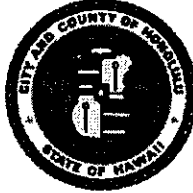


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March 29, 2011

LATE TESTIMONY

Honorable Gilbert S. C. Keith-Agaran, Chair  
Honorable Karl Rhoads, Vice Chair  
Committee on Judiciary  
Hawaii State House of Representatives  
State Capitol  
Honolulu, Hawaii 96813

Dear Representatives Keith-Agaran and Rhoads:

Subject: Senate Bill No. 217, S.D.2, H.D. 1  
Relating to Civil Actions Arising from Sexual Offenses

While this office strongly supports efforts at obtaining compensation for minor victims of sexual offenses, Senate Bill 217, as currently drafted, would severely impair the City's ability to fairly defend against such claims and we ask that the Legislature consider exempting the counties, as it has the State, for many of the same reasons. If this Committee desires that this measure apply to the counties, then we recommend that certain provisions, that would be vulnerable to judicial constructions which are against county interests, and contrary to the objectives of the bill, be amended.

First, we ask that the Legislature to consider exempting the counties entirely from the ambit of this bill. We recognize that unlike the State, the counties do not possess sovereign immunity. However, similar to the State, counties are frequently named as party defendants merely because they are perceived as having "deep pockets." More importantly, counties deal with thousands of patrons on an annual basis and frequently face personnel changes, making it difficult to track down relevant witnesses or for those witnesses to possess reliable memories of the events at issue. Moreover, many individuals who have left government service simply are unwilling to participate in the legal process. Consequently, counties frequently find themselves at a distinct disadvantage when facing allegations of a considerably stale nature. This, no doubt, is why H.R.S. § 46-72 (the Statute of Limitations for claims against the counties) was originally established at six (6) months. Consequently, we believe it entirely fair and reasonable to maintain the status quo with regards to such claims against municipalities.

If the bill is to apply to the City, we would like to bring to this Committee's attention particular concerns with the language used in the second and third sentences of subsection b. The second sentence begins, "[a] claim may also be brought...", suggesting that the legislature is creating an entirely new cause of action. While we believe the intent is merely to delineate the circumstances under which a common law claim could be brought, there is sufficient ambiguity in the wording to create a colorable argument that a new cause of action is what was intended. Similarly, while we think it important to set forth criteria for holding entities liable, the scenario set forth at the end of this same sentence, i.e., "the accused and the minor were engaged in an activity over which the legal entity had some degree of responsibility or control", is extremely vague and broad in its scope, and would expand cognizable claims during this period far beyond common law principles. There are all sorts of activities that occur on county land for which the county has *some* responsibility or control. For example, sporting activities occur at county parks maintained by counties under schedules dictated by county employees. However, such "responsibility" and "control" bear no relation to any sexual offenses independently committed by tortfeasors in the course of participating at such events. Hence, we would recommend that this clause be eliminated.

Accordingly, the City proposes the following amendments to subsection (b):

(b) For a period of two years following the effective date of this Act, victims of child sexual abuse that occurred in this State who have been barred from filing suit against their abusers by virtue of the expiration of the former civil statute of limitations shall be permitted to file those claims in the circuit courts of this State against: (1) the natural person who committed the act of sexual abuse; and (2) a legal entity, except the State and the counties, if the person committing the act of sexual abuse against the minor was employed by an institution, agency, firm, business, corporation, or other public or private legal entity that owed a duty of care to the victim; provided that damages against the legal entity shall be awarded under this subsection only if there is a finding of gross negligence on the part of the legal entity

Thank you for your consideration of our request.

Sincerely,

  
for Carrie K.S. Okinaga  
CORPORATION COUNSEL

**Francine H. Gora**

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## **LATE TESTIMONY**

My name is Francine Gora and I am a Hawaiian Studies teacher at Ma'ema'e Elementary School and I support the passage of this bill SB217 SD2.

I am a victim of sexual molestation by a family member during my childhood, from ages 5 through 10 years old. I do not want to see the molesters get away with their heinous actions because of a statue of limitations. This two year cap will not restore what has been wrongfully taken from me. The minimum that should be done is that these predators should be held accountable for their actions and remain on the sexual predator list for life.