



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2011**

**LATE
Testimony**

ON THE FOLLOWING MEASURE:

S.B. NO. 217, S.D. 2, RELATING TO LIMITATIONS OF ACTIONS.

BEFORE THE:

HOUSE COMMITTEE ON HUMAN SERVICES

DATE: Monday, March 14, 2011 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): David M. Louie, Attorney General, or
Caron M. Inagaki, Deputy Attorney General

Chair Mizuno and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill, but opposes the bill as currently written due to certain legal infirmities. We suggest the following changes and clarifications to avoid confusion and alleviate concerns over its legality.

The purpose of this bill is to create a cause of action, with no limitations period, for minors who are alleged to have been injured as a result of the conduct of another, which would constitute a violation of part V or VI of chapter 707, Hawaii Revised Statutes (specifically sexual offenses or child abuse). The bill also revives a cause of action, which may otherwise be barred by a limitations period, by allowing the commencement of an action within two years of the effective date of this bill against the alleged abuser and the alleged abuser's employer if the employer owed a duty of care to the victim.

The Department of the Attorney General opposed the original form of the bill because it appeared to allow a cause of action to be brought, not just against the alleged perpetrator, but against even those who the claimant may believe had some

connection, no matter how peripheral, to the assault or abuse, without any time limitation.

This raised concerns that the bill violated the due process clause of the state and federal constitutions, since a claim could conceivably be brought against any person or entity at any time, which could prevent or severely impair that person or entity's ability to defend himself or herself or itself.

With the amendments in S.D. 2, which limit the cause of action to the alleged abuser, those concerns have been somewhat alleviated as to other persons or entities, but the lack of a statute of limitations at all for a civil action is troubling and unprecedented in the State of Hawaii. We would have no objections to extending the statute of limitations to a longer, reasonable length of time. California has extended the statute of limitations for civil actions for recovery of damages suffered as a result of childhood sexual abuse to eight years of the date the plaintiff attains the age of majority or within three years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness was caused by the abuse. (California Civil Code of Procedure Section 340.1.) The Department of the Attorney General would not oppose a similar extended time limitation.

We would suggest these changes to subsection (a) to follow the California statute and to avoid any confusion as to the intent of the bill.

§657- Civil action arising from sexual offenses; application; certificate of merit.

(a) Notwithstanding any law to the contrary, an action for recovery of damages based on physical, psychological, or other injury or condition suffered by a minor arising from the sexual abuse of the minor by an adult may be commenced ~~[at any time following the commission of the act or acts that constituted the sexual~~

~~abuse.]~~ against the natural person who committed the act of sexual abuse. The time for commencement of the action shall be within eight years of the date the plaintiff attains the age of majority or within three years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual abuse. A civil cause of action for sexual abuse of a minor shall be based upon sexual acts that constituted or would have constituted a criminal offense under part V or VI of chapter 707.

The Department of the Attorney General would also suggest the following changes to subsection (b) which allows for the revival of claims for two years following the effective date of this act.

(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~~[-If]~~ against the natural person who committed the act of sexual abuse. A claim may also be brought under this subsection against a legal entity 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, or the accused and the minor were engaged in an activity over which the legal entity had some degree of responsibility or control~~[, damages]. 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. This subsection shall not apply to the State of Hawaii.

Also, S.D. 2 eliminates the section in the original bill that called for a certificate of merit to be filed by the attorney for the plaintiff prior to the bringing of a civil action within the revival period.

Because there is an extended time limitation with respect to when the act occurred for claims brought pursuant to either section (a) or (b), the Department of the Attorney General believes that the requirement of a certificate of merit under either subsection is a fair and reasonable way to safeguard against false claims, or claims brought as a result of false memories.

Therefore, we believe that the subsection (d) requiring a certificate of merit should be reinserted into the bill with the following changes to subsection (d).

(d) In any civil action filed pursuant to subsection (a) or (b), a certificate of merit shall be filed by the attorney for the plaintiff. The certificate of merit shall contain a notarized statement by a psychologist who is licensed pursuant to chapter 465, a marriage and family therapist who is licensed pursuant to chapter 451J, a mental health counselor who is licensed pursuant to chapter 453D, or a licensed clinical social worker who is licensed pursuant to chapter 467E and who is knowledgeable in the relevant facts and issues involved in the particular action. The certificate of merit shall state in reasonable detail the facts and opinions that the psychologist, marriage and family therapist, mental health counselor, or licensed clinical social worker has relied on for concluding that there is a reasonable basis to believe that the plaintiff has been subject to one or more acts that would constitute an offense listed in subsection (a). The psychologist, marriage and family therapist, mental health counselor, or licensed clinical social worker providing the statement may not be a party to the litigation.

~~[Only one certificate of merit shall be filed
for each action, even if more than one
defendant is named in the complaint or is
subsequently named.]~~

We respectfully request that this bill be amended to
include the stated changes.

3114 Rep Mizuno from Sen Shimabukuro
attorney gen office will support measure & improvement

access1

From: tina (cj) [ypeia01@yahoo.com]
Sent: Monday, March 14, 2011 8:37 AM
To: access1
Subject: Re: Fw: Attorney General Feedback Re: SB217

**LATE
Testimony**

--- On Mon, 3/14/11, Maile Shimabukuro <maileshimabukuro@yahoo.com> wrote:

From: Maile Shimabukuro <maileshimabukuro@yahoo.com>
Subject: Fw: Attorney General Feedback Re: SB217
To: "Christine Johnson" <ypeia01@yahoo.com>, "marci hamilton" <hamilton02@aol.com>
Cc: "Wally Inglis" <wallyinglis@yahoo.com>
Date: Monday, March 14, 2011, 8:19 AM

FYI, please see below. I forwarded Mr. Louie's email to House Human Services Comm. Chair John Mizuno, and Vice Chair Jo Jordan. Hopefully the AG's testimony will be something we all can support.

CHRISTINE: IF YOU ARE ATTENDING TODAY'S HEARING, WE SHOULD MAKE SURE THAT CHAIR MIZUNO AND VICE CHAIR JORDAN UNDERSTAND THAT THE ATTORNEY GENERAL'S OFFICE WOULD SUPPORT THE MEASURE IF FURTHER IMPROVEMENTS ARE MADE TO THE BILL. (HOPEFULLY THE AG'S TESTIMONY WILL MAKE THAT CLEAR).

Aloha 

Sen. Maile Shimabukuro
District 21 (Ko Olina, Nanakuli, Ma`ili, Wai`anae, Makaha, Makua)
Hawaii State Senate
State Capitol, Room 223
415 South Beretania Street
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--- On Mon, 3/14/11, Maile Shimabukuro <maileshimabukuro@yahoo.com> wrote:

From: Maile Shimabukuro <maileshimabukuro@yahoo.com>
Subject: Attorney General Feedback Re: SB217
To: "John Mizuno" <repmizuno@capitol.hawaii.gov>, "Jo Jordan" <repjordan@capitol.hawaii.gov>
Date: Monday, March 14, 2011, 8:15 AM

Dear John and Jo:

Please see emails below regarding SB217, which eliminates the statute of limitations for civil actions brought by

persons subjected to sexual offenses as a minor. Fortunately, the Attorney General's Office is willing to work together to further improve this measure.

Mahalo for scheduling SB217,
Maile 349-3075

Aloha 

Sen. Maile Shimabukuro
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--- On Mon, 3/14/11, Maile Shimabukuro <maileshimabukuro@yahoo.com> wrote:

From: Maile Shimabukuro <maileshimabukuro@yahoo.com>
Subject: Re: Question re: SB217
To: David.M.Louie@hawaii.gov
Date: Monday, March 14, 2011, 8:09 AM

Dear Mr. Louie:

Mahalo for this valuable feedback. I really appreciate you being willing to find ways to work together to further improve the bill.

Sincerely,
Maile 349-3075

Aloha 

Sen. Maile Shimabukuro
District 21 (Ko Olina, Nanakuli, Ma`ili, Wai`anae, Makaha, Makua)
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--- On Sun, 3/13/11, David.M.Louie@hawaii.gov <David.M.Louie@hawaii.gov> wrote:

From: David.M.Louie@hawaii.gov <David.M.Louie@hawaii.gov>

Subject: Re: Question re: SB217

To: "Maile Shimabukuro" <maileshimabukuro@yahoo.com>

Cc: "David Louie" <David.M.Louie@hawaii.gov>

Date: Sunday, March 13, 2011, 5:56 PM

Senator Shimabukuro - Thank you for your email. My office has reviewed the revised bill and will be submitting some testimony regarding the bill. Although the newest version of the bill has incorporated a number of improvements, it is our view that additional improvements can and should be considered. These additional improvements will be included in the further testimony that my office will submit. While we continue to have some concerns and hesitations, if all of the additional improvements noted in our further testimony are included, we are inclined to support the bill. Thank you.

David Louie

-----Maile Shimabukuro <maileshimabukuro@yahoo.com> wrote: -----

To: David Louie <David.M.Louie@hawaii.gov>

From: Maile Shimabukuro <maileshimabukuro@yahoo.com>

Date: 03/11/2011 12:58PM

Subject: Question re: SB217

Dear Mr. Louie:

SB217, which eliminates the statute of limitations for civil actions brought by persons subjected to sexual offenses against a minor, has been scheduled for hearing on Monday, 3/14/11, before the House Human Services Committee.

During the hearing on this measure before the Senate Judiciary and Labor Committee, the Attorney General stated that she may support the bill if it was amended to more closely mirror the Delaware statute. The Senate did in fact amend the bill to model it after Delaware's statute, and I hope the Attorney General is now willing to support the measure.

For more information, here is SB217's current status:

http://www.capitol.hawaii.gov/session2011/lists/measure_indiv.aspx?billtype=SB&billnumber=217

Please do not hesitate to contact me if you have any questions.

Mahalo, Maile

349-3075

Aloha 

Sen. Maile Shimabukuro

District 21 (Ko Olina, Nanakuli, Ma`ili, Wai`anae, Makaha, Makua)

Hawaii State Senate

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March 12, 2011

TO: Hawai'i State Legislature

RE: SB 217

We support the expeditious passage of SB 217 which removes the Statute of Limitations for victims of sexual abuse to file civil suits against their perpetrators. It further provides a 2 year window for past victims to file civil suits.

Print	Signature	Address
Karen GS Young	Karen GS Young	86-024 Glenminger St. Wai'anae 96792
Fred Dodge, MD	F Dodge	" " "
^{SANDRA} SANDY Ducharme	Sandra Ducharme	84-770 Kili Dr. #436 - Wai'anae 96792
Angela Sacredo		84-755 Ala Mahika St Wai'anae 96792
Rosalie C. Smith	Rosalie C. Smith	84-770 Kili Dr. #731 Wai'anae HI 96792
Gladys Singleton	Gladys Singleton	84-754 Ala Mahika St. #55-A Wai'anae HI 96792
Chin Rivera		84-909 Maholia Rd Wai'anae HI 96792
Cecy Bree Watson	Cecy Bree Watson	84-680 Kili Dr. #503 Wai'anae 96792