

STAND. COM. REP. NO.

3321

Honolulu, Hawaii

APR 04 2014

RE: H.B. No. 2034  
H.D. 2  
S.D. 1

Honorable Donna Mercado Kim  
President of the Senate  
Twenty-Seventh State Legislature  
Regular Session of 2014  
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred  
H.B. No. 2034, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO SEXUAL ASSAULT,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Amend section 657-1.8, Hawaii Revised Statutes, to eliminate the statute of limitations for a civil action for damages arising from a sexual act that constituted or would have constituted sexual assault in the first degree, sexual assault in the second degree, or continuous sexual assault of a minor under the age of fourteen years; and
- (2) Amend section 701-108, Hawaii Revised Statutes, to remove the statute of limitations for a criminal action arising from sexual assault in the first degree, sexual assault in the second degree, and continuous sexual assault of a minor under the age of fourteen years.

Your Committee received testimony in support of this measure from the Office of the Prosecuting Attorney, County of Kauai; Office of the Prosecuting Attorney, County of Maui; Women's Caucus, Democratic Party of Hawaii; YWCA of Kauai; The Sex Abuse Treatment Center; Hawaii Women's Coalition; and sixteen individuals. Your Committee received testimony in opposition to

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this measure from the Department of the Attorney General, Office of the Public Defender, and one individual. Your Committee received comments on this measure from one individual.

Your Committee finds that child sexual abuse is an epidemic that unfortunately is not adequately addressed because a vast majority of child sexual abuse victims fail to report their sexual assaults to authorities. The Sex Abuse Treatment Center testified that many children do not disclose sexual abuse immediately. Studies have estimated that between sixty to eighty percent of child sexual abuse victims withhold disclosure. Furthermore, studies examining latency in disclosure report an average delay of three to eighteen years. By eliminating the statute of limitations for civil and criminal actions for claims arising from certain sexual assault crimes, this measure recognizes and provides the time it generally takes for victims of child sexual abuse to develop the strength and courage to report incidences of child sexual abuse.

Your Committee notes the testimony submitted by a professor from the Benjamin N. Cardozo School of Law indicating that eight states allow a civil action to be filed at any time for a child sexual abuse claim and seven states currently have pending legislation to eliminate the statute of limitations for civil child sexual abuse claims. This testimony also indicates that thirty-eight states allow the prosecution of certain child sexual abuse crimes to commence at any time.

However, your Committee notes the concerns raised by the Department of the Attorney General that eliminating the statute of limitations for the filing of a civil claim arising from certain sexual assault crimes may violate the due process clause of the state and federal constitutions. The Department testified that a claim could be brought against any person at any time, which could prevent or severely impair the alleged perpetrator's ability to defend. Your Committee further notes the testimony submitted in opposition that eliminating the statute of limitations for civil and criminal claims for certain sexual assault crimes fails to recognize that over time memories fade, evidence may be lost or expunged, and witnesses may die or be difficult to find.

Accordingly, your Committee believes that the statute of limitations should be further defined to sufficiently balance the rights of the victim and accused in child sexual abuse civil and criminal claims. Your Committee notes that according to the



testimony submitted by a professor from the Benjamin N. Cardozo School of Law, four states have legislation pending that allows a victim of child sexual abuse to file a civil claim up to attaining the age of fifty-five. Your Committee believes that the statute of limitations to file a civil claim in this measure should be set accordingly for all sexual acts that constituted or would have constituted a criminal offense under part V or VI of chapter 707, Hawaii Revised Statutes. Your Committee further notes the discussion during the hearing for this measure regarding studies indicating that the human brain is not fully developed until the age of twenty-five. Accordingly, your Committee believes that the statute of limitations should toll during any time when the victim is under twenty-five years of age for certain sexual assault offenses committed when the victim is a minor.

Your Committee notes that the Legislature passed Act 68, Session Laws of Hawaii 2012 (Act 68), to extend the statute of limitations for civil actions brought by a victim of sexual offenses as a minor against the person who committed the act and establish a two-year window to allow a victim of sexual abuse to bring a cause of action if bringing such an action was barred due to the expiration of the statute of limitations that was in effect prior to April 24, 2012. Your Committee further finds that the two-year window to allow a victim of child sexual abuse to bring a cause of action that is otherwise barred will sunset on April 24, 2014, if legislative action is not taken. Accordingly, your Committee believes that extending the window for an additional five years provides additional time for a victim of child sexual abuse to come forward.

Your Committee further notes S.B. No. 2687 (Regular Session of 2014), as amended, amends section 657-1.8(b), Hawaii Revised Statutes, to change the standard used by the court to award damages against a legal entity, except for the State or counties, from a finding of gross negligence to a finding of negligence on the part of the legal entity. Your Committee believes that this measure should also reflect this standard. Despite the written testimony suggesting that this standard be effective retroactively to 2012, when Act 68 was enacted, your Committee believes that the negligence standard should be applied prospectively to avoid conflicts with pending civil actions.

Accordingly, your Committee has amended this measure by:

- (1) Amending section 657-1.8, Hawaii Revised Statutes, to:



- (A) Delete language that eliminated the statute of limitations for a civil action for damages arising from a sexual act that constituted or would have constituted sexual assault in the first or second degree or continuous sexual assault of a minor under the age of fourteen years;
  - (B) Extend the statute of limitations for the filing of a civil action for the recovery of damages arising from the sexual abuse of the minor that constituted or would have constituted a criminal offense under part V or VI of chapter 707, Hawaii Revised Statutes, to the later of:
    - (i) The victim attaining the age of fifty-five, rather than twenty-six; or the person who committed the sexual abuse attaining the age of majority; or
    - (ii) Three years after the victim discovers or should have discovered the psychological injury or illness was caused by the sexual abuse;
  - (C) Extend the sunset date for five additional years to allow a victim of child sexual abuse to bring a civil action against the victim's abuser or an entity, except for the State or counties, if the statute of limitations for filing a civil claim has lapsed; and
  - (D) Clarify that after April 23, 2014, damages against the legal entity in a sexual assault civil action in which the statute of limitations for filing a civil claim has lapsed shall be awarded only if there is a finding of negligence on the part of the legal entity;
- (2) Amending section 701-108, Hawaii Revised Statutes, to:
- (A) Delete language that removes the statute of limitations for a criminal action arising from sexual assault in the first or second degree and

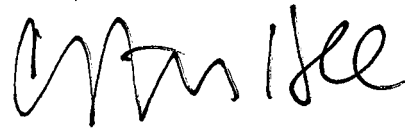


continuous sexual assault of a minor under the age of fourteen years; and

- (B) Insert language to clarify that the statute of limitations for a criminal claim shall toll during any time that the victim is under twenty-five years of age for certain sexual assault crimes committed against the victim at the time the victim was a minor; and
- (3) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2034, H.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2034, H.D. 2, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary and  
Labor,




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CLAYTON HEE, Chair



The Senate  
 Twenty-Seventh Legislature  
 State of Hawai'i

**Record of Votes**  
**Committee on Judiciary and Labor**  
**JDL**

Bill / Resolution No.:*	Committee Referral:	Date:		
HB 2034, HD2	JDL	3/28/14		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	✓			
SHIMABUKURO, Maile S.L. (VC)	✓			
GABBARD, Mike	✓			
GALUTERIA, Brickwood	✓			
IHARA, Jr., Les				✓
SOLOMON, Malama				✓
SLOM, Sam				✓
<b>TOTAL</b>	4			3
Recommendation:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution:				
Original File with Committee Report	Yellow Clerk's Office	Pink Drafting Agency	Goldenrod Committee File Copy	

\*Only one measure per Record of Votes