

STAND. COM. REP. NO. 1464

Honolulu, Hawaii

April 8, 2011

RE: S.B. No. 217
S.D. 2
H.D. 2

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Sixth State Legislature
Regular Session of 2011
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred S.B. No. 217, S.D. 2, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO LIMITATION OF ACTIONS,"

begs leave to report as follows:

The purpose of this bill is to expand the ability of sex abuse victims to seek civil claims and damages for abuse occurring during childhood by, among other things:

- (1) Allowing a cause of action for damages for physical, psychological, or other injury or condition arising from the sexual abuse of a minor by an adult, which may be commenced within:
 - (A) Eight years of the plaintiff attaining the age of majority; or
 - (B) Three years of the date the plaintiff learned or reasonably should have learned of the resulting psychological injury or illness occurring after the age of majority;



- (2) Allowing those victims of child sexual abuse who were barred by the expiration of the former statute of limitations from filing suit against their abusers to file claims in circuit court for a two-year period following the effective date of this bill;
- (3) Allowing victims previously barred from bringing claims, as discussed in paragraph (2), to bring civil claims against legal entities, except the State, if the abuser was employed by that entity and it owed a duty of care to the victim or exercised some degree of responsibility or control over the activity in which the victim and abuser were engaged when the abuse occurred;
- (4) Allowing an accused party to recover attorney's fees if the court determines that a false accusation was made with no basis in fact and malicious intent; and
- (5) Requiring that a plaintiff bringing a civil claim for sexual abuse as a minor to file a certificate of merit containing a notarized statement by certain qualified professionals that there is a reasonable basis to conclude that one or more acts of sexual abuse occurred.

The Sex Abuse Treatment Center and a large number of concerned individuals testified in support of this measure. The Hawaii Catholic Conference and Hawaii Family Forum opposed this bill. The Department of the Attorney General, City and County of Honolulu Department of the Corporation Counsel, and many concerned individuals provided comments.

Your Committee finds that organizations, as well as adults, contribute to instances of childhood sexual abuse and should be held accountable for their role in the commission of these inexcusable acts. In particular, your Committee acknowledges the comments of the Hawaii Catholic Conference and Hawaii Family Forum about protecting all children from abuse and agrees that all entities should be equally subject to civil actions for past sexual abuse of minors, including the State.

Your Committee notes that the State can and does waive its sovereign immunity in other special circumstances. Addressing the sexual abuse of minors is as worthy a reason as the others for the State's waiver of sovereign immunity.



Furthermore, your Committee agrees with the Department of the Attorney General that a similar California statute for such civil actions provides a reasonable framework. Therefore, your Committee has determined that additional provisions of the California law will be adopted, including:

- (1) The requirement that a certificate of merit must be filed for plaintiffs who are 26 years of age or older at the time the action is commenced; and
- (2) The addition of the State as an eligible entity to be sued for past and future claims.

Accordingly, your Committee has amended this measure by:

- (1) Adding provisions to allow claims against legal entities in addition to natural persons;
- (2) Removing the State's exemption from liability; and
- (3) Requiring a certificate of merit only for plaintiffs who are 26 years of age or older.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 217, S.D. 2, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 217, S.D. 2, H.D. 2.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary,


GILBERT KEITH-AGARAN, Chair



