

QUESTION #
SB2843 SD1 HD2

**PROPOSES A CONSTITUTIONAL AMENDMENT PROVIDING FOR A PUBLIC
RIGHT OF ACCESS TO INFORMATION REGARDING PERSONS CONVICTED OF
CERTAIN OFFENSES AGAINST CHILDREN AND PERSONS CONVICTED OF
CERTAIN SEXUAL OFFENSES, AS DETERMINED BY THE LEGISLATURE**

Constitutional Question

"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?"

Description of Proposed Amendment

The proposed amendment establishes that the public has a state constitutional right of access to registration information regarding individuals who have been convicted of certain crimes against children or certain sexual offenses. Current state statutes require public disclosure of relevant registration information after a judge, in a separate court hearing for each convicted offender, has determined that release of such information is necessary to protect the public. Relevant registration information presently is defined by state statute to include: the offender's name and aliases; actual address of residence and employment; information identifying the offender's vehicles; a summary of the individual's offenses; and a recent photograph of the individual. The proposed amendment requires the Legislature to determine what part of a convicted offender's registration information must be made available to the public. Additionally, the amendment requires the Legislature to expressly designate which offenses against children and which sexual offenses are subject to the public access to registration information requirement. Finally, the proposed amendment requires the Legislature to determine: how the designated registration information will be made available to the public; and when and under what conditions a convicted offender may petition the court to end the public's access to the individual's registration information.

The Hawaii Supreme Court ruled in *State v. Bani*, 97 Hawaii 285, 298 (2001), that state procedural due process rights entitled a registered sex offender to notice and an opportunity to be heard prior to public notification of his sex offender status. The court required the State to allow a registered sex offender "a meaningful opportunity to argue that he or she does not represent a threat to the community and that public notification is not necessary" To comply with this ruling, present state law requires that registered sex offenders, as defined in section 846E-1, Hawaii Revised Statutes, prior to the public release of their relevant registration information, be

given a separate civil court hearing to determine that such notification is necessary to protect the public.

Meaning of a "YES" Vote

A "yes" vote means that the public will have a state constitutional right of access to registration information regarding persons convicted of certain offenses against children and persons convicted of certain sexual offenses without a separate court hearing.

Further, the Legislature would have the power to determine:

- (1) Which sexual offenses and crimes against children are subject to the public right of access;
- (2) What information constitutes registration information to which the public has a right of access;
- (3) The manner of public access to the registration information; and
- (4) The period of time and conditions pursuant to which a convicted person may petition for termination of public access.

Meaning of a "NO" Vote

A "no" vote means that the public would not have access to registration information regarding registered sex offenders unless a court determines in a separate court hearing that public release of relevant registration information is necessary to protect the public.

Meaning of a "BLANK" Vote

A "blank" vote has essentially the same effect as a "no" vote because the number of "yes" votes must exceed the sum of the "no" and "blank" votes in order for the amendment to be ratified.

Pros

Current Hawaii law provides police access to the sex offender registration information, but public access to relevant registration information about an individual sex offender is barred until the offender is given a separate civil court hearing and provided an opportunity to present evidence to show that the offender does not represent a threat to the community and that the public release of the registration information is not necessary to protect the public. As a result of the Hawaii Supreme Court's decision in *State v. Bani*, a state web site that had been providing

public access to information regarding convicted sex offenders was shut down in 2001, due to the fact that the previously convicted offenders had not been granted separate hearings as required by current law.

The proposed amendment would establish the public's constitutional right of access to registration information regarding individuals convicted of certain offenses against children and certain sexual offenses. It also would allow the Legislature to eliminate or modify the separate hearing requirement. The Legislature would determine which offenses require a separate hearing and which do not, what registration information may be accessed by the public, and how the public gets that information. The Legislature also would determine when and under what conditions a convicted individual may petition the court for termination of public access.

There are over 1,900 registered sex offenders in Hawaii. Under present law, except for persons convicted of a single misdemeanor offense who are not subject to the public notification requirement, previously convicted sex offenders, as well as persons convicted in the future of certain sex offenses and certain crimes against children, must be given a separate civil court hearing before the public is allowed access to relevant registration information that is necessary to protect the public regarding an offender, even though the offender was found guilty of a sexual offense or crime against children. These separate hearings will require additional time and resources to complete.

The people of Hawaii, through their Legislature, should be allowed to identify certain crimes – such as a violent rape or a sexual assault on a child – that are so serious that a separate court hearing is not necessary before the public can learn whether convicted offenders live down the block or across the street. People have a right to protect themselves. Parents have a right to protect their children. Relevant registration information regarding those convicted of certain sex offenses and certain crimes against children should be made available to citizens as soon as possible after conviction. A separate hearing should not be required in every case. This amendment allows the Legislature to help protect citizens from sex offenders and help parents protect their children.

Cons

The proposed amendment seeks to do away with state procedural due process protections that currently exist regarding the publication of the names, street addresses, employment street addresses, license numbers and photographs of persons convicted of sexual offenses and crimes against children.

In 2002 and 2003, the Legislature enacted statutory procedures for publishing the names of offenders convicted of sexual offenses and crimes against children. These procedures required a separate civil court hearing where the offender's conviction would be entered into evidence and the burden would be on the offender to prove that he or she was not a danger to the community and the safety of the public did not require public notification.

Although the separate hearing process was enacted in 2002, and modified in 2003, as of July 1, 2004, no hearings had been held to provide public access to relevant registration information on any registered sex offender. Instead, efforts have been concentrated on this attempt to amend the state constitution so that such offenders will not have a state due process right to a hearing.

Most states have some form of public access to sex offender registration information, but with many more limitations than Hawai`i has. Some states have a hearing process, or they limit the offenses requiring public notification to the most serious felony sexual offenses. In Hawai`i, most sex offenders, other than an offender convicted of a single misdemeanor, are subject to public notification for a minimum of 10 years, with a possibility of a court order for lifetime public release of the relevant registration information.

Proponents of this amendment claim that sexual crimes have the highest rate of recidivism (repeat criminal behavior) and that the public needs this information in order for their children to be safe from strangers moving into the neighborhood. However, Hawai`i has one of the lowest rates of recidivism, due in large part to having one of the best sex offender treatment programs in the country which includes close monitoring of these individuals. Additionally, statistics prove that "stranger" assaults count for less than seven per cent of these offenses against children. Most sexual offenses against children are committed by family members and friends known to the victim.

There has been no showing that this proposed constitutional change is necessary. The current separate court hearing process can and should be used to determine when public access to relevant registration information is necessary. Modifications to improve the process can always be made. Some opponents of the amendment believe that claims that it will take years to clear the backlog of sex offenders who have not had such hearings are without reasonable basis in fact. Many hearings may be very short, requiring no evidence other than paper documentation of the conviction. Some offenders may agree to public access and avoid a costly public hearing in order to save further embarrassment.

Constitutional amendments should be carefully considered and only undertaken when there has been a clear demonstration that an issue cannot be addressed through any other avenue. That is not the case here. Because the process of adversarial scrutiny adds to the credibility of our criminal justice system, the current process involving a separate court hearing should be allowed to take place. Otherwise, there will be two conflicting constitutional provisions, i.e. the due process clause and this amendment, which will lead to years of costly, time-consuming litigation that will benefit no one and will further delay the public's access to this important registration information.