



# THE SEX ABUSE TREATMENT CENTER

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

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DATE: February 8, 2011

TO: The Honorable Suzanne Chun Oakland, Chair  
The Honorable Les Ihara, Jr., Vice Chair  
Committee on Human Services

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

RE: SB217  
Relating to Limitations of Actions

Good afternoon Senators Oakland and Ihara, Jr. 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 intent of SB 217, which attempts to expand the ability for sex assault victims to seek civil compensation, is commendable. However, I 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.

# CARDOZO

BENJAMIN N. CARDOZO SCHOOL OF LAW • YESHIVA UNIVERSITY

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February 6, 2011

## SUBMITTED VIA EMAIL

Senator Chun Oakland  
Chair, Committee on Human Services  
Room 226  
State Capitol  
415 South Beretania Street  
Honolulu, HI 96813  
[HMSTestimony@Capitol.Hawaii.gov](mailto:HMSTestimony@Capitol.Hawaii.gov)

RE: Hearing Before the Committee on Human Services on SB217, Relative to the Statute of Limitations for Civil Actions Involving Childhood Sexual Abuse (February 8, 2011, 2:00 p.m.)

Dear Senator Oakland:

I commend you and the Committee for taking up SB217, 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.<sup>1</sup> Bills that would eliminate, extend, or create windows for the statutes of limitations covering child sex abuse are pending or have passed in Massachusetts,<sup>2</sup> Connecticut,<sup>3</sup> Virginia,<sup>4</sup> Florida,<sup>5</sup> New Jersey,<sup>6</sup> and Oregon.<sup>7</sup> Information on the statutes of limitations for child sex abuse can be found on my website, [www.sol-reform.com](http://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

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<sup>1</sup> 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.

<sup>2</sup> 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).

<sup>3</sup> 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.)

<sup>4</sup> 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).

<sup>5</sup> 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).

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

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



many children over the course of their lives,<sup>8</sup> window legislation does far more than create justice for victims in the past. It also forestalls future abuse of today's children.

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.,

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KENNETH V. LANNING, CHILD MOLESTERS: A BEHAVIORAL ANALYSIS 5, 37 (4<sup>th</sup> ed. 2001) available at [http://www.cybertipline.com/en\\_US/publications/NC70.pdf](http://www.cybertipline.com/en_US/publications/NC70.pdf). ("Except for child prostitution, most 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.").

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); 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).

SB217 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 SB217, 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  
[hamilton02@aol.com](mailto:hamilton02@aol.com)  
212-790-0215 (office)  
215-493-1094 (facsimile)

## ChunOakland2 - Tyrell

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**From:** Debby Bodkin [bodkind@hotmail.com]  
**Sent:** Monday, February 07, 2011 7:39 AM  
**To:** HMS Testimony  
**Subject:** Senate Bill 217 - Hearing Scheduled for February 8, 2011, 2:00 p.m.  
**Attachments:** lenihanlyonspic.pdf

Via Email  
February 7, 2011

Re: Child Sexual Abuse Bill, SB 217  
Hearing: February 8, 2011  
Time: 2:00 pm  
Room: 016  
Committee: HMS

Dear Honorable Elected Officials:

This email is submitted in support of SB 217 scheduled for hearing on Tuesday, February 8, 2011. As elected government officials, thank you for having the courage to act on behalf of children, adults and families by placing the future protections of children as one of your highest priorities.

It is my understanding that tomorrow's hearing is the third time this Bill will come before you. As a Catholic wife, mother and advocate from Southern California, as you listen and consider written and oral testimony tomorrow, I ask you to take a moment and visualize that one of your children and/or grandchildren is a victim of horrific sex abuse. We can all acknowledge that living in the United States of America is a blessing -- thanks to freedoms we must never take for granted. As a non-attorney, I continue to struggle with understanding how freedoms of religion and separation of church and state ENABLED sex crimes against our children for decades, without accountability in a court of law. Many have lost their lives fighting to protect our freedoms and nationwide legislation similar to SB 217 will ensure that no one in a position of authority and/or trust will escape accountability for crimes against our children.

Included with this email is a pdf copy of my daughter's classmates when she attended Catholic school in Orange County, California. A picture speaks a thousand words and I will never forget my feelings when it was discovered that two out of the three priests that visited my daughters' Catholic school regularly, were known sexual predators BEFORE they were transferred to St. Edward's. I thank God every day none of my children were sexually abused; however, many children were abused by members of the clergy and/or persons in positions of authority. It is my belief that no child or adult should be denied their day in a court of law based on legal technicalities.

With respect, please understand the importance of implementing SB 217 in the State of Hawaii on behalf of future protections of children, adults and families. ***Without justice, there will never be peace. Without peace, faith and our country's laws are empty.***

Sincerely,  
Debby Bodkin  
38126 High Country Road  
Palmdale, CA 93551  
Cell: (949) 290-5516  
[bodkind@hotmail.com](mailto:bodkind@hotmail.com)

## ChunOakland2 - Tyrell

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**From:** tina (cj) [ypeia01@yahoo.com]  
**Sent:** Thursday, February 03, 2011 10:41 AM  
**To:** HMS Testimony  
**Cc:** chris johnson  
**Subject:** Testimony SB217 hearing date 2/8/11 2pm

Testimony SB217 hearing date 2/18/11 2pm

Elimination of Statutes of limitations child sexual abuse civil suits..plus one year window.

today's date 2/3/11

I completely support this Bill SB217 (hb133)

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 made 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

84-770 Kili Drive

Waianae, Hawaii

96792



I am writing in Favor of the Bill SB 217 - elimination of Statue of Limitations on child sexual abuse in Hawaii.

This bill hits home for my family and I.

Two of our daughters were sexually abused.

Unfortunately, by the time they came forward and was emotionally able to deal with the situation, the status of limitation was over. Many of these perpetrators are free because they know that children and abused individuals are terrified and when threatened will not tell or literally just can't face the emotional drama and hurts. We have seen how this injustice has affected our children's life. Many are not the same after being abused....One thing for sure, their life is affected – many for life. As a parent it is difficult to see the affects of child abuse on your siblings. These perpetrators don't care of the affects of their abuse. The sad part about all of this is that the majority of the abusers get away. Often by the time the person abused can work through the trauma, the status of limitations has been exhausted. I strongly urge you to pass this bill.

Thank you for your time and consideration.

Kathleen V. Phillips  
3297 Old Haleakala Hwy.  
Makawao, HI 96768

Phone: 808-572-7226



## ChunOakland2 - Tyrell

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**From:** Linda MacDonald [flight@ns.sympatico.ca]  
**Sent:** Saturday, February 05, 2011 9:02 PM  
**To:** HMS Testimony  
**Subject:** Testimony for SB217 date of hearing 2/8/11 2pm

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  
316 Prince St  
Truro, NS  
Canada, B2N 1E4  
phone 902.895.2255