



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

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**LATE TESTIMONY**

**ON THE FOLLOWING MEASURE:**

H.B. NO. 133, RELATING TO LIMITATION OF ACTIONS.

**BEFORE THE:**

HOUSE COMMITTEE ON HEALTH

**DATE:** Friday, February 11, 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 or  
Randolph Slaton, Deputy Attorney General

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Chair Yamane and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill, but opposes it due to certain legal infirmities.

The purpose of this bill is to create a cause of action for minors who are alleged to have been injured as a result of the conduct of another that would constitute a violation of part V or VI of chapter 707, Hawaii Revised Statutes (specifically sexual offenses or child abuse) or similar offense, with no limitations period. The bill also revives a cause of action that may be barred by a limitations period by allowing the commencement of an action within one year of the effective date of this bill, provided that the action is commenced within thirty-five years of the conduct alleged or within thirty-five years after the minor attains the age of eighteen years.

The bill is unclear as to what is meant by "direct conduct of another." As written, the bill appears 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.

The Department of the Attorney General has concerns that this bill violates the due process clause of the state and federal constitutions since a claim can 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 itself. For example, if a minor is sexually abused and is taken to a hospital to be treated, a medical care provider who examines the minor is mandated to report the suspected abuse. If no medical care provider reports the suspected abuse and the child is abused again, there may be grounds to file an action against the medical care provider and the hospital. However, since there is no time limitation, a claimant could file a lawsuit decades later when there may no longer be any witnesses or documentation that would allow the medical care provider or hospital to defend itself in the lawsuit.

Also, any claim against a medical care provider under this bill would be in direct conflict with section 657-7.3 which sets forth a specific limitation period for actions brought by a minor.

Moreover, if medical care providers or hospitals can be sued at any time, insurance companies may refuse to issue errors and omissions policies or may raise their rates to such an extent that physicians could no longer afford to purchase insurance coverage.

It is also unclear as to who can make the determination that the conduct constitutes a violation of part V or VI of chapter 707 in order to allow a cause of action under this bill. If the alleged perpetrator is arrested but not charged with a

crime under part V or VI because the prosecutor determines that the allegations are unfounded, this bill may still allow a lawsuit to be brought against a wrongfully accused individual, at any time, if the allegations in the lawsuit merely include the elements of a violation of part V or VI. Because there is no limitations period, a lawsuit could even be brought after this individual's death against his estate and there would be no opportunity for the accused to establish his innocence.

Finally, it is unclear as to why the certification process in subsection (d) would apply only to an action filed pursuant to subsection (b) and not subsection (a), especially if a significant length of time has passed between the alleged conduct and the filing of a lawsuit pursuant to subsection (a).

We respectfully request that this bill be held.

morikawa2 - Grant

**From:** tina (cj) [tjpeia01@yahoo.com]  
**Sent:** Thursday, February 10, 2011 4:57 PM  
**To:** HLTtestimony  
**Subject:** Fw: HB 133 health.. hearing on 2/11/11 9am from Kay Goodnow

aloha,  
several people who submitted testimony for HB133 had problems with the address.  
Have been given permission to send them again to make sure they get thru.  
Thank you  
christine johnson  
makaha, hawaii

--- On Wed, 2/9/11, Kay Goodnow <[kaygoodnow2011@gmail.com](mailto:kaygoodnow2011@gmail.com)> wrote:

From: Kay Goodnow <[kaygoodnow2011@gmail.com](mailto:kaygoodnow2011@gmail.com)>  
Subject: HB 133  
To: [HLTestimony@Capitol.hawaii.gov](mailto:HLTestimony@Capitol.hawaii.gov)  
Date: Wednesday, February 9, 2011, 12:25 PM

Representative Ryan Yamane  
Representative Dee Marikawa

As a survivor of priest abuse at my age of 14, I am writing to request that you vote in favor of HB 133. I live in Kansas, but I want you to know that it took me close to 50 years to be able to talk about what happened to me. My life has been far from "normal," and no child or vulnerable adult knows how to fight back when trust is violated in God's name or by any trusted person... Sincere best wishes for the outcome of this bill.

Katherine Goodnow  
13850 West 91st Terrace, Apartment 408D  
Lenexa, KS 66215  
(913) 851-1702

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## LATE TESTIMONY

I am writing in Favor of the Bill HB 133 - elimination of Statute 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

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