

**HB2034**

**HD2**



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

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 2034, H.D. 2, RELATING TO SEXUAL ASSAULT.

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY AND LABOR

**DATE:** Wednesday, March 19, 2014

**TIME:** 10:00 a.m.

**LOCATION:** State Capitol, Room 325

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

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Chair Hee and Members of the Committee:

The Department of the Attorney General (Department) opposes this bill as it relates to eliminating the statute of limitations for civil actions for certain sexual assault crimes. The Department has no constitutional or legal concerns that would prevent the Legislature from eliminating the statute of limitations for crimes involving sexual assault against minors and the disabled. Hawaii has already determined that certain crimes, such as murder, are so heinous and pernicious that the criminals who commit them should not be able to evade prosecution. Perpetrators of sexual assault against minors and the disabled violate the most vulnerable who are often intimidated by threats and unlikely to report the crime until many years later. Society has an interest in ensuring that these predators are caught and brought to justice.

The purpose of this bill is to amend section 657-1.8, Hawaii Revised Statutes (HRS), to create a civil cause of action, with no limitations period, for recovery of damages by persons who are alleged to have suffered psychological or physical injury "arising from" sexual assault in the first or second degrees or continuous sexual assault of a minor under the age of fourteen years against the perpetrator of these crimes. The bill also amends section 701-108, HRS, to allow for the criminal prosecution of these crimes with no limitations period.

The lack of any statute of limitations for a civil action against the alleged perpetrator is troubling and unprecedented in the State of Hawaii. This raises concerns that the bill violates the due process clause of the state and federal constitutions, because a claim could conceivably be brought against any person at any time, which could prevent or severely impair that person's

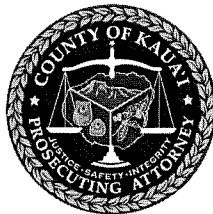
ability to defend himself or herself. Over the passage of time, memories fade, witnesses move or pass away, and documents are lost or destroyed.

The bill is also unclear as to who can make the determination that the conduct constitutes a violation of part V or VI of chapter 707, HRS, in order to allow a cause of action under this bill. The bill, as written, allows civil actions, at any time, even against a person who has been accused, but not proven, to have committed the crime upon which the civil action is based. The bill does not require a conviction or even proof of guilt but merely that injury “arising from” sexual assault occurred. If the alleged perpetrator is arrested but not charged with a crime under part V or VI because the prosecutor determines that the allegations are unfounded, this bill may still allow a lawsuit to be brought against a wrongfully accused individual, at any time, if the allegations in the lawsuit merely include the elements of a violation of section 707-730, 707-731, or 707-733.6 or any other sexual abuse of a minor that falls within part V or VI of chapter 707. Because there is no limitations period, a lawsuit could even be brought after this individual’s death against his or her estate and there would be no opportunity for the accused to establish his or her innocence.

We respectfully request that the amendments proposed in section 1 be deleted from this bill or alternatively that this bill be held.

**Justin F. Kollar**  
Prosecuting Attorney

**Kevin K. Takata**  
First Deputy



**Rebecca A. Vogt**  
Second Deputy

**Diana Gausepohl-White, LCSW**  
Victim/Witness Program Director

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TESTIMONY IN SUPPORT OF  
H.B. NO. 2034 HD2  
A BILL FOR AN ACT RELATING TO SEXUAL ASSAULT

Justin F. Kollar, Prosecuting Attorney *Justin F. Kollar* 3.17.14  
County of Kauai

Senate Committee on Judiciary and Labor

Wednesday, March 19, 2014  
10:00 a.m., Room 016

Honorable Chair Hee, Vice-Chair Shimabukuro, and Committee Members:

The Office of the Prosecuting Attorney, County of Kauai submits the following testimony in **support** of H.B. 2034 HD2, Relating to Sexual Assault.

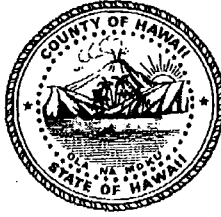
The purpose of this bill is to remove the statute of limitations for criminal and civil actions arising from Sexual Assault in the First or Second Degree and Continuous Sexual Assault of a Minor Under the Age of Fourteen.

Survivors of these offense face a number of obstacles to coming forward, including societal pressures, lack of trust in or fear of law enforcement, shame, fear of economic repercussions, fear of retaliation or retribution, and lack of support structures creating safe spaces for reporting. This bill recognizes that these offenses are not like other offenses where there is less potential for emotional and physical trauma associated with reporting.

For these reasons, we **support** H.B. 2034 HD2 as written. We ask the Committee to **pass** the bill. Thank you for the opportunity to testify on this matter.

MITCHELL D. ROTH  
PROSECUTING ATTORNEY

DALE A. ROSS  
FIRST DEPUTY  
PROSECUTING ATTORNEY



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**OFFICE OF THE PROSECUTING ATTORNEY**

TESTIMONY IN SUPPORT OF HOUSE BILL 2034 HD2

A BILL FOR AN ACT RELATING TO SEXUAL ASSAULT

COMMITTEE ON JUDICIARY AND LABOR

Sen. Clayton Hee, Chair

Sen. Maile S.L. Shimabukuro, Vice Chair

Wednesday, March 19, 2014, 10:00 AM  
State Capitol, Conference Room 016

Honorable Chair Hee, Vice Chair Shimabukuro, and Members of the Committee on Judiciary and Labor, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in support of House Bill No. 2034 HD2.

The purpose of this measure is to remove the statute of limitations 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 years old.

Eliminating the statute of limitations on sexual assault sends a strong message that sexual violence will not be tolerated in our community. Reporting a sexual assault is never an easy process and takes tremendous courage and victims may take time to work through many emotions and experiences before being ready to engage with the legal system.

The Office of the Prosecuting Attorney of the County of Hawai'i supports the passage of House Bill No. 2034 HD2. Thank you for the opportunity to testify on this matter.

Respectfully,

A handwritten signature in black ink that reads "Mitchell D. Roth".

Mitchell D. Roth  
Prosecuting Attorney  
County of Hawai'i



March 19, 2014

TO: Senator Clayton Hee, Chair  
Senator Maile Shimabukuro, Vice Chair and  
Members of the Committee on Judiciary and Labor

FROM: Jeanne Y. Ohta, Co-Chair

RE: HB 2034 HD2 Relating to Sexual Assault  
Hearing: Wednesday, March 19, 2014, 10:00 a.m., Room 016

POSITION: **STRONG SUPPORT**

The Hawai'i State Democratic Women's Caucus writes in strong support of HB 2034 HD2 Relating to Sexual Assault, which would remove the statute of limitations for criminal actions arising from sexual assault in the first and second degrees and continuous sexual assault of a minor under the age of fourteen years, and for civil actions against the perpetrator of sexual assault in the first and second degrees and continuous sexual abuse of a minor under the age of fourteen years.

Eliminating the statute of limitations is important because it is common for survivors of sexual assault, both minors and adults to wait some time before telling anyone about a sexual assault. Sexual assault is one of the most underreported crimes. Reporting to law enforcement may not be the first concern of a survivor following an assault or on their journey to healing. Reporting an assault takes tremendous courage and survivors may take time to work through the many emotions and experiences before being ready to engage with the legal system.

At least 32 states have no criminal statute of limitations on either or both child sexual abuse or the most aggravated sex crimes under the state laws.<sup>1</sup> Eliminating the statute of limitations acknowledges that sexual assault is one of the most severe offenses against a person.

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 victims' access to justice by allowing them the opportunity to move forward in the legal system. There are other safeguards set up in the criminal justice system that protect against unreliable evidence and false reporting.

The Hawai'i State Democratic Women's Caucus is a catalyst for progressive, social, economic, and political change through action on critical issues facing Hawaii's women and girls. It is because of this mission, the Women's Caucus supports this measure and urges its passage by the committee. Thank you for this opportunity to provide our testimony is support.

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<sup>1</sup> The National Center for Victims of Crime, *Statutes of Limitation for Sexual Assault: A State-by-State Comparison*, <http://victimsofcrime.org/docs/DNA%20Resource%20Center/sol-for-sexual-assault-check-chart---final---copy.pdf?sfvrsn=2> (Aug. 2013).

# eliminating racism empowering women

ywca

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DATE: March 17, 2014

TO: The Honorable Clayton Hee, Chair  
The Honorable Maile S.L. Shimabukuro, Vice Chair  
Senate Committee on Judiciary and Labor

FROM: Renae Hamilton, Executive Director  
YWCA of Kaua`i

RE: H.B. 2034 HD2  
Relating to Sexual Assault

Good morning, Chair Hee, Vice Chair Shimabukuro, and members of the Senate Committee on Judiciary and Labor. My name is Renae Hamilton and I am the Executive Director for the YWCA of Kaua`i.

The YWCA of Kaua`i strongly supports H.B. 2034 HD2 relating to Sexual Assault. The YWCA is the sole provider on Kaua`i for providing essential services related to sexual assault; crisis intervention, counseling treatment and prevention education. We provide an average of over 2,000 counseling hours a year for over 200 clients. Over 50% of the victims that receive counseling services are under 18 years old. Adults who were molested as children are a large percentage of our adult clients. This bill provides for victims who were assaulted as children an opportunity to seek justice later in life without a statute of limitations limiting their options.

Survivors of sexual assault often do not seek criminal justice immediately after the crime has occurred. There are many reasons for this; shame, fear of serious repercussions, family and societal pressures, etc. When the victims are children, they often do not even have a say in the decision to seek justice or not. We know in our work with adult who were assaulted as children, it can take years for that survivor to want to seek justice for the heinous crimes perpetrated on them when they were most vulnerable. Each survivors healing journey is unique and it is important to acknowledge that sexual assault offenses are not like other offenses where victims are ready to seek justice immediately. I've personally heard many adults state they wished they could report now that they feel stronger and are ready to face the challenges associated with reporting a crime. This bill would help these survivors find justice they deserve and will help our community become safer by holding offenders accountable for their crimes.

On behalf of the staff and Board of Directors, I urge the committee to pass H.B. 2034 HD2 as written. Thank you for this opportunity to testify.





# THE SEX ABUSE TREATMENT CENTER

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

*Executive Director*  
Adriana Ramelli

DATE: March 19, 2014

*Advisory Board*

TO: The Honorable Clayton Hee, Chair  
The Honorable Maile S.L. Shimabukuro, Vice Chair  
Senate Committee on Judiciary and Labor

*President*  
Mimi Beams

*Vice President*  
Peter Van Zile

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

Joanne H. Arizumi

Mark J. Bennett

Andre Bisquera

Marilyn Carlsmith

RE: H.B. 2034 H.D. 2  
Relating to Sexual Assault

*Senator*  
Suzanne Chun Oakland

Monica Cobb-Adams

Donne Dawson

Dennis Dunn

*Councilmember*  
Carol Fukunaga

David I. Haverly

Linda Jameson

Michael P. Matsumoto

Gidget Ruscetta

Joshua A. Wisch

Good morning Chair Hee, Vice Chair Shimabukuro and members of the Senate Committee on Judiciary and Labor. 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 H.B. 2034 H.D. 2, which would remove the statute of limitations for criminal actions arising from sexual assault in the first and second degrees and continuous sexual assault of a minor under the age of fourteen years, and for civil actions against the perpetrator of sexual assault in the first and second degrees and continuous sexual abuse of a minor under the age of fourteen years.

Additionally, we would recommend that Section 1 of H.B. 2034 H.D. 2, which applies to civil actions, be amended to include the language of S.B. 2687, S.D.1, H.D. 1 that would eliminate the statute of limitations on civil actions against the perpetrator or the negligent entity owing a duty of care to the survivor of child sex abuse.

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. 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.

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. Adult survivors also may not disclose right away because they are scared or concerned 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.

Eliminating the statute of limitations can encourage more survivors to come forward and hold more perpetrators accountable. Under the current law, both the perpetrator and survivor are assured that the perpetrator will not be prosecuted after a certain amount of time. No matter what the perpetrator has done or the impact they have had on the survivor, the perpetrator can be guaranteed to walk away without penalty. Thus, there may be less incentive to come forward. By knowing that there is a possibility that the perpetrator may face consequences 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. At least 32 states have no criminal statute of limitations on child sexual abuse and/or the most aggravated sex crimes under state laws.<sup>v</sup>

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. The window is set to close this April. To date, a number of survivors have come forward with suits directly attributable to the law.

Including language from S.B. 2687, S.D.1, H.D. 1 would keep that window open indefinitely and allow a civil suit against not only the perpetrator but also a legal entity owing a duty of care to the survivor. Allowing civil suits against these entities is vitally important because it exposes and holds accountable the institutions who failed to protect children from abuse. However, we do not believe that claims against the State and its political subdivisions should be exempt. All survivors should be given the opportunity for justice regardless of the status of the entity where the perpetrator worked.

We urge you to pass H.B. 2034 H.D. 2, with an amendment to allow civil suits against entities that breached their duty of care in protecting children from sexual abuse. 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 when they are ready.

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).

<sup>v</sup> The National Center for Victims of Crime, *Statutes of Limitation for Sexual Assault: A State-by-State Comparison*, <http://victimsofcrime.org/docs/DNA%20Resource%20Center/sol-for-sexual-assault-check-chart---final---copy.pdf?sfvrsn=2> (Aug. 2013).

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DELIVERED VIA E-MAIL

March 13, 2014

Senator Clayton Hee  
Chairman, Committee on Judiciary & Labor  
Hawaii State Senate  
c/o Committee Clerk, Room 407  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: Written Testimony Of Brook Hart (And On Behalf Of Professor Of Law Virginia Hench, Kenneth Lawson (the Associate Director of the Hawaii Innocence Project), William Harrison, Esq., And Susan Arnett, Esq.) In Opposition To House Bill No. 2034 (H.D. 2)

Dear Chairman Hee and Committee Members:

Since 1968, I have practiced primarily criminal defense law and constitutional law in Hawaii. I also serve as a Lecturer in Law at the University of Hawaii's William S. Richardson School of Law. I have been an adjunct faculty member at our law school since 2005, co-teaching the "Hawaii Innocence Project" seminars with Professor Virginia Hench and criminal defense attorneys William Harrison and Susan Arnett. Kenneth Lawson is the Associate Director of the Hawaii Innocence Project.

I write this letter, along with Professor Hench, Mr. Harrison, Ms. Arnett and Mr. Lawson, to express our strong opposition to House Bill No. 2034 (H.D. 2), entitled "Relating To Sexual Assault." On March 6, 2014, that bill was received by the Senate from the House of Representatives, and referred to your Senate Committee on Judiciary & Labor. Remarkably, that bill amends H.R.S. § 701-108 to abolish any statutory limitation period for initiating criminal prosecutions of alleged offenses of "sexual assault in the first and second

degrees, and continuous sexual assault of a minor under the age of fourteen years," so that prosecutions for those alleged offenses "may be commenced at any time." [Underlining added.] The bill likewise amends H.R.S. § 657-1.8 to eliminate any statutory limitation period for civil actions "for recovery of damages based on [alleged] physical, psychological, or other injury or condition [allegedly] suffered by an individual [allegedly] 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," so that "such civil actions may be commenced at any time against the [alleged] perpetrator of the act." [Underlining added.]

This letter supports (and incorporates by reference) the written testimony against House Bill No. 2034 that was submitted by the State Office of the Public Defender to the Judiciary Committee of the House of Representatives on February 7, 2014. As that written testimony clearly pointed out: (a) the current statutory limitation periods for alleged sexual assault in the first degree and second degree, and alleged continuous sexual assault of a minor under the age of fourteen years, are "sufficient to balance the rights of both the [complainant] and [the] accused in sexual assault cases"; (b) "[o]ver time, memories fade and witnesses disappear" and "[p]hysical evidence may deteriorate, be destroyed or lost"; (c) elimination of any limitation period for those alleged felony offenses would cause "extreme prejudice" to "the rights of accused [individuals] to a fair trial," and would result in "more defendants who will be convicted of crimes they did not commit"; and (d) complainants in cases involving alleged sexual assault often have "a motive to make a false claim."

The current limitation periods for criminal prosecution of alleged offenses of sexual assault in the first degree and second degree, and alleged continuous sexual assault of a minor under the age of fourteen years, are fair and equitable. Sexual assault in the first degree (H.R.S. § 707-730), and continuous sexual assault of a minor under the age of fourteen years (H.R.S. § 707-733.6), are class A felonies with a standard limitation period of six years pursuant to H.R.S. § 701-108(2)(b). Sexual assault in the second degree (H.R.S. § 707-731) is a class B felony, with a standard limitation period of three years pursuant to H.R.S. § 701-108(2)(d).

Importantly, when the complainant was a juvenile at the time of the alleged offense, pursuant to H.R.S. § 701-108(6)(c) neither of those limitation periods commence to run "during any time when the [alleged] victim is alive and under eighteen years of age." Furthermore, pursuant to H.R.S. § 701-108(3)(c), for any "felony offense involving evidence containing deoxyribonucleic acid [DNA] from the offender, if a test confirming the presence of [DNA] is performed prior to expiration of the [standard] period of limitation," the limitation period may be extended up to ten years from the expiration of the standard limitation period. Finally, pursuant to H.R.S. § 701-108(6)(a), the limitation period does not run during "any time when the accused is continuously absent from the State [of Hawaii] or has no reasonably ascertainable place of abode or work within the State [of Hawaii]," as long as that provision does not "extend the period of limitation by more than four years from the expiration of the [standard] period of limitation." So in sum, the current limitation periods are more than sufficient for legitimate prosecutions.

As recognized in the original Commentary on H.R.S. § 701-108, having a statutory limitation period for initiation of criminal prosecutions is supported by "important policies." The "most persuasive is the fact that after a certain time, evidence tending to prove or disprove criminal liability becomes stale. Witnesses die, move away, or forget; physical evidence disintegrates, and it becomes impossible to ascertain what actually happened." *Id.* (underlining added). Further, statutes of limitation "may also be viewed as statutes of repose." *Id.* Even a person who has allegedly "committed a penal act is entitled, after the passage of some time, to conduct the person's affairs on the assumption that they will not be disrupted by a prosecution. This is particularly true in the case of someone who has ceased to engage in penal activity and is leading a law-abiding life." *Id.* Thus, "an upper limit is set" on the time within which a prosecution may be commenced. *Id.* As the United States Supreme Court has emphasized: "The purpose of a statute of limitations is to limit exposure to criminal prosecution to a certain fixed period of time following the occurrence of those acts the legislature has decided to punish by criminal sanctions. Such a limitation is designed to protect individuals from having to defend themselves against charges when the basic facts may

have become obscured by the passage of time and to minimize the danger of official punishment because of acts in the far-distant past. Such a time limit may also have the salutary effect of encouraging law enforcement officials promptly to investigate suspected criminal activity." Toussie v. United States, 397 U.S. 112, 114-15 (1970) (underlining added). Indeed, a statute of limitation is "the primary guarantee against bringing overly stale criminal charges," and it provides "predictability by specifying a limit beyond which there is an irrebuttable presumption that a defendant's right to a fair trial would be prejudiced." United States v. Marion, 404 U.S. 307, 322 (1971) (citation omitted). For example, one of the most critical defenses that a statute of limitation helps to protect is the alibi defense. Rule 12.1(b) of the Hawaii Rules of Penal Procedure requires a defendant to "inform the prosecutor in writing of the specific place at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom the defendant intends to rely to establish such alibi," but that can become impossible when the alleged offense is too remote in time.

Although the offense of "continuous sexual assault of a minor under the age of fourteen years" may only be committed against a juvenile, it is important to remember that complainants in cases of alleged sexual assault in the first degree or second degree were frequently adults at the time of the alleged offenses. Yet, House Bill No. 2034 (H.D. 2) makes no distinction between cases of alleged sexual assault in the first degree or second degree that involve complainants who were adults, rather than juveniles, at the time of the alleged offense. Further, although an alleged sexual assault in the first degree can sometimes rely upon a complainant's status as "mentally defective" or "mentally incapacitated" at the time of the alleged offense, and an alleged sexual assault in the second degree can sometimes rely upon a complainant's status as "mentally incapacitated" at the time of the alleged offense, numerous complainants in such cases were not mentally defective or mentally incapacitated. Yet again, the sweeping language of House Bill No. 2034 (H.D. 2) indiscriminately applies to all complainants in such cases, including those who were fully competent adults at the time of the alleged offense.

By simultaneously repealing any limitation period for both criminal and civil actions regarding alleged sexual assault in the first degree and second degree, and alleged continuous sexual assault of a minor under the age of fourteen years, House Bill No. 2034 (H.D. 2) provides an obvious financial incentive for complainants to make false accusations of sexual assault. Defendants in both criminal and civil actions could be forced to defend against accusations of supposed sexual assaults that purportedly occurred as long as forty or fifty years ago. In addition to improper financial motivation, complainants could be motivated to make false claims by any type of grudge, anger, resentment or antipathy against defendants.

Statutory limitation periods are particularly necessary in cases of alleged sexual assault because of two additional factors that make the danger of wrongful convictions especially high. First, in many cases of alleged sexual assault, the sexual act would be completely lawful if the complainant consented. For first-degree sexual assault under H.R.S. § 707-730(1)(a), consent negatives the statutorily required "strong compulsion," and for second-degree sexual assault under H.R.S. § 707-731(1)(a), consent likewise negatives the statutorily required "compulsion." Indeed, the simple "compulsion" required for second-degree sexual assault under H.R.S. § 707-731(1)(a) can be as minimal as "absence of consent." H.R.S. § 707-700 ("'Compulsion' means [inter alia] absence of consent ..."); Hawaii Pattern Jury Instructions: Criminal Instruction 9.00 (2013) (same).

Second, Rule 412 of the Hawaii Rules of Evidence (the so-called "rape shield" rule) is frequently used to exclude "reputation or opinion evidence of the past sexual behavior" of a complainant that is offered "to prove the character of the [complainant] to show action in conformity therewith" (Rule 412(a)), and to exclude evidence of a complainant's "past sexual behavior other than reputation or opinion evidence" that is offered "to prove the character of the [complainant] to show action in conformity therewith" (Rule 412(b)).<sup>1</sup> There are exceptions to the Rule 412(b) exclusion,

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<sup>1</sup> Although Rule 412(a)-(b) uses the term "past sexual behavior," Rule 412(h) broadly defines that term to mean "sexual behavior other than the sexual behavior with respect to which a sexual offense or sexual harassment is alleged."

see Rule 412(b)(1)-(2), but trial courts often tend to narrowly construe and apply the exceptions.

For all of the foregoing reasons, I strongly urge the Senate Committee on Judiciary & Labor to abstain from even holding a hearing on House Bill No. 2034 (H.D. 2), this astonishingly dangerous and extraordinarily flawed proposed legislation, and to refrain from destroying the fundamental and essential protections provided by the very reasonable current statutes of limitation. Notably, there are Senate bills that also address this subject in whole or in part: Senate Bill No. 2448 ("Removes the statute of limitations 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 years"), Senate Bill No. 2943 ("Allows prosecution for first, second, and third degree sexual assault to commence at any time"), and Senate Bill No. 79 ("Eliminates the statute of limitations for civil actions brought by persons subjected to sexual offenses as a minor against the person who committed the act"). Senate Bill No. 2448 was introduced on January 17, 2014, and was referred to the Senate Committee on Judiciary & Labor on January 21, 2014. Senate Bill No. 2943 was introduced on January 23, 2014, and was referred to the Senate Committee on Judiciary & Labor on that same date. Senate Bill No. 79 was introduced on January 17, 2013, referred to the Senate Committee on Judiciary & Labor on the same date, and carried over to the 2014 legislative session on December 18, 2013. Wisely, none of those three bills have received a hearing or even have a hearing scheduled.

If the Senate Committee on Judiciary & Labor does decide to hold a hearing on House Bill No. 2034 (H.D. 2), however, I would then urge all committee members to vote against that bill. Abolishing any statute of limitation for alleged sexual assault in the first degree and second degree, and alleged continuous sexual assault of a minor under the age of fourteen years, would definitely harm our community by: (a) significantly increasing the number of individuals who would be wrongfully charged, convicted, incarcerated and subjected to onerous sex offender registration requirements for such alleged offenses; (b) substantially increasing the number of individuals who would be wrongfully subjected to unmerited civil lawsuits; and (c) wasting valuable judicial time and

resources on those stale criminal and civil cases.

Very truly yours,

LAW OFFICES OF BROOK HART  
A Law Corporation

A handwritten signature in cursive script that reads "Brook Hart". The signature is written in dark ink and is positioned above the printed name.

BROOK HART



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March 18, 2014

## VIA DROPBOX/EMAIL SUBMISSION

Senator Clayton Hee, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair  
Committee on Judiciary and Labor  
State Capitol, House Conference Room 329  
415 South Beretania Street  
Honolulu, HI  
Hearing: March 19, 2014 10:00AM

RE: Hawai'i H.D. 2, H.B. 2034 (Removes the statute of limitations for criminal actions arising from sexual assault in the first and second degrees and continuous sexual assault of a minor under the age of fourteen years, and for civil actions against the perpetrator of sexual assault in the first and second degree and continuous sexual abuse of a minor under the age of fourteen years.) Effective July 1, 2014.

Dear Senator Hee, Senator Shimabukuro and Members of the Committee:

Thank you for moving forward with legislation that protects children. Please accept my testimony in support of amending HB2034 to mirror the language of SB2687 regarding civil claims. Consistent with my prior testimony, some of which I reiterate for your convenience below, it is important this change is made to better protect children and afford access to justice for child sexual abuse survivors.

HB2034 only allows civil actions against the perpetrator and only for certain types of sexual abuse. Although I support the unlimited criminal statute of limitations, the civil portion of the bill in Section 1 relating to the civil limitations period contradicts both the current window statute and the provisions of SB2687. It does not provide access to justice for many survivors in dire need of that access, and it allows institutions to continue to negligently expose children to harm without accountability.

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By contrast, laws like current S.B. 2687 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. Unfortunately, there will always be child sexual predators. We cannot eliminate that reality. However, we can hold institutions accountable when they negligently expose children to such predators, and we can give justice to victims. The language of SB2687 accomplishes these important goals.

The language in HB2034 limiting civil actions to only certain types of sexual harm is an additional, major problem. The reality is that harm results from child sexual abuse in any form. Trauma and harm resulting from one event of fondling of a pubescent girl's breasts or genitals, for example, can be just as traumatic and stigmatizing as trauma from repeated incidents or penetration. The traumatic effect and damage from sexual trauma may vary in degree depending on age, ethnicity, culture and a myriad of other factors. To deny access to justice based upon discrete categories of sexual harm perpetrated by the abuser will undoubtedly deny access to rightful claims and give shelter to abusers and those who negligently expose abusers to children. Such focus on the category of the abusive act is the wrong emphasis. Rather the emphasis should be on prevention of all sexual abuse and access to justice for all children sexually abused. Focusing on the *category* of abuse, rather than the *fact* of abuse, would further result in abusers making hair-splitting arguments to evade responsibility based upon the "exact" category of the abuse; it would be a weapon abusers would use against victims to defeat their claims.

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

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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 civil 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 against abusers as well as the negligent institutions who cause abuse 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

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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.

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.

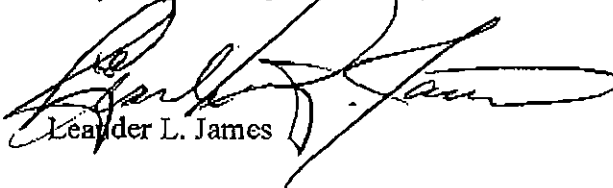
I am an example of this. I was born and raised Catholic. I have a brother-in-law (a brother of my wife's sister) who is a priest. There are numerous clergy in my extended family. I am a graduate of Santa Clara University, a Jesuit university. I taught in Jesuit schools for two years. I greatly value 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.

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 under the civil law. 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. To further these goals, please amend H.B. 2034 to either 1) eliminate Section 1 relating to the civil limitations period; or 2) incorporate in Section 1 the same language as the most current version of S.B. 2687.

Very Respectfully Submitted,



Leander L. James

# Rosenberg & McKay

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March 17, 2014

## VIA DROPBOX/EMAIL SUBMISSION

Senator Clayton Hee, Chair  
Senator Maile Shimabukuro, Vice Chair  
Senate Committee on Judiciary and Labor  
State Capitol, Conference Room 016  
415 South Beretania Street  
Honolulu, HI  
Hearing: March 19, 2014 10AM

RE: Hawaii H.D. 2, H.B. 2034 (Removes the statute of limitations for criminal actions arising from sexual assault in the first and second degrees and continuous sexual assault of a minor under the age of fourteen years, and for civil actions against the perpetrator of sexual assault in the first and second degrees and continuous sexual abuse of a minor under the age of fourteen years.) Effective July 1, 2050.

Aloha Senator Hee, Senator Shimabukuro and Members of the Committee:

As you will recall, I submitted written testimony supporting S.B. 2687, which extended the effective period of the “window statute,” Hawaii Revised Statutes §657-1.8. I agreed with Professor Marci Hamilton of the Benjamin Cardozo School of Law at Yeshiva University, who proposed that the gross negligence standard be changed to “negligence” and was gratified when your committee incorporated this amendment as it passed S.B. 2687. The current bill before you, H.D. 2/H.B. 2034, seeks to amend the window statute in a different way.

First, the bill seeks to remove the criminal statute of limitations for certain sex crimes including “the continuous sexual abuse of a minor under the age of fourteen years.” For the protection and safety of our keiki ‘o ka ‘aina, I support this change.

However, H.B. 2034 also seeks to amend the window statute for civil claims in a manner wholly inconsistent with S.B. 2687. For example, H.B. 2034 only extends the civil statute of limitations for certain acts of sexual abuse, not all. Even more importantly, the extended limitations period is only for claims against the individual perpetrator, and not for claims against harborers or entities responsible for the perpetrator or those who have a duty of care to the injured victims. These other individuals and entities are not subject to criminal prosecution and in order to

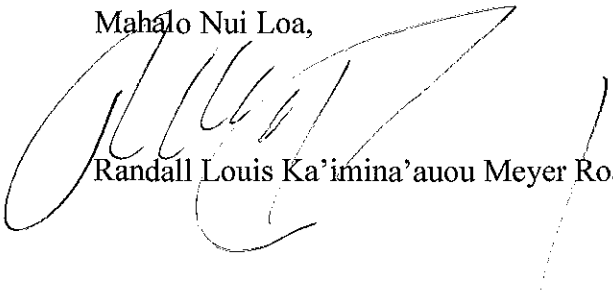
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discourage them from ignoring their duties to take precautionary actions to protect children under their care or sphere of influence, we must arm victims with a direct civil claim. Otherwise, we will not be providing any disincentive for these entities and individuals to change their behavior that has become the norm for the past many decades in Hawaii, where victims of sexual abuse are ignored, pedophiles are sheltered, and evidence of serial child abuse is concealed.

I believe that the current version of S.D. 1, S.B. 2687, as passed with amendments by the House Committee on Human Services, is the best version for Hawaii's children. Therefore, I recommend that H.B. 2034 be amended to (a) either eliminate Section 1 relating to the civil limitations period, or (b) incorporate in Section 1 the same language as the most current version of S.B. 2687.

I appreciate your consideration of these matters.

Mahalo Nui Loa,



Randall Louis Ka'imina'auou Meyer Rosenberg

# CARDOZO LAW

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March, 18, 2014

## VIA DROPBOX/EMAIL SUBMISSION

Senator Clayton Hee, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair  
Honorable Members  
Senate Committee on Judiciary & Labor  
Conference Room 016  
415 South Beretania Street  
Honolulu, Hawaii 96813

Hearing: March, 19, 2014, 10:00 AM

RE: Hawaii H.B. 2034 HD2 (Removes the statute of limitations for criminal actions arising from sexual assault in the first and second degrees and continuous sexual assault of a minor under the age of fourteen years, and for civil actions against the perpetrator of sexual assault in the first and second degrees and continuous sexual abuse of a minor under the age of fourteen years.) [Effective 7/1/2050].

Dear Senator Hee, Senator Shimabukuro, and Members of the Committee:

I commend the Committee for taking up H.B. 2034 HD2, which would eliminate the civil and criminal statutes of limitation (“SOLs”) for victims of sexual assault in the first and second degree and continuous sexual assault of a minor under the age of 14. This is a valuable addition to Hawaii’s laws to protect children and to identify the perpetrators preying on children in Hawaii. It will shift the balance of power from the perpetrators who now can breathe a sigh of relief when the SOLs end, to the victims, who will have access to justice when they are ready.

While every extension or elimination of a statute of limitation is a positive policy, change, I do feel compelled to mention that I support the addition of language which would function as to extend or eliminate the civil SOL against employers and institutions who cover-up and perpetuate child sex abuse via serious negligence as well. H.B 2034 would be a stronger bill for Hawaii’s children if it were

**Required parameters are missing or incorrect.**

amended to include language referencing employers similar to that currently contained in S.B.2687 SD1 HD1:

“A claim may also be brought under this subsection against a legal entity, except the State or its political subdivisions, if:

(1) The person who committed the act of sexual abuse against the victim was employed by an institution, agency, firm, business, corporation, or other public or private legal entity that owed a duty of care to the victim; or

(2) The person who committed the act of sexual abuse and the victim were engaged in an activity over which the legal entity had a degree of responsibility or control.”<sup>1</sup>

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 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).

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. Hawaii put itself at the vanguard of the movement to increase access to justice for victims when it enacted the “window,” which is now open. See, <http://sol-reform.com/News/hawaii/#news> Hawaii provided child sex abuse victims from many walks of life, who were previously blocked from justice, to be able to seek justice.

The lawsuits filed under the window, which revived previously expired SOLs, have been critical in identifying to the public the abuse and suffering that existed in Hawaii and was until the window appeared, secret. Minnesota followed Hawaii and now also has an open window, and is having the same experience: victims have been freed to seek justice, perpetrators are being named, and those who make the abuse possible are being held to account to the public. See, <http://sol-reform.com/News/topics/mn-post-window/>

Elimination of SOLs for child sex abuse is ideal, because the vast majority of victims need decades to come forward. There is an extensive and persuasive body of scientific evidence establishing that child sex abuse victims are harmed in a way that makes it extremely difficult to come forward and, therefore, victims typically need decades to do so.<sup>2</sup> On average, victims come forward in their early 40s. If passed, this bill will dramatically improve justice for children who were sexually abused in Hawaii.

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<sup>1</sup> S.B.2687 SD1 HD1, <http://legiscan.com/HI/drafts/SB2687/2014>; SOL-Reform.com, “HUS Committee passed Hawaii SB 2687 out with amendment HD1” <http://sol-reform.com/News/hus-committee-passed-hawaii-sb-2687-out-with-amendment-hd1/> (removing age 55 limit).

<sup>2</sup> Rebecca Campbell, Ph.D., “*Neurobiology of Sexual Assault: Explaining Effects on the Brain*,” National Institute of Justice (2012); *R.L. v. Voytac*, 199 N.J. 285, 971 A.2d 1074 (N.J. 2009); Bessel A. van der Kolk M.D., et al., *Traumatic Stress: The Effects of Overwhelming Experience on Mind, Body, and Society* (2006).



## **Required parameters are missing or incorrect.**

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.

This is a crime where the victims routinely are incapable of filing charges or a lawsuit for damages until mid-life. The current SOL is configured so that it shuts the vast majority of victims out of the courts, before they can ever get there. That means, as currently configured, Hawaii law protects predators and disables victims. Who pays for that? The public, as opposed to those who caused the abuse.

There is no unfairness to defendants in eliminating the SOL for sexual assault of a child, because the only alteration to the law is the date of filing. The law governing at the time of the offense still governs, and the burdens on the parties remain the same, with the prosecutor or plaintiff bearing the initial burden of proof. If they do not have the evidence to carry their initial burden of proof, the case will be dismissed.

### **There are three compelling public purposes served by SOL Reform, including the removal and/or revival 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 access to justice; and
- (3) It cures the injustice wreaked by the current unfairly short statutes of limitation that protect child predators and silence child sex abuse victims.

I have been involved in statute of limitations reform in numerous states, and it is, without exception, the most effective means for the public to learn who the secret predators are. 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).

Legislative reform for statutes of limitations for child sex abuse victims continues to mount every year. 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,

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<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.")

## Required parameters are missing or incorrect.

Vermont, Virginia, West Virginia, Wisconsin, Wyoming and the Territory of Guam having already eliminated the criminal SOL for at least some child sex crimes.<sup>4</sup>

Last year, more progress was made in opening up abuse victims' access to justice 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 both 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>

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<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. § 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. Assemb. (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).

## Required parameters are missing or incorrect.

Opponents argue that Hawaii's 2-year civil "window" and modest extension in 2012 was sufficient.<sup>19</sup> Once the window closes in several months, Hawaii's civil SOL will revert to an age that is unreasonably young for most survivors of abuse.

The fact that a window has been in place for nearly two years is no reason to believe that Hawaii has completed the project of protecting its children adequately. The movement is progressing so quickly that many states are realizing that previous bills have been insufficient and are adding further extensions or outright elimination of the statutes of limitation; multiple extensions within a few years' time are becoming quite common in many states. For example, in 2007, Delaware enacted its Child Victims Act ("CVA"), which (1) eliminated the SOL for civil child-sex-abuse cases, and (2) created a two-year window.<sup>20</sup> Experience taught, however, that the Delaware CVA did not cover health care providers, and so Delaware enacted a new window for health care providers.<sup>21</sup> Further, Illinois had extended its SOL in 2011, only 3 years prior to opting for full elimination last year.<sup>22</sup> Illinois had previously extended its SOL in 2003 as well.<sup>23</sup> 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 a bill that would again extend the civil and criminal SOL in California.<sup>24</sup> Returning to the inadequacy of Hawaii's civil SOL now, after learning that victims will not have adequate access to justice after the window closes is rational and important.

Other state legislatures are already active on this issue in 2014 as well: Assemblywoman Markey has reintroduced her bill to eliminate the civil SOL; eliminate the criminal SOL for incest and continuing course of conduct crimes (felonies are already exempt); and create a 1-year civil "window" in New York.<sup>25</sup> Iowa is also considering a bill that would extend the statutes of limitation for civil and

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<sup>19</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>20</sup> DEL. CODE ANN. 10 § 8145 (a)-(b)

<sup>21</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>22</sup> See, 735 ILCS 5/13-202.2 (Ill. 2011) (effective 1-1-11 to 1-1-14) (increased the time to bring a civil action from 10 years to 20 years after majority; and increased discovery tolling from 5 years to 20 years).

<sup>23</sup> See, 735 ILCS 5/13-202.2 (Ill. 2003) (effective 7-24-03 to 1-1-11) (increased the time to bring a civil action from 2 years to 10 years after majority; and increased discovery tolling from 2 years to 5 years).

<sup>24</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 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>25</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>.

**Required parameters are missing or incorrect.**

criminal actions brought by minor victims of sexual offenses to twenty-five (25) years from majority.<sup>26</sup> In addition, SOL reform bills are pending in Pennsylvania, Massachusetts, and New Jersey.

SOL reform has very few detractors in the United States other than the Roman Catholic bishops, who are primarily concerned that the courts will force them to divulge the secrets they still harbor in their Secret Archives. This may well be changing soon, however, as the United Nations last month pressed the Vatican to dramatically improve its policies to protect children from sex abuse, including a strong suggestion to support SOL reform: “(e) Promote the reform of statute of limitations in countries where they impede victims of child sexual abuse from seeking justice and redress”<sup>27</sup>

Some detractors claim that as time passes there is a higher risk of false claims and thus they serve an important role in protecting the rights of innocent persons. Yet, there are very few false claims regarding sexual abuse.<sup>28</sup> The plaintiff still bears the initial burden of proof, and if he or she lacks evidence, the case does not go forward. Victims of child sex abuse rarely make false claims, as we learned when windows were open in California and Delaware. In cases brought under California’s last window there were a total of about 5 false claims in over 1000, and none to my knowledge in Delaware.

The SOL reform Hawaii is spearheading will make Hawaii one of the safest states in the country for children. I applaud you and the Committee for considering this legislation, which will help childhood sexual abuse victims. Hawaii’s children deserve the passage of this bill, which would permanently tip the balance toward the victims and away from the predators. This bill represents a huge step forward for Hawaii’s children now and in the future.

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>26</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>27</sup> SOL-Reform.com, [http://sol-reform.com/Jan2014\\_UN\\_Concluding\\_observations\\_on\\_second\\_periodic\\_report\\_Holy\\_See.pdf](http://sol-reform.com/Jan2014_UN_Concluding_observations_on_second_periodic_report_Holy_See.pdf)

<sup>28</sup> See, Delphine Collin-Vezina, et al., Lessons Learned from Child Sexual Abuse Research: Prevalence, Outcomes, and Preventive Strategies, CHILD & ADOLESC. PSYCH. & MENTAL HEALTH (2013); Merrilyn McDonald, The Myth of Epidemic False Allegations of Sexual Abuse in Divorce Cases, Court Review (Spring 1998), available at <http://www.omsys.com/mmcd/courtrev.htm#Rcr2023>; E. Olafson, et al., Modern History of Child Sexual Abuse Awareness: cycles of Discovery and Suppression, 17 CHILD ABUSE NEGL. 1, 7-24 (1993).

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**HB2034**

Submitted on: 3/14/2014

Testimony for JDL on Mar 19, 2014 10:00AM in Conference Room 016

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

Comments: Dear Chair Hee and Committee members.. I love this bill.. It shows an awareness of the importance of removing time limits on sexual assault thus warning predators they will be held accountable no matter how much time has passed and this alone can stop many assaults!.. Plus it gives victims a chance for justice and equality. Thank you so much for this hearing and this high consciousness...  
Respectfully, tina (Christine Johnson) makaha

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**HB2034**

Submitted on: 3/16/2014

Testimony for JDL on Mar 19, 2014 10:00AM in Conference Room 016

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

Comments:

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**Date:** Monday, March 17, 2014 4:04:10 PM

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**HB2034**

Submitted on: 3/17/2014

Testimony for JDL on Mar 19, 2014 10:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Amy Monk	Individual	Support	No

Comments:

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Chair Clayton Hee of the Senate Committee  
Senate Committee on Judiciary and Labor

House Bill No., 2032

Day and Date of Hearing

Time and Place of Hearing

Re: Testimony in SUPPORT of House Bill 2032, Relating to Sexual Assault

Chairman Hee and Members of the Committee:

I am a resident of Hawaii testifying **in support of** House Bill 2032 relating to the removal of the statute of limitations relating to sexual assault.

It is well known that people who experience sexual assault have a tendency not to report the incident to their local authorities right away. According to the Rape, Abuse, and Incest National Network, current national sexual assault statistics indicate that 44% of sexual assault victims are under the age of 18, while 80% of sexual assault victims are under the age of 30.<sup>1</sup> The fact that nearly half of sexual assault victims are under the age of 18, demonstrates that sexual assault is a serious issue around the nation that impacts both adults and children. A serious issue such as this warrants ample time for victims to make an informed decision as to whether they would like to pursue criminal or civil charges against their abuser. Although many victims are hesitant to report for various reasons, victims under the age of 18 may be subjected to ongoing assault by their abuser, particularly if that abuser remains in the household or is in close proximity to that child. If the abuse is ongoing, the victim may feel helpless and unwilling to report that individual to law enforcement out of fear of retaliation.

The statistics in Hawaii are alarming, yet too outdated to demonstrate the extent which sexual assault is an issue in our community. Nonetheless, according to a report by the Department of the Attorney General, Crime Prevention and Justice Assistance Division, data gathered from mid 1990 through mid 2001, shows that the average age of victims in Hawaii range from ages 15 to 20 years and 90% of those victims were women.<sup>2</sup> Further, approximately 68% of those assaulted and treated by Sex Abuse Treatment Center in Honolulu were willing to report their experience to the authorities.<sup>3</sup> Although reporting appears to have been significantly higher from the mid 1990s-2001, up-to-date data is currently unavailable to demonstrate whether Hawaii's reporting statistics have fallen to mirror the dismal national statistics or if they have remained the same. The proposed bill gives the victim the opportunity to change their mind, if reporting their assault wasn't something that the victim wanted to do initially. It also allows children to report abuse that they may have experienced as a child. It furthers a community agenda of protecting our youth and stopping violence in our state.

I highly encourage the Senate Judiciary and Labor Committee to pass House Bill 2032. This bill could deter abuses by giving victims a voice. It would permit victims to come forward when they are ready, not necessarily in a set time frame. Sexual assault is a violent act where an abuser chooses to commit his or her crime. That crime should not go unpunished simply because the statute of limitations has expired in the eyes of the law. If we are to empower victims to come forward, we need to give them to opportunity to heal and to come forward on their own terms.

Thank you for the opportunity to submit testimony on this matter.

Sincerely,

Lindsay Larkins-Leahy

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<sup>1</sup> Rape, Abuse and Incest National Network, <https://www.rainn.org/statistics>

<sup>2</sup> Sexual Assault Victims in Honolulu (February 2004), <http://ag.hawaii.gov/cpja/files/2013/01/Sex-Assault-Victims-2004.pdf>

<sup>3</sup> Sexual Assault Victims in Honolulu (February 2004), <http://ag.hawaii.gov/cpja/files/2013/01/Sex-Assault-Victims-2004.pdf>



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**HB2034**

Submitted on: 3/18/2014

Testimony for JDL on Mar 19, 2014 10:00AM in Conference Room 016

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

Comments: Don't let predators and pedophiles get away with their crimes! PLEASE give survivors access to justice by supporting this measure!

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