



**COMMENTS OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2018**

ON THE FOLLOWING MEASURE:

H.B. NO. 1847, RELATING TO LIMITATION OF ACTIONS FOR SEXUAL ASSAULT.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, February 1, 2018 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): WRITTEN COMMENTS ONLY. For more information, call
First Deputy Attorney General Russell Suzuki at 586-1292

Chair Nishimoto and Members of the Committee:

The Department of the Attorney General provides the following comments.

The purpose of this bill is to amend section 657-1.8(b), Hawaii Revised Statutes, to extend the time in which a victim of child sexual abuse can bring a civil claim if the victim is barred from filing a claim due to the expiration of the existing statute of limitations. This bill would allow an additional four-year "window" up to April 24, 2020, for otherwise time barred civil claims to be brought. Claims can be brought against the abuser as well as any legal entity that employed the abuser or owed a duty of care to the victim, or if the legal entity had responsibility or control over the activity the victim and abuser were engaged in.

We recommend the Committee bear in mind that within these four years, claims may be brought against the State of Hawaii, its departments, agencies, boards, and commissions regardless of when the alleged sexual abuse occurred. This might increase the State's potential for liability, and because of the passage of time, might curtail the State's ability to defend itself, even against claims that are unsubstantiated.

Thank you for the opportunity to provide comments.

HB-1847

Submitted on: 1/30/2018 3:38:29 PM

Testimony for JUD on 2/1/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Victor K. Ramos	Maui Police Department	Support	No

Comments:

Executive Director
Adriana Ramelli

Advisory Board

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Joanne H. Arizumi

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Linda Jameson

Michael P. Matsumoto

Nadine Tenn Salle, MD

Deane Salter

Joshua A. Wisch

Date: February 1, 2018

To: The Honorable Scott Nishimoto, Chair
The Honorable Joy San Buenaventura, Vice Chair
House Committee on Judiciary

From: Justin Murakami, Policy Research Associate
The Sex Abuse Treatment Center
A Program of Kapi'olani Medical Center for Women & Children

RE: Testimony in Support of H.B. 1847 with Comments
Relating to Limitation of Actions for Sexual Assault

Good afternoon Chair Nishimoto, Vice Chair San Buenaventura, and members of the House Committee on Judiciary:

The Sex Abuse Treatment Center (SATC) supports H.B. 1847, which would re-establish the window period during which a victim of child sexual abuse may bring an otherwise time-barred civil action against the victim's abuser, or against an entity with a duty of care to the victim that employed the abuser, and offers an additional comment.

Child sexual abuse remains a serious and ongoing threat to the safety, health and wellbeing of children and young people, and often has profound consequences for victims that continue throughout adulthood. According to the National Sexual Violence Resource Center, in the United States approximately 1 in 4 girls and 1 in 6 boys will be sexually abused before they turn 18 years old. On O'ahu, over half of the survivors of sexual violence that seek services at SATC experienced their victimization at age 17 or younger.

Many survivors of child sexual abuse do not disclose the abuse right away. Some studies have estimated that between 60% and 80% of child sexual abuse survivors withhold disclosure, and there is general consensus in the literature that many children who experience sexual abuse delay disclosure until adulthood.^{1,2} Of these, the average latency—the delay until the survivor is able to disclose their

¹ 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).

² Catherine Esposito, *Child Sexual Abuse and Disclosure: What does the Research Tell Us?*, available online: https://www.facs.nsw.gov.au/data/assets/file/0003/306426/Literature_Review_How_Children_Disclose_Sexual_Abuse.pdf (accessed February 6, 2017).

victimization—has been found to be approximately 20 years, with some survivors delaying up to 50 years.^{3, 4}

There are numerous reasons that a child might delay disclosing abuse. Children can blame themselves or be prevented from reporting due to feelings of intense fear, disbelief, anger, helplessness, betrayal and anxiety. Children may also not disclose abuse due to their stage of cognitive development, capacity to understand what happened, and ability to express their complaint. Finally, the majority of survivors know their perpetrator, who may be a family member, friend or acquaintance, and may fear retaliation or the potential for a negative impact on their family or community.

Even more troubling is that some survivors of child sexual abuse who do disclose abuse are subjected to silencing and re-traumatizing reactions by the recipients of their disclosures. Survivors have reported that adults they told about their experiences with abuse sometimes blamed them, accused them of lying, minimized their disclosure, or subjected them to punishment or retaliation. Therefore, the fact that a survivor may have told someone that they were abused does not mean they had a meaningful opportunity to seek justice in the past.

In 2012, Hawai'i opened a window period during which survivors of child sexual abuse were able to bring previously time-barred civil actions. That window closed in April of 2016, but before it did a number of survivors came forward with suits directly attributable to the law. Since its closure, others who would be interested in bringing suit have come forward and asked that it be reopened.

Re-establishing the window provides survivors the opportunity to seek justice for themselves, and enhances public safety. Studies have found that a number of child sexual abusers are serial perpetrators.⁵ These offenders pose an ongoing and continual threat to the community. When more survivors are able to come forward in a manner that respects the enormous bravery that an act of disclosure represents, more perpetrators are identified and are barred from benefiting from the heinous, silencing nature of their crimes.

In addition to supporting that the Legislature reopen the window period for bringing otherwise time-barred civil actions for child sexual abuse, we offer the following comment:

We note that children are most vulnerable to sexual abuse between the ages of 7 and 13, which places the average age of disclosure during adulthood at approximately 27 to 33 years old. However, based on the current civil statute of limitations, most child sexual abuse cases would expire upon the victim's reaching the age of 26 years.

We further recognize that the current civil statute of limitations also provides that a victim who discovers, in adulthood, that they have been injured as a result of child sexual abuse has 3 years to bring a civil suit. We note that this may not be enough time for a

³ Id.

⁴ Betty Chan and Andrew Ngai, *Latency of Child Sexual Abuse Claims: Presented to the Actuaries Institute General Insurance Seminar*, available online: <http://www.actuaries.asn.au/Library/Events/GIS/2014/GIS2014ChanNgaiSexualAbusePaper.pdf> (accessed February 6, 2017).

⁵ See, e.g., Department of Justice Office of Justice Programs, *Sex Offender Management Assessment and Planning Initiative*, "Chapter 5: Adult Sex Offender Recidivism," available online: https://www.smart.gov/SOMAPI/sec1/ch5_recidivism.html (accessed February 6, 2017).

survivor, who may be suffering significant physical and mental health issues in adulthood as a result of the abuse, to address those issues and be prepared to face their abuser in court.

Therefore, we respectfully ask that the Committee please consider adding language to H.B. 1847 that would—for unexpired and future cases—extend the civil statute of limitations for child sexual abuse to an extent that would provide more of these survivors an opportunity to seek justice. Please see the attached Exhibit for possible language that could be used to this effect.

Thank you for this opportunity to testify in support of H.B. 1847.

EXHIBIT A

SECTION 1. Section 657-1.8, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Notwithstanding any law to the contrary, except as provided under subsection (b), no action for recovery of damages based on physical, psychological, or other injury or condition suffered by a minor arising from the sexual abuse of the minor by any person shall be commenced against the person who committed the act of sexual abuse more than:

(1) ~~Eight~~ Twenty two years after the eighteenth birthday of the minor or the person who committed the act of sexual abuse attains the age of majority, whichever occurs later; or

(2) ~~Three~~ Ten years after the date the minor discovers or reasonably should have discovered that psychological injury or illness occurring after the ~~[age of]~~ minor's eighteenth birthday was caused by the sexual abuse, whichever comes later.

A civil cause of action for the sexual abuse of a minor shall be based upon sexual acts that constituted or would have constituted a criminal offense under part V or VI of chapter 707.

(b) For a period of ~~[four]~~ eight years after April 24, 2012, a victim of child sexual abuse that occurred in this State may file a claim in a circuit court of this State against the person who committed the act of sexual abuse if the victim is barred from filing a claim against the victim's abuser due to the expiration of the applicable civil statute of limitations that was in effect prior to April 24, 2012.

A claim may also be brought under this subsection against a legal entity 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.

Damages against the legal entity shall be awarded under this subsection only if there is a finding of gross negligence on the part of the legal entity."

HB-1847

Submitted on: 1/30/2018 3:26:57 PM

Testimony for JUD on 2/1/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Benton Kealii Pang, Ph.D.	Hawaiian Civic Club of Honolulu	Support	No

Comments:

Law Office of Mark Gallagher

66 Kaiholu Place
Kailua, HI 96734

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Fax 888-806-1531
mgallagher@hawaiiantel.net

January 31, 2018

To: Chair Nishimoto, Vice Chair San Buenaventura and Committee Members

From: Mark Gallagher

Re: Testimony in support of HB 1847

Relating To Limitation of Actions For Sexual Assault

Thank you for the opportunity to provide testimony in support of H.B. No. 1847, Relating to Limitation of Actions For Sexual Assault.

As a practicing Hawaii attorney, I have had the opportunity to represent numerous survivors of childhood sex abuse in pursuing justice under Hawaii's expired window statute which was open between April 2012 to April 2014. These claims represented a significant step forward in providing long delayed justice to survivors of childhood sex abuse. The proposed bill would represent another step forward in protecting children by holding accountable abusers and those responsible for them.

In allowing survivors of childhood sexual assault to bring civil claims against perpetrators who abused them and the institutions which employed or were responsible for the perpetrators H.B. No. 1847 will protect the rights of victims who have not yet felt strong enough to face what happened to them. We have seen an evolution of the nature of these claims. No doubt due to well publicized scandals on the mainland, the initial survivors to step forward were men who were deeply traumatized years ago and found a community of others who had gone through the same. The strength of the voices of these survivors together allowed them to move forward and effect change in the responsible institutions. Recently, as reflected in the #metoo movement and by the brave survivors who confronted U.S. Gymnastics physician Dr. Larry Nassar, another group of survivors has learned they were not alone, that speaking their truth can

help others and that together they are powerful and can effect change. Other survivors like them, who are just now finding the their voices, should have the opportunity to do so to the full extent possible.

Children who are abused often feel that they have no one to turn to. The abuse is held as a terrible secret between the victim and the abuser, and too often another responsible party who does nothing. The child, feeling powerless, tells no one and keeps the secret and the damage cascades through the years. As a result, even when an option to pursue justice as an adult is presented, it takes a survivor a significant amount of courage and time to seize the opportunity. The current statute of limitations rewards perpetrators who terrified their victims so much that the secrets remain buried even many years later. It is fundamentally unfair to rush these survivors merely to protect the repose of perpetrators in our midst.

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

Very truly yours,
Mark F. Gallagher

hscadv



HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE
1164 Bishop Street, Suite 1609, Honolulu, HI 96813

LATE

DATE: JANUARY 31, 2018

TO: STATE OF HAWAII
HOUSE COMMITTEE ON JUDICIARY
REP. SCOTT Y. NISHIMOTO, CHAIR
RE. JOY A. SAN BUENAVENTURA, VICE CHAIR
REP TOM BROWER
REP. GREGG TAKAYAMA
REP. CHRIS LEE
REP. BOB MCDERMOTT
REP. DEE MORIKAWA
REP. CYNTHIA THIELEN

FROM: STACEY MONIZ, EXECUTIVE DIRECTOR
HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE

RE: TESTIMONY IN SUPPORT FOR HB1847
RELATING TO LIMITATION OF ACTIONS FOR SEXUAL ASSAULT

Aloha:

On behalf of the Hawaii State Coalition Against Domestic Violence (HSCADV) and our 22 member organizations across the state, I am submitting testimony in SUPPORT of HB1847 which would extend the time period that a victim of child sexual abuse has to bring civil action against their abuser or an entity with the duty of care that may have employed the abuser at the time.

It is very well documented that survivors of childhood sexual abuse do not disclose the abuse that has happened to them right away, sometimes for many years, even into adulthood. We want to support victims in feeling safe enough to disclose their abuse and afford them the civil remedies to help with closure and healing.

As stated above, HSCADV supports HB1847.

Thank you for your consideration of our testimony. If you would like to discuss this or have any questions, I can be reached at 808.832.9613x4 or via email at smoniz@hscadv.org.

Together we can do amazing things



COMMITTEE ON JUDICIARY

Rep. Scott Y. Nishimoto, Chair

Rep. Joy A. San Buenaventura, Vice Chair

DATE: Thursday, February 1, 2018

TIME: 2 p.m.

PLACE: Conference Room 325

STRONG SUPPORT FOR HB1847

Aloha Chair Nishimoto, Vice Chair and members,

The Coalition is in **support** of this bill to extend the period during which a victim of child sexual abuse may bring an otherwise time-barred civil action against the victim's abuser or an entity with a duty of care.

The Coalition is in agreement with the Sex Assault Treatment Center in recommending that the Legislature include additional language extending the default civil statutes of limitations, consistent with SB 2719 (introduced by Sen. Shimabukuro) and HB 2189 (introduced by Rep. Ichiyama).

Given the epidemic proportions of the problem, 1 in 4 girls and 1 in 6 boys will be sexually abused before they turn 18 years old, and the length of time that traumatized victims take to report, 60 to 80 percent not reporting often until adulthood, this measure makes sense. The victims of this soul-stealing crime deserve justice.

Mahalo for the opportunity to testify,

Ann S. Freed Co-Chair, Hawai'i Women's Coalition

Contact: annsreed@gmail.com Phone: 808-623-5676

HB-1847

Submitted on: 1/30/2018 7:09:04 PM

Testimony for JUD on 2/1/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dara Carlin, M.A.	Domestic Violence Survivor Advocate	Support	Yes

Comments:

HB-1847

Submitted on: 1/30/2018 3:13:30 PM

Testimony for JUD on 2/1/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Joy Marshall		Support	No

Comments:

HB-1847

Submitted on: 1/30/2018 4:55:11 PM

Testimony for JUD on 2/1/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Karin Nomura		Support	No

Comments:

I think the occurrences that have made this bill a necessity speak for themselves, though thought on other bills that might need to be lengthened and changed might be worth looking into...

HB-1847

Submitted on: 1/30/2018 7:04:45 PM

Testimony for JUD on 2/1/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
aimee sutherlin		Support	No

Comments:

As a Social Worker who has worked for programs providing intervention for adult and child sexual assault survivors, and as a citizen who has loved ones who are survivors, I submit testimony in strong SUPPORT of HB1847. Allowing increased time for victims to report crimes against them is a logical and needed measure. Often survivors need time to process and heal before reporting the crime committed against them. The time needed varies uniquely with each individual. To report is a great act of courage; to limit this right and hinder a victim's process is inhumane and unjust. Reporting and following through the legal process can be an important part of the healing journey for survivors. Please allow survivors to heal and seek justice.

Mahalo

Aimee Chung, MSW

HB-1847

Submitted on: 1/31/2018 5:52:46 AM

Testimony for JUD on 2/1/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
chris johnson		Support	Yes

Comments:

Aloha House of Representatives.

I wonder if this bill when it becomes law would/could include the past sexual abuse of now deceased victims?

In Delaware, where the statute of limitations on child sex abuse civil was removed retro actively, the family of a victims of child sex abuse was able to sue for their son who committed suicide from abuse by catholic priest...

In Hawaii we have the well documented abuse of David Figueroa by several catholic priests as a child and by Bishop Ferrario.. David's mother worked at the catholic church for the Bishop/

David became a prostitute and homeless and when he was dying of HIV aids, he and his mother asked Bishop Ferrario for help and the bishop and church HID behind the statute of limitations and refused to pay... .. His mother and family suffer to this day..

I believe it would be just and rightous for this family and others to use a window bill if they meet the burden of proof?

Thank you for considering this..

Respectfully,

Christine Johnson retired R,N,, activis for SOL reform, Judicial reform, maternal child health

Makaha, Hawaii, 96792

HB-1847

Submitted on: 1/31/2018 7:12:29 AM

Testimony for JUD on 2/1/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Colette W.		Support	No

Comments:

Aloha Chair Nishimoto, Vice Chair San Buenaventura, and Members of the House Committee on Judiciary,

I am testifying in **STRONG SUPPORT of HB1847.**

Please support and pass HB1847 which will help victims of sexual abuse FINALLY find justice, healing and peace. Please be the voice for those whose voices went unheard, unsupported and unheeded for way too long. Their time has come; long overdue.

Mahalo for supporting and passing this very important bill!

HB-1847

Submitted on: 1/31/2018 2:38:46 PM

Testimony for JUD on 2/1/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
		Support	No

Comments:

Domestic Violence Action Center is in strong support of this Bill.

thank you for your favorable consideration.

Dear Chair Nishimoto, Vice Chair Buanaventura, and committee members:

I am a survivor of childhood sex abuse and I support HB 1847.

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

As a survivor, talking about the abuse is hard...as a male survivor, near impossible. Our culture and gender norms make it difficult for men to seek help. It can take many years after the abuse to even admit what happened, let alone seek the medical attention needed to accept and move on. In the past months, we've seen the affect childhood sex abuse has affected the survivors in the Kamehameha Schools case, ranging from depression, addiction, and suicide. My abuse was from 4th to 6th 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 41, I am grateful that I am full of compassion and love for my 2 children, rather than the anger and shame that consumed me for so many years.

I ask the respected committee members today to please consider HB 1847, 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. The recent lawsuits in Hollywood and #metoo campaign in social media shows that sex assault affects more people than we could ever know. With this increase in awareness and social acceptability of also being a victim, please show that you acknowledge their suffering and support their recovery by giving them the chance to speak out against the perpetrators and feel whole again. Thank you.

Andre Bisquera

LATE

HB-1847

Submitted on: 1/31/2018 11:45:32 PM

Testimony for JUD on 2/1/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Younghi Overly	NONE	Support	No

Comments:

Dear Chair Nishimoto and members of the House Committee on Judiciary,

I would like to thank the Committee for the opportunity to testify in SUPPORT of H.B. 1847, which extends the period during which a victim of child sexual abuse may bring an otherwise time-barred civil action against the victim's abuser or an entity with a duty of care.

As a victim of child sexual abuse and a former counselor at a sexual assault services provider, I can assure you that there are thousand "good" reasons why many victims of child sexual abuse withhold disclosure. Many do not disclosure until they reach an adult age when they remember, feel safer, etc. This is how Larry Nassar was able to get away all these years.

According to the National Sexual Violence Resource Center, 1 in 4 girls and 1 in 6 boys in United States will be sexually abused before they turn 18 years old. On Oahu, over half of the survivors of sexual violence that seek services at SATC experienced their victimization at age 17 or younger.

Please extend the period so victims of child abuse could seek justice and potentially prevent others from becoming victims. Thank you for taking time to read my testimony.

P.S. I'm sorry about the late submission. I didn't see the notice until I got home tonight.

LATE

HB-1847

Submitted on: 2/1/2018 2:02:58 PM

Testimony for JUD on 2/1/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	OCC Legislative Priorities	Support	No

Comments: