



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:

S.B. NO. 2439, S.D. 1, RELATING TO LIMITATION OF ACTIONS.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

DATE: Tuesday, March 12, 2024 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325 and Videoconference

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Lee Ying Kwok, Deputy Attorney General

Chair Tarnas and Members of the Committee:

The Department of the Attorney General provides the following comments and concerns.

The purpose of this bill is to propose to add a new section to chapter 657, Hawaii Revised Statutes (HRS), that would provide adults who allege sexual abuse a civil cause of action for filing a lawsuit thereof for a limited period of four years following the enactment of this bill, regardless of what year the alleged abused occurred.

We understand that victims of sexual abuse may need additional time before they are ready to file a lawsuit but want to note some concerns. Because the proposed new section will wholly disregard any applicable statute of limitations, plaintiffs may allege abuse that occurred any number of years or decades ago.

This lengthy passage of time will result in prejudice to the parties involved in a lawsuit. The integrity of the evidence and truth-finding process of litigation becomes markedly strained as memories fade, witnesses relocate or pass away, and documents are lost or destroyed. Testimony by witnesses, even if they are available, becomes unreliable. Most state agencies have records retention policies that call for the destruction of documents after a certain period of time, which creates further evidentiary challenges when they cannot produce documents from decades ago.

With respect to the challenges of document retention, we note that, although documents have increasingly been saved electronically in recent years, there are still

issues with the cost and feasibility of retention over the span of decades. Each state agency that may be named in such a lawsuit has its own retention policies to cut down on cost. Additionally, even if documents are stored electronically, they are subject to loss for various reasons, including natural disaster, human error, and mechanical failures. The lawsuits allowed under this bill may involve occurrences that are so old that they were not recorded as digital information, but the original pertinent physical documents no longer exist after decades of time have passed.

In addition to the document preservation issue, the biggest issue remains the availability of witnesses. When a case is brought 10 or 30 or 50 years after an alleged incident, the witnesses, including the alleged perpetrator, are often dead or missing, and it becomes next to impossible for the State to defend a case.

If the Committee is inclined to amend the bill going forward, a more reasonable time period within which plaintiffs could allege a cause of action is the originally proposed one year, rather than four.

Notwithstanding our serious concerns regarding adding a new section to chapter 657, HRS, that would extend the period that litigation is allowed against the state, our office would be happy to work with the Legislature to find the best solution that is fair to all parties. Thank you for the opportunity to provide comments.

SB-2439-SD-1

Submitted on: 3/8/2024 8:23:33 PM

Testimony for JHA on 3/12/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Michael Golojuch Jr	Stonewall Caucus of the Democratic Party of Hawai‘i	Support	Remotely Via Zoom

Comments:

Aloha Representatives,

The Stonewall Caucus of the Democratic Party of Hawai‘i; Hawai‘i’s oldest and largest policy and political LGBTQIA+ focused organization fully supports SB 2439 SD 1.

Though we think that there should be NO statute of limitations for survivors of sexual assault no matter their age.

We hope you all will support this important piece of legislation.

Mahalo nui loa,

Michael Golojuch, Jr. (he/him)
Chair and SCC Representative
Stonewall Caucus for the DPH

**TESTIMONY OF EVAN OUE ON BEHALF OF THE
HAWAII ASSOCIATION FOR JUSTICE (HAJ) SUPPORTING
THE INTENT WITH COMMENTS OF SB 2439 SD1**

Date: Tuesday March 12, 2024

Time: 2:00 p.m.

My name is Evan Oue and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) **SUPPORTING THE INTENT WITH COMMENTS OF SB 2439 SD1.**

HAJ supports this measure which expands the statute of limitations (SOL) for civil actions brought by persons subjected to sexual offense as an adult. Specifically, provides an additional 4 years for claims that have lapsed for adults who have been subjected to a sexual offense.

HAJ appreciates the amendments of the legislature to extend the timeframe from 1 to 4 years for adult sexual abuse victims to bring cases forward that have been time barred by the SOL. In order to further this intent, HAJ would encourage the legislature to increase the time period to be greater than 4 years in order to encourage adult victims who may have difficulties coming forward.

Moreover, HAJ would recommend an amendment on Page 2, line 11, to remove “gross” to make the threshold for a claim for damages against a legal entity just negligence. Removal of “gross” would make sure this measure is consistent with the standard for other respondent superior tort claims. This amendment would hold entities to the same negligence standard when it comes to their agents committing sexual offenses as the need to properly hire and supervise agents when operating in course and scope of their employment. Including a reasonableness

standard would make a legal entity more accountable for their actions or omissions in these types of cases.

The proposed measure properly accounts for the challenges that victims face when electing to pursue justice. HAJ supports the intent of the measure with the provided amendments.

Thank you for allowing us to testify regarding this measure. Please feel free contact us should you have any questions or desire additional information.

SB-2439-SD-1

Submitted on: 3/8/2024 6:19:51 PM

Testimony for JHA on 3/12/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Mike Golojuch	Rainbow Family 808	Support	Written Testimony Only

Comments:

Rainbow Family 808 supports SB2439. Please pass this bill.

Mike Golojuch, Sr., Secretary/Board Member

An Assault is Never the Victim's Fault

Support A1065/S4555 - Removing the voluntary incapacitation loophole

RAINN

Leading the National Effort to End Sexual Violence

"Initiating sexual contact with someone because they are incapacitated and unable to resist or even passed out, is sexual assault. Period. There should be no "he said, she said" defenses to this. No matter how we became incapacitated, we couldn't possibly give consent."

– Kat Dueterhaus, RAINN Speakers Bureau from Florida

- 6,040 people reported rape in New York in 2022. The true number is likely higher as sexual assault goes severely underreported.
- Some survivors don't report sexual assault because they blame themselves for being drunk or don't have a muddled recollection of the events due to intoxication, despite clear evidence of intimate violation.
- Approximately 70% of rape or sexual assault victims experience moderate to severe distress, a larger percentage than for any other violent crime.

About RAINN

Over the last 25 years, RAINN has served over 3 million survivors and their loved ones through the National Sexual Assault Hotline.

RAINN worked to pass the Debbie Smith Act, helping to secure over one billion dollars in funding for state and local crime labs to eliminate the DNA and rape kit backlog.

Support A1065/S4555

Prohibits the use of intoxication of the victim as a defense in sex crimes

Sponsored by AM Dinowitz and Senator Fernandez



- New York statute requires that mental incapacitation results from a person being under the influence without their agreement.
- This creates what is today called the Voluntary Intoxication Loophole i.e. if the victim has themselves voluntarily become intoxicated, the rape statute does not apply.
- This prevents many victims from having their case tried and thereby achieving some semblance of justice.
- Victims are never at fault for a sexual assault – regardless of whether they use or are forced to use drugs or alcohol.
- A 1065/ S 4555 removes this loophole and makes it a crime to assault someone who was impaired to the point of being unable to assess the situation.

Contact: Mollie Montague, Director State Legislative Affairs | marymo@rainn.org

SB-2439-SD-1

Submitted on: 3/12/2024 10:11:52 AM

Testimony for JHA on 3/12/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Carolyn M Golojuch	Rainbow Family 808	Support	Written Testimony Only

Comments:

Rainbow Family 808 supports this bill as long as all time restrictions are removed.

Victim Survivors of Rape deserve full support against the rapists as this crime is a crime and damages the person for a lifetime. Otherwise, Hawai`i remains a Safe Haven for Rapists.

SB-2439-SD-1

Submitted on: 3/10/2024 3:41:26 PM

Testimony for JHA on 3/12/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Teri Heede	Individual	Support	In Person

Comments:

Make all the suggestions to move assets and authority to an appropriate organization and #LegalizeIt

Other states are already the tax revenue and taking the focus off low level drug offenders like cannabis smokers.

It's time Hawai'i let adults make their own decisions on recreational use.

SB-2439-SD-1

Submitted on: 3/8/2024 9:49:03 AM

Testimony for JHA on 3/12/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Lu Ann Mahiki Lankford-Faborito	Individual	Support	Written Testimony Only

Comments:

Strong support

SB-2439-SD-1

Submitted on: 3/8/2024 11:25:51 AM

Testimony for JHA on 3/12/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Christine Johnson	Individual	Support	Written Testimony Only

Comments:

Aloha Hawaii State House of Representative Legislators.

My name is Christine Johnson.

I am a retired Registered Nurse and remain an activist for Statute of Limitations, both Child and Adult Civil and Criminal reform of law, and opening retroactive window laws for past victims to secure some justice.

In 1985, my then 11 year old son, was molested by a Jesuit Catholic Priest in Santa Barbara, California. (I have all court and legal documents on this).

My son told me right away. what happened.

I went to the Jesuit Church and Pastor and to the Police.

The priest pled no contest(guilty) in California and got 2 years probation and was removed from the priest hood (and got married and had 2 children while we were entrapped in the legal Justice? system)

There was no need for a retroactive look back window except there was, when the Jesuit order tride every dirty trick in the book to put us in survivor mode to try to keep us/me from filing a civil suit for my son, a minor and me a widow who they had employed.

My son suffered greatly from the abuse., I decided to file a civil suit (within the legal time limits) and experienced the wrath of the church/ archdiocese /jesuits even some politicians.

I was fired from my job by jesuits and my son and i became homeless for a while as i struggled to put our lives back together and continue to go forward with a civil suit for my son.

I know SB2439 is for ADults sexually assaulted as adults.

SB2439 opens a 4 year retroactive window for Victims who weren't able to confront their sexual assault within the time limits allotted.

I believe my testimony and all documents and news articles i have can atest to the fact that when it comes to Statutes of Limitations, the Church and often the State and Federal Government and the legal justices systems protect predators and institutions and manipulate and exploit victims no matter if they report ON TIME or 50 years later.

It took over 6 years for me to get a civil settlement for my son and even that was tainted by a corrupt judge who had to resign. (i have all documents for this). and lawyers who missed deadlines and jesuit lawyers who verbally, emotionally abused me and my son. and a judge who minimized and mocked the molestation.

We all have seen how horrible ADult victims of rape are treated in our legal justice system.

I sincerely and respectfully thank Hawaii State Legislators who have proven many times they are willing and able to address and help Victims' of sexual assault, no matter how old or young or how much time has passed...

Thank you so much for hearing this bill and hopefully sending it to Governor Green for a signature.

Mahalo to all!

Christine Johnson

Makaha

SB-2439-SD-1

Submitted on: 3/10/2024 9:59:29 AM

Testimony for JHA on 3/12/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Alika Valdez	Individual	Support	Written Testimony Only

Comments:

I support this agenda.

SB-2439-SD-1

Submitted on: 3/10/2024 10:04:48 AM

Testimony for JHA on 3/12/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Rebeca	Individual	Support	Written Testimony Only

Comments:

Aloha

My name is Rebecca. I am a member of the community that has been affected not only by the aftermath of Child Sexual Abuse, but I have been affected by, just as importantly, the aftermath of trusting a member of the community with High Social Standing to help me deal with this abuse endured as a child as a young adult. This respected member of the community, nearly 20 years older than myself, took advantage of me in my vulnerability in the worse way in the vital years of my life: My young adult formative years. He confirmed me into the Catholic church. I was over 18, but still very young. According to him, he has done this to many young girls and women, the youngest citing ages 14 in Kailua. He said that it was nothing illegal "it was the legal age at the time".

I am not yet comfortable naming this Person who was a highly respected member of the community, as he was very high in the Catholic church, and went on to take extremely high positions in Government. He currently is an Executive Director at a Highly respected Medical Association. He was able to get these positions only due to his ability to say "I

quit the Priesthood" But in reality, he abused children and vulnerable women. He was told Quit or have a record.

He has also settled out of court on 2 child sex abuse cases. One was public, one was private.

When I came forward about the abuse of this member of society, I had to endure horrendous investigation strategies. I had to be questioned by private investigators, required take a Polygraph , submit phone records that contained up to 20 calls day and night up to 2 am from Sacred Heart Parish. This technique is known today as "love bombing" and textbook manipulation to break down a victim. I also had to answer hideous questions about the details of the abuse again and again. I had to explain and re explain what happened to me. This man violated me in the worse way, using his power and authority. He played horrendous manipulative games using my childhood trauma against me, requiring me to commit certain acts with him in order to "heal" in turn for a false promise of marriage . He was a sexual sadist. He would confide that other women had previously done unspeakable acts with him intimately, and if I did not commit these acts with him we were not a "husband wife fit". Of course there was no marriage or stability in the future. It was all a sick game to him. He used his power and authority against a vulnerable young adult for his own sick fantasies. In my youth, I had no idea a human being could be capable of being so evil, under the guise of a Priest. I am just touching the iceberg of the years of abuse he put me through, in the meantime not only stealing my precious youth, but knowing he was just going to dispose me

in the end, as he did many other young parishoners. The lifetime devastating effects of this has caused a lifetime of intense insecurity and self doubt, begging for validation in the aftermath of the abuse. The of Abuse of a vulnerable adult is as horrendous as Child SA. In my case, as a double victim of abuse, I can honestly say that the abuse by the man in power and authority was by far worse than the abuse I endured as a child.

The long term effects of this abuse have been devastating. I am Disabled, due to many Severe Autoimmune illnesses that surfaced during the Investiative process, and the aftermath of the Trauma. I have been unable to hold jobs, go to religious gatherings, hold relationships, have a normal life. I was told my Autoimmune Illness that Disabled me was brought on by the Trauma of the abuse by the man in Power, as well as the investigative process. I have suffered Mentally in a way no human should have to endure.

While CSA is horrific, so is the Abuse of Vulnerable persons of those in power. I am asking that both HB1968 and the future Adult Survivors Act be signed into law as it is now in many states such as: New York, California, Maine, and many others. Please make the Adult Survivors Act as well as the Child Survivors act a reality so this cannot happen to any adult or child again.

I would also like to add that statistically, age 52 is the Average Age for a person to disclose past abuse, let alone go through the long healing process. I would like to also propose that, due to this Data we get rid of "windows of

Opportunity" completely. Victims come forward when they are ready.

After years of living in silence and darkness watching this man lie to the world about why he "left" the priesthood, I am finally brave enough to tell my story. I am finally willing to speak up on behalf of myself and for the benefit of other vulnerable young adults and women who face abuse in relationships.

If the Adults survivors Act is passed in Hawaii as it has many other states it will allow victims to speak up about thier trauma and give them a voice. As the Hawaii Survivors Act was introduced, it became a rare opportunity to speak up about the trauma I have experienced and that I will be recovering from for the rest of my life.

As this Man in Power once said about having inappropriate relationships with girls age 14, "It was legal in Hawai'i at the time" therefore it was acceptable. Let's work together to make it unacceptable.

SB-2439-SD-1

Submitted on: 3/11/2024 9:52:54 AM

Testimony for JHA on 3/12/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Renee Rabb	Individual	Support	Written Testimony Only

Comments:

Thank you for the opportunity be testify in support of SB2439 by Senator Shimabukuro which extends the statute of limitations for sexual offenses against adults in civil cases. From reading the bill, it seems that there are adequate safeguards provided.

Mahalo,

Renee Rabb

Hawaiian Paradise Park

Keaau, HI 96749