
A BILL FOR AN ACT

PROPOSING AN AMENDMENT TO ARTICLE I, SECTION 25, OF THE HAWAII
CONSTITUTION REGARDING CRIMES AGAINST MINORS.

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

1 SECTION 1. The legislature finds that in 1997, the
2 legislature passed a law to prohibit continuous sexual assault
3 of a minor under the age of fourteen years. However, that law
4 was invalidated by the Hawaii supreme court. A similar
5 constitutional amendment was passed by voters in 2004 but was
6 also invalidated by the Hawaii supreme court. The present
7 version of article I, section 25, of the Hawaii State
8 Constitution was passed by voters in 2006, and authorizes the
9 legislature to define what behavior constitutes a continuing
10 course of conduct in continuous sexual assault crimes against
11 minors younger than fourteen years of age. The present version
12 of article I, section 25, of the Hawaii State Constitution also
13 allows the legislature to define what constitutes the jury
14 unanimity that is required for a conviction under this charge.
15 This is significant because, for example, all twelve jurors may
16 agree that three or more acts of sexual assault were committed



1 against the same child victim and within the requisite age
2 range, but not all jurors may agree as to which three acts
3 constitute the basis for the conviction. This legislative
4 authority is needed to address the difficulty in prosecuting
5 those persons who repeatedly sexually assault a child, given the
6 difficulty that children have in remembering the individual
7 dates on which they were sexually assaulted.

8 The legislature further finds that the amendment proposed
9 by this Act would allow the legislature to expand the offense to
10 include continuous sexual assault of a minor under the age of
11 sixteen years, from the existing statutory age of fourteen
12 years. This change would be consistent with the age at which
13 minors may legally consent to sexual conduct, with the provision
14 that it is not an offense if the minor is at least fourteen
15 years old but less than sixteen years old, and the other person
16 is less than five years older than the minor or legally married
17 to the minor.

18 Accordingly, the purpose of this Act is to propose an
19 amendment to article I, section 25, of the Constitution of the
20 State of Hawaii to expand the legislature's present power to
21 define the elements and jury unanimity requirements of the crime



1 of continuous sexual assault of a minor, to include minors who
2 are younger than sixteen years of age, rather than only those
3 who are younger than fourteen years of age.

4 SECTION 2. Article I, section 25, of the Constitution of
5 the State of Hawaii is amended to read as follows:

6 **"SEXUAL ASSAULT CRIMES AGAINST MINORS**

7 **Section [÷]25[÷].** In continuous sexual assault crimes
8 against minors younger than [~~fourteen~~] sixteen years of age, the
9 legislature may define:

- 10 1. What behavior constitutes a continuing course of
11 conduct; and
12 2. What constitutes the jury unanimity that is required
13 for a conviction."

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

16 "Shall the Constitution of the State of Hawaii be
17 amended to include within the legislature's present
18 power to define the elements and jury unanimity
19 requirements of the crime of continuous sexual assault
20 of a minor, those minors who are younger than sixteen



1 years of age rather than only those who are younger
2 than fourteen years of age?"

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

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



Report Title:

Honolulu Prosecuting Attorney's Office Package; Sexual Assault Crimes; Criminal Offenses; Constitutional Amendment

Description:

Proposes an amendment to Article I, section 25, of the Hawaii Constitution to expand the legislature's present power to define the elements and jury unanimity requirements of the crime of continuous sexual assault of a minor, to include minors who are younger than 16 years of age, rather than only those who are younger than 14 years of age. (SD2)

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