
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

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

4 SECTION 4. New constitutional material is underscored.

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

PROPOSED

Report Title:

Sexual Assault Crimes; ConAm

Description:

Propose an amendment to article I of the State Constitution 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. (Rabago case). (SD1)

