

STAND. COM. REP. NO.

2976

Honolulu, Hawaii

MAR 04 2022

RE: S.B. No. 2660
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirty-First State Legislature
Regular Session of 2022
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred S.B. No. 2660 entitled:

"A BILL FOR AN ACT RELATING TO PROSTITUTION,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Allow defendants who enter deferred acceptance of nolo contendere pleas to have the conviction vacated if conditions are met; and
- (2) Specify that the three-year period begins after the original deferral of the nolo contendere plea.

Your Committee received testimony in support of this measure from the Hawai'i State Commission on the Status of Women, The Legal Clinic, American Civil Liberties Union of Hawai'i, and one individual. Your Committee received testimony in opposition to this measure from one individual. Your Committee received comments on this measure from the Office of the Public Defender.

Your Committee finds that section 712-1209.6, Hawaii Revised Statutes, allows defendants convicted of prostitution to file a motion to vacate the conviction if the defendant is not subsequently convicted of any other crime within three years after the original conviction. However, section 712-1209.6, Hawaii



Revised Statutes, fails to include immigrant defendants charged with prostitution who, instead of going to trial or entering a traditional guilty or nolo contendere plea, entered a deferred acceptance of a nolo contendere plea or deferred acceptance of a guilty plea. Under immigration law, a conviction is defined as a plea of guilty or nolo contendere and the judge has ordered some form of punishment. Under this definition, a deferred acceptance of nolo contendere plea or a deferred acceptance of a guilty plea is still considered a conviction in immigration law. As a result, many immigrant defendants receive deferred acceptance of nolo contendere pleas or deferred acceptance of guilty pleas for prostitution, comply with the terms of the court, have their plea dismissed and expunged, and still are arrested by U.S. Immigration and Customs Enforcement and put into removal proceedings. Because section 712-1209.6, Hawaii Revised Statutes, does not include these types of pleas, or acknowledge them as convictions, these clients are unable to utilize the vacatur and get their immigration case dismissed. This measure will give immigrant defendants an opportunity to avoid the adverse immigration consequences of their deferred acceptance of nolo contendere and deferred acceptance of guilty pleas by allowing defendants who enter deferred acceptance of nolo contendere or guilty pleas to have the plea vacated if conditions are met.

Your Committee has amended this measure by:

- (1) Allowing a person's deferred acceptance of nolo contendere plea or deferred acceptance of guilty plea to be vacated;
- (2) Inserting an effective date of July 30, 2075, to encourage further discussion; and
- (3) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2660, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2660, S.D. 1, and be placed on the calendar for Third Reading.



Respectfully submitted on
behalf of the members of the
Committee on Judiciary,



KARL RHOADS, Chair



The Senate
Thirty-First Legislature
State of Hawai'i

Record of Votes
Committee on Judiciary
JDC

Bill / Resolution No.:*	Committee Referral:	Date:
SB 2660	JDC	02-17-22

The Committee is reconsidering its previous decision on this measure.
If so, then the previous decision was to: _____

The Recommendation is:

<input type="checkbox"/> Pass, unamended 2312	<input checked="" type="checkbox"/> Pass, with amendments 2311	<input type="checkbox"/> Hold 2310	<input type="checkbox"/> Recommit 2313
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Members	Aye	Aye (WR)	Nay	Excused
RHOADS, Karl (C)	✓			
KEOHOKALOOLE, Jarrett (VC)	✓			—
ACASIO, Laura	✓			
GABBARD, Mike	✓			
KIM, Donna Mercado	✓			
LEE, Chris	✓			
FEVELLA, Kurt	✓			
TOTAL	7	—	—	—

Recommendation: Adopted Not Adopted

Chair's or Designee's Signature: *Karl Rhoads*

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*Only one measure per Record of Votes