



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SIXTH LEGISLATURE, 2012**

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**ON THE FOLLOWING MEASURE:**

**H.B. NO. 2139, RELATING TO LIMITATION OF ACTIONS.**

**BEFORE THE:**

**HOUSE COMMITTEE ON HUMAN SERVICES**

**DATE:** Monday, January 30, 2012

**TIME:** 8:30 a.m.

**LOCATION:** State Capitol, Room 329

**TESTIFIER(S):** David M. Louie, Attorney General, or  
Randolph Slaton, Deputy Attorney General

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Chair Mizuno and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill and does not oppose the bill, but makes the following comments and recommendations.

There are two virtually identical bills, H.B. No. 1933 and H.B. No. 2139, being heard at the same time before this committee.

These bills differ only in that H.B. No. 1933 contains the additional wording on page 1 of the bill at lines 10 -13, "provided that an action against a person who was a minor at the time the person committed the act of sexual abuse may be commenced when that person reaches the age of majority."

Since the following paragraph already sets forth that the time to commence an action under this section is "eight years of the date the plaintiff or the person who committed the act of sexual abuse attains the age of majority, whichever occurs later," the additional wording is not necessary and it may cause confusion as to when the time actually starts to run.

In our testimony for H.B. No. 1933, we have recommended that this phrase be deleted. Since H.B. No. 2139 does not contain this wording, we would only suggest the following additional amendments.

To avoid any conflict of interest, we would recommend an additional change to subsection (d) relating to the notarized statement of a medical or mental health care professional as set forth below.

(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 include a notarized statement by a:

- (1) Psychologist licensed pursuant to chapter 465;
- (2) Marriage and family therapist licensed pursuant to chapter 451J
- (3) Mental health counselor licensed pursuant to chapter 453D; or
- (4) Clinical social worker licensed pursuant to chapter 467E;

who is knowledgeable in the relevant facts and issues involved in the action ~~and~~,  
who is not a party to the action[- ], and who is not currently treating nor had  
previously treated the plaintiff.

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



**HAWAII CATHOLIC CONFERENCE**  
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Email to: [HUSTestimony@Capitol.hawaii.gov](mailto:HUSTestimony@Capitol.hawaii.gov)  
Hearing on: January 30, 2012 @ 8:30 a.m.  
Conference Room # 329

**DATE:** January 27, 2012

**TO:** House Committee on Human Services  
**Representative John M. Mizuno, Chair**  
**Representative Jo Jordan, Vice Chair**

**FROM:** Walter Yoshimitsu, Executive Director

**RE: OPPOSITION TO HB 1933 AND HB 2139 RELATING TO LIMITATION OF ACTIONS**

Honorable Chair Mizuno and members of the House Committee on Human Services, 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 the Catholic Church in Hawaii. **We oppose these two bills for the following reasons:**

These bills could cause substantial problems for all types of programs and nonprofits, including schools, churches, camps, and youth programs. The bills expand the statute of limitations for commencement of a tort action for acts of child sexual abuse that would constitute offenses under Part V (Sexual Offenses) and Part VI (Child Abuse) of Chapter 707. Further, the bills provide a two-year window for revival of all actions that are presently time-barred, no matter how long ago the sexual abuse occurred, except as against the State. Although claims are revived against all others, the bills specifically provide that the State is exempt from revived claims. Finally, the bills substantially expand the concept of child sexual abuse to now include abuse of the child by another minor.

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.

Studies actually indicate that the institutions most likely to foster an atmosphere of abuse are not private institutions, but public ones. 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).)

These rates of abuse are much higher than those reported in the private sector, including incidents of abuse involving clergy of the Catholic Church.

These bills, however, do not recognize this. Instead of protecting children in such situations, these bills perversely and explicitly exempt the State from liability for time-barred claims, while at the same time reviving such claims against all other institutions.

There is no rational basis for making such a distinction, especially given the empirical data regarding incidents of abuse occurring in public institutions. Further, the clear message this legislation sends is that children who have suffered abuse by State employees or under the State's control are not as worthy of legal redress as those who have suffered abuse in a private setting. For example, if a child is abused by a teacher in a private school, under these bills there is a revived right to assert a claim against the school. If the same identical situation occurred in a DOE school, however, there would be no ability to recover.

Although the State in these bills is exempted, 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, will be substantially affected by the revival of claims already barred by the statute of limitations. **Because of the lapse of time, many institutions potentially subject to suit under these bills 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.

These bills, however, would now allow the assertion of claims going back for an unlimited period of years. 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.

These bills would 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.

Another very disturbing feature of these bills is that they appear to expand the scope of claims considered child sexual abuse beyond abuse by adults against children. Bill 1933 explicitly also covers claims for recovery of damages "against a person who was a minor at the time the person committed the sexual abuse." Although Bill 2139 does not state this explicitly, it also purports to extend the statute of limitations to within "[e]ight years of the date the plaintiff or the person who committed the act of sexual abuse attains the age of majority, whichever occurs later."

Thus, no longer is the concern of this legislation the preservation of claims where it involves sexual abuse of a minor resulting from the actions of an adult such as a coach, teacher or pastor. Now, the concept of child sexual abuse is being expanded to include situations where two minors are sexually involved with one another. Have the ramifications of this been thought through? Are schools now exposed to liability where something occurred in the vicinity of a school dance? What about actions of juvenile campers with each other, of which the camp was not even aware? Are claimants now able to say that the camp should be liable because it was "responsible" for campers at the camp?

Finally, these bills will not provide any additional protection for children. While not belittling in any way the suffering that those already abused have suffered, as we have previously testified, 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. These bills, however, which resuscitate claims that are 30, 40, or 50 years old, will not do anything to make children safer today.

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

Thank you for the opportunity to testify.

TO: Representative Mizuno, Chair  
Representative Jordan, Vice Chair  
Human Services Committee Members

FROM: Dara Carlin, M.A.  
Domestic Violence Survivor Advocate  
881 Akiu Place  
Kailua, HI 96734

DATE: January 30, 2012

RE: **Strong Support** for HB2139, Relating to Limitations of Actions

Good Morning Representatives and thank you for this opportunity to provide testimony on this measure. Because this proposal is so closely related to HB1933 (the one just heard) please refer to that testimony as it contains the same content I would talk about here.

Respectfully,

Dara Carlin, M.A.  
Domestic Violence Survivor Advocate

Dear Chair Mizuno, Vice Chair Jordan, and committee members:

I am a survivor of childhood survivor abuse and I support HB2139.

As a child victim of sexual abuse, you are very confused and scared, especially if the perpetrator is someone from your family, such as my half-brother, or from an institution that you are told you can trust, such as a church, school, etc. Besides being confused on who you can trust, there are feelings of shame and guilt that the abuse was your fault. Imagine having these feelings as an 11 year old child; it would be very difficult to come out and tell someone about your situation. I am now 35 years old and am finally able to freely talk about my abuse. I have been in therapy for the past 9 years and have overcome addictions, anger, and low self-esteem. Unfortunately, the statute of limitations for civil and criminal action has passed in the state of Washington where the abuse occurred.

As you can see, child sexual abuse can be crippling. It is estimated that 1 out of 6 men have been sexually abused. The number maybe higher but it is hard to quantify because many men live in silence due to fear and shame. It can take years for a man to even admit that he was sexually abused, let alone be strong enough to name his perpetrator in court. Knowing that the statute of limitations has passed may contribute to men not confronting their past and seeking help to improve their mental well-being.

I urge the committee to support the intent of this bill and demonstrate to the boys and girls, men and women, who have been victims of sexual abuse, that the State of Hawaii believes their stories, and that they too can have their day of justice and feel whole again. Thank you.

Andre Blsquera