

**HB2034**

**HD2**

**LATE**

**TESTIMONY**



**Office of the Public Defender  
State of Hawaii  
Timothy Ho, Chief Deputy Public Defender**



**Testimony of the Office of the Public Defender,  
State of Hawaii to the Senate Committee on Judiciary & Labor**

March 19, 2014, 10:00 a.m.

H.B. No. 2034, HD2: RELATING TO SEXUAL ASSAULT

Chair Hee and Members of the Committee:

This measure would remove the statute of limitations for civil and criminal actions involving sexual assault in the first and second degree and continuous sexual assault of a minor under the age of fourteen.

The Office of the Public Defender opposes H.B. 2034, HD2.

Currently, under Sec. 701-108, H.R.S., only the offenses of murder in the first and second degree have no statute of limitations. The removal of the statute of limitations in sexual assault cases will be done so at extreme prejudice of the rights of accused to a fair trial.

The statute of limitation for sexual assault in the first degree is six years, and three years for sexual assault in the second degree. Presently, the time period may be extended in the case of DNA evidence for a period not to exceed ten years from the expiration of the original time limitation. When the victim is a minor, the statute of limitations does not begin to run for any sexual assault offense until the victim reaches eighteen years of age. We believe that these time period extensions are sufficient to balance the rights of both the victim and accused in sexual assault cases. Over time, memories fade and witnesses disappear. Physical evidence may deteriorate, be destroyed or lost.

As a trial attorney, I have represented many defendants charged with sexual assault. Several of those cases went to trial. All but one of them resulted in acquittals, not because of a lack of evidence, but because they were falsely accused by complainants who had a motive to make a false claim.

In one case, a minor, age twelve, claimed that her stepfather sexually assaulted her over a period of time. He was charged with sexual assault in the first degree within the statute of limitations. During my trial preparation, I noticed that the minor's allegation seemed mysteriously similar to another sexual assault case that I was working on. When I compared the minors' statement forms, their allegations were nearly identical. The minors also lived in the same housing complex, and were classmates at school. The minor in the case I was trying claimed that she was assaulted two months after the minor in the first case. We also found the minor's diary, in which she wrote about being sexually active with her fourteen-year-old boyfriend, her anger with her stepfather for being strict about her relationship with her boyfriend and curfew at home. There was no mention in her diary about being sexually assaulted by her stepfather. After trial, we discovered that pages that were ripped out of her diary documented her scheme. Why is this important? The right result occurred, right? What would happen if this charge were brought fifteen years after the alleged offense? What if instead of her anger with her stepfather, the accuser is motivated by greed, and is intent on cutting him out of her mother's estate? How would we be able to discover the existence of another case in order to show that the accuser copied the accusations of her classmate? How would we even be able to find this witness? What of the diary? How would we be able to discover its existence? How do we competently represent a defendant who is charged decades after the alleged offense?

Another sexual assault case that I handled involved a soldier accused of sexually assaulting a sixteen-year-old girl in a hotel room. She reported this to her father when she and her twin sister returned home after spending two days and a night away from home. My client admitted that he and a fellow soldier picked up the girls, and later got a hotel room for the four of them. After they paired off, he felt uncomfortable because his friend began having sex with one of the twins, and made an excuse to leave the room and called a buddy to take him home. He denied sexually assaulting the minor and denied having any sexual relations with her. His fellow soldier confirmed his story, and stated that the jilted twin was upset and crying when it was apparent that my client was not returning to the hotel room. The soldier also reported that while consoling the minor, he had sex with the other sister as well. As unbelievable as this story was, both my client and his fellow soldier took and passed lie detector tests conducted by the police polygraphist. The charges were eventually dismissed, when the girls refused to submit to a polygraph examination. Again, how is this relevant to the argument against the removal of the statute of limitation for sexual assault in

the first and second degree? If the allegation is instead made a decade after the alleged assault, what happens if we cannot find our witness? How do we defend this soldier? As I mentioned in my testimony above, over time, memories fade and witnesses disappear. Physical evidence may deteriorate, be destroyed or lost.

According to the Innocence Project, since 1989, there have been 312 post-conviction DNA exonerations in the United States. The average length of time served by each exoneree is 13.5 years. In Hawaii, Alvin Jardine was incarcerated for 20 years until he was exonerated by DNA evidence. The victim mistakenly identified Mr. Jardine as her assailant. The removal of a statute of limitation for sexual assault cases will result in more defendants who will be convicted of crimes they did not commit.

The Office of the Public Defender strongly opposes this measure. Thank you for the opportunity to be heard on this matter.



## Hawaii Women's Coalition

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**COMMITTEE ON JUDICIARY AND LABOR**  
**Senator Clayton Hee, Chair**  
**Senator Maile S.L. Shimabukuro, Vice Chair**

DATE: Wednesday, March 19, 2014  
TIME: 10:00AM  
PLACE: Conference Room 016

**STRONG SUPPORT FOR HB 2034 that:** Would repeal 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.

Aloha Chair Hee, Vice Chair Shimabukuro and committee members,

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 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 is in strong support of this bill that is part of our regular 2014 Package. Please pass the important bill out of committee.

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

# Law Office of Mark Gallagher

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Kailua, HI 96734

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March 18, 2014

To: Chair Hee, Vice Chair Shimabukuro and Committee Members

From: Mark Gallagher

Re: Testimony in support of S.B. No. 2034, H.D. 2 with modifications

Relating To Sexual Assault

Thank you for the opportunity to provide testimony in support of H.B. No. 2034. H.D. 2, Relating to Sexual Assault.

As a practicing Hawaii attorney, I have had the opportunity to represent numerous survivors of childhood sex abuse in their pursuit of justice. 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. S.B. 2687, which is pending this session, provides an additional step forward for civil justice by providing survivors with additional time.

The instant bill, H.B. 2034 also seeks to modify the civil statute of limitations and the criminal statute of limitations for limited types of sexual abuse. Although I do not have a criminal practice, I am aware that the movement to remove criminal statutes of limitations has been building nationally for some time, for example the Adam Walsh Act removed federal criminal statutes of limitations for certain offenses against children in 2006, 18 U.S.C. sections 2241-2245, so Hawaii's movement in this direction has good company. However, I do have concerns as to the language in H.B. 2034 regarding the civil statute of limitations as compared to the modifications proposed by S.B. 2687. While H.B. 2034 removes the statute of limitations for civil claims, it does so only for a limited number of offenses and only as to the perpetrator. In order to effect the ultimate change desired, the greater protection of the rights and wellbeing of those traumatized by sexual abuse, the more expansive language of included offenses of S.B. 2687 is preferable. Additionally, H.B. 2034 does not include an

extension of the statute of limitations for civil claims against the entities responsible for the activities of the perpetrators. Historically, these entities have been in the best position to prevent such sexual abuse. Civil claims are the best way to alter their behavior. Therefore, I propose that the language of S.B. 2687, S.D. 1, H.D. 1 be substituted for section 1 of H.B. 2034 relating to civil claims.

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

Very truly yours,  
Mark F. Gallagher

Dear Chair Hee, Vice Chair Shimabukuro, and committee members:

I am a survivor of childhood sex abuse and I support the intent of HB 2034. I ask the committee to please consider the language from Section 1 of HB 2034 HD 2 be amended with the language of SB 2687 SD 1 HD 1 that would eliminate the statute of limitations on civil actions against perpetrators of childhood sex abuse. Also, I believe the State should not be exempted and should be held accountable for these horrible crimes.

Eliminating the statute of limitations is very important due to the nature of these crimes. It places these crimes in the category of murder, which I feel childhood sex abuse belongs. 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 sexual assault, 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 HB 2034, 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 care about them and support their recovery by giving them the chance to speak out against their perpetrators and feel whole again. Thank you.

Andre Bisquera



**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [JDLTestimony](#)  
**Cc:** [paulakomarajr@yahoo.com](mailto:paulakomarajr@yahoo.com)  
**Subject:** \*Submitted testimony for HB2034 on Mar 19, 2014 10:00AM\*  
**Date:** Tuesday, March 18, 2014 9:40:38 PM

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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>
Paul A. komara, Jr.	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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March 19, 2014

TO: The Honorable Clayton Hee, Chair  
Senate Committee on Judiciary and Labor  
FROM: Renie Wong Lindley  
RE: HB 2034

Dear Senator Hee,

I strongly support HB 2034 which removes the statute of limitations for sexual assault in the first and second degrees. I, like many other women, have been raped. I've been raped more than once; once as a minor and twice as an adult. I never brought charges because, again, like many other women, I felt it was something I was too ashamed to talk about. Now, later in life, I've come to realize that by not coming forward, I've allowed the perpetrator to think rape is okay and that he can go on raping other women.

I feel that by passing this bill into law, you are sending a message to perpetrators that rape is unacceptable and there are consequences. You can't just wait for six years and then have a clean slate. The person who is the victim lives with the trauma far more years than that. I know someone else who was gang-raped. Her life fell apart after the rape, and she was never able to trust anyone again. She tried to get justice years later, but couldn't, even though there was evidence to convict, because of the statute of limitations.

Thank you for hearing this bill. Please pass HB 2034.

Mahalo,  
Renie Wong Lindley

March 19, 2014

To: The Honorable Clayton Hee, Chair

From: Kristin Douglas

RE: HB 2034 Relating to Sexual Assault

Dear Chair Hee,

As a thirty-year rape survivor it would be a life's dream to know that a woman is free to bring criminal charges against her perpetrator regardless of the time it takes for her to come to terms with the trauma of the event that has changed her life, forever.

Most perpetrators of sexual assault are recidivists. Eliminating the statute of limitations will effectively bring perpetrators to justice and take them off the streets. Hawaii's neighborhoods, school zones, and children will be safer.

Thank you for the opportunity to testify,

Sincerely,  
Kristin Douglas

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [JDLTestimony](#)  
**Cc:** [radamshere2003@yahoo.com](mailto:radamshere2003@yahoo.com)  
**Subject:** Submitted testimony for HB2034 on Mar 19, 2014 10:00AM  
**Date:** Wednesday, March 19, 2014 8:47:54 AM

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**HB2034**

Submitted on: 3/19/2014

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>
Debra Adams	Individual	Support	No

Comments: The overwhelming majority of rapists are recidivists, equaling many victims over the course of a perpetrator's lifetime. Statute limitations on rape disables society from rightful protection against offenders. Rape is a societal problem, a public safety issue, a public health hazard, and a mental health issue. The results of these heinous crimes devastate the victim's quality of life; prohibits them from fully participating in life; and significantly depletes victim, family, and taxpayer resources. Additionally, dealing with law enforcement and the state's legal process can often revictimize a claimant. Rape victims are three times more likely to suffer from depression, six times more likely to suffer from post traumatic stress disorder, 13 times more likely to abuse alcohol, 26 times more likely to abuse drugs, and four times more likely to contemplate suicide. Overhauling the legal definition of rape to include all persons of all ages and fully repealing the statute limits on rape laws are the first steps to combating this heinous crime. Prosecuting to the fullest extent of the law is another. There is no statute of limitations on murder and there should be no statute of limitations on the heinous crimes of rape and carnal abuse.

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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Mar 19, 2014

To: The Honorable Clayton Hee, Chair  
The Honorable Malle S.L. Shimabukuro  
And JDL Committee members

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

Re: Bill HB2034 HD2 hearing Mar 19 @ 10:00 conference room 016  
I Strongly Support HB2034 HD2 elimination of the statute of limitations

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 how others may retaliate. I have been testifying now for my 3<sup>rd</sup> years... trying to convince all of you the need for this bill... it seems impossible to explain how real the long term ramifications that victims have to endure with the lack of support (or justices) of our current laws or lack thereof...

I just met a social worker most recently and I told her I admired her ability to do the kind of work she does and that it must be gratifying to help families ... She agreed and but added "the hardest part is dealing with the children of sexual abuse" (I had not asked about the subject nor told her my history)... What I heard was so unsettling that from my generation to this one nothing has changed.... no one is taking this crime seriously and it continues to mess with the emotional state of mind of us victims generation to generation...being one of the roots of so much addictions in this world...drugs , alcohol, anger issues etc.

I'm 57 where my abuser moved in next door to me 10 yrs ago now and am unable to remove him (via a TRO) forcing me into this predicament with the inability to move due to circumstances ... it upsets me so much that my abuser has way more rights then I ...the judges don't see my psychological struggle....I have been in counseling for 10 yrs now for PTSD with no relief in sight and now have cancer (a possible result due to the stress)... this is something that plagues your soul if it's not dealt with appropriately it destroys life's..

We as a society have to make it clear that this is a crime and not acceptable behavior ....but right now we are sending to many mixed messages to both the abusers and the victims...I'm outraged that the abusers have more rights than us...avoiding this ugly subject is not going to make it go away....for the victims its Humiliating, degrading and intimidation(things I'm feeling right now just having to write this) and it all can be made worse when the abuser is someone in the family (and not being able to distance yourself from the abuser) these are feeling translate into way worse feelings that carry on though out life...

Please remember that abusers are very good at what they do to keep you from talking (especially if its only for a few yrs (7 right now) its very very rare that a victim can come clean about their experience until way past the statute of limitations is up (In my case in my 50's)...it has a tndaency to manifest into

other parts of their life's at a very earlier age... in my case it started with obsessive compulsive disorder (when he moved back in next door to me) which is what got me into counseling then was diagnosis with the PTSD with no relief in sight ...when trying for a TRO against him I brought 5 letters from doctors as my proof of need only to be rejected by the courts and left to deal with what is....now it has really made me sick with difficulty with coping and cancer..

My wishes would be that this Bill help victims to get access to Temporary (or life time) Restraining Orders (TRO'S)also..

my concern also is of the cut off age of 14 in this bill being 15 yrs is the age of consent... I am very concern for young youths 15..16..17 + also ....

please consider those being dragged into the sex trade here in Hawaii... think of the ages of boys in the Penn state case....those being abused by priest... teachers... strangers....neighbors...older relatives or siblings and now even psychiatrist (the new Kam school lawsuit) etc. many of these circumstances don't stop at 14 and some may start at 14 + ...

we need to think about changing the age limitation to using the term "those vulnerable" ...

another reminder of those girls most recently found that were kidnapped (in 3 separate cases that I cant name at the moment) where there were a couple kids that were kidnapped as teenagers and a few at a younger age but all felt helpless even at the age of 21 to stop the abuse even when there were actual windows of opportunity for rescue....please understand every circumstances and age is different ...

I understand that the use of the word consent was meant to be used with kids of similar ages.... please don't exempt victims of circumstances..