

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

ON THE FOLLOWING MEASURE:

S.B. NO. 2588, S.D. 1, H.D. 2, RELATING TO LIMITATION OF ACTIONS.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Thursday, March 29, 2012

TIME: 4:30 p.m.

LOCATION: State Capitol, Room 308

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

Chair Oshiro and Members of the Committee:

The Department of the Attorney General has always appreciated the intent of this bill, but opposes this bill as currently written and recommends the following amendments.

The previous version of the bill, S.D. 1, H.D. 1, to which this Department had no objection, has been substantially amended. Subsection (b) of the bill allows for the revival of a claim for a victim of childhood sexual abuse against the victim's abuser due to the expiration of the applicable civil statutes of limitations for a period of two years following the effective date of this bill. Subsection (b) also allows a claim to be brought against a legal entity that owed a duty of care to the victim or had a degree of responsibility or control over the activity that the person who committed the act of sexual abuse and the minor were engaged in. In H.D. 1, this revival section did not apply to the State because other statutes and the case law in Hawaii have already established a statute of limitations that applies specifically to the State.

The current draft, H.D. 2, now attempts to include the "State or its political subdivisions" within subsection (b), in direct contravention to, and creating a clear conflict with, existing law. We recommend that the wording of H.D. 1 be reinstated to exclude the State.

Also, in previous versions of the bill, to avoid any conflict of interest, we recommended a change to subsection (d) relating to the notarized statement of a health care professional or therapist as follows:

(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, who is not a party to the action[;], and who is not currently treating nor had previously treated the plaintiff.

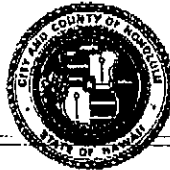
H.D. 1 contained this wording, but the wording was deleted from H.D. 2. Extending the statute of limitations or reviving claims that arose out of incidents that occurred many years ago, without any time limitation, increases the risk of false claims or claims being brought based on false memories. To safeguard against false claims and implanted memories, and to ensure objectivity, current or former treating professionals should not be among those who can provide a statement that a plaintiff's claim has merit.

We recommend that the wording precluding treating or former treating health care professionals and therapists from submitting a notarized statement be reinserted into the bill.

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

DEPARTMENT OF THE CORPORATION COUNSEL
CITY AND COUNTY OF HONOLULU
 530 SOUTH KING STREET, ROOM 110 * HONOLULU, HAWAII 96813
 PHONE: (808) 768-5193 * FAX: (808) 768-5105 * INTERNET: www.honolulu.gov

PETER B. CARLISLE
 MAYOR



ROBERT CARSON GODBÉY
 CORPORATION COUNSEL

KATHLEEN A. KELLY
 FIRST DEPUTY CORPORATION COUNSEL

March 29, 2012

Honorable Marcus R. Oshiro, Chair
 Honorable Marilyn B. Lee, Vice Chair
 Committee on Finance
 Hawaii State House of Representatives
 State Capitol
 Honolulu, Hawai'i 96813

Dear Representatives Oshiro and Lee,

Subject: Senate Bill No. 2588, S.D.1, H.D.2
Relating to Limitations of Actions

The City and County of Honolulu supports the intent of this bill, to reinforce legal remedies available to minor victims of sexual offenses. However, Senate Bill No. 2588, S.D.1, H.D.1, as currently drafted, would severely impair the City's ability to fairly defend against such claims. Counties deal with thousands of patrons on an annual basis and frequently face personnel changes, making it difficult to track down relevant witnesses. Consequently, counties frequently find themselves at a distinct disadvantage when facing allegations of a considerably stale nature. This, no doubt, is why H.R.S. § 46-72 (the Statute of Limitations for claims against the counties) was originally established at six (6) months. We believe that the current Statute of Limitations for claims against municipalities is fair and reasonable.

If this bill is to apply to the City, we would like to bring to this Committee's attention to particular concerns first, with the language used in the second sentence of subsection (b):

(b) ... " [a] claim may also be brought..."

This suggests that the legislature is creating an entirely new cause of action. While we believe the intent is merely to delineate the circumstances under which a common law claim could be brought, there is sufficient ambiguity in the wording to create a colorable argument that a new cause of action is what was intended.

Second, the language in subsection (b), subsection (2):

Honorable Marcus R. Oshiro, Chair
Honorable Marilyn B. Lee, Vice Chair
March 29, 2012
Page 2

- (2) The person who committed the act of sexual abuse and the victim were engaged in an activity over which the legal entity, including the State or its political subdivision, had a degree of responsibility or control.

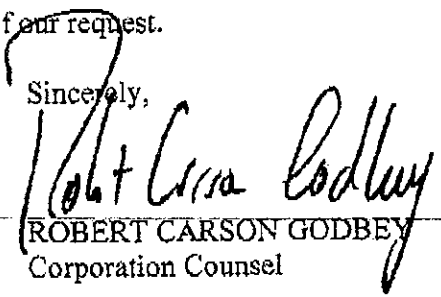
This section is extremely vague and broad in its scope and would expand cognizable claims during this period far beyond common law principles. The counties are involved with a multitude of activities for which the counties have *some* degree of responsibility. For example, sporting activities occur on county parks maintained by counties under schedules dictated by county employees. However, such "responsibility" and "control" bear no relation to any sexual offenses independently committed by tortfeasors in the course of participating at such events. Hence, we would recommend that this clause be eliminated.

Accordingly, the City proposes the following amendments to subsection (b):

- (b) For a period of two years following the effective date of Act , Session Laws of Hawai'i, 2012, a victim of child sexual abuse that occurred in this State who has been barred from filing a claim against the victim's abuser due to the expiration of the applicable civil statute of limitations that was in effect prior to the effective date of Act , Session Laws of Hawai'i 2012, may file a claim in the circuit courts of this State against:
- (1) the person who committed the act of sexual abuse; and
 - (2) a legal entity, except the State and the counties, if the person committing the act of sexual abuse against the victim 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; provided that 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.

Thank you for your consideration of our request.

Sincerely,


ROBERT CARSON GODBEY
Corporation Counsel



THE SEX ABUSE TREATMENT CENTER

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

Executive Director
Adriana Ramelli

DATE: March 29, 2012

Advisory Board

President
Mimi Beams

TO: The Honorable Marcus R. Oshiro, Chair
The Honorable Marilyn B. Lee, Vice Chair
Committee on Finance

Vice President
Peter Van Zile

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

Joanne H. Arizumi

Mark J. Bennett

Andre Bisquera

RE: S.B. 2588, S.D.1, H.D.2
Relating to Limitation of Actions

Marilyn Carlsmith

Senator
Suzanne Chun Oakland

Monica Cobb-Adams

Donne Dawson

Dennis Dunn

Good afternoon Chair Oshiro, Vice Chair Lee and members of the Committee on Finance. 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 Hawai'i Pacific Health.

Senator
Carol Fukunaga

Frank Haas

David I. Haverly

Linda Jameson

Roland Lagareta

Michael P. Matsumoto

Phyllis Muraoka

Gidget Ruscetta

The SATC supports S.B. 2588, S.D.1, H.D.2. It is commendable to expand the ability of sexual assault victims to seek civil compensation. We respectfully recommend, however, that sub-section (d) be omitted. We believe it is unnecessary, time-consuming and costly to the plaintiff to require a certificate of merit be filed by the plaintiff's attorney to determine the veracity of the claim. 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. Further, section (c) in this proposed legislation allows the recovery of attorneys' fees from a false accusation.

In summary, SATC supports this important victim-center legislation and believes it can be strengthened if sub-section (d) is omitted. Thank you for allowing SATC the opportunity to testify.



HAWAII CATHOLIC CONFERENCE
6301 Pali Highway
Kaneohe, HI 96744-5224

Email to: FINTestimony@Capitol.hawaii.gov
Hearing on: Thursday, March 29, 2012 @ 4:30 p.m.
Conference Room #308

DATE: March 27, 2012

TO: House Committee on Finance
Representative Marcus Oshiro, Chair
Representative Marilyn Lee, Vice Chair

FROM: Walter Yoshimitsu, Executive Director

RE: OPPOSITION TO SB 2588 SD 1 HD2 RELATING TO LIMITATION OF ACTIONS

Honorable Members of the House Committee on Finance, 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 this bill for the following reasons:**

This bill could cause substantial problems for all types of programs and nonprofits, including schools, churches, camps, and youth programs. The bill expands 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 bill provides a two-year window for revival of all actions that are presently time-barred, no matter how long ago the sexual abuse occurred. Finally, the bill substantially expands 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. We are glad that this version has finally included the

State because it sends a clear message that children who have suffered abuse by State employees or under the State's control are 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 public or private school, under this bill there is a revived right to assert a claim against the school.

In addition to the State, 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 this bill 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 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.

This bill 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 this bill is that it appears to expand the scope of claims considered child sex sexual abuse beyond abuse by adults against children. This is because the bill 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, this bill 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. 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.

CARDOZO

BENJAMIN N. CARDOZO SCHOOL OF LAW • YESHIVA UNIVERSITY

MARCI A. HAMILTON
Paul R. Verkuil Chair in Public Law

E-MAIL hamilton02@aol.com
PHONE 215-353-8984

07

March 29, 2012

SUBMITTED VIA WEB DROP/EMAIL

Hon. Rep. Marcus R. Oshiro, Chair
Hon. Rep. Marilyn B. Lee, Vice Chair
House Committee on Finance
State Capitol
Conference Room 308
415 South Beretania Street
Honolulu, HI 96813-2425

SUPPORT

RE: Hearing Before Committee on Finance on S.B.2588, S.D.1 H.D. 2 Relative to the Statute of Limitations for Civil Actions Involving Childhood Sexual Abuse (March 29, 2012 4:30 p.m.)

Dear Honorable Representatives Oshiro, Lee & Members of the Committee:

I commend you and the Committee for taking up S.B 2588, S.D.1, H.D. 2, which would extend and toll the statute of limitations for civil actions brought by minor victims of sexual offenses, and revive for two (2) years some actions for which the statute of limitations had previously lapsed. **If passed, it will put Hawaii in the forefront of child protection.**

There are untold numbers of hidden child predators in Hawaii who are preying on one child after another, because the statutes of limitations have been configured to give them that opportunity. This bill reduces the present danger to Hawaii's children.

This bill 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, 2012),

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) It identifies previously unknown child predators to the public so children will not be abused in the future;**
- (2) It gives chance child sex abuse survivors a fair chance at justice; and**
- (3) It cures the injustice wreaked by the current unfairly short statute of limitations that protect child predators and silence child sex abuse victims.**

I have been involved in statute of limitations reform in numerous states. This is the only tried and true method of identifying the many hidden 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).

This is a vibrant national movement to protect our children. Legislative reform for statutes of limitations for child sex abuse victims is on the rise. Guam's bill removing the statute of limitations and creating a two-year window was signed into law by Governor Calvo on March 10, 2011.¹ Virginia² also passed and signed into law legislation extending its statutes of limitations in 2011. Florida³ and Illinois⁴ each extended or eliminated their statute of limitations in 2010. Bills that would eliminate, extend, or create windows for the statutes of limitations covering child sex abuse are pending or have passed in South Dakota,⁵ Connecticut,⁶ New Jersey,⁷ New York,⁸ and

¹ Bills No. B033 & B034-31(COR), Acts 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, removing the statute of limitations and 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, now Public Laws No. 31-06 & 31-07 (2011); Erin Thompson, *Sex Abuse Bills Now Public Law*, PACIFIC DAILY NEWS (Mar. 10, 2011), available at <http://www.guampdn.com/article/20110310/NEWS01/103100301/Sex-abuse-bills-now-public-law>.

² VA. CODE ANN. § 8.01-243(D) (2011), formerly H.B. 1476, 2011 Gen. Assemb., 2011 Reg. Sess., (enacted) (extending the limitations period for actions for sexual abuse committed during the infancy or incapacity of the abused person from two years to 20 years from the time of the removal of the infancy or incapacity or from the time the cause of action otherwise accrues).

³ 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).

⁴ 735 ILL. COMP. STAT. 5/13-202.2 (2010) (enacted) (expanding statute of limitations for injury based on childhood sexual abuse to within 20 (previously 10) years of the date the limitation period begins to run or within 20 (previously 5) years of the date the person abused discovers or through the use of reasonable diligence should discover that the act of childhood sexual abuse occurred and the injury was caused by that abuse).

⁵ H.B. 1218, 87th Leg. Sess., 2012 Reg. Sess. (S.D. 2012) (pending) (rescinding the statute of limitations for any civil cause of action arising out of childhood sexual abuse).

Oregon.⁹ Bills—including two creating a most important civil “window”—were recently introduced in both houses of the Pennsylvania legislature as well.¹⁰

Information on the statutes of limitations for child sex abuse can be found on my website, 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 children in Hawaii 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 many children over the course of their lives,¹¹ window legislation does far more than create justice for victims in the past. It also forestalls future abuse of today’s children.

SOL reform has very few detractors other than the Catholic bishops, who have misleadingly argued that window legislation is unconstitutional on the theory that it “targets” the Church. Window legislation does not target any particular perpetrator or organization. A federal trial court in the Ninth Circuit persuasively upheld the California window against such an argument. See *Melanie H. v. Defendant Doe*, No. 04-1596-WQH-(WMc), slip op. (S.D. Cal. Dec. 20, 2005).

⁶ 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.)

⁷ No. S.2405, 214th Legis. Sess., 2010-2011 Reg. Sess. (N.J. 2011) (pending) (eliminating statute of limitations for child sex abuse).

⁸ No. A.5488, 234th Gen. Assemb., 2011-2012 Reg. Sess. (N.Y. 2012) (pending) (extending the statute of limitations in criminal and civil actions for certain sex offenses committed against a child less than eighteen years of age, and creating a one year civil “window”).

⁹ H.B. 4100, 76th Gen. Assemb., 2011-2012 Reg. Sess. (Or. 2012) (pending) (eliminating criminal statute of limitations for sexual abuse crimes committed against minors). Oregon extended its civil limitations period regarding injuries arising out of child sex abuse in 2009. OR. REV. STAT. §12.117 (2009).

¹⁰ H.B. 832, 220th Gen. Assemb., 2011-2012 Reg. Sess. (Pa. 2012) (pending) (eliminates the statute of limitations for number of enumerated criminal offenses involving child sexual abuse); H.B. 878, 220th Gen. Assemb., 2011-2012 Reg. Sess. (Pa. 2012) (pending) (extends the statute of limitations in all civil cases not encompassed by House Bill 832 by allowing claims to be brought in court up to 32 years after majority; *and* establishes civil “window” which allows any suit that was previously barred from court solely on statute of limitations grounds to commence within the two-year period); S.B. 1392, 220th Gen. Assemb., 2011-2012 Reg. Sess. (Pa. 2012) (pending) (extends statute of limitations from to 32 years from majority; *and* establishes all important 2 year civil “window” to allow for previously procedurally time-barred child sex abuse claims to commence).

¹¹ KENNETH V. LANNING, *CHILD MOLESTERS: A BEHAVIORAL ANALYSIS* 5, 37 (4th ed. 2001) available at 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.”).

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).

In a case decided last year, the Delaware Supreme Court, sitting en banc, upheld a two-year window against a due process challenge. Sheehan v. Oblates of St. Francis de Sales, 15 A.3d 1247 (Del. 2011). The California one-year window also was held to be constitutional. See Deutsch v. Masonic Homes of California, Inc., 80 Cal. Rptr. 3d 368, 378 (Cal. Ct. App. 2008).

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); Deutsch v. Masonic Homes of California, Inc., 164 Cal. App. 4th 748, 760, 80 Cal. Rptr. 3d 368, 378 (Cal. Ct. App. 2008); 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., 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).

Hawaii law supports the window. The Hawaii Supreme Court has upheld 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).

Hawaii does provide for a two-year (2) statute of limitations for repressed memory cases, but victims typically have a difficult time dealing with such memories. Two years is a very short period of time within which to process the information, obtain the needed counseling to be ready to go to court, and then to find an attorney and proceed to the judicial process. The window would help them as well as the vast majority of victims, who do not have repressed memories and simply could not get to court before the statute of limitations expired.

Once again, I applaud you for introducing legislation intended to help childhood sexual abuse victims, and the Committee for taking up the cause of child sex abuse victims in this way. Hawaii's children deserve the passage of statutes of limitations reform to protect children today and in the future, and to achieve justice for the many victims suffering in silence. This bill creates a two-year (2) window of opportunity for Hawaii's child sex abuse victims who were locked out of the courthouse by unfairly short limitations periods. This is a huge step forward for Hawaii's children.

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
212-790-0215 (office)
(215) 353-8984 (cell)
215-493-1094 (facsimile)

JACOB BURNS INSTITUTE FOR ADVANCED LEGAL STUDIES

BROOKDALE CENTER • 55 FIFTH AVENUE • NEW YORK, NY 10003-4391

March 29, 2012

Dear Chair Oshiro, Vice Chair Lee, and Committee on Finance members:

I am a survivor of childhood sexual abuse and I support the intent of SB2588 being heard on Thursday, March 29, 2012, 4:30 PM.

As a victim of childhood sexual abuse, you are very confused and scared, especially if the perpetrator is someone from your family, such as my half-brother in my case, or from an institution that you are told you can trust, like 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 36 years old and am finally able to freely talk about my abuse. I have seen various therapists 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 support the intent of this bill to give survivors of childhood sex abuse their day of justice and feel whole again. But honestly, I would like to see the statute of limitations be extended even longer or be completely eliminated. Other states have enacted laws that extended the statute of limitations past the age of 26 and even eliminated it. Just a few weeks ago on March 2, 2012, South Dakota governor Dennis Daugaard signed Senate Bill 68 that eliminated the statute of limitations for civil actions in certain rape offenses where the victim was under age 13. In 2009, Oregon passed HB 2827, which extended the civil statute of limitations until the victim reaches the age of 40, or until 5 years after the discovery of connection between injury and abuse. Currently, Pennsylvania, Maine, and Arizona are also considering bills that would extend or eliminate the statute of limitations. States that have eliminated civil statute of limitations include Maine, Delaware, and Florida. Hawaii has shown it can be leader in renewable energy by having the most aggressive renewable portfolio standards in the nation. Let's show that Hawaii can also be a leader in the protection of its citizens by passing aggressive legislation regarding the statutes of limitations

Also, there is important language in the latest version of this bill, SB 2588 SD1 HD2, that needs to be addressed. It includes amendments that would make the State and its political subdivisions as entities potentially liable. In previous versions, the State was exempt, which made the bill consistent with pre-existing sovereign immunity laws, and was supported by the Governor's office. By including the State, this bill will be open to veto again like last year's State of Limitations bill, SB217. I urge the committee to amend this version so that the State is exempt, so that it has a chance to be signed by Governor Abercrombie. Including the State as potentially liable would be a death sentence for this bill and leave survivors waiting another year for justice.

Please consider the children of Hawaii, and the men and women who suffer in silence from childhood sexual abuse when considering this bill. Enacting such legislation will help identify predators and keep them from abusing more victims. After California passed its "window legislation" which opened a one year window in 2003, 300 perpetrators were identified. Thank you for considering this bill.

Andre Bisquera