



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SEVENTH LEGISLATURE, 2014**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 2687, S.D. 1, RELATING TO LIMITATIONS OF ACTIONS.

**BEFORE THE:**

HOUSE COMMITTEE ON HUMAN SERVICES

**DATE:** Thursday, March 13, 2014

**TIME:** 11:30 a.m.

**LOCATION:** State Capitol, Room 329

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

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Chair Carroll and Members of the Committee:

The Department of the Attorney General opposes this measure.

The purpose of this bill is to amend section 657-1.8, subsection (b), Hawaii Revised Statutes (HRS), to eliminate the two-year window that allowed civil claims to be brought by victims of childhood sexual assault who had been barred from filing a claim due to the expiration of the applicable statute of limitations. The bill adds wording to allow a victim of childhood sexual assault who is barred from filing a claim due to the expiration of the applicable statute of limitations to file a claim any time before the victim attains the age of fifty-five. This bill also lowers the standard of proof required to allow damages against a legal entity from a finding of gross negligence to simple negligence. In addition, this bill adds a provision that “[t]he court, plaintiff, or any person enumerated under paragraphs (1) to (4) [in subsection (d) of section 657-1.8, HRS] shall not be required to disclose the contents of the sealed certificate of merit to fulfill the requirements under this section.”

When section 657-1.8(b) was first enacted, the bill was highly publicized and the public was made aware that any victims of childhood sexual assault whose claims may have been untimely due to the applicable statute of limitations at that time, could have two years in which to now bring a civil lawsuit. Indeed, many civil lawsuits alleging acts of sexual assault that occurred many years, sometimes decades, earlier, were filed as a result of the passage of this law. These lawsuits were also highly publicized. We believe that the two-year window was a reasonable period of time and allowed victims a fair opportunity to have a second chance to file a claim.

We oppose the further extension of time that allows a civil lawsuit to be brought any time before the victim reaches the age of fifty-five. The extended length of time raises due process concerns because the bill could severely prejudice the defendants in a lawsuit who may not be just the accused perpetrator but also any entity that may be subject to the law.

With this further extension, a victim could theoretically bring a lawsuit more than four decades after the sexual assault. Over the passage of time, memories fade, witnesses move or pass away, and documents are lost or destroyed. Most entities have records retention policies that call for the destruction of documents after a certain period of time. A claimant could conceivably wait to file a lawsuit until the most strategically opportune time to prevent a defendant from defending against the lawsuit. A lawsuit could even be brought against an individual after his or her death and there would be no opportunity for the accused to establish his or her innocence.

Just one example where this bill could be misapplied is in the instance of a minor who is a victim of sexual abuse of one of the identified crimes 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, because a lawsuit may not be filed until decades after the alleged assault, 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, HRS, which sets forth a specific limitation period for actions for medical torts.

With respect to the proposed amendment in subsection (d) (page 3, lines 12-15), the wording is unclear as to its meaning, purpose, or necessity. The amendment provides that “[t]he court, plaintiff, or any person enumerated under paragraphs (1) to (4) shall not be required to disclose the contents of the sealed certificate of merit to fulfill the requirements under this section.” However, the statute already provides that the certificate of merit “shall be sealed and remain confidential.” Thus, the privacy of the plaintiff in a civil action is already protected. In

litigation, there are also other ways that this information could be protected, for example, by a court protective order.

We respectfully request that this bill be held.

HAWAII  
STATE  
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ON THE  
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WOMEN



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March 13, 2014

To: Representative Mele Carroll, Chair  
Representative Bertrand Kobayashi, Vice Chair  
Members of the House Committee on Human Services

From: Cathy Betts, Executive Director, Hawaii State Commission on the Status of Women

Re: Testimony in Support, SB 2687 SD1, Relating to Limitation of Actions

Thank you for this opportunity to testify in strong support of SB 2687, SD1, which would allow child victims of sexual abuse to bring a civil action if the statute of limitations for bringing a civil claim has lapsed and the victim has not yet reached the age of 55.

It is highly common for survivors to wait years, if not decades, before disclosing their abuse. For child victims of abuse and rape, this legislation is even more important because children rarely disclose, with sometimes a 3-18 year delay in disclosure.<sup>1</sup> This delay in disclosure means that a child victim may miss the statute of limitations and never have the ability to, at the very least, report the sexual assault or abuse. Adult perpetrators recognize and prey on this vulnerability in child victims.

The ability to come forward and report, even if the victim does not “prevail”, can strongly influence the way in which a victim recovers from trauma. Allowing some leniency in the ability to file civil claims allows victims a sense of ownership over the future of their case and potentially, a sense of closure. Further, allowing civil claims to proceed will not open the floodgates nor will it encourage false reporting. Our judiciary and our justice system have safeguards preventing truly fraudulent claims from moving forward. Additionally, false claims of sexual abuse are very rare.

At least 32 states have no criminal statute of limitations on child sexual abuse or the most aggravated sex crimes. The Commission strongly believes that child victims should be given the option to report and bring a civil action against their abuser or the entity responsible for allowing the abuse to occur. Please pass this bill.

Thank you for this opportunity to testify in support of SB 2687, SD1.

<sup>1</sup> Ramona Alagia, *An Ecological Analysis of Child Sexual Abuse Disclosure: Considerations for Child and Adolescent Mental Health*, 19(1) J. CAN. ACAD. CHILD. ADOLESC. PSYCHIATRY 32 (Feb. 2010).







March 12, 2014

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The Hon. Mele Carroll  
Chair, Committee on Human Services  
House of Representatives  
Hawaii State Capitol, Room 405  
415 South Beretania St.  
Honolulu, HI 96813

Dear Chair Carroll:

The National Center for Victims of Crime, the nation's leading resource and advocacy organization for all victims of crime, asks you to please support SB 2687 which will extend the civil statute of limitations for victims of child sex abuse to age 55. **This bill will help expose perpetrators and increase public safety.**

By extending the statute of limitations for initiating civil actions for childhood sexual abuse, the bill would prevent future crimes, protect the children of Hawaii, and promote justice for victims of this serious crime. Experts believe that as many as one in four children are sexually abused before the age of 18. The harm caused by that abuse, a unique crime shrouded in shame and secrecy, may not become apparent for decades. Many victims do not come forward, if at all, until years after the crime, when they seek treatment for depression, drug or alcohol abuse, phobias, or other abuse-related symptoms. Often, victims hesitate to report the abuse because they fear being blamed or not believed. Perpetrators often intensify these fears, threatening to harm the victims or their families if the victim discloses the crime.

**EXECUTIVE DIRECTOR**

Mai Fernandez

Child sex abuse is a crime that thrives on secrecy. Perpetrators commit the abuse in private, go to great lengths to keep victims silent, and publicly conduct themselves in a way that avoids close scrutiny. By extending the statute of limitations for civil actions, Hawaii could help prevent offenders (each of whom usually molest more than 100 children) from committing more crimes. The passage of SB 2687 would encourage more victims to come forward, subject more perpetrators to scrutiny, and deter organizations that serve children from hiring predators. Passage of this bill would also affirm the Legislature's commitment to the children of Hawaii.

I strongly urge you to vote "yes" on SB2687.

Sincerely,

Jeffrey R. Dion, Deputy Executive Director



# THE SEX ABUSE TREATMENT CENTER

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

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DATE: March 13, 2014

TO: The Honorable Mele Carroll, Chair  
The Honorable Bertrand Kobayashi, Vice Chair  
House Committee on Human Services

FROM: Alana Peacott-Ricardos, Policy Research Associate  
The Sex Abuse Treatment Center

RE: S.B. 2687, S.D. 1  
Relating to Limitation of Actions

Good morning Chair Carroll, Vice Chair Kobayashi and members of the House Committee on Human Services. My name is Alana Peacott-Ricardos and I am the Policy Research Associate for 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.

SATC strongly supports S.B. 2687, S.D.1, which allows a survivor of child sexual abuse to bring a civil action against the abuser or an entity, if the statute of limitations for filing a civil claim has lapsed and the survivor has not yet attained the age of fifty-five. Eliminating the statute of limitations on sexual assault sends a strong message that sexual violence will not be tolerated in our community at any time.

It is common for survivors of sexual assault to wait some time before telling anyone about the assault. Some survivors may never tell. A sexual assault is an unexpected intrusion and can create upheaval at home, work, or in social settings. There are many ways that survivors respond to sexual violence: fear, guilt, shock, disbelief, anger, confusion, helplessness, anxiety. Reporting an assault takes tremendous courage and it may not take first priority following an assault. A survivor may need time to work through the many emotions and experiences before they are ready to engage with the legal system.

This is especially true for survivors of child sexual abuse. Many children do not disclose sexual abuse right away. Some studies have estimated that between 60–80% of child survivors withhold disclosure.<sup>i</sup> Studies examining latency to disclosure have reported a mean delay from 3–18 years.<sup>ii</sup> There may be many reasons for this, from the child's stage of cognitive development and their ability to express what happened, to the fact that a majority of survivors know the perpetrator<sup>iii</sup> and may fear the impact on their family or the perpetrator's family.

Eliminating the statute of limitations can encourage more survivors to come forward and hold more perpetrators accountable. Statutes of limitation assure both the perpetrator and survivor that the perpetrator will not be liable for any harm after a certain point. No matter what the perpetrator has done or how deep of an impact the

perpetrator has had on the survivor, the perpetrator can be guaranteed to walk away without consequence. Thus, there is much less incentive to come forward and reveal such a personal experience. By knowing that there is a possibility that the perpetrator may be held responsible for their actions, more survivors may be motivated to share their story when they are ready. Additionally, this enhances public safety. Studies have found that a number of undetected sex offenders are serial offenders.<sup>iv</sup> These offenders pose a continuing threat to the community. When more survivors are able to come forward, more perpetrators are identified.

In 2012, Hawai'i amended its statute of limitations for civil actions involving child sexual abuse and provided a two-year window allowing survivors who had been previously barred by the statute of limitations to bring a civil action against the perpetrator or against the entity that employed the person accused of committing the abuse. This window will close this April. To date, at least ten survivors have come forward with suits directly attributable to the law. While the law has provided survivors with a chance to obtain justice, it has also served to expose the long-hidden abusers and institutions who failed to protect children from abuse.

It should be noted that this law expressly exempts claims against the State and its political subdivisions. In other words, a survivor would be able to bring suit against a negligent private entity but not a negligent public institution. In particular, if the survivor was subject to abuse in a school setting, a suit could only be brought against a private school and not a public school. This exemption is not balanced for all survivors. In addition, a survivor's age at the time they decide to come forward should not be a factor. There are survivors of child sexual abuse who are beyond the age of 55. There is no reason that a survivor who is 57, 67, or older should be barred from bringing a suit based on their age. Eliminating the statute of limitations does not change the burden of proof or difficulty that both sides face in terms of evidence where there has been a passage of time. It merely improves survivors' access to justice by allowing them the opportunity to move forward in the legal system. All survivors should be given that chance regardless of their age or the status of the entity where the perpetrator worked.

Thank you for this opportunity to testify.

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<sup>i</sup> Ramona Alagia, *An Ecological Analysis of Child Sexual Abuse Disclosure: Considerations for Child and Adolescent Mental Health*, 19(1) J. CAN. ACAD. CHILD ADOLESC. PSYCHIATRY 32 (Feb. 2010).

<sup>ii</sup> *Id.*

<sup>iii</sup> See, e.g., THE SEX ABUSE TREATMENT CENTER, *SEXUAL ASSAULT VICTIMS IN THE CITY AND COUNTY OF HONOLULU: 2001-2010 STATISTICAL PROFILE 1* (2013), available at <http://satchawaii.org/pdf/sexual-assault-victims-2001-2010-statistical-report.pdf>. According to the report, 92.5% of child victims and 80% of adult victims receiving services from SATC knew the perpetrator.

<sup>iv</sup> See, e.g., David Lisak & Paul M. Miller, *Repeat Rape and Multiple Offending Among Undetected Rapists*, 17 *Violence & Victims* 73 (2002).





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Christopher M. Anderson  
*Executive Director*

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March 13, 2014

To the Honorable Members of the Human Services Committee,

I want to thank you for allowing me to opportunity to address you this morning on a vitally important piece of legislation. My name is Christopher Anderson, and I am the Executive Director of MaleSurvivor, a national organization that provides male survivors of sexual abuse and their loved ones with information and resources to help them heal. I am also a survivor of sexual abuse that I suffered at the hands of a neighbor when I was growing up.

Sexual abuse is a silent epidemic that represents one of the greatest public health crises in this country. Studies show that victims of abuse are at far higher risk for depression, substance abuse, and suicide. Further, we know that at least 1 out every 6 males have been the victim of unwanted sexual contact before the age of 16. According to the 2010 National Intimate Partner and Sexual Violence Survey, almost one quarter of the male population in the United States experience some form of sexual violence during their lifetime.

And it has been this way for a very, very long time. Think about that for a moment – for every 100 friends you have, at least 15 to 20 of them have been sexually abused. Do you know which ones? Probably not. One of the most damaging effects of sexual abuse is that it effectively silences the voice of the victim. It took me over 20 years to disclose that I was sexually abused, even though all that time I carried the memory and pain close to the surface. Why? Like many survivors, males in particular, I minimized what happened to me so that I could carry on - a short-term strategy that almost always leads to long term harm. Research that we have done among the many thousands of members of our organization shows that it takes male survivors on average 20 years to disclose and begin to recover.

Yet even though I was older when I finally began my recovery, there was no way that I would have been emotionally prepared to bring charges against the man who abused me within the framework established by Statutes of Limitation across that exist in many states around the country. Any restriction on survivors' access to the justice system simply makes no sense. It serves to make it far less likely that survivors will attempt to hold abusers accountable, and thus acts as a shield allowing more abuse to occur.

Some will say that memory is a fickle thing and we cannot allow victims to bring charges after too long a time has passed. Well, what is too long? Any limits are nothing more than an arbitrary line in the sand, one that actually establishes an unfair, and undemocratic, boundary. No one can

tell how long it will take to heal, and this arbitrary line does not serve the interests of justice. Why should anyone be denied their opportunity to bring charges against a person who ripped their soul apart because they need 49 months to be healed enough to bring charges as opposed to 47?

Others say that evidence is lost and witnesses die, the implication being that the further in the past the abuse occurred, the less likely it is there will be sufficient documentation to support a case. But where there is an institution there is a bureaucracy, and where there is a bureaucracy there is paperwork – mountains of paperwork. There is almost always evidence of prior misdeeds or wrong doing in the files, and if there is not – that fact will be uncovered in the discovery phase and the case thrown out before trial. Prosecutors filed additional charges against Penn State officials still awaiting trial on charges stemming from the Sandusky trial because the discovery process had uncovered MORE documentation revealing that administrators not only knew, but also discussed, Sandusky's disturbing behavior. Isn't it just possible that maybe some of the reason people try to argue that documents don't exist is because they wish they didn't?

Some will tell you that if the Statute of Limitations for sexual abuse crimes is lifted, a flood of lawsuits will bankrupt institutions vital to the health of our communities. First - by what moral standard is it even permissible to make such an argument? How can we justify allowing schools, sports programs, and – yes- religious institutions to escape liability when they fail to take simple steps that would prevent children from being raped? How can any institution that acts in ways that allows anyone to be raped more often be considered vital to the health of our society? But setting aside the question – the likelihood of any institution being flooded by lawsuits would actually decrease if there were no Statute of Limitations. By giving survivors more time to heal, and by working with survivors to support them actively in their healing, it becomes less likely that these matters will be litigated, and more likely that more cost effective methods of supporting survivors' healing needs and instituting transformational changes within institutions will be negotiated and implemented. Any restriction on access to the halls of justice forces more people to come forward and file a suit solely to protect their right to be heard and have even a chance at justice.

Only by making it possible to hold abusers and the institutions that harbor them accountable for the harm they cause, can we ever hope to overcome this eminently preventable epidemic of sexual violence. Many well-intentioned people mistakenly think that the very same institutions that harbor abusers can be counted on to fix themselves from within. But it's simply not true. Time after time after time victims have received empty promises from those in charge only to learn that the teacher who was transferred or the priest who was passed onto another parish has abused yet more children.

The plain truth, honorable members, is that there is only one person in this world who has the power to stop abuse. The victim. And yet our law stifles, traumatizes, and impedes the very people we need to empower. It is only when we hear the victim's voice that we can begin to right what is wrong. I urge you to support the survivors all around us. Victims need our support in order to heal, in order to find their voice. Only by enacting laws attuned to our needs can we begin to heal our communities and rebuild institutions corrupted, shattered, and demoralized by abuse.

Christopher M. Anderson  
Executive Director, MaleSurvivor





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

ONLINE SUBMISSION

Hearing on: Thursday, March 13, 2014 @ 11:20 a.m.  
Conference Room #329

**DATE:** March 12, 2014

**TO:** House Committee on Human Services  
Representative Mele Carroll, Chair  
Representative Bertrand Kobayashi, Vice Chair

**FROM:** Walter Yoshimitsu

**RE:** OPPOSITION TO SB 2687, SD 1, RELATING TO LIMITATION OF ACTIONS

Honorable Members of the Senate Committee on Judiciary and Labor, 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 seeks to extend further the statute of limitations for child sexual abuse that would constitute offenses under Part V (Sexual Offenses) and Part VI (Child Abuse) of Chapter 707, by removing the limitations period for potential plaintiffs up to the age of 55. If it becomes law, it could cause substantial problems for all types of programs and nonprofits, including schools, churches, camps, and youth programs.

Many such 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 for up to fifty-five years. In other words, it could conceivably cover claims dating back to 1959, the year Hawaii first became a State. 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.

After the passage of fifty or more years, it is unlikely that the institution will be able to find persons with knowledge as to what actually occurred. Even if there were such persons still alive, it is unlikely they will still have an accurate memory of what occurred that long ago. So the institution is left with the claims of abuse, and absolutely no way to defend itself from such claims. It is fundamentally unfair to put an institution in such a position.

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.

This bill also perpetuates the basic unfairness of allowing resuscitated abuse claims against private institutions while immunizing the State and its political subdivisions from the exact same culpable conduct. 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 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 in public institutions are much higher than those reported in the private sector, including incidents of abuse involving clergy of the Catholic Church. Yet this bill only allows assertions of claims against private institutions and immunizes the State and its political subdivisions from any responsibility for the exact same abuses. Where is the fairness here, either for victims of abuse, or for private institutions that are faced with having to defend themselves while knowing the State and its political subdivisions are absolved from any accountability for the exact same types of claims?

We also have additional specific objections to the present SD 1 form of the bill. The amended SD 1 removes the "gross negligence" protection for institutions; now all that would be required is a finding of simple negligence. The legislature, when previously considering the standard of negligence that

was to be imposed on institutions, specifically concluded that the standard should be one of gross negligence in order not to create the risk of violating due process. As stated by the Senate Committee on Judiciary and Labor in the prior version of this law that established the gross negligence standard:

Testimony presented to your Committee raised concerns about the measure, however. Specifically, the Department of the Attorney General testified that this measure appears to allow a cause of action to be brought, not just the alleged perpetrator, but against even those whom 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 raised concerns that the measure may violate 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.

Because the window for an action is thirty-five years or less before the effective date of the measure or within thirty-vie years after the minor attained the age of eighteen, claims may be potentially asserted going back as far as fifty-three years. This raises problems with the availability of witnesses or documentation that would allow a medical provider or hospital to defend itself against a lawsuit for failure to report suspected abuse that occurred decades before, for example. An unlimited limitations period combined with the ability to bring suit against any person or entity raises questions about whether a person or entity connected only remotely with the abuse can meaningfully defend against such claims. . . .

Your Committee notes that a substantively similar measure was enacted in Delaware in 2007, and codified at section 8145 of the Delaware Code. These provisions resolve many of the concerns raised in testimony and have been upheld on review by the Delaware appellate courts and federal courts.

Your committee has amended this measure by:

- (1) Deleting the contents and replacing it with the contents of section 8145 of the Delaware Code, which amends the measure, as received by your Committee, in the following ways:
  - (A) Limits the cause of action to the perpetrator of the sexual abuse, except for the employer of the perpetrator when the employer either owed some duty to the minor or the employer had some degree

of responsibility or control over the activity engaged in by the perpetrator and the minor and the employer was grossly negligent . . . .

House Standing Committee Report No. 765 (Judiciary and Labor), 2011 Legislature (emphasis added). The requirement of gross negligence is constitutionally required to mitigate the obvious due process problem where there are no longer witnesses or documentation that would allow the institution to defend itself. There the plaintiff must be required to show a much higher standard that the institution was grossly negligent in its actions.

The amended SD1 also removes the ability of defendants in abuse cases to gain discovery regarding the certificate of merit, in order to investigate whether the certificate is well-founded or is the basis of a spurious accusation. The restriction makes illusory another protection mechanism of the original legislation, which is the ability of someone falsely accused to recover attorneys' fees. Section 657-1.8(c) provides that a wrongly accused defendant may recover attorney's fees if the court determines a false accusation has been made with no basis in fact and with malicious intent. However, if a defendant is prohibited from examining the documentation that formed the basis of the claim, the defendant is denied the practical ability to make a claim for fees and again denied a fair judicial process that comports with due process.

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.



# Rosenberg & McKay

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Randall L.K.M. Rosenberg  
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March 11, 2014

## VIA DROPBOX/EMAIL SUBMISSION

Representative Mele Carroll, Chair  
Representative Bertrand Kobayashi, Vice Chair  
House Committee on Human Services  
State Capitol, House Conference Room 329  
415 South Beretania Street  
Honolulu, HI  
Hearing: Feb. 7, 2014 10AM

RE: Hawaii S.D.1, S.B. 2687 (Amends Haw. Rev. Stat. §657-1.8, and extends the time for a victim of child sexual abuse to bring a civil action against victim's abuser or an entity, except for the State or counties, when the entity was negligent, if the statute of limitations for filing a civil claim has lapsed and the victim has not yet attained the age of fifty five) [Effective 4/23/2014].

Aloha Representative Carroll, Representative Kobayashi & Members of the Committee:

I am a Hawaii attorney that has represented and continues to represent victims of child sexual abuse. I provided written testimony in favor of S.B. 2687 when it was before the Senate Committee on Judiciary and Labor.

I represent approximately 30 victims of child sexual abuse in Hawaii. I have one client who is currently 70 years old. He cried as he told us his story of being sexually abused by the parish priest as a young 7 year old boy. He had been too ashamed and embarrassed to tell his parents, his wife, or his children and had kept it to himself for more than six decades until the day he told us. It affected his life in many ways as he fought substance abuse, issues regarding his sexuality, trust, and relationships. The knowledge that he could come forward under the new Hawaii "window" statute and present his claim against the priest and the church had finally given him feelings of relief and empowerment. For the first time in more than 60 years, he felt that he was healing.

I am gratified that the legislature is considering extending this law. We have found that many victims of child sexual abuse have a difficult time coming forward, particularly in Hawaii with our unique culture which seems to value silent suffering rather than bringing the shame and

Representative Mele Carroll, Chair  
Representative Bertrand Kobayashi, Vice Chair  
House Committee on Human Services  
March 11, 2014  
Page two


embarrassment of public sex-related disputes to the family name. I have seen statistics showing that, although the average age of child sex abuse is 12 years old, the average age of reporting the abuse is 42 years old.

With this information in mind, I have two concerns with the present draft of SD 1. First, under the present language, the 55 year old cap for presenting a claim would have prevented nearly half of my current clients from bringing their claims under the statute. The fact that it took them longer than the national average to come forward does not make their claims any less legitimate or worthy of compensation. In fact, the notion that a perpetrator or harbinger of a perpetrator would be aggrieved by "stale claims" is simply false. In case after case, here and on the mainland, it has been shown that it is the defendant that has the advantage, since most of the records regarding the abuser have remained in the defendant's possession. Whether the plaintiff is ever able to obtain those records, in the face of vociferous objections of "confidentiality," loss, and often deliberate destruction, determines whether the plaintiff is ultimately successful.

Second, we would like the amended requirement of establishing "negligence" of the harbinger made retroactive to the date of the original statute, which initially required proof of "gross negligence," an extremely high standard which was deemed unnecessary by the Hawaii State Commission on the Status of Women, and led to the amendment by the Senate Judiciary Committee. For reasons of fairness, we believe there must be a single standard for plaintiff's burden of proof and that where the evidence shows that the institutional defendant already had a duty of care to the victim or a degree of responsibility or control over the activity in which the perpetrator and victim were engaged, a finding of negligence on the part of the institution is sufficient to impose liability. Any higher standard is unprecedented in the law and is unprecedented in other states that have passed such legislation.

I appreciate your consideration of and reflection on these matters.

Mahalo Nui Loa,

  
Randall Louis Ka'imina'auou Meyer Rosenberg



**Joelle Casteix, Survivor Advocate**  
**Volunteer Western Regional Director, SNAP**  
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**18 Starfish Court**  
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**Testimony in support of SB 2687 SD1** — Statute of Limitations; Civil Actions; Sexual Abuse of a Minor

Aloha. My name is Joelle Casteix and I am a 43-year-old wife and mother. I am a victim of child sexual abuse and have devoted my career to preventing abuse and helping other victims find hope, healing and accountability.

More importantly, I am living proof why a bill like SD 1 is essential to the safety of Hawai'i's children.

Let me tell you a little about my story. Growing up in southern California, I was a vulnerable child. I came from an alcoholic home and suffered from severe emotional pain and loss because of the home life I had to endure.

Between the ages of 15 and 17 (1986-1988), I was meticulously groomed and horribly sexually molested by my high school choir teacher at a Catholic high school in Santa Ana. During the course of the abuse, he impregnated me and gave me a sexually transmitted disease.

To say that the abuse devastated me would be an understatement. I still lack the language to describe the betrayal and shame I felt when I told Catholic school administrators that I was being abused. They told me that I was "in love" and needed to keep quiet. They told me I would get in trouble if I spoke out.

No one called the police. No one tried to help me. No one warned the other girls.

I still can't comprehend the emotional manipulation I endured—the physical pain and confusion of abuse, the shame and isolation I suffered, the raw fear I still experience. My community was splintered as friends who learned of the abuse took sides. I was victimized over and over again. Child sexual abuse destroys everyone even remotely connected to it.

When my abuser went on to abuse one of my friends and at least two other girls, I thought it was my fault. I didn't have the words, the strength or the maturity to protect myself or any of his other victims. I didn't know how to report the crime. In fact, I didn't even know that I had rights.

It took me more than 15 years to heal enough from the injuries to even understand that what happened to me was not my fault. For most victims, it takes far longer.

But by the time I was strong enough to name my abuser and seek justice, it was already too late. The school, the Catholic Diocese of Orange and my perpetrator all simply denied that I had been abused. I had no civil or criminal recourse, even though I was positive that he had molested other girls. He even threatened to sue me if I accused him publicly.

But a 2003 law changed everything for me. California's civil window for victims of child sexual abuse allowed me to use the tried-and-true civil court system to expose the man who abused me and the men and women who covered up for him. Fortunately, I was healed enough at the time to come forward. I was healed enough to bear the burden of proof that that victims must bear in the courts. I was healed enough to overcome the shame and embarrassment that victims abuse carry with them.

When my case settled, the public got access to more than 200 pages of previously secret documents. They

included my perpetrator's signed confession, in which he admitted abusing me and at least two other girls. There were also documents that showed how school administrators and diocese officials knew about the abuse, covered it up, and then lied to me and the media afterward, letting a child rapist go free to hurt other kids. In writing, they blamed the abuse on my "emotional problems."

Across California, brave victims exposed more than 250 predators. Some were still working with kids, some were in other schools, working in school districts, volunteering, and holding positions of power.

For the past two years, I have been working closely with victims all over the state of Hawaii, helping them come forward, learn about their rights, and get the help they need.

We are seeing the same kind of success for victims in Hawaii that we saw in California. Brave victims from Honolulu to Hilo have exposed more than two dozen predators in schools, churches and foster homes. We have learned how people in power covered up for abusers and allowed children to be abused. But the word is really only beginning to spread, and victims are only just starting to talk about abuse. We have only scratched the surface.

But after April 24, many victims will never get the chance for justice.

My biggest fear is for the victims who are not healed enough or able to come forward before April 24. These victims will not be able to do anything to expose their abuser or get justice, even if a credibly accused abuser is still working with children. Without legal rights and the ability to prove their cases in a court of law, victims have no recourse to ensure that no other children are hurt. Without a law like SD1, no one will be held accountable for what happened to hundreds of children all over the state and no one can warn the thousands of children still in harm's way.

SD1 gives these victims a window of hope. It puts predators on notice that they will be exposed. It helps law enforcement by unearthing evidence that has been hidden. It gives victims rights and dignity. It helps survivors like me finally protect and embrace the child within us who was so terribly savaged. It allows victims to come forward on their own terms, when they are ready and healed enough to stand up and demand justice.

If we cannot help the most vulnerable among us to become empowered, prove their stories, get justice, keep children safe right now, and punish wrong-doers, then we have failed.

I ask you to support SD1. Thank you.

# CARDOZO LAW

BENJAMIN N. CARDOZO SCHOOL OF LAW • YESHIVA UNIVERSITY

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March 12, 2014

## VIA DROPBOX/EMAIL SUBMISSION

Representative Mele Carroll, Chair  
Representative Bert Kobayashi, Vice Chair  
House Committee on Human Services  
State Capitol, Conference Room 329  
415 South Beretania Street  
Honolulu, HI  
Hearing: March 13, 2014 11:30AM

RE: Hawaii S.B. 2687 SD1 (Allows a victim of child sexual abuse to bring a civil action against victim's abuser or an entity, except for the State or counties, when the entity was negligent, if the statute of limitations for filing a civil claim has lapsed and the victim has not yet attained the age of fifty-five)[Effective 7/1/2050].

Dear Chairwoman Mele Carroll, Vice Chairman Bert Kobayashi and Members of the Committee:

I commend the Committee for taking up S.B. 2687 SD1, which would extend the civil statute of limitations to age 55, even where the SOL has lapsed.<sup>1</sup> 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. Age fifty-five (55) is a reasonable cut-off given that on average, victims come forward in their early 40s. If passed, S.B. 2687 SD1 will dramatically improve justice for children who were sexually abused in Hawaii. Further, I applaud the amendment to remove "gross negligence" from the bill text. Gross negligence is an unnecessary requirement.<sup>2</sup>

**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 about one in five boys. Historically, 90% of child victims never go to the authorities and the vast majority of claims expire before the victims are

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<sup>1</sup> Although we assume they mean to include all victims to age 55, inserting the word "including" before "if the victim is barred" would make it clear that all victims who are not yet 55, those with open and expired claims would be included. Otherwise, it is unfair to leave current victims with only 8 years.

<sup>2</sup> Delaware was first window requiring gross negligence, peculiar to Delaware law of sovereign immunity. See DEL. CODE ANN. 10 § 8145 (a)-(b); Neither California nor Minnesota window included it. See CAL. CODE CIV. PROC. § 340.1 (c), Minnesota Child Victims Act, 2012 Minn. Stat. § 541.073 (formerly, S.B. 534 & H.B. 681) (Minn. 2013).



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. Given that most child perpetrators abuse many children over the course of their lives,<sup>3</sup> SOL extension does far more than create justice for today's victims. It also forestalls future abuse of tomorrow's children by identifying perpetrators to the public.

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 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, and testified in numerous states where SOL reform is being considered. I also track the SOL movement in all 50 states on my website, [www.sol-reform.com](http://www.sol-reform.com).

**There are three compelling public purposes served by the removal of SOLs for child sexual abuse:**

- (1) It identifies previously unknown child predators to the public so children will not be abused in the future;
- (2) It gives 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. Criminal SOL elimination has become the norm, with Alabama, Alaska, Arizona, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, New York, North Carolina, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, West Virginia, Wisconsin, Wyoming and the Territory of Guam having already eliminated their criminal SOL for at least some child sex crimes.<sup>4</sup> Although the

<sup>3</sup> KENNETH V. LANNING, *CHILD MOLESTERS: A BEHAVIORAL ANALYSIS* 10, 52 (5<sup>th</sup> ed. 2010) 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.”)

<sup>4</sup> ALA. CODE § 15-3-1; ALASKA STAT. § 12.10.010, ALASKA STAT. § 11.41.427; ARIZ. REV. STAT. ANN. § 13-107; COLO. REV. STAT. § 16-5-401; CONN. GEN. STAT. § 54-193(a); DEL. CODE ANN. tit. 11 § 205(e); FLA. STAT. ANN. §



2014 legislative session has just begun, 2013 made more progress in opening up abuse victims' access to justice in 2013 than at any point in history. Sixteen states introduced bills to increase victims' access to justice by scaling back the SOLs.<sup>5</sup> In 2013 alone, SOL reform was enacted in Arkansas, where the state eliminated the criminal SOL;<sup>6</sup> Illinois, where the civil and criminal SOLs were eliminated;<sup>7</sup> Vermont, where the SOL was increased for certain sex crimes against children;<sup>8</sup> Nevada, where the criminal statute of limitations was extended;<sup>9</sup> and Minnesota, which removed its SOL for child sexual abuse and enacted a 3-year retroactive civil "window."<sup>10</sup>

Bills were introduced for at least the second time in Pennsylvania (window; civil and criminal elimination);<sup>11</sup> New Jersey (window and extension of discovery rule);<sup>12</sup> and Massachusetts (civil extension to age 55 with a window).<sup>13</sup> They were also introduced in New York (window; civil and criminal elimination);<sup>14</sup> Missouri (elimination of civil and criminal);<sup>15</sup> Oregon (elimination criminal for certain sex crimes against minors);<sup>16</sup> Washington (extension of criminal to 30);<sup>17</sup> and Wisconsin (elimination of civil with a window).<sup>18</sup>

On the civil side 2013 was a continuation of the progress made in previous years; 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.<sup>19</sup> Delaware eliminated both the civil and criminal SOLs and enacted a two-year window, from July 2007 to 2009.<sup>20</sup>

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775.15(13); GA. CODE ANN. §17-3-1(d); IDAHO CODE §19-401; IND. CODE § 35-41-4-2; KY. REV. STAT. ANN. § 500.050; LA. CODE CRIM. PROC. ANN. ART. 571; ME. REV. STAT. ANN. tit. 17-A § 8; *Clark v. State*, 774 A.2d 1136, 1144 n.8 (Md. 2001); MASS. GEN. LAWS CH. 277, § 63; MICH. COMP. LAWS § 767.24(1); MINN. STAT. § 628.26(e)-(f); MISS. CODE ANN. § 15-1-49; MO REV. STAT. § 556.036(1); NEB. REV. ST. § 29-110; N.M. STAT. ANN. § 30-1-8; N.Y. CRIM. PROC. LAW § 30.10(2); *State v. Johnson*, 167 S.E.2d 274, 279 (N.C. 1969) ("In this State no statute of limitations bars the prosecution of a felony"); R.I. GEN. LAWS § 12-12-17(a); S.C. Judicial Dep't, *Summary Court Judges Bench Book*, CRIMINAL(A)(2) (2000-2013) ("South Carolina does not have a general statute of limitations for criminal actions"), <http://www.judicial.state.sc.us/summaryCourtBenchBook/HTML/CriminalA.htm>; S.D. CODIFIED LAWS § 23A-42-1; TEX. CODE CRIM. PROC. ANN., art. 12.01; UTAH CODE ANN. § 76-1-301; VT. STAT. ANN. tit. 13, § 4501; *Comm. v. Gouge*, 1983 WL 210243, at \*1 (Va. Cir. Ct. Feb. 24, 1983) (noting "the crime charged was a felony for which there was no statute of limitations"); W. VA. CODE § 61-11-9 (felonies other than perjury not mentioned in enumerated list); WIS. STAT. ANN. § 939.74; *Boggs v. State*, 484 P.2d 711, 714 (Wyo. 1971) ("Wyoming has no statute of limitations as to the commencement of criminal proceedings"); GUAM P.L. 31-06 & 31-07.

<sup>5</sup> Marci A. Hamilton, *2013: The Year in Review for Child Sex Abuse Victims' Access to Justice*, JUSTIA (Jan. 9, 2014), <http://verdict.justia.com/2014/01/09/2013-year-review-child-sex-abuse-victims-access-justice>

<sup>6</sup> S.B. 92, 2013 Gen. Assemb., 89th Gen. Assem. (Ark. 2013) (enacted 2013).

<sup>7</sup> H.B. 1063, 98th Gen. Assemb., Reg. Sess. (Ill. 2013); S.B. 1399, 98th Gen. Assemb., Reg. Sess. (Ill. 2013).

<sup>8</sup> S.B. 20, 2013 Gen. Assemb., Reg. Sess. (Vt. 2013) (enacted 2013).

<sup>9</sup> S.B. 103, 2013 Gen. Assemb., Reg. Sess. (Nev. 2013) (enacted 2013).

<sup>10</sup> Minnesota Child Victims Act, 2012 Minn. Stat. § 541.073 (formerly, S.B. 534 & H.B. 681) (Minn. 2013).

<sup>11</sup> H.B. 237, 2013 Gen. Assemb., Reg. Sess. (Pa. 2013); H.B. 238, 2013 Gen. Assemb., Reg. Sess. (Pa. 2013).

<sup>12</sup> S.B. 2281, 215th Leg., 1st Ann. Sess. (N.J. 2012).

<sup>13</sup> H.B. 1455, 188th Gen. Ct., Reg. Sess. (Mass. 2013); S.B. 633, 188th Gen. Ct., Reg. Sess. (Mass. 2013).

<sup>14</sup> Assemb. A01771, 2013 Gen. Assemb., Reg. Sess. (N.Y. 2013).

<sup>15</sup> H.B. 247, 2013 Gen. Assemb., 1st Reg. Sess. (Mo. 2013).

<sup>16</sup> H.B. 3284, 77th Leg. Assemb., Reg. Sess. (Or. 2013).

<sup>17</sup> S.B. 5100, 63rd Leg., Reg. Sess. (Wash. 2013).

<sup>18</sup> S.B. 225, 101st Leg., Reg. Sess. (Wis. 2013).

<sup>19</sup> 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



Virginia<sup>21</sup> also enacted legislation extending its civil statutes of limitations in 2011, while Florida eliminated the civil statute of limitations for sexual battery of a child in 2010.<sup>22</sup> Minnesota, Illinois, Florida, Guam and Delaware thus join Alaska,<sup>23</sup> Connecticut<sup>24</sup> and Maine,<sup>25</sup> all of which have eliminated their civil statutes of limitations for child sex crimes. These eliminations have not resulted in miscarriages of justice or any other imagined problems. The only constituencies benefitted by a civil SOL are pedophiles and the institutions whose polices are inadequate to protect.

Opponents argue that Hawaii extending its SOL and enacted a 2-year civil “window,” which went into effect in April 2012 is sufficient.<sup>26</sup> The movement, however, is progressing so much that many states are adding to previous choices to extend the statute of limitations. For example, in 2007, Delaware had enacted its Child Victims Act (CVA), which (1) eliminated the SOL for civil child-sex-abuse cases, and (2) created a two-year window during which civil child-sex-abuse cases on which the SOL had already expired could still be brought in court.<sup>27</sup> The cases that were brought during that SOL window are now moving through the Delaware courts. The CVA did not cover health care providers, as it turned out, and so Delaware enacted this new window for health care providers.<sup>28</sup> Further, Illinois had extended its SOL less than a decade prior to opting for full elimination last year. California had a civil window open for the calendar year of 2003, yet is already seriously considering further SOL extensions.

Already, in 2014, Sen. Jim Beall has introduced bills which would extend the civil and criminal SOL in California,<sup>29</sup> and Assemblywoman Markey has reintroduced her bill to eliminate the SOL and

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>.

<sup>20</sup> DEL. CODE ANN. 10 § 8145 (a)-(b) (2007) (civil); 11 DEL. CODE ANN. 11 § 205 (criminal).

<sup>21</sup> 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).

<sup>22</sup> FLA. STAT. ANN. § 95.11(9) (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>23</sup> ALASKA STAT. § 09.10.065 (no SOL for claims arising out of for felony sex abuse/assault of minor, felony exploitation of minor).

<sup>24</sup> CONN. GEN. STAT. § 52-577e (no SOL if events forming the civil claim led to conviction for first-degree aggravated sexual or sexual assault).

<sup>25</sup> ME. REV. STAT. ANN. tit. 14, § 752-C (1) (no SOL for any actions based on sex acts against minors).

<sup>26</sup> Hawaii Act 068 (12), formerly S.B. 2588, 2012 Leg. Sess. (Haw. 2012) (enacted April 24, 2012) (extended and tolls statute of limitations for civil actions brought by minor victims of sexual offenses; and reviving via a civil “window” for two (2) years some actions for which the statute of limitations had previously lapsed).

<sup>27</sup> DEL. CODE ANN. 10 § 8145 (a)-(b)

<sup>28</sup> Marci A. Hamilton, *The Progress We've Made -- and Haven't Yet Made -- on Child-Sex-Abuse Statutes of Limitations: 2010, the Year in Review*, FINDLAW (Dec. 30, 2010), <http://writ.news.findlaw.com/hamilton/20101230.html>

<sup>29</sup> California Senate Bill 926 and Senate Bill 924, 2013- 2014 Reg. Sess. (Ca. 2014), available at, <http://sol-reform.com/News/california/#pending>. See also, “Senator Beall Calls for Giving Victims More Time to Seek Prosecution or File a Lawsuit,” Website of Sen. Jim Beall (D-CA15) (Jan. 29, 2014), <http://sd15.senate.ca.gov/news/2014-01-29-senator-beall-calls-giving-victims-more-time-seek-prosecution-or-file-lawsuit> (“Senate Bill 926 would reform the criminal statute of limitations by raising the age at which an adult survivor of childhood sex abuse can seek prosecution from 28 to 40 years. The bill would affect sex crimes against children including lewd and lascivious acts, continuous sexual abuse of a



create a 1 year civil “window” in New York.<sup>30</sup> Iowa is also considering a bill which would extend the statute of limitations for civil and criminal actions brought by minor victims of sexual offenses to twenty-five (25) years from majority.<sup>31</sup>

SOL reform has very few detractors other than the Roman Catholic bishops, who have misleadingly argued that reform is unconstitutional on the theory that it “targets” the Church. SOL reform does not target any particular perpetrator or organization. Indeed, the majority of victims are victims of incest. A federal trial court in the Ninth Circuit persuasively upheld the first 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).

Child sex abuse victims suffer from many negative effects.<sup>32</sup> Researchers in various studies have found -- specifically in men who were sexually abused as children-- that long-term adaptation will often include sexual problems, dysfunctions or compulsions, confusion and struggles over gender and sexual identity, homophobia and confusion about sexual orientation, problems with intimacy, shame, guilt and self-blame, low self-esteem and negative self images and increased anger. There is also an increased rate of substance abuse, a tendency to deny and de-legitimize the traumatic experience, symptoms of Post Traumatic Stress Disorder, and increased probability of fear and depression.

Hundreds of research studies have shown conclusively that sexual abuse can alter a child’s physical, emotional, cognitive and social development and impact their physical and mental health throughout his or her lifetime. A 2002 study looked at same sex twin pairs where one of the twins was sexually abused as a child and one was not.<sup>33</sup> According to the study, a person with a history of childhood sexual abuse has an increased risk of the following: major depression, suicide attempt, conduct disorders, alcohol and/or nicotine dependence, social anxiety, rape after the age of 18 years old, and, divorce.<sup>34</sup>

Typically, it takes years for the victim to suffer these negative outcomes:

Some of the effects of sexual abuse do not become apparent until the victim is an adult and a major life event, such as marriage or birth of a child, takes place.

child, and other offenses. The bill has co-authors from both parties. A second bill, SB 924, proposes to reform the two standards that now govern the statute of limitations for civil lawsuits by:

- Increasing the age deadline to file to 40 years old from 26. This existing deadline is currently used when the victim makes his or her causal connection to their trauma before they reach their 26th birthday.
- Increasing the time from the date of discovery of their trauma to child sex abuse to five years from the current standard of three years. Additionally, it stipulates the five-year period starts when a physician, psychologist, or clinical psychologist first informs the victim of the link between their adult psychological injuries and the abuse”).

<sup>30</sup> New York Child Victims Act, Assemb. A01771, 2014 Gen. Assemb., Reg. Sess. (N.Y. 2014), *available at* <http://sol-reform.com/News/new-york/#pending> .

<sup>31</sup> Iowa Child Victims Act, S.B. 3112, 2014 Gen. Assemb., Reg. Sess. (I.A. 2014), *available at* <http://sol-reform.com/news/iowa#pending> .

<sup>32</sup> Elliot Nelson et. al., *Association Between Self-reported Childhood Sexual Abuse and Adverse Psychosocial Outcomes: Results From a Twin Study*, 59(2) ARCHIVES OF GENERAL PSYCHIATRY, 139, 139-45 (2002).

<sup>33</sup> *Id.* at 139-44.

<sup>34</sup> *Id.* at 142.

Therefore, a child who seemed unharmed by childhood abuse can develop crippling symptoms years later. . . .<sup>35</sup>

Hawaii pays the price of abuse in several ways. First, the state suffers from reduced productivity from victims, because they have been disabled by the abuse. To the extent that they are not made whole, they are producing less tax-generating income. The fact that Hawaii shuts off prosecution and civil claims before victims are ready to come forward means that many victims have no chance to achieve justice and, therefore, are more likely to suffer serious depression and illness. Second, Hawaii bears the cost of divorces, broken homes, and suffering children, which are a sadly prevalent fact in many survivors' lives. This creates a drag on local school districts that must provide counseling and guidance for troubled youth, the state agencies that deal with troubled families, and local authorities. Third, the survivors' medical bills generated by the abuse, whether psychological or physical, are likely to have to be subsidized by state and federal medical programs and funds.

Once again, I applaud you and the Committee for considering this legislation which will help childhood sexual abuse victims. Hawaii's children deserve the passage of statute of limitations reform to protect children today and in the future, and to achieve justice for the many victims suffering in silence. S.B. 2687 SD1 represents a huge step forward for Hawaii's children.

Please do not hesitate to contact me if you have questions regarding statute of limitations reform, or if I can be of assistance in any other way.

Sincerely,



Marci A. Hamilton  
Paul R. Verkuil Chair in Public Law  
Benjamin N. Cardozo School of Law

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<sup>35</sup> Mic Hunter, Psy.D., Abused Boys, 59 (1991).

**kobayashi1-Joni**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 12, 2014 10:28 AM  
**To:** HUS testimony  
**Cc:** jlee16@gmail.com  
**Subject:** \*Submitted testimony for SB2687 on Mar 13, 2014 11:30AM\*

**SB2687**

Submitted on: 3/12/2014

Testimony for HUS on Mar 13, 2014 11:30AM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jenny Lee	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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**VIA DROP BOX/EMAIL SUBMISSION**

March 12, 2014

Representative Mele Carroll, Chair  
Representative Bertrand Kobayashi, Vice Chair  
House Committee on Human Services  
State Capitol, House Conference Room 329  
415 South Beretania Street  
Honolulu, HI

**Hearing:**

RE: **Hawaii S.D.1, S.B. 2687** (Amends Haw. Rev. Stat. §657-1.8, and extends the time for a victim of child sexual abuse to bring a civil action against victim's abusers or an entity, except for the State or counties, when the entity was negligent, if the statute of limitations for filing a civil claim has lapsed and the victim has not yet attained the age of fifty five) [Effective 4/23/2014].

Dear Representative Carroll, Representative Kobayashi & Members of the Committee:

Thank you for considering this important legislation that protects children in the face of strong institutional opposition.

By way of background, I received an M.S.W. in 1976 and for several years worked with disturbed adolescents and their families in a psychiatric hospital in Chicago. Subsequently, I obtained a J.D. and have practiced law for thirty years. I am currently licensed to practice law in Washington and in Hawaii. As an attorney I have significant experience representing crime victims, including victims of childhood sexual abuse. For more than a decade, I have been a member of the National Crime Victim's Bar Association and have assisted professionals in Hawaii, including in my capacity as a volunteer presenter in the 2012 Hawaii Civil Justice Seminars for mental health professionals, law enforcement, and others.

I provided written testimony in favor of S.B. 2687 before the Senate Committee on Judiciary and Labor. The legislation you are considering will remedy the discriminatory effect of the current Hawaii "window" statute of limitations and will continue to provide victims of childhood sexual abuse access to justice.



In my experience, both as a psychiatric social worker and as an attorney, victims of childhood sexual abuse who have an opportunity to confront their abuse in legal proceedings gain psychological insight and empowerment. It follows, therefore, that a law like S.B. 2687 is a primary mechanism for promoting healing. Where there is no such law, survivors usually continue to live an isolated and lonely life.

Children seldom seek help for sexual abuse and they rarely discuss the abuse with anyone, including with close family members. Usually these abuse victims are shrouded in shame and guilt and are simply unable to confront the abusers and/or the institutions which negligently exposed them to the abusers and to the abuse. These victims, which cross all socioeconomic boundaries, have similar and profound problems related to the abuse, including alcohol and/or drug addictions, impaired functioning in relationships and employment, mistrust of other people, sexual dysfunction, depression, self-harming behavior, and anxiety. Some victims are never able to discuss or even acknowledge the abuse. Many others are simply not able to talk about it until well into their adulthood.

For these reasons, legislatures across the country have passed laws loosening or completely removing statutes of limitations that prevented victims of childhood sexual abuse from seeking justice when they were psychologically able. For example, Washington, Montana and Idaho have essentially removed the statute of limitations by allowing a victim to bring a claim after making the causal connection between the child sexual abuse and harm.

Other states, like California, Minnesota and Hawai'i passed "window statutes" providing a period of time for survivors to bring claims without a statute of limitations. The unfortunate reality of window statutes, however, is that the window arbitrarily closes on survivors who are ready to seek justice by confronting their molester or the institution who harbored their molester. If additional legislation is not passed, the April 2014 window will shut under current law for Hawai'i survivors.

Allow me to suggest a friendly amendment to the present draft of S.D. 1. Specifically, I would like the amended requirement of establishing "negligence" of the harborer made retroactive to the date of the original statute, which initially required a "gross negligence," an extremely high standard. The gross negligence standard was deemed unnecessary by the Hawaii State Commission on the Status of Women.

Throughout the country, the burden of proof for plaintiffs claiming personal injuries is typically simple negligence. It should go without saying that victims of childhood sexual abuse should not be required to prove gross negligence against institutions that negligently exposed the victims to the abuse, or harbored and/or sheltered the abusers. There is simply no rational reason for heightening the burden

of proof for victims of childhood sexual abuse. Other states have passed laws like S.B. 2687 with a negligence standard. These laws promote child protection, child sexual predator accountability and institutional change. For these reasons, I ask that you apply a single standard for a plaintiff's burden of proof and where the evidence shows that an institutional defendant already had a duty of care to the victim or a degree of responsibility or control over the activity in which the perpetrator and victim were engaged, a finding of negligence on the part of the institution should be applied.

I appreciate your consideration.

Mahalo.

\S

Sidney Stillerman Royer

SSR/ssr



# Rosenberg & McKay

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Randall L.K.M. Rosenberg  
Charles E. McKay  
Moana A. Yost

March 12, 2014

## VIA DROPBOX/EMAIL SUBMISSION

Representative Mele Carroll, Chair  
Representative Bertrand Kobayashi, Vice Chair  
House Committee on Human Services  
State Capitol, House Conference Room 329  
415 South Beretania Street  
Honolulu, HI

Hearing: March 13, 2014 11:30 AM

RE: Hawaii S.D.1, S.B. 2687 (Amends Haw. Rev. Stat. §657-1.8, and extends the time for a victim of child sexual abuse to bring a civil action against victim's abuser or an entity, except for the State or counties, when the entity was negligent, if the statute of limitations for filing a civil claim has lapsed and the victim has not yet attained the age of fifty five) [Effective 4/23/2014].

Representative Carroll, Representative Kobayashi & Members of the Committee:

Randall Rosenberg, with whom I work, also submitted written testimony in support of this proposed bill. I would respectfully add my own comments in support as well.

I was born in the Territory of Hawaii and I grew up in the same community as many of the victims of child sexual abuse that I now represent. I was lucky. I attended public school and I was never abused. Had things been different, I could also have been one of the many victims of the predators in my own community who abused the power and trust of their positions and institutions.

My office currently represents over 20 survivors of childhood sexual abuse. They range in age from their 30s to their 60s. Some are older. In many cases, I have been the first person they have ever told about the sexual abuse they suffered as children. Some found the courage to tell their wife, sibling or close family member, but only after many years passed. All found the courage to seek help and healing as a direct result of this Legislature passing the two-year window statute. I submit this testimony to support a fair extension of that law.

In my practice, I have been repeatedly told that victims feel too ashamed to come forward for many, many years. They mistakenly believe that the abuse they suffered was somehow their own fault, even though they were only children at the time. Their self-blame and silence is largely a function of broken trust. An institution they were taught to trust placed them under the influence and power of a sexual predator, who, in most cases, was treated with deference and respect by others in their community. Victims spend decades in silence, masking their pain and misplaced guilt and shame with drug and alcohol abuse. Many struggle with emotional problems that result in overcompensation, hypersexuality, hyposexuality and "acting out." Nearly all suffer dysfunction in their personal relationships.

Until recently, victims believed that they had no recourse for what happened to them as children and for the after-effects in their adult years. They had no recourse, until the Hawaii Legislature had the courage and wisdom to pass Hawaii Revised Statutes Section 657-1.8 two years ago. That statute created a window in the statute of limitations that allowed the survivors of childhood sexual abuse a chance to be heard.

In connection with the proposed Bill before this Committee, I would respectfully add four comments:

1. Extend the window. The time window under the current version of HRS 657-1.8 will expire next month. If that window closes, other survivors who do not yet know about the law or their rights and who have not yet come forward will be barred forever. It takes tremendous courage for a victim of child abuse to come forward. Many of the victims who became aware of the window statute agonized over their decision for many months. Unfortunately, news of the limited, two-year window has not reached everyone. Thus, my first comment is that expanding the window will give victims a fair chance to come forward.
2. Adopt a "regular" standard of negligence. The current version of HRS 657-1.8 includes a legal standard that the victim must show that the perpetrator's institution, i.e., the church or parochial school, must have been "grossly negligent." This is a legal standard that is higher and harder to meet than a standard of "ordinary" negligence. Ordinary negligence is the failure to behave with the level of care that someone of ordinary prudence would have or should have exercised under the same circumstances.

I respectfully suggest that institutions which employed and harbored perpetrators of child sexual abuse should be held to the same standard of behavior which applies to all of us: acting prudently using ordinary, reasonable care. Ordinary negligence is the standard that applies to driving a car, operating machinery, hiring employees, etc. All of us would have liability if we violate these ordinary standards. There should not be a different or less-protective standard that applies to a sexual predator's institution, particularly when children's health and safety is at stake.

3. Retroactivity. The final form of the statute should not create two categories of legal standards which apply to victim/survivors. There should not be one standard of

negligence for victims who happen to have asserted their claims prior to April 24, 2014 (when the current statute of limitations sunsets) and a different negligence standard for victims who file claims after April 24, 2014. The ordinary negligence standard should be the same for all victims who have the courage to come forward.

I would therefore urge the Legislature to clearly express the intent that an ordinary negligence standard is retroactive and applicable to all survivor claims, including those filed within the current April, 2012 to April 2014 window.

4. Consider the consequences of a 55-year age limit. A proposed modification of HRS 657-1.8, which is new, and not part of the current law, is to limit future childhood abuse claims to survivors who are 55 years old or younger. I respectfully ask that you carefully consider this limitation.

Attached to this submission is a copy of written testimony of Nancy Spencer, a 65-year old victim of childhood abuse. Mrs. Spencer's testimony was submitted previously, on February 7, 2014, and for the hearing on proposed S.B. 2687. Mrs. Spencer, and other victims in her age bracket, would have been barred from asserting very real and bona fide claims if this had been the law when she came forward.

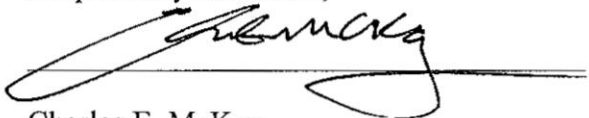
I respectfully suggest there is nothing that makes the claims of a 56-year-old victim any less real, painful or valid than the claims of a 55-year old. Instead of picking an arbitrary age, claims should be evaluated on their own merits for each individual case.

Some defendants in child abuse claims may suggest that an age limit helps to deter "bogus" claims by older people, made where the perpetrator may be dead and evidence may be older. In response, I respectfully suggest that claims by seniors are not automatically more "bogus" or suspicious *because* they are made by seniors. A claim by a 58-year-old survivor is every bit as painful, real and important to that person as it is to a survivor 3 years younger. With regard to "unfounded" claims, the current law already includes a requirement that the claimant must be interviewed by a Hawaii-licensed psychologist to help ensure that the claim is real and not fabricated. This weeds out fictitious allegations.

Additionally, a statute which allows a 58-year-old or a 65-year-old survivor to make a claim does not mean that the survivor then automatically wins in court. It only means that the survivor has fair access to the judicial system of the State of Hawaii. The statute just gets him or her into the door. The victim still has the burden of proof.

Thank you for considering these comments.

Respectfully submitted,



Charles E. McKay

**kobayashi1-Joni**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 12, 2014 11:09 AM  
**To:** HUS testimony  
**Cc:** breaking-the-silence@hotmail.com  
**Subject:** Submitted testimony for SB2687 on Mar 13, 2014 11:30AM

**SB2687**

Submitted on: 3/12/2014

Testimony for HUS on Mar 13, 2014 11:30AM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dara Carlin, M.A.	Individual	Support	No

Comments: Please support this proposal that will support the VICTIMS of crime, NOT the pedophiles, sex abusers and sex offenders who benefit and are excused due to the Statute of Limitations. If the victims of sexual offenses have to suffer the consequences for the rest of their lives because of what was perpetrated against them, why should those who raped, sodomized and molested be spared the consequences of their own actions?

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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March 12, 2014

## VIA DROPBOX/EMAIL SUBMISSION

Representative Mele Carroll, Chair  
Representative Bertrand Kobayashi, Vice Chair  
House Committee on Human Services  
State Capitol, House Conference Room 329  
415 South Beretania Street  
Honolulu, HI  
Hearing: March 13, 2014 11:30AM

RE: Hawaii S.D.1, S.B. 2687 (Amends Haw. Rev. Stat. §657-1.8, and extends the time for a victim of child sexual abuse to bring a civil action against victim's abuser or an entity, except for the State or counties, when the entity was negligent, if the statute of limitations for filing a civil claim has lapsed and the victim has not yet attained the age of fifty five) [Effective 4/23/2014].

Dear Representative Carroll, Representative Kobayashi & Members of the Committee:

Thank you for considering legislation that protects children in the face of opposition by powerful institutions. Please accept my submission in support of S.B. 2687 and my respectful request for the following friendly amendments:

1. **Replace the "gross negligence" standard with a "negligence" standard.** "Gross negligence" should be replaced with "negligence." A "gross negligence" standard provides immunity to those who "negligently" cause child sexual molestation. "Gross negligence" is thus a heightened standard protecting child molesters and those who harbor them. Without diminishing the need to pass S.B. 2687 in any form, we must recognize that there is no logic supporting why we would apply a legal standard that protects those who negligently cause sexual abuse of children. It is not logical, for example, that we apply a "negligence" standard to those who cause physical harm (such as in motor vehicle collisions), but would provide a more protective "gross negligence" standard to those who negligently cause child sexual abuse. The negligence standard should be expressly applied retroactively, discussed immediately below.



2. **Make the negligence standard expressly retroactive.** As currently worded, the Bill may not be retroactive for abuse survivors who filed, or could have filed, their claims under the current window statute. It is important to make the Bill expressly retroactive with respect to the "negligence" standard (discussed above) so all survivors have the same burden of proof of "negligence".

3. **Remove the discriminatory and arbitrary age 55 cap.** The age 55 cap is arbitrary and will artificially cut-off access to justice for survivors of child sexual abuse while serving no logical purpose (see below comments). That said, if it is necessary to maintain this cap as a compromise so the legislation survives with the negligence standard applied retroactively, then it may be best to keep it.

In my personal experience, laws like S.B. 2687, with a negligence standard, help to accomplish societal goals of 1) protecting children, 2) holding child sexual predators accountable and 3) encouraging institutional change for the protection of children. My experience includes representing victims and institutions, including victims in Hawai'i. In the mid 1990s I began representing victims of child sexual abuse with volunteer representation in the Court Appointed Special Advocates (CASA) program. My exposure expanded exponentially six years ago when I was asked to lead teams of advocates nationally representing survivors of child sex abuse. I have counseled and represented hundreds of sexual abuse victims. I currently represent four Hawai'i child molestation victims in the Christian Brothers' Institute case filed in the Southern District of New York. I jointly represent more than 300 sexual abuse victims in five states. My experience has additionally involved volunteer representation and assistance of religious and secular organizations regarding policy and procedure reform for the protection of children, including schools, churches, and a nationally-known children's camp.

I live within the borders of the Coeur d'Alene Indian Reservation in the State of Idaho and much of my representation involves indigenous peoples. I have assisted professionals in your State, including in my capacity as a volunteer presenter in the 2012 Hawaii Civil Justice Seminars for mental health professionals, law enforcement, and others.

My experience is that children seldom seek help for sexual abuse. They live in fear, silence and shame into their adulthood. Most never tell family, friends or even their spouse of the abuse. When contacted by a survivor, I am usually the first person they tell. Abuse survivors blame themselves and hide in shame and silence until they gain the perspective of adulthood and are ready to confront their abuser and/or the institution who negligently exposed them to their abuser, which is the first step in the healing process. However, a survivor can only take this step toward healing where there is a law like S.B. 2687. Where there is no such law, survivors continue to live in shame, silence and self-blame that often devolves into anger and aggravated self-harming behavior. Many sink into isolation, alcoholism and drug abuse. A significant number simply end their lives. This I know from personal experience.



The phenomenon of delayed ability to confront child sexual abuse is the reason why statutes are being passed across the United States giving adult survivors access to justice. In recognition of this phenomenon, which is unique to child sexual abuse, many informed legislators, including yours, have passed laws loosening or completely removing the statutes of limitations that historically prevented victims from seeking justice when they were psychologically able. States like Washington, Montana and Idaho have essentially removed the statute of limitations by allowing a victim to bring their claim after they make the causal connection between the child sexual abuse and harm. Other states, like California, Minnesota and Hawai'i passed "window statutes" providing a period of time for survivors to bring claims without a statute of limitations. The unfortunate reality of window statutes, however, is that the window arbitrarily "shuts out" survivors who, even a day later, are ready to seek justice by confronting their molester or the institution who harbored their molester. If S.B. 2687 is not passed, the April window will shut under current law for Hawai'i survivors.

This "shut out" phenomenon is worse, in my personal experience, for victims of indigenous peoples. In many cultures there is an added layer of shame, guilt and social stigma associated with identifying oneself as a child sexual abuse victim. Consequently, these peoples take longer to "come forward" to seek justice and healing. Therefore, a "window" statute like Hawai'i's current law results in the unintended consequence of discriminating against these peoples as well as victims from other cultures who attach added social stigma to child sexual abuse. The only way to remedy this unintended discrimination, and to provide ongoing access to justice for all victims, is to keep the window permanently open, as S.B. 2687 does.

You will hear strong opposition. The same elements of certain secular and religious institutions appear over and over opposing legal reforms that provide justice to abuse survivors and protection to children, and I am sure they will appear here. In my experience, these elements, unlike institutions I have counseled, do not want transparency or reform for the protection of children. Those who claim to speak for religious organizations often frame their arguments under the general categories of First Amendment Religious freedoms and general fairness. It is important to recognize at the outset that the protection of children and justice for abuse survivors are the issues, not religious freedom. To state it bluntly, there is no First Amendment Right under the United States Constitution to expose children to sexual molestation. As to fairness, nothing could be more unfair than to deny a sexually molested child the right to confront their abuser and those who negligently caused the abuse. Finally, I submit that these religious elements are not speaking for the majority of their members, who hold the protection of children in highest regard, who believe in accountability and who seek to heal the harmed.

I understand some institutions opposed to S.B. 2687 are making the "stale evidence" argument. They argue that claims brought "years after the abuse" put the defendant in an unfair position, because evidence is lost and witnesses die. This argument fails under scrutiny. First, no victim can sustain a legal claim unless they have evidence to prove their case; it is often the



Representative Mele Carroll, Chair  
Representative Bertrand Kobayashi, Vice Chair  
House Committee on Human Services  
March 12, 2014  
Page 4

victim, who was truly abused, with a valid claim, who cannot "prove" their claim in a court of law for lack of documentation resulting from passage of time. The victim often cannot prove their case without uncovering documentation from the institution establishing its knowledge that the perpetrator posed a risk of harm to children. Ironically, it is the institution who possesses (and in my experience not uncommonly destroys) evidence that it knew the perpetrator posed a risk of harm to children. Thus, it is the institution who controls the "notice" evidence (documents and witnesses) the victim needs to prove their case against the institution, not the other way around, as these institutional arguers would have us believe. Examples abound. For example, the Boys Scouts of America destroyed many "Perversion Files" documenting knowledge of pedophile perpetrators. I have uncovered evidence of Catholic Bishops in cases who intentionally destroyed clear notice to them that a priest was molesting boys.

I recognize that the age 55 cap in the Bill is offered as a compromise to institutions opposing the bill. Compromises are important in politics where they balance two valid opposing viewpoints. Here, however, there is no real logic to support an age 55 cap. The proffered logic relies on the "stale evidence" argument. But as I have pointed out above, that has no teeth.

Unfortunately, the root of institutional resistance to doing the right thing lies in a misguided perception that the institution's fundamental tenants are being challenged by the secular legislature and courts. As pointed out above, no institution has the right to fundamental tenants that expose children to sexual molestation. Further, where this institutional resistance is fueled by an "us vs. them" mentality, the institution is blind to the fact that the so-called "us" and "them" are on the same side (or should be) when it comes to the protection of children.

I am an example of this. I was born and raised Catholic. I have a brother-in-law (a brother of my wife's sister) who is a priest. There are numerous clergy in my extended family. I am a graduate of Santa Clara University, a Jesuit university. I taught in Jesuit schools for two years. I greatly value the contribution of religion and faith to our society. I am a man of faith myself and attend church regularly. My story in this regard was the subject of a National Public Radio profile that can be found at:

<http://www.npr.org/templates/story/story.php?storyId=136696900> . When I counsel, or confront, an institution with policies, practices or procedures that put children at unreasonable risk of sexual harm, I am not doing so to disparage the institution or deprive it of First Amendment rights, but rather to: 1) protect children; 2) provide survivors justice and healing; and 3) encourage the institution to better itself.

Finally, those who focus their arguments on the staleness of a child sexual abuse claim brought by an adult survivor fail to recognize that the claim is not stale at all. Survivors are suffering the long-term effects of their abuse now. Perpetrators who have not been held accountable pose a risk to children now. Institutions who have not reformed their policies and procedures to protect children are putting children at risk now. Allowing victims to bring rightful claims in court under S.B. 2687, amended to a "negligence" standard, will promote the



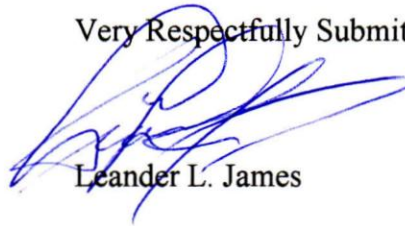
Representative Mele Carroll, Chair  
Representative Bertrand Kobayashi, Vice Chair  
House Committee on Human Services  
March 12, 2014  
Page 5

social policies and good eminently relevant to today: protection of children, justice for the abused, and accountability for violators and those who negligently expose children to child sexual harm.

In closing, let me express what we all believe: children are our most precious resource and our future, entitled to heightened protection under the civil and criminal law. S.B. 2687 is designed to provide this protection. This law will allow victims of child sexual abuse to seek justice and healing, hold perpetrators accountable and encourage institutional change for the protection of children.

I extend my heartfelt gratitude for your efforts to protect children and afford needed rights to victims. Please pass this Bill with friendly amendments that assure a negligence standard is applied retroactively and, if politically possible, remove the arbitrary age 55 cap.

Very Respectfully Submitted,



Leander L. James

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March 12, 2014

To: Chair Carroll, Vice Chair Kobayashi and Committee Member

From: Mark Gallagher

Re: Testimony in support of S.B. No. 2687, S.D. 1

Relating To Limitation of Actions

Thank you for the opportunity to provide testimony in support of S.B. No. 2687. S.D. 1, Relating to Limitation of Actions.

As a practicing Hawaii attorney, I have had the opportunity to represent numerous survivors of childhood sex abuse in pursuing justice under Hawaii's current window statute. Many of these claims were brought under Hawaii's "window statute" which represented a significant step forward in providing long delayed justice to survivors of childhood sex abuse. The proposed bill represents another step forward in protecting children and holding those responsible accountable.

In allowing survivors of childhood sex abuse to bring civil claims against perpetrators who abused them and the institutions which employed or were responsible for the perpetrators after April 24, 2014, so long as the survivors are under fifty-five years old, SB 2687 will protect the rights of victims who have not yet felt strong enough to face what happened to them. Currently, the window for bringing such claims closes on April 24, 2014. Children who are abused often feel that they have no one to turn to. The abuse is held as a terrible secret between the victim and the abuser, and too often another responsible party who does nothing. The child, feeling powerless, tells no one and keeps the secret and the damage cascades through the years. As a result, even when an option to pursue justice as an adult is presented, it takes a survivor a significant amount of courage and time to seize the opportunity. The expiration of the window in effect rewards perpetrators who terrified their victims so much that the secrets re-

main buried even many years later. It is fundamentally unfair to rush these survivors merely to protect the repose of perpetrators in our midst.

SB 2687 also proposes to change the standard of proof for claims by survivors of childhood sex abuse against entities who employed or were responsible for perpetrators to “negligence”, rather than “gross negligence.” The general standard of proof in civil claims is negligence, however the existing law provides the special protection of the higher standard of proof of gross negligence. This change would level the playing field to put these entities in the same position as other civil defendants.

Gross negligence is a very high standard, just below intentional misconduct. This standard would keep the courthouse doors closed for many victims. Outside of child sex abuse Hawai'i Courts have defined it as:

- “a step below willful misconduct”<sup>1</sup>
- “conduct that is more extreme than ordinary negligence but less than willful or wanton conduct”<sup>2</sup>
- “It is an aggravated or magnified failure to use that care which a reasonable person would use.”<sup>3</sup>

There is no good reason why a negligent employer of a child molester should have the protection of such a heightened burden of proof compared to a negligent employer of a bad driver. HRS 657-1.8 already provides the defendants with extra protections such as the need to file a certificate of merit to weed out unreasonable claims and sanctions for groundless actions.

SB 2687 also stops defendants from employing a litigation strategy of seeking to force the disclosure of certificates of merit, which are confidential certifications by psychological professionals submitted to the court to assure only claims with a reasonable basis in fact are even filed. This change clarifies the original intent that these certificates provide the court a confidential mechanism to weed out frivolous claims. The defense bar has been seeking production of these confidential certificates of merit in an obvious attempt to create a technical

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<sup>1</sup> Pancakes of Hawaii, Inc. v. Pomare Properties Corp., 944 P.2d 83 (Hi. Ct. App. 1997)

<sup>2</sup> HI R CIV JURY Instr. §8.17: Punitive Damages (Definition of “Gross Negligence”)

<sup>3</sup> Id.

defense to claims. If successful, defense lawyers will launch a campaign of deposing the professionals who prepared the certificates of merit and challenging the court's determination that the certificates were valid through motions to dismiss or introducing evidence at trial. This would drive up litigation expense and delay for all involved. The judge's review of the certificate of merit already provides the defense with a protection not afforded other defendants and they should not be permitted to expand this extra protection even further by litigating the content of the certificate of merit. Precluding disclosure would do so.

Thank you for the opportunity to address this most important matter.

Very truly yours,  
Mark F. Gallagher



TESTIMONY BY NANCY SPENCER  
IN SUPPORT OF SB 2687 and HB2034  
RELATING TO SEXUAL ASSAULT  
February 6, 2014

Senator Clayton Hee, Chair  
Senator Maile Shimabukuro, Vice Chair  
Senate Committee on Judiciary and Labor  
State Capitol, Conference Room 016  
415 S. Beretania Street  
Honolulu, Hawaii

Re: Proposed HB 2034 and SB 2687  
Statute of Limitations for bringing civil claims against sexual predators  
Extending the statute of limitations, Not limiting the extension to victims under 55

Mr. Hee and Ms. Shimabukuro and Committee Members:

My name is Nancy Spencer. I was born in Hawaii in 1948. I am now 65 years old. When I was eleven years, I was repeatedly sexually abused by a member of a ministry that I had been taught to respect and to trust.

The abuse affected me throughout my life. It changed how I dealt with people. It affected my trust and relationship with men. I kept people at a distance and I always dressed very conservatively so I would not attract attention. I am married now and I have a grown children. The abuse has always been in the background for me, affecting my relationship with my husband and my intimacy. I was overly protective of my daughter and this caused problems as well.

Throughout my life I kept the story of the abuse inside. I was embarrassed and ashamed and thought that people might blame me for what happened. I know now that this is not true.

In 2013, I found out by chance that the law had changed and that from 2012 to 2014, people like me could make a civil claim. Before that, I thought there was nothing that could be done. I made a claim and it was resolved by mutual agreement.

I found out about this law by chance. I understand that your committee is now considering extending the period of time in which people like me can have a claim for abuse they suffered as children.

I ask you, respectfully, to give other victims the same chance that was given to me to face the issues and to get closure. It was healing for me and I believe it would be healing for others. Unless other victims had, by luck, come upon the change in the law, they would not know that they had rights.

To me, drawing a line at age 55 is arbitrary and unfair. If that had been the law at the time, I would have had no chance to come forward. I respectfully ask you to make the law open to everyone who had been a victim of abuse as a child.



Nancy Spencer  
637 Hoomoana Street  
Pearl City, Hawaii 96782

PO Box 30554, Honolulu, Hawaii 96820

[DrLisaHartwell@gmail.com](mailto:DrLisaHartwell@gmail.com)

March 12, 2014,

Dear Legislator,

Please support SB 2687 which will extend the civil statute of limitations for victims of child sex abuse to age 55. **This bill will help expose perpetrators and increase public safety.**

By extending the statute of limitations for initiating civil actions for childhood sexual abuse, the bill would prevent future crimes, protect the children of Hawaii, and promote justice for victims of this serious crime. Experts believe that as many as one in four children are sexually abused before the age of 18. The harm caused by that abuse, a unique crime shrouded in shame and secrecy, may not become apparent for decades. Many victims do not come forward, if at all, until years after the crime, when they seek treatment for depression, drug or alcohol abuse, phobias, or other abuse-related symptoms. Often, victims hesitate to report the abuse because they fear being blamed or not believed. Perpetrators often intensify these fears, threatening to harm the victims or their families if the victim discloses the crime.

Child sex abuse is a crime that thrives on secrecy. Perpetrators commit the abuse in private, go to great lengths to keep victims silent, and publicly conduct themselves in a way that avoids close scrutiny. By extending the statute of limitations for civil actions, Hawaii could help prevent offenders (each of whom usually molest more than 100 children) from committing more crimes. The passage of SB 2687 would encourage more victims to come forward, subject more perpetrators to scrutiny, and deter organizations that serve children from hiring predators. Passage of this bill would also affirm the Legislature's commitment to the children of Hawaii.

I am a unique psychologist in Hawaii in that I work with both victims and perpetrators. Most clinicians choose to work with only one side of this issue. I have robust training and experience to fully understand how this crime impacts the lives of victims, their families, and the perpetrators themselves.

Please vote YES on SB2687.

Mahalo,

Lisa L. Hartwell, PsyD, RN  
Clinical Psychologist

**LATE**

**GAY LESBIAN  
BISEXUAL AND  
TRANSGENDER  
CAUCUS**



**DEMOCRATIC  
PARTY OF HAWAII**

### **COMMITTEE ON HUMAN SERVICES**

Chair: Rep. Mele Carroll

Vice Chair: Rep. Bertrand Kobayashi

Members: Representatives Della Au Belatti, Dee Morikawa, Richard Creagan, Marcus R. Oshiro, Mark J. Hashem, Justin H. Woodson, Jo Jordan, Beth Fukumoto

### **HEARING ON SB 2687, SD1 (SSCR2493)**

DATE: Thursday, March 13, 2014

TIME: 11:30 AM

PLACE: Conference Room 329

**RELATING TO LIMITATION OF ACTIONS.** Allows a victim of child sexual abuse to bring a civil action against victim's abuser or an entity, except for the State or counties, when the entity was negligent, if the statute of limitations for filing a civil claim has lapsed and the victim has not yet attained the age of fifty-five. Prohibits the court, plaintiff, or certain individuals from being required to disclose the contents of the sealed certificate of merit. (SD1)

### **TESTIMONY IN SUPPORT**

Originally HB 2034 repealed the Statute of Limitations on the crime of Sex Assault for criminal and civil actions arising from sexual assault in the first and second degrees and continuous sexual assault of a minor under the age of fourteen. This would have better addressed the rights of victims.

We support the proposal that victims would have a right to seek damages in a civil action. However, we are troubled about the arbitrary age limitation. Rape is a crime about power, a crime that degrades and humiliates victims. The trauma of rape can affect victims for the rest of their lives. Many international human rights organizations regard rape as a crime against humanity.

It is common for survivors of sexual assault to wait some time before telling anyone about the assault. Some never tell. Reporting takes tremendous courage. A survivor may need time to work through the emotional trauma before they engage the legal system. This is especially true for survivors of child sexual abuse. Some studies estimate that between 60– 80% of child survivors never disclose.

Adult survivors may not disclose right away because they fear retaliation; blame themselves; are confused by what happened, particularly if for example the perpetrator is an intimate partner.

Thirty-two (32) states have no criminal statute of limitations on child sexual abuse or the most aggravated sex crimes under state laws.

Eliminating the statute of limitations does not change the burden of proof or alleviate the challenges in entering evidence where there has been a passage of time. It gives survivors' their day in court. That in and of itself can go a long way towards healing grievous wounds.

Mahalo for the opportunity to testify,

Jo-Ann M. Adams  
Legislative Liaison

**LATE**

Dear Chair Carroll, Vice Chair Kobayashi, and committee members:

I am a survivor of childhood sex abuse and I support SB 2687.

Extending the statute of limitations is very important due to the nature of childhood sex abuse. Childhood sex abuse is confusing, creates feelings of shame, guilt and anger, and destroys your ability to trust. Your ability to connect with other people is crippled since you feel alone and that the abuse was your fault. Many people's lives have been ruined by sex abuse, with the life-long destructive effects on children, the most damning.

As a survivor, talking about the abuse is hard...as a male survivor, near impossible. Our culture and gender norms make it difficult for men to seek help. It can take many years after the abuse to even admit what happened, let alone seek the medical attention needed to accept and move on. My abuse was from 4<sup>th</sup> to 6<sup>th</sup> grade, yet the first time I told someone was when I was 27. I didn't take my recovery seriously until age 33, when I sought help from the Sex Abuse Treatment Center. Today, at 38, I am grateful that I am full of compassion and love for my 3 month old daughter, rather than the anger and shame that consumed me for so many years.

The current statute of limitations doesn't take into account the severity of the crime and the effects on its victims. I ask the respected committee members today to please consider SB 2687, and to think about the other survivors out there suffering in silence. Their pain is real and debilitating. These survivors are your auntys, uncles, brothers, sisters, sons and daughters. Please show that you acknowledge their suffering and support their recovery by giving them the chance to speak out against their perpetrators and feel whole again. Thank you.

Andre Bisquera





**COMMITTEE ON HUMAN SERVICES**  
**Rep. Mele Carroll, Chair**  
**Rep. Bertrand Kobayashi, Vice Chair**

DATE: Thursday, March 13, 2014  
TIME: 11:30 AM  
PLACE: Conference Room 329

**SUPPORT FOR SB 2687 that:** Would allow a victim of child sexual abuse to bring a civil action against victim's abuser or an entity, except for the State or counties, when the entity was negligent, if the statute of limitations for filing a civil claim has lapsed and the victim has not yet attained the age of fifty-five. Prohibits the court, plaintiff, or certain individuals from being required to disclose the contents of the sealed certificate of merit. Effective 07/01/50. (SD1)

Aloha Chair Carroll, and committee members,

We have previously supported **HB 2034** that would have repealed the Statute of Limitations on the crime of Sex Assault for criminal and civil actions arising from sexual assault in the first and second degrees and continuous sexual assault of a minor under the age of fourteen.

We think that this would have been a better, more comprehensive law to address the rights of victims of this heinous crime. We are glad that victims would have the right to civil action under this proposed law, but are concerned about the arbitrary cut-off at age 55. Why 55? Why not 65 or 35 or 19? The only motivation can be to that institutions are worried about their pocket books.

As we have said in prior testimony, rape is a crime like no other. It is not about sex, though many still think so. It is in reality a crime that is about power, a crime that is designed to degrade, humiliate and subjugate its victims. It is a crime whose effects will follow its victims for the rest of their lives. It is a form of torture, is often used in war as a tool of torture and is classified by many international human rights organizations as a crime against humanity.

Consider the following facts:

It is common for survivors of sexual assault to wait some time before telling anyone about the assault. Some survivors may never tell. A sexual assault is an unexpected intrusion and can create upheaval at home, work, or in social settings. There are many ways that survivors respond to sexual violence: fear, guilt, shock, disbelief, anger, confusion, helplessness, and/or anxiety. Reporting an assault takes tremendous courage and it may not take first priority following an assault. A survivor may need time to work through the many emotions and experiences before they are ready to engage with the legal system.

This is especially true for survivors of child sexual abuse. Many children do not disclose sexual abuse right away. Some studies have estimated that between 60– 80% of child survivors withhold disclosure. There may be many reasons for this, from the child's stage of cognitive development and their ability to express what happened, to the fact that a majority

of survivors know the perpetrator and may fear the impact on their family or the perpetrator's family.

Adult survivors also may not disclose right away because they are afraid that the perpetrator might retaliate; or they may blame themselves; or they are confused by what happened or the feelings they may have for the perpetrator, if for example the perpetrator is an intimate partner.

Finally note that 32 states have no criminal statute of limitations on either or both child sexual abuse or the most aggravated sex crimes under state laws. Eliminating the statute of limitations does not change the burden of proof or difficulty that both sides face in terms of evidence where there has been a passage of time. It gives survivors' their day in court. That in and of itself can go a long way towards healing grievous wounds.

The Coalition will support this bill if this is the best that the legislature can do at this time.

Mahalo for the opportunity to testify,

Ann S. Freed Co-Chair  
Hawai'i Women's Coalition  
Contact: [annsfreed@gmail.com](mailto:annsfreed@gmail.com)  
Phone: 808-623-5676

Mar 13 2014

To: The Honorable Mele Carroll, Chair  
The Honorable Bertrand Kobayashi, Vice Chair

**LATE**

From: Adult Survivor of Child Sexual Abuse through Proxy Dara Carlin, M.A.  
881 Akiu Place  
Kailua, Hawaii 96734

Re: Bill SB2687 hearing HUS Rm 329 11:30

**I Strongly Support SB2687 elimination of the statute of limitations without limiting the age limitation of 55 and younger..**

Honorable Representatives,

I apologize for doing this by proxy testimony but having the courage to speak the truth is very tough when you fear what the outcome might look like and the possibility of retaliate. And I carry a name that could lead people to believe that Im speaking about of someone Im not...I have been testifying now for now 3 years I believe... trying to convince all of you the need for this bill... I have testified from a place of experience on the long term ramifications that victims have to endure because of the lack of support (and/or justices) of our current laws or lack thereof...

In this law if I understand it correctly I believe would eliminate the statute of limitations (up to the age of 55) ...I was aware of the 2 yr window given (in the past couple of yrs) for me to act on in the civil arena ... I perused a lawyer for this purpose but was denied do to my circumstance in which the lawyer explained to me the fear he had (for me) of retaliation at the given moment....so he wouldn't take my case (and had asked others too)..

This was done when I was 55 I believe and I have now turn 57 most recently so this would not give me another opportunity to seek compensation (for past medical bills and therapy for PTSD and now I have cancer which has been known to be common with us victims) I believe that in the up coming future my position will be changing and the fear of retaliation will change... but again if the 55 yrs of age stays I loss that opportunity...and my case the perpetrators has acknowledged his crime...so it wouldn't be a matter of proving it....but what is most distressing to me he has moved in next door to me about 10 yrs ago and refuses to remove himself despite having another home elsewhere. and I cant afford to move and I have applied for a couple of TRD's where the judges have denied me....

**PLEASE PLEASE PLEASE consider moving this bill forward and with the elimination of the age limit**

Thank you very much for your time and efforts



Charles Balcher  
Social Worker PHD, LSW  
State of Hawaii Social Worker VI

**LATE**

To: The Committee On Human Services  
Rep. Mele Carroll, Chair  
Rep. Bertrand Kobayashi, Vice Chair

Thursday, March 13, 2014  
11:30 AM

RE: SB 2687, SD!

I support SB 2687, SD1 allowing a victim of child abuse to bring a civil action against the victim's abuser. This bill adds to the victim's emotional health as well as enabling the victim to recover from this tragic event in a timely manner. Recovery will never be complete. Thank you for allowing my testimony.



**kobayashi1-Joni**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, March 13, 2014 9:36 AM  
**To:** HUS testimony  
**Cc:** cj77701@hotmail.com  
**Subject:** Submitted testimony for SB2687 on Mar 13, 2014 11:30AM



**SB2687**

Submitted on: 3/13/2014

Testimony for HUS on Mar 13, 2014 11:30AM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
chris johnson	Individual	Support	No

Comments: I know several victims of child sexual abuse in Hawaii who are over age 55. They are very alert and good women who have suffered much from this and fought hard for justice for all victims.. I hope the age 55 may be eliminated. I met over 80 year old men in Santa Barbara who told me they were raped by priests in California and Ohio, New York.. they were also good people who were clear and able.. Since the burden of proof is always on the victim I respectfully suggest no age limits.. (sometimes just knowing one can have a voice and justice and that something was done for their pain, can heal them). Thanks so much.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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