

TRANSMITTAL

DATE: 2-9-11
TO: The Honorable Ryan I. Yamane, Chair
The Honorable Dee Morikawa, Vice Chair
Committee on Health
FROM: Adriana Ramelli
The Sex Abuse Treatment Center
RE: HB 133

Hearing: Month Day, Year/Time
Committee on Health
2-11-11 9:00am

This transmittal consists of 2 pages including this cover sheet.

Sender: Christine Trecker
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THE SEX ABUSE TREATMENT CENTER

A Program of Kapi'olani Medical Center for Women & Children

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DATE: 2/11/2011

TO: The Honorable Ryan I. Yamane, Chair
The Honorable Dee Morikawa, Vice Chair
Committee on Health

FROM: Adriana Ramelli, Executive Director
The Sex Abuse Treatment Center

RE: HB 133
Relating to Limitation of Actions

Good morning Representatives Yamane and Morikawa and members of the Committee on Health. My name is Adriana Ramelli and I am the Executive Director of the Sex Abuse Treatment Center (SATC), a program of the Kapi'olani Medical Center for Women & Children (KMCWC), an affiliate of Hawaii Pacific Health.

The SATC supports the intent of HB 133. It is commendable to attempt to expand the ability of sex assault victims to seek civil compensation. However, we have two concerns about the requirements of subsection (d). First, as currently written, a notarized statement from a prospective plaintiff's therapist regarding a reasonable basis to believe the plaintiff would be required. The role of the SATC therapist is to provide direct treatment services. We do not investigate the validity or veracity of alleged sex assaults. Our therapists can comment on assessment, treatment modalities and outcomes, but they should not have to judge their client's credibility or corroborate their claims. With respect to the attorney certificate of merit, SATC does not believe this is needed since there is a "good faith" requirement already imposed on attorneys via the Hawaii Rules of Civil Procedure requiring them to bring only meritorious claims before the Court.

Secondly, the bill as it stands would waive the victim-counselor or patient-therapist privilege before a suit is filed (or concurrent with a suit being filed) as opposed to a waiver during the discovery process. Filing sensitive mental health information with the Court as a matter of public record should not be taken lightly and the client may not be fully informed of the ramifications of waiving privilege so early in the process.

In summary, SATC supports the intent of this bill to enlarge the statute of limitations without the added requirements in subsection (d). Thank you for allowing SATC to provide input into this important piece of legislation.

morikawa2 - Grant

From: Linda MacDonald [flight@ns.sympatico.ca]
Sent: Wednesday, February 09, 2011 11:41 AM
To: HLTtestimony
Subject: Testimony for HB133 health committee 2/11/11 at 9:00 am

Testimony for HB133 Health Committee date 2/11/11 9 am

To whom it may concern,

I am writing in support of Hawaii Senate bill 217 to eliminate the Statutes of limitations on child sexual abuse civil cases.

I have worked in the field of relational violence for the past 18 years as a counselor, activist, researcher, and writer. It has been my experience that some adults are not able to come forward with their claims of sexual abuse, and other forms of relational violence, until they are older adults. As young adults most people are focused on establishing their lives in education and occupation. It is not until many persons have established some adult security that they are often capable to cope with the rigors of holding their alleged perpetrators accountable legally.

Also the memories of relational trauma may be unprocessed or dissociated until young adulthood.

Finally I live and work in Canada and there are no statutes of limitations on crimes of sexual abuse, or other forms of relational violence, in my country.

with respect,

Linda MacDonald MEd, BN, RN
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phone 902.895.2255

CARDOZO

BENJAMIN N. CARDOZO SCHOOL OF LAW • YESHIVA UNIVERSITY

MARCI A. HAMILTON
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07

February 9, 2011

SUBMITTED VIA EMAIL

Representative Ryan Yamane
Chair, Health Committee
Hawaii State Capitol, Room 419
Honolulu, HI 96813
HLTtestimony@Capitol.hawaii.gov

RE: Hearing Before the Health Committee on Notice HB133, companion bill to SB217,
Relative to the Statute of Limitations for Civil Actions Involving Childhood Sexual
Abuse (February 11, 2011, 9:00 a.m.)

Dear Representative Yamane:

I commend you and the Committee for taking up HB133, which would eliminate the statute of limitations for civil actions brought by minor victims of sexual offenses and revive for one year some actions for which the statute of limitations had previously lapsed. There are untold numbers of hidden child predators who are preying on one child after another, because the statutes of limitations have been configured to give them that opportunity. This bill redresses that injustice and reduces the present danger to Hawaii's children. If passed, it will put Hawaii in the forefront of child protection.

This is a sunshine law for children. There is an epidemic of child sex abuse around the world. At least one in four girls is sexually abused and at least one in five boys. Sadly, 90% never go to the authorities and the vast majority of claims expire before the victims are capable of getting to court. Most victims are abused by family or family acquaintances. This bill would protect the children of Hawaii by making it possible for victims to come forward and identify their perpetrators in a court of law. It would also bring delayed, but still welcome, justice to these victims.

By way of introduction, I hold the Paul R. Verkuil Chair in Public Law at the Benjamin N. Cardozo School of Law, Yeshiva University, where I specialize in church/state relations and constitutional law. My most recent book, *Justice Denied: What America Must Do to Protect Its Children* (Cambridge University Press 2008), makes the case for statute of limitations reform in the child sex abuse arena. I am the leading expert on the history and constitutionality of retroactive statutes of limitations with respect to child sex abuse and have advised many child sex abuse victims on constitutional issues.

There are three compelling public purposes served by window legislation:

- (1) the identification of previously unknown child predators to the public so children will not be abused in the future;**
- (2) giving child sex abuse survivors a day in court; and**
- (3) remedying the wrong done to child sex abuse survivors caused by an overly short statute of limitations that placed predators and their enablers in a preferred position to the victims.**

I have been involved in statute of limitations reform in numerous states. This is the only means of identifying child predators. As Professor Timothy Lytton has documented, civil tort claims have been the only means by which survivors of clergy abuse have been able to obtain any justice. Timothy Lytton, *Holding Bishops Accountable: How Lawsuits Helped the Catholic Church Confront Sexual Abuse* (Harvard University Press, 2008).

Legislative reform for statutes of limitations for child sex abuse victims is on the rise. This week alone, there are hearings in Guam and Hawaii.¹ Bills that would eliminate, extend, or create windows for the statutes of limitations covering child sex abuse are pending or have passed in Massachusetts,² Connecticut,³ Virginia,⁴ Florida,⁵ New Jersey,⁶ and Oregon.⁷ Information on the statutes of limitations for child sex abuse can be found on my website, www.sol-reform.com.

Statute of limitations reform is the one tried and true means that will identify the many hidden child predators, who are grooming other children right now. The “window” in California led to the public identification of over 300 perpetrators previously unidentified. Delaware also enacted a window, which has led to the public identification of dozens of perpetrators previously hidden. Given that most child perpetrators abuse many children over the course of their lives,⁸ window legislation does far more than create justice for victims in the past. It also forestalls future abuse of today’s children.

¹ Bill No. B034-31(COR), An Act To Amend § 11306 Of Article 3, Chapter 11, Title 7 Of The Guam Code Annotated; Relative To The Statute Of Limitations For Civil Actions Involving Child Sexual Abuse, establishing a two-year window of opportunity for child sex abuse victims whose claims have expired under the Guam statute of limitations to bring their civil claims.

² H.R. 689, 187th Gen. Ct., Reg. Sess. (Mass. 2011) (pending) (statute of limitations for child sex abuse runs for three years from when claimant discovers connection between sex abuse and harm suffered).

³ S.B. No. 784, 2011 Gen. Assemb., 2011 Reg. Sess. (Conn. 2011) (pending) (eliminating limitation of time for bringing a civil action with respect to a new occurrence of sexual abuse, sexual exploitation or sexual assault in order to recognize the severity of such occurrences and give victims increased access to the civil court system.)

⁴ H.B. 1476, 2011 Gen. Assemb., 2011 Reg. Sess. (Va. 2011) (pending) (extending the limitations period for actions for sexual abuse committed during the infancy or incapacity of the abused person from two years to 25 years from the time of the removal of the infancy or incapacity or from the time the cause of action otherwise accrues).

⁵ Fla. Stat. Ann. § 95.11(7) (2010) (enacted) (eliminating statute of limitations for sexual battery if victim was under 16 years old, for claims not barred as of July 2010).

⁶ S.B. No. A1164, 2009 (pending) (eliminating statute of limitations for sexual assault when the victim reaches majority).

⁷ H.B. 3057, 76th Gen. Assemb., 2011 Reg. Sess. (Or. 2011)(enacted) (extending statute of limitations for sexual abuse crimes committed against minors).

⁸ KENNETH V. LANNING, CHILD MOLESTERS: A BEHAVIORAL ANALYSIS 5, 37 (4th ed. 2001) available at http://www.cybertipline.com/en_US/publications/NC70.pdf. (“Except for child prostitution, most

Any claim that window legislation leads to bankruptcy of institutions is irresponsible. First, only two bankruptcies have followed window legislation, one in San Diego and the other in Wilmington. In both cases, the bankruptcy was a voluntary bankruptcy, which was intended to protect assets and avoid trials that would have revealed the Catholic hierarchy's secrets regarding their role in endangering children. In San Diego, the bankruptcy court publicly stated that the diocese was not honest about its actual wealth and that there was no justification for the bankruptcy filing. The Wilmington bankruptcy has just settled, and the settlement includes remuneration for victims for the cover up of child sex abuse predators, and just as important, an agreement to release the identities of those priests who have been accused of abuse.

The window legislation in California brought justice to a large number of victims, exposed the identities of more than 300 perpetrators, and did not result in cuts in church services or even make a dent in ambitious plans for new cathedrals. Rather, the settlements were paid out of insurance proceeds and the sale of properties not dedicated to religious use.

Some have argued that retroactive legislation is unconstitutional. While such an implication was true in the nineteenth century, it is no longer true under the federal Constitution, as the United States Supreme Court has explained: "The presumption against statutory retroactivity had special force in the era in which courts tended to view legislative interference with property and contract rights circumspectly. In this century, legislation has come to supply the dominant means of legal ordering, and circumspection has given way to greater deference to legislative judgments." Landgraf v. USI Film Prods., 511 U.S. 244, 272 (1994); see also Republic of Austria v. Altmann, 541 U.S. 677 (2004).

The majority of states has not found retroactive statutes of limitations unconstitutional. See Catholic Bishop of N. Alaska v. Does, 141 P.3d 719 (Alaska 2006); San Carlos Apache Tribe v. Superior Court ex rel. County of Maricopa, 972 P.2d 179 (Ariz. 1999), superseded by statute, Arizona Rev. Stat. § 12-505 (2010); Liebig v. Superior Court, 257 Cal. Rptr. 574 (Cal. Ct. App. 3d 1989); Mudd v. McColgan, 183 P.2d 10 (Cal. 1947); Shell Western E&P, Inc. v. Dolores County Bd. of Comm'rs, 948 P.2d 1002 (Colo. 1997); Rossi v. Osage Highland Dev., LLC, 219 P.3d 319 (Col. App. 2009) (citing In re Estate of Randall, 441 P.2d 153, 155 (Col. 1968)); Roberts v. Caton, 619 A.2d 844 (Conn. 1993); Whitwell v. Archmere Acad., Inc., C.A. No: 07C-08-006 (RBY), 2008 Del. Super. LEXIS 141 (Del. Super. Ct. April 16, 2008); Riggs Nat'l Bank v. District of Columbia, 581 A.2d 1229 (D.C. 1990); Vaughn v. Vulcan Materials Co., 465 S.E.2d 661 (Ga. 1996); Gov't Employees Ins. Co. v. Hyman, 975 P.2d 211 (Haw. 1999); Roe v. Doe, 581 P.2d 310 (Haw. 1978); Henderson v. Smith, 915 P.2d 6 (Idaho 1996); Hecla Mining Co. v. Idaho State Tax Comm'n, 697 P.2d 1161 (Idaho 1985);

sexual-exploitation-of-children cases in the United States involve acquaintance molesters who rarely use physical force on their victims. . . . Although a variety of individuals sexually abuse children, preferential-type sex offenders, and especially pedophiles, are the primary acquaintance sexual exploiters of children. A preferential-acquaintance child molester might molest 10, 50, hundreds, or even thousands of children in a lifetime, depending on the offender and how broadly or narrowly child molestation is defined. Although pedophiles vary greatly, their sexual behavior is repetitive and highly predictable.”).

Metro Holding Co. v. Mitchell, 589 N.E.2d 217 (Ind. 1992); Ripley v. Tolbert, 921 P.2d 1210 (Kan. 1996); Shirley v. Reif, 920 P.2d 405 (Kan. 1996); Kienzler v. Dalkon Shield Claimants Trust, 686 N.E.2d 447 (Mass. 1997); Rookledge v. Garwood, 340 Mich. 444 (Mich. 1954); Gomon v. Northland Family Physicians, Ltd., 645 N.W.2d 413 (Minn. 2002); Cosgriffe v. Cosgriffe, 864 P.2d 776 (Mont. 1993); Panzinov. Continental Can Co., 364 A.2d 1043 (N.J. 1976); Alsenz v. Twin Lakes Village, 843 P.2d 834 (Nev. 1992); Bunton v. Abernathy, 73 P.2d 810 (N.M. 1937); Hymowitz v. Eli Lilly & Co., 539 N.E.2d 1069 (N.Y. 1989); In Interest of W.M.V., 268 N.W.2d 781 (N.D. 1978); Pratte v. Stewart, 929 N.E.2d 415 (Ohio 2010); McFadden v. Dryvit Systems, Inc., 112 P.3d 1191, 1195 (Or. 2005); McDonald v. Redevelopment Auth., 952 A.2d 713, 718 (Pa. Commw. Ct. 2008); Bible v. Dep't of Labor and Indus., 696 A.2d 1149 (Pa. 1997); Stratmeyer v. Stratmeyer, 567 N.W.2d 220 (S.D. 1997); Ballard Square Condo. Owners Ass'n v. Dynasty Constr. Co., 146 P.3d 914 (Wash. 2006) superseded by statute, Wash. Rev. Code 25.15.303, as recognized in Chadwick Farms Owners Ass'n v. FHC, LLC, 160 P.3d 1061 (Wash. 2007); Neiman v. Am. Nat'l Prop. & Cas. Co., 613 N.W.2d 160 (Wis. 2000) (open question); RM v. State Dept. of Family Servs., Div. of Public Servs., 891 P.2d 791, 792 (Wyo. 1995).

HB313 has two functions: First, it eliminates the statute of limitations for civil actions of minors who are victims of child sex abuse. Second, for one year, it revives claims that expired under the prior statute of limitations. Hawaii has held as constitutional retroactive application of a newly extended statute of limitation to revive claims that previously expired. Roe v. Doe, 581 P.2d 310, 316 (Haw. 1978) (holding that “[t]he right to defeat an action by the statute of limitations has never been regarded as a fundamental or vested right. . . . [W]here lapse of time has not invested a party with title to real or personal property, it does not violate due process to extend the period of limitations even after the right of action has been theretofore barred by the former statute of limitations.”); Gov't Employees Ins. Co. v. Hyman, 975 P.2d 211 (Haw. 1999).

Once again, I applaud you for introducing this legislation and the Committee for taking up the cause of child sex abuse victims in this way. Hawaii's children deserve the passage of HB313, which eliminates the statute of limitations for all future cases, and creates a one-year window of opportunity for Hawaii's child sex abuse victims who were locked out of the courthouse by unfairly short limitations periods.

Please do not hesitate to contact me if you have questions regarding window legislation or if I can be of assistance in any other way.

Sincerely,

Marci A. Hamilton
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212-790-0215 (office)
215-493-1094 (facsimile)

morikawa2 - Grant

From: tina (cj) [ypeia01@yahoo.com]
Sent: Wednesday, February 09, 2011 6:52 AM
To: HLTtestimony
Subject: Testimony HB133 Hlt committee hearing date 2/11/11 9am rm.329

Aloha Hlt Committee,

My name is Christine Johnson (tina)

I support HB 133.

The fact that perpetrators of sex crimes against children have had time limits to hide behind and run out is insane and is a testimony to the protection of predators over child victims.

I believe that because of time limits many families and institutions and others have had the freedom to sexually abuse generations of children thus creating generations of alcoholics, drug addicts homeless and poverty prone and suicide victims (to name a few) .

This Bill alone will tell the perpetrators and their enablers that they WILL be held accountable no matter how long ago the abuse happened and thus put a big STOP SIGN up where there was none before and end generational cycles of abuse.

.This bill will help both predators and victims..

The predators will know there are consequences for their actions.. by stopping an addictive cycle.. that can be broken by authorities saying NO.

The victims , who studies have shown usually cannot deal with childhood sex abuse until way into their 40's and up will have the opportunity to stop generational and institutional child sexual abuse by naming perpetrators and having them pay for the catastrophic damages caused by the sexual abusers and their enablers.

I also approve of the one year window.. i have seen it work very well in other states to help bring out the names of perpetrators and thus protect children and families and it can provide monetary help for victims who are often a burden on our health, mental health and social systems.. because of their addictions and problems.

Thank you for the opportunity to speak..

Respectfully,

Christine Johnson,
Retired R.N.,
Advocate for maternal child health,
Advocate for child and adult sexual abuse survivors and victims,
Survivor of childhood sexual abuse and adult sexual abuse..
Member of PROTECT THE CHILDREN

Member several human rights organizations
Advocate for Statutes of Limitations reform

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morikawa2 - Grant

From: Debby Bodkin [bodkind@hotmail.com]
Sent: Thursday, February 10, 2011 10:43 AM
To: HLTtestimony
Subject: FW: HB133 - Health Committee, Friday, February 11, 2011, 9:00 a.m.

February 10, 2010

Re: **HB133 Health Committee, Friday February 11, 2011, 9:00 a.m.**

Dear Honorable Elected Government Officials for the State of Hawaii:

As a wife, mother and advocate for the fair administration of justice in Southern California, this written testimony supports HB 133 and hopefully, will be considered a Part 2 to testimony supporting SB 217, submitted earlier this week. With the utmost respect, thank you for the courage to act on behalf of individuals who cannot protect themselves, our children and families.

There is no doubt that the passage of HB 133 will provide a balance, especially when combined with SB 217. As a non-attorney, and legal secretary for approximately 30 years, my life in the workplace has been blessed because I have learned first-hand from honest and ethical attorneys that practice the day-to-day urgency of avoiding any and all legal, personal, financial and/or religious conflicts of interest, on behalf of their clients. However, since the public eruption of the clergy sex abuse crisis in 2002, I have witnessed shocking and self-serving legal strategies by attorneys representing Goliaths. The truths about judicial abuse create a serious public safety crisis and in actuality, is a form of denied justice to victims of heinous sex crimes.

It is my belief that subsection (d) of HB 133, which requires a notarized certificate of merit signed by a mental health professional before litigation is commenced, is crucial to legislative efforts that will protect the future protections of children and the United States Constitution. A certificate of merit will enable all parties to make an informed decision before commencing litigation. In a perfect world, a certificate of merit signed by a mental health professional would not be necessary; however, as we strive toward a perfect world, we cannot compromise our children and grandchildren's safety.

Thank you again for providing an opportunity to submit testimony. The citizens of the State of Hawaii have done a great job electing officials that take the time to listen and take legislative action on behalf of children and families. ***Without justice there will never be peace. Without peace, faith and our country's laws are empty.***

Best regards.

Debby Bodkin
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