

**SB2687**

**LATE**

**TESTIMONY**

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Subject: Submitted testimony for SB2687 on Feb 7, 2014 10:00AM  
Date: Friday, February 07, 2014 10:14:04 AM

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**SB2687**

Submitted on: 2/7/2014

Testimony for JDL on Feb 7, 2014 10:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
chris johnson	SNAP	Support	No

Comments: Dear Chair Hee and committee members.. Am posting this for SNAP.. Christine Johnson HI -Testimony backing statute of limitations reform Posted by Barbara Dorris on February 07, 2014 · Flag David Clohessy, Director, SNAP, Survivors Network of those Abused by Priests, (7234 Arsenal Street, St. Louis MO 63143), 314 566 9790 cell. (SNAPclohessy@aol.com) (Hearing is Friday, February 7 at 2 p.m. in Hawaii.) I strongly support SB 2687 . By way of background, I have been the director of SNAP for 25 years. Four boys in our family, including me, were molested as kids by the same predator priest. One of the victims, my younger brother, grew up to become a priest. Because he molested kids as well, my brother is now suspended from the priesthood. When it comes to child sexual abuse, three steps must be taken. We must protect the vulnerable, expose the predators and enablers, and heal the victims. With virtually no added expense, legislation that lifts the statute of limitations achieves all three goals. In a nutshell, this legislation reforms predator-friendly child molestation laws. It removes archaic, arbitrary time limits that keep victims of these horrific crimes trapped in shame, silence and self-blame. It removes the incentive predators and enablers now have to intimidate victims, threaten witnesses, destroy evidence, and 'run out the clock' on their crimes. So eliminating the rigid, dangerously restrictive statute of limitations is the cheapest and most effective way to protect kids in the future. It's the best because it relies on the open, impartial time-tested American criminal justice system that's been continually refined and reformed for centuries. It's the cheapest because it requires no expensive, fancy new technology, no untested theories, no risky strategies and no massive, revolutionary changes, just a simple, small procedural change. We're essentially just opening the courthouse doors a tad wider, to accommodate brave but deeply wounded victims of horrific child sex crimes and to expose the compulsive criminals who commit those crimes over and over again. This move, getting rid of the statute of limitations, helps kids now and in the future. When this bill passes, people will know that when it comes to child sexual abuse, Hawaii is in the forefront. There will be some cases in which a victim will be distrustful of the criminal system. There will be some cases in which the police and prosecutors do not have enough evidence. In these cases, the civil remedy will at least give victims an alternative: they can try to expose their perpetrator in civil court, warn others about him, and protect others from him. There will be some cases in which a victim will be

determined to get a predator locked up. The FBI estimates that 90% of all child molesters are never prosecuted. That's right: 90%. So we have two choices: 1. reform the arbitrary, archaic, predator-friendly statute of limitations, or 2. spend millions on more cops, better crime labs, and the like. Please ask yourselves: What's more important-a rigid time limit that helps predators- or the flexible judgment of prosecutors and jurors? What's more important, the safety of the innocent or the convenience of the accused? In a well-rehearsed manta, the well-funded defense lawyers talk about 'lost evidence, faded memories and dead witnesses.'" Yes, these are problematic, but for us, the victims, not for them, the predators. Remember who has the burden of proof here- the victims. Scam artists who do shoddy roofing work and cause harm can only be discovered and prosecuted after it rains. Surgeons who are reckless and cause harm can only be discovered and exposed after patients recover. And predators who cause harm by molesting kids can only be discovered and exposed after those kids grow up, gain understanding, realize they're hurting, become strong, and find courage. The well-funded defense lawyers also claim 'Victims should come forward sooner.' They're right. Victims should. But the simple truth is that often, victims simply can't. How often do you hear of a six year old girl walking to her local police station and reporting that her step father is molesting her? It rarely happens. They were shrewdly but severely wounded as kids. They should not be punished for not being able to understand and act according to someone else's arbitrary schedule. No one says to a grieving widow "You've got 6 weeks to get over your husband's death." If you could have no statute of limitations for just one crime, I suggest you make child molestation that crime. Murders are usually discovered promptly. With murder, there's usually physical evidence, and murderers usually only murder once. Child sex crimes are usually discovered years later. There's often no physical evidence. And child molesters almost always molest again. So today, please tell kids that their safety matters. Please tell child sex abuse victims that their healing matters. And please tell those who would commit and conceal heinous crimes against children that they'll get no special breaks in Hawaii.

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February 6, 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: Feb. 7, 2014 10AM

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

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

Thank you for considering legislation that protects children in the face of opposition by powerful institutions. Please accept my submission in support of S.B. 2687 and my request for friendly amendments to reduce the "gross negligence" standard to "negligence" and remove the arbitrary age 55 cap for the following reasons:

1. Children are our most precious resource and our future entitled to heightened protection under the civil and criminal law. S.B. 2687 is designed to provide this protection. This law will allow victims of child sexual abuse to seek justice and healing, hold perpetrators accountable and encourage institutional change for the protection of children.

2. "Gross negligence" should be replaced with "negligence." A "gross negligence" standard provides immunity to those who "negligently" cause child sexual molestation. "Gross negligence" is thus a heightened standard protecting child molesters and those who harbor them. Without diminishing the need to pass S.B. 2687 in any form, we must recognize that there is no logic supporting why we would apply a legal standard that protects those who negligently cause

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sexual abuse of children. It is not logical, for example, that we apply a "negligence" standard to those who cause physical harm (such as in motor vehicle collision), but would provide a more protective "gross negligence" standard to those who negligently cause child sexual abuse.

3. S.B. 2687 will remedy the discriminatory effect of the current "window" statute ( as discussed further below).

4. The age 55 cap is arbitrary and will artificially cut-off access to justice for survivors of child sexual abuse while serving no logical purpose (see below comments).

In my personal experience, laws like S.B. 2687, with a negligence standard, help to accomplish societal goals of 1) protecting children, 2) holding child sexual predators accountable and 3) encouraging institutional change for the protection of children.

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

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

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

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

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

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

I understand some institutions opposed to S.B. 2687 are making the "stale evidence" argument. They argue that claims brought "years after the abuse" put the defendant in an unfair position, because evidence is lost and witnesses die. This argument fails under scrutiny. First, no victim can sustain a legal claim unless they have evidence to prove their case; it is often the victim, who was truly abused, with a valid claim, who cannot "prove" their claim in a court of

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

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

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

I am an example of this. I was born and raised Catholic. I have a brother-in-law (a brother of my wife's sister) who is a priest. There are numerous clergy in my extended family. I am a graduate of Santa Clara University, a Jesuit University. I taught in Jesuit schools for two years. I greatly value the contribution of religion and faith to our society. I am a man of faith myself and attend church regularly. My story in this regard was the subject of a National Public Radio profile that can be found at <http://www.npr.org/templates/story/story.php?storyId=136696900> . When I counsel, or confront, an institution with policies, practices or procedures that put children at unreasonable risk of sexual harm, I am not doing so to disparage the institution or deprive it of First Amendment rights, but rather to: 1) protect children; 2) provide survivors justice and healing; and 3) encourage the institution to better itself.

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

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abused, and accountability for violators and those who negligently expose children to child sexual harm.

I and so many like me are tremendously grateful for your efforts protect children and afford needed rights to victims. Had I learned of your hearing more than a day ago, I would have rearranged my schedule to present personally. I would be more than pleased to be a resource and provide any assistance I can to you and the legislative process regarding this Bill or similar legislation. I thank you for considering my submission.

Very Respectfully Submitted,

Leander L. James



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February 6, 2014

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

The purpose of my letter is to ask you to consider what allowing greater access to justice for past survivors of childhood sexual abuse will do to prevent child sexual abuse in the future. My law partner, Leander L. James, has written a letter discussing the reasons why "gross negligence" should be replaced with "negligence" in this legislation. I echo Leander's refrain that a heightened standard protects child molesters and those who harbor them. That is not good for Hawaii, for Hawaii's religious organizations, or for Hawaii's children.

Almost all of the hundreds of child sex abuse survivors that I have represented cite a desire to protect future generations from abuse as a reason for coming forward. To this end, myself and the attorneys I work with on these cases seek to make positive changes in the organizations that allow for this horrendous abuse. When needed, we ask for non-monetary relief, asking these organizations to change policies so that children are protected in the future.

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For example, in working with Honolulu attorney Randall Rosenberg and Charles McKay, we recently filed a lawsuit in Maui County against the LDS Church aka the Mormon Church, among other Defendants. Having discovered that the Mormon Church's child abuse prevention policies are more aimed at protecting the Church than preventing child abuse, part of this lawsuit seeks to change these policies, thereby making the Mormon Church a safer place for children. Below is the cover page of that complaint along with the cause of action seeking the aforementioned policy changes.

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D. MERICKA, CLERK  
 SECOND CIRCUIT COURT  
 STATE OF HAWAII

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT  
 STATE OF HAWAII

JACOB HUGGARD and KYLE SPRAY,	)	CIVIL CASE NO.: 14-1 0028 (2)
Plaintiffs,	)	(Other Non-Vehicle Tort)
vs.	)	COMPLAINT; DEMAND FOR JURY TRIAL;
THE CORPORATION OF THE	)	SUMMONS
PRESIDENT OF THE CHURCH OF	)	
JESUS CHRIST OF LATTER-DAY	)	
SAINTS, a Utah Corporation; THE	)	
CORPORATION OF THE PRESIDING	)	
BISHOP OF THE CHURCH OF JESUS	)	
CHRIST OF LATTER-DAY SAINTS, a	)	
Utah Corporation; MAUI LAND &	)	
PINEAPPLE COMPANY, INC., a Hawaii	)	
Corporation; YOUTH DEVELOPMENTAL	)	
ENTERPRISES, INC., a Utah Corporation;	)	
BRIAN R. PICKETT; and JOHN DOES 1-10	)	
Defendants.	)	

## **II. FIRST CAUSE OF ACTION - EQUITABLE RELIEF**

27. PLAINTIFFS incorporate by reference all other paragraphs of this Complaint as if fully set forth herein.

28. Plaintiffs are entitled to equitable relief from this Court, for non-monetary redress and the protection of Plaintiffs and other similarly situated members of the public and children, as follows:

a. That LDS Defendants change its current corporate policies regarding reporting of suspected child sexual abuse. Upon information and belief the current policy is set forth in *2013 Handbook 2: Administering the Church, Section 13.6.18* which provides that "If a leader becomes aware of physical, sexual or emotional abuse of someone during a Church activity, he or she should contact the bishop immediately. Instructions for bishops are provided in *Handbook 1:17.3.2*," which provides in pertinent part, "In the United States and Canada, the Church has established a help line to assist stake presidents and bishops in cases of abuse ... When calling the help line, leaders will be able to consult with professional counselors and legal specialists who can help answer questions and formulate steps to take ... If confidential information indicates that a member's abusive activities have violated applicable law, the branch president, bishop or stake president should urge the member to report these activities to the appropriate government authorities. Leaders can obtain information about local reporting requirements through the help line. Where reporting is required by law, the leader encourages the member to secure qualified legal advice. To avoid implicating the Church in legal matters to which it is not a party, Church leaders should avoid testifying in civil or criminal cases or other proceedings involving abuse." *Handbook 1, State Presidents and Bishops 2010, Section 17.3.2.*

b. Because the current policies do not adequately protect children, rather aim to protect the LDS Defendants, these policies should be changed and include the following:

i. Where a charge of sexual abuse of a child has been made against any agent, leader, or member of the Church, he or she shall be immediately removed from exposure to children and all appropriate safeguards be made to keep him or her away from children pending investigation.

ii. Whenever any leader or member in the Church has reasonable suspicion of child sexual abuse, whether the abuse happened during a "Church activity" or not, this leader or member shall report the abuse first to the police and child protective services.

iii. Every Church leader shall be a mandatory reporter of child sexual abuse, regardless of whether mandatory reporting is required by law.

iv. There shall be an affirmative statement in both *Handbook 1 and Handbook 2* that leaders and members shall cooperate with civil and criminal authorities in cases involving child sexual abuse; this includes truthfully testifying at depositions, hearings, trials and other proceedings, regardless of whether such testimony would implicate the Church or not.

c. That for a period of not less than ten (10) years from entry of judgment, LDS Defendants post on the home page of their websites that Defendant PICKETT is a credibly accused pedophile and post his last known address as well in order to alert people of this danger;

d. That the person(s) with authority to act on behalf of the LDS Defendants request in writing that the Attorney General of the State of Hawaii form a Joint Task Force on Child Protection to annually investigate and monitor the LDS Defendants and all institutions under the auspices of the LDS Defendants;

e. That Defendants never seek to direct, pay, or hire any agent or employee or third party to retract, oppose, or challenge the constitutionality or legitimacy of any reform of a civil or criminal statute of limitations, mandatory child abuse reporting clergy exemptions, or repeal of the clergy's-penitent privilege or other laws which serve to shield child sexual abusers from investigation, apprehension, prosecution, and conviction in Hawaii or similar legislation or law in any other state or jurisdiction;

f. That LDS Defendants establish "age appropriate" sex abuse training and educational program for children ages 3-18. That this program shall include a "safe haven" for children to report sexual abuse; that this "safe haven" include three persons in each "Ward" that are designated to speak with children about sexual abuse; that the children are taught they can go to any of the three that they feel most comfortable with; that if one of these designated persons has reasonable suspicion of child sexual abuse, whether the abuse happened during a "Church activity" or not, this designated person shall report the abuse first to the police and child protective service.

g. That LDS Defendants adopt a whistleblower policy concerning the method by which a report concerning abuse within LDS defendants can be made and expressly providing that LDS Defendants will not take any retaliatory actions against persons who report such information in good faith.

h. That annually, the President of The Church of Jesus Christ of Latter-Day Saints or a person authorized to act on his behalf, make a written statement that there exists no undisclosed knowledge that any leader, or member of LDS Defendants has sexually abused any person in Hawaii, or that if they have such knowledge of any abuse it has been reported to Office of the Attorney General of the State of Hawaii. Each statement shall be signed and dated under penalty of perjury. A copy of this signed and dated statement shall be retained in an appropriate file in perpetuity;

i. That within thirty (30) days after entry of Judgment, Defendants send letters of apology to Plaintiffs. Letters of apology will state that Plaintiffs were not at fault for the abuse and that Defendants take responsibility for the abuse.

j. That LDS Defendants publish on their web site the identity of all Church leaders and members who have been credibly accused of sexual molestation of a child in Hawaii.

Like many of the citizens of Hawaii, I was born and raised in the Mormon Church. While I no longer affiliate with this organization, I have some family and friends that do. I want their kids to be protected when they are involved in Mormon Church activities. This law will allow lawsuits like this to make a positive change in the Mormon Church, not only in Hawaii, but hopefully in other locations throughout the United States as well. Lawsuits like this are a catalyst for change; organizations like the Mormon Church will be forced to make its child abuse prevention policy better, thereby exposing pedophiles and protecting kids.

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By allowing greater access to justice for past survivors of childhood sexual abuse, children will be protected from this horrendous plague in the future. This is good for Hawaii, it is good for Hawaii's religious organizations, as it will make them safer and less attractive to pedophiles; it is good for Hawaii's children. This law is bad for pedophiles.

Very Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'CV', with a horizontal line extending to the right.

Craig K. Vernon

Feb 6, 2014

To: The Honorable Clayton Hee, Chair  
The Honorable Maile Shimabukua

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

Re: Bill SB2687 hearing JDL rm 016 Feb 7 10:00

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

Honorable Representatives,

I apologize for doing this by proxy testimony but having the courage to speak the truth is very tough when you fear what the outcome might look like and the possibility of retaliate. I have been testifying now for my 3<sup>rd</sup> years... trying to convince all of you the need for this bill... I have testified from a place of experience on the long term ramifications that victims have to endure because of the lack of support (or justices) of our current laws or lack thereof...

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

This was done when I was 55 I believe and I have now turn 57 most recently so this would not give me another opportunity to seek compensation (for past medical bills etc for therapy and now I have cancer which has been known to be common with us victims) I believe in the up coming future my position will change and the fear of retaliation will change... but again if the 55 yrs of age stays I loss that opportunity...

For your reference my case involves the perpetrators acknowledgment of the crime...it wouldn't be a matter of proving it..

Please consider moving this bill forward and with the elimination of the age limit also

Thank you very much for your time and efforts

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## TESTIMONY IN SUPPORT OF SB 2687

Honorable Chair and Committee Members:

I support the passage of SB 2687 and would respectfully suggest additional modifications. This testimony is broken down to address three issues: (1) the time limit for bringing an action; (2) the gross negligence standard protecting entities; and (3) confidentiality of the certificate of merit.

### TIME LIMIT FOR BRINGING ACTION

As an attorney, I have had the privilege to represent a number of persons in bringing claims against individuals who sexually abused them as children, and when appropriate, claims against the persons and entities who facilitated the perpetrator's abuse or provided protection to the abusers so they were free to strike again. Many of these claims were made possible by Hawaii's "window statute", Section 657-1.8, Hawaii Revised Statutes, which was a significant step forward in addressing childhood sex abuse claims, but certainly was not the end of the journey.

Although many of the acts of sex abuse which would be addressed by this bill may have occurred years ago, one of the first things I learned in representing survivors is that the pain and harm of childhood sexual abuse is still very close to the surface, and its impact remains profound. As such, it takes a great amount of courage for a survivor to stand up to power for the child he or she once was and to state "It happened to me, it was wrong, and it was not my fault." Our island culture may increase the reluctance of a survivor to come forward. While claims may be brought under a pseudonym, there still is a fair concern that if one comes forward, friends, relatives, neighbors, co-workers and others in the community will learn of the abuse and deeply personal facts about the survivor. As a result, stepping forward with a claim is something that many persons who have contacted me still are not ready to do, even in the face of the upcoming expiration of the window on April 24, 2014. Some of these people will never reach a point of empowerment where they are able to present claims. However, others will and it is unfair to rush these survivors to action merely to protect the repose of perpetrators in our midst, who have already been too long protected by societal customs making discussion of some topics off limits and organizations which have valued the continued service of the perpetrators over the protection of the children who were victimized.

### GROSS NEGLIGENCE STANDARD PROVIDES SPECIAL PROTECTION

The current HRS 657-1.8 has an extra protection built in for entities who facilitated, sheltered and protected perpetrators. This is a special protection not normally afforded to civil wrongdoers and now would be a good time to remove it. HRS 657-1.8(b) states that damages against such an entity “shall be awarded under this subsection only if there is a finding of gross negligence on the part of the legal entity.” Emphasis added. This language should be stricken retroactive to the enactment of the window statute on April 24, 2012. Proving negligence or intentional wrongful conduct which occurred many years ago, which is the plaintiff’s burden, is already very challenging in these cases. Pertinent records have been discarded or lost, and witnesses have died. As such this challenge of proving negligence alone provides ample protection to entities and additional special protection is not required, fair or appropriate.

#### CONFIDENTIALITY OF CERTIFICATES OF MERIT

Finally, the window statute currently requires that “a certificate of merit shall be filed by the attorney for the plaintiff, and shall be sealed and remain confidential.” While the statute specifically provides that the certificate of merit be sealed and remain confidential, its purpose being to assure the court that there is a reasonable basis to believe that a plaintiff was subject to one or more acts of sexual abuse, defense attorneys in claims brought under HRS 657-1.8 have been arguing that they are entitled to copies of these confidential certificates.

Before the enactment of our window statute, California passed a window statute for childhood sex abuse claims effective in 2003 which could have served as a model for the Hawaii law. California Code of Civil Procedure Section 340.1. The California statute contained a similar requirement that a certificate of merit be filed by an attorney after consultation with a “mental health practitioner” who is “knowledgable of the relevant facts and issues involved in the particular action” so that certification can be made that there is a “reasonable and meritorious cause for the filing of the action.” CCP Section 340.1(h). In California, multiple claims were consolidated in the Los Angeles Superior Court into a proceeding entitled The Clergy Cases I, Case no. JCCP 4286. The defendants therein moved to compel disclosure of certificates of merit on numerous grounds including, inter alia, that CCP Section 1010 “requires copies of the papers upon which a motion is based to be served on all other parties. . . “ The defendants’ motion was denied, in part, based upon specific statutory language precluding disclosure. Although the intent is clear, HRS 657-1.8 is missing such specific language.

An analogous situation under Hawaii law is provided by claims submitted to the Medical Claims Conciliation Panel as a prerequisite to filing a medical malpractice action. HRS 671-12.5(a) requires that a party injured by an act of medical malpractice submit a “certificate of consultation” to the MCCP. The certificate of consultation must certify consultation with a “knowledgeable or experienced in the same medical specialty as the health care professional against whom the inquiry is made, and that the party or the party's attorney has concluded on the basis of the consultation that there is a reasonable and meritorious cause for filing the inquiry.” HRS 671-12.5(a)(1). However, the claimant “shall not be required to disclose the names of any physician consulted to fulfill the requirements of subsection (a) to any of the other parties to the inquiry,” although the MCCP panel itself is entitled to the information to verify compliance. HRS 671-12.5(c).



Based upon the foregoing, it is respectfully submitted that HRS 657-1.8(d) be amended to state that “the court, the plaintiff and any other person shall not be required to disclose the certificate of merit filed under seal to fulfill the requirements of this section.”

Thank you for your time and attention to this important matter.

Very truly yours,

Mark Gallagher

# Rosenberg & McKay

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

February 6, 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: Feb. 7, 2014 10AM

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

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

I am a Hawaii attorney that has represented and continues to represent victims of child sexual abuse. I have one client who is currently 70 years old. He cried as he told us his story of being sexually abused by the parish priest as a young 7 year old boy. He had been too ashamed and embarrassed to tell his parents, his wife, or his children and had kept it to himself for more than six decades until the day he told us. It affected his life in many ways as he fought substance abuse, issues regarding his sexuality, trust, and relationships.

Ironically, the knowledge that he could come forward under the new Hawaii "window" statute and present his claim against the priest and the church had finally given him feelings of relief and empowerment. For the first time in more than 60 years, he felt that he was healing.

Hawaii needs to remove the limitations period set forth in HRS §657-1.8 that is set to expire on April 24, 2014. The 55 year cap proposed in the SB 2687 is a step in the right direction, but not a big enough step. There is no legitimate reason to ever impose a statute of limitations on child victims of sexual abuse. The notion that a perpetrator or harbinger of a perpetrator would be

February 6, 2014  
Page 2

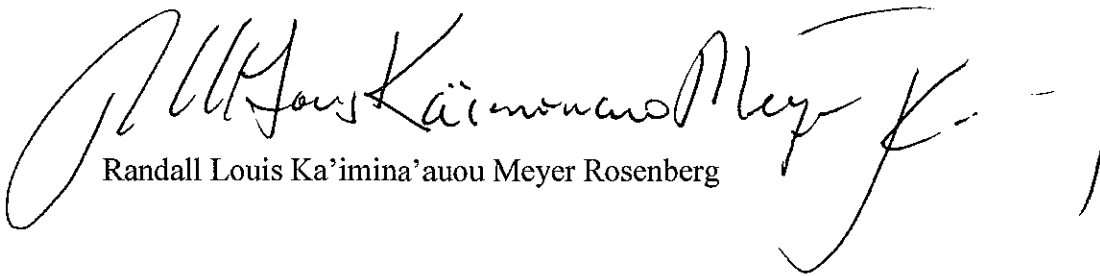
aggrieved by “stale claims” is simply false. In fact, case after case, here and on the mainland, has shown that it is the defendant that has the advantage, since most of the records regarding the abuser have remained in the defendant’s possession. Whether the plaintiff is ever able to obtain those records, in the face of vociferous objections of “confidentiality,” loss, and often deliberate destruction, determines whether the plaintiff is ultimately successful.

We would also like to see the requirement of establishing “gross negligence” changed to simple “negligence.” It is difficult enough for the plaintiff to prove liability as it is. Under a gross negligence standard, every case will be contested, even against the most notorious pedophiles as the defendant institutions argue that the perpetrator’s repeated misconduct was not obvious or pervasive enough for the institution to have done something about it. No other state that we are aware of imposes this heightened burden of proof. The requirement for a certificate of merit from a licensed psychologist is sufficient to weed out potential fabricated claims. Requiring the plaintiff to also prove gross negligence is simply unfair.

I have four children. My wife and I would be devastated if any of them were sexually abused. But the horror they would go through personally is beyond our abilities to comprehend. Please do not take away the only legal leverage they have to prevent such abuse from occurring.

I appreciate your consideration of and reflection on these matters.

Me ka ha’aha’a,



Randall Louis Ka'imina'auou Meyer Rosenberg

# THOMAS P. DOYLE, J.C.D., C.A.D.C.

9700 WOODLAND GLEN COURT, VIENNA, VIRGINIA 22182

February 6, 2014

VIA 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 St.,  
Honoulu HI

Re: S.B. 2687

Dear Senators and Members of the Committee,

I am writing in strong support of the passage of S.B. 2687.

I am a Catholic priest, ordained in 1970. Since 1984 I have been deeply involved in the support of victims of sexual abuse throughout the U.S. and in several European countries as well. I have addressed the legislatures of several states in the U.S. as well as the District of Columbia. I have also been a consultant or expert witness for the four government commissions that investigated sexual abuse of children and minors in the Republic of Ireland. I have testified at the Cornwall Inquiry in Canada and have most recently addressed the Parliament of Belgium.

I have worked closely for thirty years with thousands of victims of sexual abuse by clergy of several denominations as well as victims of sexual abuse by others including family members. Although I am not a citizen of the State of Hawaii I have had the privilege of helping a number of victims from your State.

Sexual violation is a horrendous intrusion on a person and has lasting, devastating effects. One of the most common effects, which is also attested to by numerous psychologists and researchers, is a severe degree of fear and shame, both of which paralyze the victim from disclosing to anyone much less law

enforcement, that he or she had been abused. Statistics have shown that the average age of sexual abuse of a minor is 12 and the average age of disclosure, for those in that small minority (37%) who disclose, is 42. This is not an issue that can be evaluated only from a cognitive viewpoint, i.e., "*they know its wrong so there is no excuse for not coming forward.*" The barriers to disclose are emotional and psychological which render far too many victims emotionally paralyzed.

The passage of S.B. 2687 will recognize this harsh reality and remove a barrier that effectively denies justice and healing to men and women who cannot come forward only because they suffer the symptoms from their abuse. Those who oppose the passage of legislation similar to this generally muster up the same arguments everywhere, to wit,

- there will be no witnesses or evidence after the passage of many years
- the bill will not provide any additional protection of children
- the bill will cause serious financial problems for institutions that are sued
- the bill is unfair and discriminatory to some institutions, e.g., the Catholic Church

I have reviewed the opposing statements of Catholic institutions throughout the U.S. as well as the opposition of other groups. All are self-serving. The concern expressed by Churches about the need for statutes of limitations in general are a smoke-screen. Movements to change the Statutes of Limitations are taking place because institutions have proven themselves unwilling to give the welfare of children the top priority.

In those States where legislation such as this has been passed none of these dire predictions proved true. It is a documented fact that the extended legislation has identified sexual predators who otherwise would have remained loose, continuing to violate children.

The Catholic Bishops of the various states that have considered legislative renewal have been the source of the strongest opposition and have been the only organization to consistently oppose legislative change in every state where it is considered. The Catholic Church's record of responding to reports of sexual abuse by the clergy is by far the worst in the U.S. and in other countries as well. The true reason for their opposition is the fear that more evidence of abuse and cover up will be forced into the open. Furthermore, although several dioceses have sought bankruptcy protection, in no instances was this because of impending financial disaster. Rather, it was used as a tactic to avoid trials and somehow

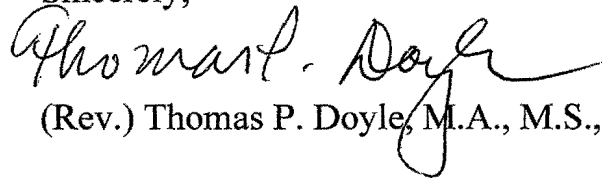
limit compensation to victims.

The programs, policies and procedures that the Churches and some other groups point to as evidence of a changed environment in which SOL revision is not necessary are all irrelevant to the main issue. All such programs, e.g., the many new policies in Catholic dioceses, were forced on these institutions precisely because the victims of their personnel were able to go to the civil courts for justice and relief. Also, all such programs look to the future in terms of prevention and do little or nothing for the existing victims from past abuse.

The statistical evidence showing who has a higher rate of sexual abuse, private or public institutions, offered by the institutions that oppose any change, is irrelevant to the purpose of the expanded Statute of Limitations. The proposed legislation is about bringing justice and healing to vulnerable people who were violated by adults. It is not about punishing institutions or Churches. Furthermore the financial security and reputation of Churches and other institutions can never be considered to be more important or advantageous to the people of the State than the safety of children or justice for those to whom it otherwise might be denied.

I thank you for this opportunity to testify on behalf of the victims of abuse and the children of Hawaii.

Sincerely,

A handwritten signature in cursive script that reads "Thomas P. Doyle". The signature is written in dark ink and is positioned above the typed name.

(Rev.) Thomas P. Doyle, M.A., M.S., J.C.D., C.A.D.C.

**VIA DROP BOX/EMAIL SUBMISSION**

February 6, 2014

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: Feb. 7, 2014 10AM**

RE: **Hawaii S.B. 2687** (Allows a victim of child sexual abuse to bring a civil action against victim's abuser or an entity, except for the State or counties, when the entity was grossly negligent, if the statute of limitations for filing a civil claim has lapsed and the victim has not yet attained the age of fifty five) [Effective 4/23/2014].

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

Thank you for considering this important legislation that protects children in the face of strong institutional opposition. S.B. 2687 will remedy the discriminatory effect of the current Hawaii "window" statute of limitations and will continue to provide victims of childhood sexual abuse access to justice. Please consider two friendly amendments to the proposed legislation: 1. reduce the "gross negligence" standard to "negligence."; and, 2. Strike the proposed limitations cap at age 55. These amendments will likely provide heightened protection of children and less protection for child molesters and those who harbor them.

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

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

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

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

Other states, like California, Minnesota and Hawai'i passed "window statutes" providing a period of time for survivors to bring claims without a statute of limitations. The unfortunate reality of window statutes, however, is that the window arbitrarily closes on survivors who are ready to seek justice by confronting their molester or the institution who harbored their molester. If S.B. 2687 is not passed, the April 2014 window will shut under current law for Hawai'i survivors.

#### **GROSS NEGLIGENCE V. NEGLIGENCE STANDARD:**

Throughout the country, the burden of proof for plaintiffs claiming personal injuries is typically simple negligence. Why should victims of childhood sexual abuse be required to prove gross negligence against institutions that negligently exposed the victims to the abuse, or harbored and/or sheltered the abusers? Of course there is no rational reason for heightening the burden of proof for victims of childhood sexual abuse. Other states have passed laws like S.B. 2687 with a negligence standard. These laws promote child protection, child sexual predator accountability and institutional change.

#### **PROPOSED LIMITATIONS CAP OF AGE 55**



For many of the reasons discussed above, a limitations cap of age 55 would be arbitrary and would have the effect of barring valid claims of individuals over the age of 55 who were simply not psychologically equipped to address the horrific details of the abuse they suffered until later in life. There is simply no rationale reason to impose this kind of arbitrary cap.

Thank you for your consideration.

Sincerely,

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Sidney Stillerman Royer

SSR/ssr

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

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

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

Mr. Hee and Ms. Shimabukuro and Committee Members:

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

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

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

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

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

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

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



Nancy Spencer  
637 Hoomoana Street  
Pearl City, Hawaii 96782

Senate Committee on Judiciary and Labor

February 7, 2014 10:00 AM

Testifier: Andre Bisquera

Support of SB 2687- Relating to Limitations of Actions

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

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

Extending the statute of limitations is very important due to the nature of these crimes. 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 37, I am grateful that I am full of compassion and love for my 2 month old daughter, rather than the anger and shame that consumed me for so many years.

The current statute of limitations doesn't take into account the severity of the crime and the effects on its victims. I ask the respected committee members today to please consider SB 2687, and to think about the other survivors out there suffering in silence. Their pain is real and debilitating. These survivors are your auntys, uncles, brothers, sisters, sons and daughters. Please show that you 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:** [breaking-the-silence@hotmail.com](mailto:breaking-the-silence@hotmail.com)  
**Subject:** Submitted testimony for SB2687 on Feb 7, 2014 10:00AM  
**Date:** Friday, February 07, 2014 10:05:50 AM

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**SB2687**

Submitted on: 2/7/2014

Testimony for JDL on Feb 7, 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: PLEASE PLEASE PLEASE support!!! Help provide access to justice for those who are too scared, ashamed or too traumatized to stand before you today. Thank you and God bless you all.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

Picture this, you are a child and unsure of what is right and what is wrong. One thing you are sure of is that adults are there to help you and guide you and teach you right and wrong. So being a child you believe everything they tell you and abide by what they say. Then an adult comes into your life and sexually assaults you. Who do you turn to and what do you do?

Most times, kids are scared to tell their parents based on how they may react or they are told by their abuser that they will be punished if they tell. These kids also feel ashamed like they are the ones at fault or that people may look down on them or make fun of them. As a kid you are scared, ashamed and feel alone so you keep these incidents kept in not telling anyone afraid of the repercussions you may face. So you put it to the back of your mind.

As time goes on most of these kids, now adults, and probably parents themselves probably still bear the same feelings of being ashamed and scared. Most won't come forward until they are sure they can deal with coming out with their abuse.

Imagine, this was you, your kid, a family member, a friend, and you had to tell them It's Too Late To Do Something About It Because Of A Statute! Imagine it was your kid and feeling that pain in your chest and seeing the tears and hurt and destruction in their eyes, you had to tell them there is nothing you or they can do because of a statute.

So why you ask should we extend this statute, because, we need to let the victims know it is not too late and they can do something. Give them closure and justice for the awful things that has happened to them. Murder has no statute yet someone who has been sexually abused has sustained similar torture yet their life was spared, having to live with this daily, yet they are not entitled to the same justice. Why Not? The question should not be why should we extend the statute but why not extend the statute. Let these victims know it is not too late.