

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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Tuesday, February 08, 2022 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Via Videoconference

TESTIFIER(S): Holly T. Shikada, Attorney General, or
Lianne M. McBride, Deputy Attorney General

Chair Rhoads 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; (2) what behavior constitutes a continuing course of conduct in continuous abuse of a minor younger than sixteen years of age; and (3) what constitutes the jury unanimity that is required for a conviction under these two charges.

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. The amendments in this bill are needed to enact a law that would permit juries to convict a person of the continuous abuse of a minor younger than sixteen years of age, if each member of the jury were convinced beyond a reasonable doubt that the defendant had abused the child the required number of times, such as three, even if there was not unanimity as to which individual incidents constitute the requisite number. We believe the amendments in this bill are needed to address the difficulty in prosecuting those

persons who repeatedly abuse a child, given the difficulty that children have in remembering the individual dates on which they were abused. This change in the law would make it easier to prosecute those persons who repeatedly abuse a child.

The Department respectfully requests the passage of this bill.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

STEVEN S. ALM
PROSECUTING ATTORNEY

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THOMAS J. BRADY
FIRST DEPUTY
PROSECUTING ATTORNEY



THE HONORABLE KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY
Thirty-First State Legislature
Regular Session of 2022
State of Hawai'i

February 8, 2022

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

Chair Rhoads, Vice-Chair Keohokalole and members of the Senate Committee on Judiciary, 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, with a suggested amendment. 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).¹

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

¹ See 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.

continuous sexual assault of children in the manner intended by the Legislature.² A constitutional amendment similar to the current proposed amendment was posed to voters in 2004 but was invalidated by the Hawaii Supreme Court.³ 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.

While the Department had also hoped to pass amendments that would create a similar offense of Continuous Abuse of a Minor Under the Age of Sixteen, the Department believes the language of that proposal requires additional work, and **respectfully requests that the Committee delete any portion of S.B. 2089 dealing with continuous abuse.**

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, with the suggested amendment. Thank you for the opportunity to testify on this matter.

² 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.

³ 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

Submitted on: 2/5/2022 7:25:30 PM

Testimony for JDC on 2/8/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Dara Carlin, M.A.	Individual	Support	No

Comments:

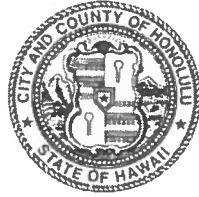
Having spent my career working with victim-survivors of abuse, may I propose that just ONE rape, ONE molestation, ONE sexual assault is sufficient to ruin a child's life well into adulthood with the consequences being felt into the next generation so I think the word "continuing" should be stricken because I assure you, just ONCE *is* enough. All "establishing patterns" as evidenced by repeat offenses does is help the perpetrators get better odds of getting away with what they've done; we need LESS Jeffrey Epsteins in this world, not more of them so make the threshold lower & more painful - perhaps that'll make perpetrators think twice before they even try it once.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honoluluupd.org

LATE

RICK BLANGIARDI
MAYOR



RADE K. VANIC
INTERIM CHIEF

OUR REFERENCE

BN-KK

February 8, 2022

The Honorable Karl Rhoads, Chair
and Members
Committee on Judiciary
State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

SUBJECT: Senate Bill No. 2089, Proposing an Amendment to Article I, Section 25, of the Hawaii Constitution Regarding Crimes Against Minors

I am Brandon Nakasato, Captain of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports Senate Bill No. 2089, Proposing an Amendment to Article I, Section 25, of the Hawaii Constitution Regarding Crimes Against Minors

The health, safety, and wellbeing of Hawaii's keiki (especially those who are victims or witnesses of any crime or violence) continue to be a priority for the HPD and its collaborating partners. The HPD is in support of the proposed amendment as it is a step forward to help address the difficulties faced in prosecuting individuals who repeatedly sexually assault minors.

The HPD urges you to support Senate Bill No. 2089, Proposing an Amendment to Article I, Section 25, of the Hawaii Constitution Regarding Crimes Against Minors.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,

Handwritten signature of Rade K. Vanic in black ink.

Rade K. Vanic
Interim Chief of Police

Handwritten signature of Brandon Nakasato in black ink.

Brandon Nakasato, Captain
Criminal Investigation Division

LATE

SB-2089

Submitted on: 2/8/2022 2:07:22 PM

Testimony for JDC on 2/8/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Mike Golojuch, Sr.	Testifying for Rainbow Family 808	Support	No

Comments:

Rainbow Family 808 strongly supports SB2089. Please pass this bill.

Mike Golojuch, Sr., Secretary/Board Member, Rainbow Family 808