

**NOTICE OF PROPOSED CONSTITUTIONAL AMENDMENTS TO THE  
CONSTITUTION OF THE STATE OF HAWAII**

During the Regular Session of 2004, Twenty-second Legislature, four (4) measures containing a proposed constitutional amendment were adopted in conformance with the requirement specified in Article XVII, Section 3 of the Hawaii State constitution.

**H.B. No. 2789 H.D. 1, S.D. 1**

A BILL FOR AN ACT RELATING TO SEXUAL ASSAULT.

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

SECTION 1. The purpose of this Act is to propose an amendment to article I of the Constitution of the State of Hawaii to provide that the legislature may define what behavior constitutes a continuing course of conduct in sexual assault crimes and to amend the Hawaii penal code to statutorily define the behavior.

SECTION 2. Article I of the Constitution of the State of Hawaii is amended by adding a new section to be appropriately designated and to read as follows:

**"SEXUAL ASSAULT CRIMES**

Section . The legislature may define what behavior constitutes a continuing course of conduct in sexual assault crimes."

SECTION 3. The question to be printed on the ballot shall be as follows:

"Shall the Constitution of the State of Hawaii be amended to provide that the legislature may define what behavior constitutes a continuing course of conduct in sexual assault crimes?"

SECTION 4. Chapter 707, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§707- Continuous sexual assault of a minor under the age of fourteen years. (1) A person commits the offense of continuous sexual assault of a minor under the age of fourteen years if the person:

- (a) Either resides in the same home with a minor under the age of fourteen years or has recurring access to the minor; and
- (b) Engages in three or more acts of sexual penetration or sexual contact with the minor over a period of time, while the minor is under the age of fourteen years.

(2) To convict under this section, the trier of fact, if a jury, need unanimously agree only that the requisite number of acts have occurred; the jury need not agree on which acts constitute the requisite number.

(3) No other felony sex offense involving the same victim may be charged in the same proceeding with a charge under this section, unless the other charged offense occurred outside the time frame of the offense charged under this section or the other offense is charged in the alternative. A defendant may be charged with only one count under this section unless more than one victim is involved, in which case a separate count may be charge for each victim.

(4) Continuous sexual assault of a minor under the age of fourteen years is a class A felony."

SECTION 5. Section 707-733.5, Hawaii Revised Statutes, is repealed.

~~["§707-733.5]—Continuous sexual assault of a minor under the age of fourteen years. (1) Any person who:~~

- ~~(a) Either resides in the same home with a minor under the age of fourteen years or has recurring access to the minor; and~~
- ~~(b) Engages in three or more acts of sexual penetration or sexual contact with the minor over a period of time, but while the minor is under the age of fourteen years,~~

~~is guilty of the offense of continuous sexual assault of a minor under the age of fourteen years.~~

~~(2) To convict under this section, the trier of fact, if a jury, need unanimously agree only that the requisite number of acts have occurred; the jury need not agree on which acts constitute the requisite number.~~

~~(3) No other felony sex offense involving the same victim may be charged in the same proceeding with a charge under this section, unless the other charged offense occurred outside the time frame of the offense charged under this section or the other offense is charged in the alternative. A defendant may be charged with only one count under this section unless more than one victim is involved, in which case a separate count may be charged for each victim.~~

~~(4) Continuous sexual assault of a minor under the age of fourteen years is a class A felony."~~

SECTION 6. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New constitutional and statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval; provided that the amendment proposed in section 2 to article I of the Constitution of the State of Hawaii shall take effect upon compliance with article XVII, section 3, of the Constitution of the State of Hawaii; and sections 4 and 5 shall take effect upon ratification of the constitutional amendment proposed in this Act.

Note: H.B. No. 2789 H.D. 1, S.D. 1 passed Third Reading in the Senate on April 2, 2004, with 23 members voting in the affirmative and passed Final Reading in the House of Representatives on April 26, 2004, with 44 members voting in the affirmative.

**S.B. No. 2843 S.D. 1, H.D. 2**

A BILL FOR AN ACT PROPOSING AN AMENDMENT TO ARTICLE I OF THE CONSTITUTION OF THE STATE OF HAWAII.

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

SECTION 1. The purpose of this Act is to propose an amendment to article I of the Constitution of the State of Hawaii to provide that:

- (1) The public has a right of access to registration information regarding persons who have been convicted in the past or who will be convicted in the future of certain crimes against children and certain sexual offenses;
- (2) The legislature shall determine which offenses are subject to this public right of access;
- (3) The legislature shall determine what information constitutes registration information to which the public has a right of access;
- (4) The legislature shall determine the manner of public access to the registration information; and
- (5) The legislature shall determine a period of time and conditions pursuant to which a convicted person may petition for termination of public access.

SECTION 2. Article I of the Constitution of the State of Hawaii is amended by adding a new section to be appropriately designated and to read as follows:

**"PUBLIC ACCESS TO INFORMATION CONCERNING  
PERSONS CONVICTED OF CERTAIN OFFENSES  
AGAINST CHILDREN AND CERTAIN SEXUAL  
OFFENSES**

Section . The public has a right of access to registration information regarding persons convicted of certain offenses against children and persons convicted of certain sexual offenses. The legislature shall determine which offenses are subject to this provision, what information constitutes registration information to which the public has a right of access, the manner of public access to the registration information and a period of time after which and conditions pursuant to which a convicted person may petition for termination of public access."

SECTION 3. The question to be printed on the ballot shall be as follows:

"Shall the Constitution of the State of Hawaii be amended to provide that the public has a right of access to registration information regarding persons convicted of certain offenses against children and persons convicted of certain sexual offenses, and that the legislature shall determine which offenses are subject to this provision, what information constitutes registration information to which the public has a right of access, the manner of public access to the registration information, and a period of time after which and conditions pursuant to which a convicted person may petition for termination of public access?"

SECTION 4. New constitutional material is underscored.

SECTION 5. This amendment shall take effect upon compliance with article XVII, section 3, of the Constitution of the State of Hawaii.

Note: S.B. No. 2843, S.D. 1, H.D. 2 passed Third Reading in the House of Representatives on April 15, 2004, with 50 members voting in the affirmative and passed Final Reading in the Senate on April 27, 2004, with 24 members voting in the affirmative.

S.B. No. 2846, S.D. 1, H.D. 2

A BILL FOR AN ACT PROPOSING AMENDMENTS TO ARTICLE I, SECTION 14, OF THE HAWAII CONSTITUTION.

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

SECTION 1. The purpose of this Act is to propose an amendment to article I, section 14, of the Constitution of the State of Hawaii to permit the legislature to pass legislation providing for the inadmissibility of privileged confidential communications between an alleged crime victim and the alleged crime victim's physician, psychologist, counselor, or licensed mental health professional.

SECTION 2. Article I, section 14, of the Constitution of the State of Hawaii is amended to read as follows:

**"RIGHTS OF ACCUSED**

**Section 14.** In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the district wherein the crime shall have been committed, which district shall have been previously ascertained by law, or of such other district to which the prosecution may be removed with the consent of the accused; to be informed of the nature and cause of the accusation; to be confronted with the witnesses against the accused[;], provided that the legislature may provide by law for the inadmissibility of privileged confidential communications between an alleged crime victim and the alleged crime victim's physician, psychologist, counselor or licensed mental health professional; to have compulsory process for obtaining witnesses in the accused's favor; and to have the assistance of counsel for the accused's defense. Juries, where the crime charged is serious, shall consist of twelve persons. The State shall provide counsel for an indigent defendant charged with an offense punishable by imprisonment."

SECTION 3. The question to be printed on the ballot shall be as follows:

"Shall the Constitution of the State of Hawaii be amended to permit the legislature to provide by law for the inadmissibility of privileged confidential communications between an alleged crime victim and the alleged crime victim's physician, psychologist, counselor or licensed mental health professional?"

SECTION 4. Constitutional material to be repealed is bracketed and stricken. New constitutional material is underscored.

SECTION 5. This amendment shall take effect upon compliance with article XVII, section 3, of the Constitution of the State of Hawaii.

Note: S.B. No. 2846, S.D. 1, H.D. 2, passed Third Reading in the House of Representatives on April 15, 2004, with 50 members voting in the affirmative and passed Final Reading in the Senate on April 27, 2004, with 24 members voting in the affirmative.

S.B. No. 2851, S.D. 1

A BILL FOR AN ACT PROPOSING AN AMENDMENT TO ARTICLE I OF THE CONSTITUTION OF THE STATE OF HAWAII.

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

SECTION 1. The purpose of this Act is to propose an amendment to article I, section 10, of the Constitution of the State of Hawaii to permit prosecutors and the attorney general to initiate felony criminal charges by filing a written information signed by the prosecutor or the attorney general setting forth the charge in accordance with procedures and conditions to be provided by the state legislature.

SECTION 2. Article 1, section 10, of the Constitution of the State of Hawaii is amended to read as follows:

**"INDICTMENT; PRELIMINARY HEARING;  
INFORMATION;  
DOUBLE JEOPARDY; SELF-INCRIMINATION**

**Section 10.** No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury or upon a finding of probable cause after a preliminary hearing held as provided by law[;] or upon information in writing signed by a legal prosecuting officer under conditions and in accordance with procedures that the legislature may provide, except in cases arising in the armed forces when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy; nor shall any person be compelled in any criminal case to be a witness against oneself."

SECTION 3. The question to be printed on the ballot shall be as follows:

"Shall Hawaii's constitutional provision regarding the initiation of criminal charges be amended to permit criminal charges for felonies to be initiated by a legal prosecuting officer through the filing of a signed, written information setting forth the charge in accordance with procedures and conditions to be provided by the state legislature?"

SECTION 4. Constitutional material to be repealed is bracketed and stricken. New constitutional material is underscored.

SECTION 5. This amendment shall take effect upon compliance with article XVII, section 3, of the Constitution of the State of Hawaii.

Note: S.B. No. 2851, S.D. 1 passed Third Reading in the Senate on March 9, 2004, with 18 members voting in the affirmative and passed Third Reading in the House of Representatives on April 7, 2004, with 36 members voting in the affirmative.

PATRICIA MAU-SHIMIZU  
Clerk of the House of Representatives

PAUL T. KAWAGUCHI  
Clerk of the Senate

(Hon S.B.: 9/10, 17, 24, 10/1/2004)