

JAN 25 2006

A BILL FOR AN ACT

PROPOSING AN AMENDMENT TO ARTICLE I OF THE CONSTITUTION OF THE
STATE OF HAWAII RELATING TO SEXUAL ASSAULT.

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

1 SECTION 1. The purpose of this Act is to propose an
2 amendment to article I of the Constitution of the State of
3 Hawaii to provide that the legislature may define what behavior
4 constitutes a continuing course of conduct in sexual assault
5 crimes against minors and what constitutes the jury unanimity
6 that is required for a conviction.

7 Under current Hawaii law, it is difficult to prosecute
8 those who repeatedly sexually assault young children with whom
9 they live, because of the difficulty young children have in
10 remembering the individual dates on which they were sexually
11 assaulted. This amendment would allow the legislature to enact
12 a law that would permit juries to convict a person of the
13 continuous sexual assault of a child, if each member of the jury
14 was convinced beyond a reasonable doubt that the defendant had
15 sexually assaulted the child the required number of times (such
16 as three), even if there were not unanimity as to the individual

1 assaults. This would thus make it easier to prosecute those who
2 repeatedly sexually assault children with whom they live.

3 The legislature passed such a law in 1997, but that law was
4 invalidated by the Hawaii Supreme Court. An amendment similar
5 to this amendment was proposed to the voters in 2004 and
6 received "yes" votes that constituted 65.6 percent of the votes
7 cast, but the amendment was invalidated by the Hawaii Supreme
8 Court on the ground that the legislature had not followed
9 correct procedures in proposing the amendment to the voters.

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

13 **"SEXUAL ASSAULT CRIMES AGAINST MINORS**

14 **Section . The legislature may define in sexual assault**
15 **crimes against minors: (1) what behavior constitutes a**
16 **continuing course of conduct; and (2) what constitutes the jury**
17 **unanimity that is required for a conviction."**

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

20 "Shall the Constitution of the State of Hawaii be amended
21 to provide that the legislature may define in sexual
22 assault crimes against minors: (1) what behavior

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1 constitutes a continuing course of conduct; and (2) what
2 constitutes the jury unanimity that is required for a
3 conviction?"

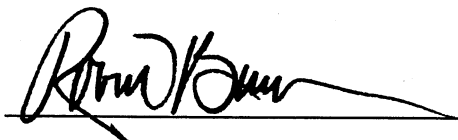
4 SECTION 5. New constitutional material is underscored.

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

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INTRODUCED BY:



BY REQUEST

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JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT PROPOSING AN AMENDMENT TO ARTICLE I OF THE CONSTITUTION OF THE STATE OF HAWAII RELATING TO SEXUAL ASSAULT.

PURPOSE: 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 that the Legislature may define what constitutes the unanimity that is required for a conviction in sexual assault crimes.

MEANS: Amend article I of the Constitution of the State of Hawaii by adding a new section.

JUSTIFICATION: This amendment is intended to reverse the effect of State v. Rabago, 103 Haw. 263 (2003). The amendment would allow the Legislature to define what behavior constitutes a continuing course of conduct in sexual assault crimes, and to define what constitutes the jury unanimity that is required for a conviction in sexual assault crimes.

In cases when an adult sexually assaults a child over the course of months or years, it is very difficult for the child to remember dates with particularity. Section 707-733.5, Hawaii Revised Statutes, was intended to address this situation and enable a jury to render a guilty verdict if the jury unanimously agrees that the child was sexually assaulted at least three times, even if the jury is not unanimous regarding which three incidents form the basis of their verdict. In the case of State v. Rabago, 103 Haw. 263 (2003), the Hawaii Supreme Court held that section 707-733.5, Hawaii revised Statutes, is unconstitutional. This amendment would

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reverse the effect of Rabago decision and would allow the legislature to enact new legislation that would accomplish the goal that section 707-733.5, Hawaii Revised Statutes, was intended to accomplish.

Impact on the public: This bill will be beneficial to the public interest because dangerous criminals will not be released due a jury's inability to reach a unanimous decision as to which particular sexual assault a defendant committed, even when the jury unanimously agrees that the perpetrator committed at least three sexual assaults against a victim in a continuing course of conduct.

Impact on the department and other agencies: This bill will help the department and other agencies because sexual assault cases involving a continuing course of conduct will be able to be more effectively prosecuted.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED AGENCIES: County police, county prosecutors, and the Office of the Public Defender.

EFFECTIVE DATE: Upon approval.