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## A BILL FOR AN ACT

RELATING TO PROSTITUTION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The purpose of this Act is to authorize a  
2 person convicted of committing the offense of prostitution to  
3 file a motion to vacate the judgment under certain circumstances  
4 and to establish procedures for the motion to vacate.

5           SECTION 2. Chapter 712, Hawaii Revised Statutes, is  
6 amended by adding a new section to be appropriately designated  
7 and to read as follows:

8           "§712-    Prostitution; motion to vacate judgment. (1) A  
9 person convicted of committing the offense of prostitution under  
10 section 712-1200, loitering for the purpose of engaging in or  
11 advancing prostitution under section 712-1206, street  
12 solicitation of prostitution in designated areas under section  
13 712-1207, or convicted of a lesser offense when originally  
14 charged with a violation of section 712-1200, 712-1206, or 712-  
15 1207, may file a motion to vacate the conviction if the  
16 defendant's participation in the offense was the result of the  
17 person having been a victim of:



- 1        (a) Promoting prostitution in the first degree under  
2        section 712-1202 or promoting prostitution in the  
3        second degree under section 712-1203;
- 4        (b) A severe form of trafficking in persons as defined in  
5        title 22 United States Code section 7102(13); or
- 6        (c) A crime as set forth in title 18 United States Code  
7        section 2422, section 2423(a), or section 2425.
- 8        (2) A motion filed under this section shall:
- 9        (a) Be in writing;
- 10       (b) Be made within a reasonable period of time after the  
11       person ceases to be a victim as described in  
12       subsection (1), subject to reasonable concerns for the  
13       safety of the defendant, family members of the  
14       defendant, or other victims of the trafficking that  
15       may be jeopardized by the bringing of a motion, or for  
16       other reasons consistent with the purpose of this  
17       section; and
- 18       (c) Describe the evidence and provide copies of any  
19       official documents showing that the defendant is  
20       entitled to relief under this section.
- 21       (3) The court shall hold a hearing on a motion filed under  
22       this section if the motion satisfies the requirements of



1 subsection (2); provided that the court may dismiss a motion  
2 without a hearing if the court finds that the motion fails to  
3 assert grounds on which relief may be granted.

4 (4) Official documentation of the defendant's status as a  
5 victim of trafficking or a victim of a severe form of  
6 trafficking from a federal, state, or local government agency or  
7 a sworn statement from a trained professional staff member of a  
8 victim services organization, an attorney, a member of the  
9 clergy, or a medical or other health professional from whom the  
10 defendant has sought services to address the effects of having  
11 been trafficked shall create a presumption that the person's  
12 participation in the offense of prostitution was a result of  
13 having been a victim of trafficking or a victim of a severe form  
14 of trafficking, but shall not be required for granting a  
15 petition under this subsection.

16 (5) If the court grants a motion filed under this section,  
17 the court shall vacate the conviction and dismiss the accusatory  
18 pleading, and may take additional action as is appropriate in  
19 the circumstances or as justice requires.

20 (6) A person making a motion to vacate pursuant to this  
21 section has the burden of proof by a preponderance of the  
22 evidence.



1        (7) This section shall not apply to a motion to vacate a  
2 conviction under this chapter for:

3        (a) Promoting prostitution; or

4        (b) A person who offers a fee to engage in sexual conduct  
5 with another person.

6        (8) For the purposes of this section:

7        "Official documentation" includes a police report, court  
8 record, or affidavit generated from a federal, state, or local  
9 government agency; a victim services organization that has  
10 served the person as a victim of trafficking; an attorney; a  
11 member of the clergy; or a medical or health care professional.

12        "Victim of trafficking" and "victim of a severe form of  
13 trafficking" shall have the same meaning as in title 22 United  
14 States Code section 7102."

15        SECTION 3. This Act does not affect rights and duties that  
16 matured, penalties that were incurred, and proceedings that were  
17 begun before its effective date.

18        SECTION 4. New statutory material is underscored.



1 SECTION 5. This Act shall take effect upon its approval.

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# H.B. NO. 2235

**Report Title:**

Prostitution; Motion to Vacate Judgment

**Description:**

Authorizes a person convicted of committing the offense of prostitution to file a motion to vacate the judgment under certain circumstances; establishes procedures for the motion to vacate.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

