

PA 99-0109: Creation of Affirmative Defense to Prostitution Charge – Summary

INTRODUCTION TO ILLINOIS PA 99-0109 (2015)

Overview of the Act: Amends 720 ILCS 5/11-14, creating an affirmative defense for people charged with prostitution, offering them the opportunity to prove they are subject to human trafficking under state law. PA 99-0109 adds new section 725 ILCS 5/115-6.1 to the code of criminal procedure, creating an in camera review process for defendants who are concerned about the safety of raising the affirmative defense in open court.

Current Status: Signed by Governor, July 22, 2015. Effective Upon Signing.

Sponsors: In the Senate: Sen. John G. Mulroe - Toi W. Hutchinson - Julie A. Morrison - Michael Connelly - Jacqueline Y. Collins, Iris Y. Martinez, David Koehler, Mattie Hunter, Patricia Van Pelt, Pamela J. Althoff, Michael Noland, Karen McConnaughay, Neil Anderson, William Delgado, Sue Rezin, Kwame Raoul, Kimberly A. Lightford, Emil Jones, III, Daniel Biss and Ira I. Silverstein.

In the House: Rep. Elgie R. Sims, Jr. - Ann Williams - Ron Sandack - Elizabeth Hernandez - Arthur Turner, Barbara Wheeler, Scott Drury, Christian L. Mitchell, John D'Amico, Elaine Nekritz, Pamela Reaves-Harris, Jaime M. Andrade, Jr., Margo McDermed, Will Guzzardi, Carol Ammons, John D. Anthony, Patricia R. Bellock, Marcus C. Evans, Jr., Barbara Flynn Currie, Robert Rita, Silvana Tabares, Camille Y. Lilly, Jehan A. Gordon-Booth, Mike Smiddy and Anna Moeller.

CREATING AN AFFIRMATIVE DEFENSE

PA 99-0109 amends Sec. 11-14 of the Criminal Code, which prohibits prostitution, providing defendants charged with prostitution the opportunity to raise an affirmative defense that they engaged in or performed prostitution as a result of being a victim of involuntary servitude or trafficking in persons as defined in 720 ILCS 5/10-9 of the Criminal Code.

This change was necessary for several reasons. Victims of commercial sexual exploitation are frequently criminalized and convicted for prostitution in Illinois. ICJIA recorded 4,411 arrests for prostitution over the last three years. Unfortunately, prostituted people report high rates of violence and control from their pimps and traffickers. They deserve a chance to prove to the court that they have been subjected to human trafficking and are not guilty of prostitution. In addition, Illinois law trailed behind the majority of states that already provide an affirmative defense to people charged with prostitution, in the growing effort to improve the criminal system response to sexually exploited people.

CREATING A NEW SAFETY PROCEDURE TO RAISE THE DEFENSE

PA 99-0109 creates new section 725 ILCS 5/115-6.1 in the code of criminal procedure. In the event a defendant charged with prostitution has reason to believe that the presentation of evidence in asserting the defense may jeopardize the safety of the accused, courtroom personnel, or others impacted by human trafficking, PA 99-0109 permits the defendant to file a motion under seal requesting the court to review the safety concerns.

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Upon receipt of the motion and notice to the parties, PA 99-0109 requires the court to hold an in camera hearing and make a record of the hearing, which must be kept under seal. The court is prohibited from reviewing the merits of the underlying affirmative defense during the in camera hearing, and any statements made by the accused during the in camera hearing are not admissible against him or her in the underlying prosecution.

In the event that the court finds by a preponderance of the evidence that the assertion of an affirmative defense under subsection by the accused in open court would likely jeopardize the safety of the accused, court personnel, or other persons, PA 99-0109 authorizes the court to select, in its discretion, from a range of listed options to improve the safety of the proceeding, including clearing the courtroom with the agreement of the accused, ordering additional in camera hearings, sealing the records, and/or prohibiting court personnel from disclosing the proceedings without prior court approval. The court may also take any other appropriate measure that in the court's discretion will enhance the safety of the proceedings and ensure the accused a full and fair opportunity to assert his or her affirmative defense.

This new procedure was included in the law in order to improve the likelihood that the defense could be used at all, based on the experiences of prostituted people in court proceedings. Survivor leaders in Illinois report that pimps or others working for pimps attend the prostituted persons' court hearings, listen to the proceedings, and on occasion intervene with court personnel. Prostituted people reflected that this was a common occurrence that everyone in the court system was aware of, and it would prevent them from raising an affirmative defense. In support, a 2008 Chicago sample of over 100 prostituted young women, 40% reported that their pimps watched them when they were not engaged in prostitution.