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LATE

LATE TESTIMONY

Email to: HMSTestimony@Capitol.hawaii.gov

Hearing on: February 8, 2011 @ 2:00 p.m.

Conference Room # 016

DATE: February 8, 2010

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

FROM: Walter Yoshimitsu, Executive Director

RE: OPPOSITION TO SB 217 RELATING TO LIMITATION OF ACTIONS

Honorable Chair Oakland and members of the House Committee on Judiciary, I am Walter Yoshimitsu, representing the Hawaii Catholic Conference. The Hawaii Catholic Conference is the public policy voice for the Roman Catholic Church in the State of Hawaii, which under the leadership of Bishop Larry Silva, represents over 200,000 Catholics in Hawaii. We oppose this bill for the following reasons:

This bill could cause substantial problems for all types of public and private programs and nonprofits, including public and private schools, churches, camps, and youth programs. This bill would eliminate any statute of limitations for commencement of a tort action for offenses under Part V (sexual offenses) and Part VI (Child Abuse) of Chapter 707, and provides that “[n]otwithstanding any law to the contrary” an action may be “commenced at any time.” Further, the bill would provide a one-year window for revival of many actions that would otherwise be barred by the applicable statute of limitation. It appears that, under the bill, claims may be asserted potentially going back as far as 53 years (1958).

While people often single out the Catholic Church for past instances of abuse, the problem is by no means unique to the Church. There is always the potential for abuse in any institution that deals with, supervises or cares for children.

Thus, for example, this bill could have a dramatic impact on claims against the State for potential sex crimes or sexual abuse committed by employees in public schools or other government programs. As indicated by a study prepared for the federal Department of Education, 6.7% of students in public schools nationwide have reported being sexually abused by an educator, a much higher percentage than the reported incidence of clergy abuse of children. (U.S. Department of Education, “Educator Sexual Misconduct: A Synthesis of Existing Literature” (2004).) Government reports also indicate that, across the country, there has been a high incidence of sexual abuse in juvenile detention facilities, with 10.3% of incarcerated youth reporting they had been sexually abused by a facility staff member during the prior year. (U.S. Department Justice, Bureau of Justice Statistics, “Sexual Victimization in Juvenile Facilities Reported by Youth 2008-09” (2010).)

Currently, the State’s liability for torts is barred unless suit is commenced within 2 years after the cause of action accrues, but this bill overrides such a limitations period and could expose the State to numerous claims.

Similarly, many other institutions including private elementary and secondary schools, Boy Scouts, Girl Scouts, YMCA, YWCA, Boys' and Girls' Clubs, childcare programs, preschools, after school programs, camps, churches, and youth-at-risk programs, just to name a few, could similarly be affected by the removal of limitations periods on asserted claims, as well as the revival of claims already barred by the statute of limitations. While it is hoped this would not be the case, there could be a flood of claims filed against both government bodies and private institutions should this bill become law.

Because of the lapse of time, many institutions potentially subject to suit under this bill would no longer have the ability to meaningfully defend themselves from such claims. The reason for statutes of limitation is to reflect the fact that, over time, individual memories fade, witnesses who may prove or disprove a claim have died or are no longer available, and written records may no longer be available that would have relevance to the case. Especially in the case of nonprofits, record-keeping over a prolonged period may be far from ideal. Boards and staff change, and institutional memories are lost.

This bill, however, would allow the assertion of claims going back many years, as far back as 1958. Many institutions may be put in the situation of defending themselves in situations where not only is there a lack of evidence, but the abuser and anyone who may have been at fault for negligently overseeing or supervising the abuser are long gone. All that remains as a target for litigation may be the institution, which is now without any practical way to defend itself from the allegations.

This bill could have substantial negative impacts on the ability of nonprofits to remain open and provide services. Many nonprofits that provide services for children and families do so on very thin budgets, especially in these economically challenging times. The cost of defending against a single claim brought under this bill could have a devastating impact. Further, to the extent that such claims can be insured against, it would seem that premiums for such insurance could increase substantially if this bill became law. Again, many nonprofit organizations may not be able to pay for such insurance, and it is quite possible that such organizations would simply cease to provide services rather than the organization, as well as its directors and officers, being exposed to suit.

This bill will not provide any additional protection for children. While not belittling in any way the suffering that those already abused have suffered, we believe that the focus of efforts at preventing sexual abuse should be on prevention. Over the past few years, as this problem has come to light, churches, schools and other nonprofits have taken substantial steps to reduce the possibility for abuse to occur, including substantially increased screening and background checks on potential teachers and employees, accountability and reporting procedures, and supervisory procedures to ensure that children are not put in situations and environments where they could be abused. This bill, however, which resuscitates claims that are 30, 40, or 50 years old, will not do anything to make children safer today.

For these reasons, we believe this bill should be held in committee.

Thank you for the opportunity to testify.