



**WRITTEN TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTY-FIRST LEGISLATURE, 2022**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 2089, S.D. 1, PROPOSING AN AMENDMENT TO ARTICLE I, SECTION 25, OF THE HAWAII CONSTITUTION REGARDING CRIMES AGAINST MINORS.

**BEFORE THE:**

SENATE COMMITTEE ON WAYS AND MEANS

**DATE:** Wednesday, February 23, 2022      **TIME:** 10:05 a.m.

**LOCATION:** State Capitol, Room 211, Via Videoconference

**TESTIFIER(S):**      **WRITTEN TESTIMONY ONLY.**

(For more information, please contact Lianne M. McBride,  
Deputy Attorney General, at (808) 586-1073.)

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Chair Dela Cruz and Members of the Committee:

The Department of the Attorney General (the Department) supports this bill.

The purpose of this bill is to amend article I, section 25, of the Constitution of the State of Hawaii to provide that the Legislature may define: (1) what behavior constitutes a continuing course of conduct in continuous sexual assault crimes against minors younger than sixteen years of age, and (2) what constitutes the jury unanimity that is required for a conviction under this charge.

The amendments proposed in this bill would allow the Legislature to expand the offense of continuous sexual assault of a minor from the existing statutory age of fourteen years to sixteen years. This change would be consistent with the age at which minors may legally consent to sexual conduct, with the provision that it is not an offense if the minor is at least fourteen years old but less than sixteen years old, and the other person is less than five years older than the minor or legally married to the minor. We believe the amendments in this bill are needed to address the difficulty in prosecuting those persons who repeatedly sexually assault a child, given the difficulty that children have in remembering the individual dates on which they were sexually assaulted. This change in the law would make it easier to prosecute those persons who repeatedly sexually assault a child.

The Department respectfully requests the passage of this bill.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

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**THE HONORABLE DONOVAN M. DELA CRUZ, CHAIR**  
**SENATE COMMITTEE ON WAYS AND MEANS**  
**Thirty-First State Legislature**  
**Regular Session of 2022**  
**State of Hawai'i**

February 22, 2022

**RE: S.B. 2089, S.D. 1; PROPOSING AN AMENDMENT TO ARTICLE 1, SECTION 25,  
OF THE HAWAII CONSTITUTION REGARDING CRIMES AGAINST MINORS.**

Chair Dela Cruz, Vice-Chair Keith-Agaran and members of the Senate Committee on Ways and Means, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in **strong support** of S.B. 2089, S.D. 1. This bill is part of the Department's 2022 legislative package and we thank you for hearing it.

The purpose of this bill is to allow the Legislature to effectively amend the offense of Continuous Sexual Assault of a Minor (§707-736.6, H.R.S.) to apply to children under sixteen years of age, where the current statute only covers children under fourteen years of age. This change would be consistent with the age at which minors may legally consent to sexual conduct, as outlined in sections 707-730 and 707-732 of the Hawaii Revised Statutes ("HRS") (i.e. Sexual Assault in the First and Third Degrees).<sup>1</sup>

In 1997, to address the difficulty in prosecuting those who repeatedly sexually assault a child—particularly given the difficulty that children have in remembering individual dates on which they were sexually assaulted—the legislature passed a law to prohibit continuous sexual assault of a minor under the age of fourteen years. That law was invalidated by the Hawaii Supreme Court, which held that a constitutional amendment was necessary to prohibit continuous sexual assault of children in the manner intended by the Legislature.<sup>2</sup> A constitutional

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<sup>1</sup> See [https://www.capitol.hawaii.gov/hrscurrent/Vol14\\_Ch0701-0853/HRS0707/HRS\\_0707-0730.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol14_Ch0701-0853/HRS0707/HRS_0707-0730.htm); and [https://www.capitol.hawaii.gov/hrscurrent/Vol14\\_Ch0701-0853/HRS0707/HRS\\_0707-0732.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol14_Ch0701-0853/HRS0707/HRS_0707-0732.htm).

<sup>2</sup> *State v. Rabago*, 103 Haw. 236, 81 P.3d 1151 (2003). Available online at: <https://casetext.com/case/state-v-rabago-1>; last accessed February 7, 2022.

amendment similar to the current proposed amendment was posed to voters in 2004 but was invalidated by the Hawaii Supreme Court.<sup>3</sup> The present version of Article 1, Section 25, was passed by voters in 2006.

The proposed changes to Article I, Section 25, of the Constitution of the State of Hawaii would authorize the legislature to define what behavior constitutes a continuing course of conduct in continuous sexual assault crimes against minors younger than sixteen years of age, and what constitutes the jury unanimity that is required for a conviction under this charge. If this bill is passed, and ultimately approved by voters, then it would be possible for a jury to consider—for example—4 different incidents of sexual assault committed against a child, even if those incidents ranged from when the child was 12 years old to 14 years old. In addition, if all 12 jurors agreed that 3 or more incidents of sexual assault occurred, but some jurors concluded that the first 3 incidents were proven beyond a reasonable doubt, while other jurors concluded that the last 3 incidents were proven beyond a reasonable doubt—again, just as a simple example—then the offense would be proven, even if all 12 jurors did not agree on the same 3 incidents.

Because children pose such a vulnerable segment of our population, and because of the added difficulties that children to have, in testifying for these types of cases, the Department strongly believes that the proposed change is needed. It is hoped that this will appropriately hold future offenders accountable and further hoped that it will deter would-be offenders from committing these offenses in the first place.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu **strongly supports** the passage of S.B. 2089, S.D. 1. Thank you for the opportunity to testify on this matter.

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<sup>3</sup> Taomae v. Lingle, 110 Haw. 327, 132 P.3d 1238 (2006). Available online at: <https://law.justia.com/cases/hawaii/supreme-court/2006/26962new.html>; last accessed February 7, 2022.

**SB-2089-SD-1**

Submitted on: 2/21/2022 5:25:47 PM

Testimony for WAM on 2/23/2022 10:05:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Gerard Silva	Individual	Oppose	No

Comments:

The people of Hawaii will not stand for any child Trafficing in Hawaii all those caught should get the Death Penalty. You should only be making the Laws as tough as possible on Child Trafficing!!