

# Testimony on behalf of the Hawai'i State Commission on the Status of Women **Khara Jabola-Carolus, Executive Director**

Prepared for the Senate Committee on Judiciary

In Support of SB1035
Thursday, February 14, 2019, at 9:30 p.m. in Room 16

Dear Chair Rhoads, Vice Chairs Wakai, and Honorable Members,

The Hawai'i State Commission on the Status of Women supports SB1035, which would repeal statutory limitations on the time period in which a survivor of childhood sexual abuse may file suit.

This legislation is particularly important for survivors of child sexual abuse because many children do not disclose abuse right away. Some studies have estimated that between 60–80% of child sexual abuse survivors withhold disclosure. Studies examining latency to disclosure have reported a mean delay from 3–18 years.

At the time of abuse, a child may not be at the cognitive level to be able to put traumatic memories into words, recall details, remember the frequency, time, or sequence of events, or understand that the acts were "wrong" or illegal. The child may be afraid of the impact on their family or the perpetrator's family if the abuse is disclosed. The majority of survivors know the perpetrator. In child sexual abuse cases, most studies reflect that 90% of child victims knew their perpetrator. In some cases, the perpetrator may be a family member living in the same home as the survivor or a close family friend.

Additionally, some people do not disclose until well into adulthood. Some adults molested as children may not discover the connection between the sexual abuse and their resulting psychological injury until decades after the abuse. Some may be motivated to pursue claims after they learn that the perpetrator has access to children. Like child survivors, a majority of adult survivors know the perpetrator. Similarly, adult survivors may not disclose right away for many reasons, including fear of retaliation, or feelings of guilt and shame.

At least 32 states have no criminal or civil statute of limitations on child sexual abuse or the most aggravated sex crimes. It is doubtful that this legislation would open the floodgates or cause concern for fraudulent claims. Additionally, this legislation does not change the burden of proof nor does it make it easier for sexual assault victims to prove their case. This legislation merely allows more survivors of sexual violence to access the justice system and feel as if they've been heard. This is a hugely important step for many survivors to recover from trauma.

Accordingly, the Commission strongly supports SB1035. Thank you for this opportunity to provide testimony on this issue.

Sincerely,

Khara Jabola-Carolus

<u>SB-1035</u> Submitted on: 2/11/2019 10:06:05 AM

Testimony for JDC on 2/14/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Golojuch Jr	Testifying for LGBT Caucus of the Democratic Party of Hawaii	Support	Yes

## Comments:

Aloha Senators,

The LGBT Caucus of the Democratic Party of Hawaii supports the passage of SB 1035.

Mahalo for your consideration and for the opportunity to testify.

Mahalo,

Michael Golojuch, Jr.

Chair

LGBT Caucus of the Democratic Party of Hawaii



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Hawaii State Legislature House Committee on Judiciary February 11, 2019

Filed via electronic testimony submission system

# RE: SB 1035, Sexual Violence; Child Sexual Abuse; Civil Action; Statute of Limitations – NAMIC's written testimony

Dear Senator Rhoads, Chair; Senator Wakai, Vice-Chair; and honorable committee members:

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to your committee for the February 14, 2019, public hearing. Unfortunately, I will not be able to attend the public hearing, because of a previously scheduled professional obligation. NAMIC's written comments need not be read into the record, so long as they are referenced as a formal submission and are provided to the committee for consideration.

The National Association of Mutual Insurance Companies (NAMIC) is the largest property/casualty insurance trade association in the country, with more than 1,400 member companies. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers. NAMIC members represent 40 percent of the total property/casualty insurance market, serve more than 170 million policyholders, and write nearly \$225 billion in annual premiums. NAMIC has 84 members who write property/casualty/workers' compensation in the State of Hawaii, which represents 28% of the insurance marketplace.

NAMIC and its member companies share the bill sponsors' desire to protect innocent victims of childhood sexual abuse. We support criminal laws that *severely punish* evil souls, who prey upon minors and inflict serious harm to the lives of children and their families. Although we support the noble intentions of this legislation, we have to look beyond our hurt and anger about the subject matter of the bill and consider the broad public policy implications of the proposed changes to the civil statute of limitation. Specifically, we are concerned about the erosion of a well-established legal doctrine that is intended to promote a fundamental tenant of due process of law, i.e. that civil claims be asserted in a timely manner so that BOTH parties have ample opportunity to gather evidence, locate witnesses and appropriately develop their legal case.

The legal process needs to be fair and balanced for BOTH parties, even when we as a society absolutely deplore the alleged behavior of one of the parties to the case. The true test of our commitment to fairness in the eyes of the law, is whether we afford procedural fairness to those we



most want punished. The proposed change to the statute of limitation is concerning as a matter of jurisprudence.

NAMIC appreciates the need to protect children and provide them with a reasonable statute of limitations to assert legal claims against alleged sexual predators, but this proposed language, which may be emotionally satisfying, is rife with unacceptable due process implications which are bad for society in the aggregate. Moreover, the proposed statute of limitations would likely create a problem for the judicial system, which could become inundated with legal cases plagued by serious evidentiary problems resulting from the assertion of very old claims where the recollection of witnesses is in question and access to necessary evidence is limited.

In addition to our legal and public policy concerns with the proposed legislation, NAMIC is also concerned that the proposed changes to the statute of limitations will adversely impact commercial liability insurance rating and underwriting practices. SB 1035 will make it extremely difficult for commercial liability insurers to properly and accurately rate risk of loss exposure for their consumers, because the proposed statute of limitations will hinder insurers in their ability to evaluate an insurance applicant's current risks of loss exposure. Insurance premiums are based upon experience (claims) and claims are ordinarily barred after a set period of time has passed from the alleged incident; this rating and underwriting approach adds stability to an insurer's rate and premium structure. If a state were to allow certain civil claims to be asserted at a date way off in the future, it could lead to commercial liability insurance pricing instability and/or premium increases for small businesses.

NAMIC appreciates that some may wonder — don't commercial liability carriers exclude coverage for criminal acts or intentional torts of the alleged sexual perpetrator? The answer is yes; however, these civil claims against the alleged criminal frequently also include claims and cross-claims against the accused perpetrator's employer for alleged negligent hiring, negligent supervision, and other "respondeat superior" based civil claims, which are covered by commercial liability policies. Often times, these claims against the employer, the party with insurance coverage, "deeper financial pockets" for civil judgment collections, and a professional reputation to protect are the primary focus of the civil legal action. These employer-parties are not sexual predators or social villains, so they shouldn't be denied any of their due process rights and placed into a legal position of having to defend against an emotionally charged twenty-one or more years old claim where the evidence may be tainted or non-existent as a result of the excessive passage of time.

Yes, *victims of sexual abuse should <u>definitely</u> receive their justice*, no one disputes this basic notion of fairness, but so too should innocent employers and associations, who deserve the right to tender an effective defense to a claim that is still fairly recent in time to the alleged incident.



For the aforementioned reasons, NAMIC respectfully requests a **NO VOTE on SB 1035**, because this well-intended and heart-centered legislative proposal is rife with due process of law concerns that will adversely impact the overall integrity and effectiveness of the law.

Thank you for your time and consideration. Please feel free to contact me at 303.907.0587 or at <a href="mailto:crataj@namic.org">crataj@namic.org</a>, if you would like to discuss NAMIC's written testimony.

Respectfully,

Christian John Rataj, Esq.

6 herrin John Han

NAMIC Senior Regional Vice President State Government Affairs, Western Region



92-954 Makakilo Dr. #71, Kapolei, HI 96707 Email: RainbowFamily808@gmail.com Ph: (808) 779-9078 Fax: (808) 672-6347

### February 11, 2019

The Honorable Karl Rhoads, Chair with Glenn Wakai, Vice-Chair and Members of the Senate Judiciary Committee

RE: SB 1035 Child Sex Abuse, SOL SUPPORT

Aloha Honorable Karl Rhoads, Chair and Glenn Wakai, Vice Chair and Members Of the Senate Judiciary

Thank you for hearing SB1035. Rainbow Family 808 strongly supports SB1035 with a change to increase the power to protect yesterdays, todays and tomorrow's Survivors of Child Sexual Abuse. To protect all our children long into the future, we need the complete REMOVAL OF THE STATUTES OF LIMITATIONS for Sex Abuse/Assault.

One father and perpretrator of sexually assaulting his daughter from childhood until she turned 18 and left the home to get away from this grevious crime, "I'll never leave Hawaii because they protect myself and those like me." Can you possibly understand how cold the Survivor felt on hearing this threat from the criminal? She's moved away from the islands and has never forgotten those years of abuse. It's taken her untold years of therapy and untold financial costs while her father sits happily in Hawaii knowing that he will never be held accountable for the years he violated his daughter. Whose daughter does he abuse today?

Please don't let this injustice continue to harm children in Hawaii! Please pass SB1035 with the stipulation that Removes SOL on Sex Crimes for once and for all.

Sincerely,

Carolyn Martinez Golojuch President and Co-Founder Rainbow Family 808

# <u>SB-</u>1035

Submitted on: 2/12/2019 9:12:30 AM

Testimony for JDC on 2/14/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Younghi Overly	Testifying for AAUW of Hawaii	Support	No

### Comments:

Dear Chair Rhoads, Vice Chair Wakai, and members of the Senate Committee on Judiciary,

On behalf of AAUW of Hawaii, I write to you to strongly support SB 1035, which would extend the civil statute of limitation in child sexual abuse cases. I also would respectfully ask you to consider eliminating the civil statute of limitation in child sexual abuse cases, as proposed in HB18.

As pointed out in SB1035, 60% to 80% of child sex abuse victims withhold disclosure. According to <a href="CHILD USA">CHILD USA</a>, the average age to disclose is 52, with the median age 48. The reasons for delay, as you probably know, are specific to each individual, but often involve disabilities that result from the trauma such as depression, PTSD, substance abuse, etc. This means most of child sexual abuse victims miss the statute of limitation. CHILD USA is a Philadelphia based non-profit think tank, which draws on the combined expertise of the nation's leading medical and legal academics to reach evidence-based solutions to persistent and widespread problems involving child protection.

According to The Sex Abuse Treatment Center, over half of the survivors of sexual violence that seek services experienced sexual abuse as a child. The Youth Risk Behavior Survey results in 2013, 2015 and 2017 indicated that children in Hawaii experience sexual violence at equivalent or greater rates than their counterparts elsewhere in the United States. <a href="Studies">Studies</a> show that 1 in 5 girls and 1 in 20 boys is victim of child sexual abuse.

Please pass this bill and show that justice has no time limit. Thank you for the opportunity to submit a testimony on this important bill.



Executive Director Adriana Ramelli

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Date: February 14, 2019

To: The Honorable Karl Rhoads, Chair

The Honorable Glenn Wakai, Vice Chair

Senate Committee on Judiciary

From: Justin Murakami, Manager, Prevention Education and Public Policy

The Sex Abuse Treatment Center

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

RE: Testimony in Strong Support of S.B. 1035

Relating to Sexual Violence

Good morning Chair Rhoads, Vice Chair Wakai, and members of the Senate Committee on Judiciary:

The Sex Abuse Treatment Center (SATC) strongly supports S.B. 1035, and respectfully offers a friendly amendment for the Committee's consideration.

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 through adulthood. According to the National Center for Victims of Crime, self-report studies show that 20% of adult females and 5-10% of adult males in the United States recall a childhood sexual assault or sexual abuse incident.

On Oahu, over half of the survivors of sexual violence that seek services at SATC experienced their victimization at age 17 or younger. Moreover, the Youth Risk Behavior Survey results in 2013, 2015, and 2017 indicated that children and youth in Hawaii experience sexual abuse and assault at higher rates than their peers elsewhere in the United States.

Many survivors of child sexual abuse do not disclose the abuse right away for various reasons. Children can blame themselves or experience intense feelings of fear, disbelief, anger, helplessness, betrayal, and anxiety. They may also not be able to disclose abuse due to their stage of cognitive development, capacity to understand what happened, or the inability to express or communicate their complaint. Finally, the majority of survivors know their perpetrator, who may be a family member, friend, or acquaintance, and may be afraid of retaliation or the potential for a negative impact on their family or community.

Some studies have estimated that between 60% and 80% of child sexual abuse survivors withhold disclosure, and there is a general consensus that many children

who experience sexual abuse delay disclosure until well into adulthood. Even more troubling, survivors who do disclose abuse are sometimes 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.

Under the current civil statute of limitations in Hawaii, most child sexual abuse cases would expire upon the victim's reaching the age of 26 years. This denies the ability to seek justice through the civil court system to the majority of child sexual abuse victims who disclose their abuse in adulthood.

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 only 3 years to bring a civil suit. We note that this affords very little time for a survivor, who may be suffering significant physical and mental health consequence and negative financial and social impacts as a result of the abuse, to both address those issues and be prepared to face their abuser in court.

SATC respectfully offers the following comment, with a recommendation for amendment of S.B. 1035, for the Committee's consideration:

We believe that Hawaii should eliminate the civil statute of limitations for cases of child sexual abuse altogether. In addition to ensuring that many more survivors are afforded a realistic and fair opportunity to seek justice, holding perpetrators accountable in court identifies them and protects future would-be victims.

Moreover, our state's experience with eliminating the criminal statute of limitations for child sexual abuse, and with window periods that have allowed older civil cases to be brought in court, demonstrates the viability of these cases and the value to both victims and the wider community in holding abusers accountable, no matter when the abuse occurred.

SATC asks that the Committee please consider amending this measure to <u>eliminate the civil statute of limitations for cases of child sexual abuse altogether</u>, affirming that justice for children should have no expiration date in Hawai'i.

We have included language that would accomplish this purpose as the enclosed Exhibit A.

Thank you again for hearing this important measure. We are grateful for this opportunity to testify in strong support of S.B. 1035.

### **Exhibit A**

- SECTION 2. Section 657-1.8, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:
- "(a) Notwithstanding section 657-7 or any other law to the contrary, [except as provided under subsection (b),

  no] an 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] may be commenced [against the person who committed the act of sexual abuse more than:
- (1) Eight 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 years after the date the minor discovers or reasonably should have discovered that psychological injury or illness occurring after the minor's eighteenth birthday was caused by the sexual abuse,

### whichever comes later.] at any time.

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 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] section 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."

<u>SB-1035</u> Submitted on: 2/13/2019 8:20:46 AM

Testimony for JDC on 2/14/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments:

# SB-1035

Submitted on: 2/13/2019 2:47:01 PM

Testimony for JDC on 2/14/2019 9:30:00 AM



Submitted By	Organization	Testifier Position	Present at Hearing
Doris Segal Matsunaga	Testifying for Save Medicaid Hawaii	Support	No

Comments:

Date: February 14, 2019

To: The Honorable Karl Rhoads, Chair, The Honorable Glenn Wakai, Vice Chair

Senate Committee on Judiciary and members of the Committee

From: Doris Segal Matsunaga, Save Medicaid Hawaii

RE: Testimony in Strong Support of S.B. 1035

Relating to Sexual Violence

Save Medicaid Hawaii strongly supports S.B. 1035, and respectfully offers an amendment for the Committee's consideration.

Please consider amending this measure to eliminate the civil statute of limitations for cases of child sexual abuse altogether, affirming that justice for children should have no expiration date in Hawai'i.

Mahalo.

<u>SB-1035</u> Submitted on: 2/11/2019 4:33:40 PM

Testimony for JDC on 2/14/2019 9:30:00 AM

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

Comments:

<u>SB-1035</u> Submitted on: 2/11/2019 10:33:33 PM

Testimony for JDC on 2/14/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Leimomi Khan	Individual	Support	No

Comments:

<u>SB-1035</u> Submitted on: 2/12/2019 5:36:23 PM

Testimony for JDC on 2/14/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Tom Aitken	Individual	Support	No

# Comments:

Support extended reporting time.

-tom aitken

PO Box 800, KÄ• ne`ohe, Hi 96844

Dear Chair Rhoads, Vice Chair Wakai, and committee members:

I am a survivor of childhood sex abuse and I support SB 1035.

Extending the time to bring suit for civil action is very important due to the nature of childhood sex Abuse (CSA). CSA 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; destructive effects include depression, addiction, and suicide.

As a survivor, talking about the abuse is hard...as a male survivor, near impossible. Our culture and toxic masculinity 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 by my half-brother, yet the first time I told someone was when I was 27. I buried the abuse deep inside and just wanted to be a normal person. The communication lines with my first-generation Filipino parents were non-existent, and I was expected to be seen and not heard. I suspect that many people of my generation in Hawaii experienced the same style of parenting and that there are many more survivors suffering in silence.

I ask the respected committee members today to please consider SB 1035 and extend the time a survivor can bring a civil suit against their abuser. Please show that you support survivors and their recovery by giving them the chance to speak out against their perpetrators and feel whole again. Thank you.

Andre Bisquera

<u>SB-1035</u> Submitted on: 2/13/2019 8:25:32 AM

Testimony for JDC on 2/14/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Sally	Individual	Support	No

Comments:



### Before the

# Committee on Judiciary

## Chair Senator Karl Rhoads and Committee Members

# On the following measure: S.B. 1035 RELATING TO SEXUAL VIOLENCE

Thursday, February 14, 2019 9:30 a.m.

State Capitol, Conference Room 016

Chair Rhoads and Members of the Committee:

My name is Cassandra Dimailig, a student at the Myron B. Thompson School of Social Work. I am testifying in support of the Senate Bill 1035 relating to sexual violence and the extension time for an individual of child sexual abuse to file a civil cause of action against their perpetrator.

According to the National Center for Victims of Crime, 1 out of 5 girls is a victim of child sexual abuse. This topic is a personal issue for me because I am a statistic. I am a survivor of child sexual abuse. I am one of those five girls who was sexually abused as a child. But I never knew that growing up. I grew up in silence drowning in my memories of my abuser. I am now a 24-year-old strong woman who chooses not to let my abuser control my life, and I choose to not let my experience as a child define me. I spent the last five years of my life suffering from PTSD of my abuse and have recently opened up to my family members and closest friends about it.

I strongly believe in this bill, and the power to give sexual abuse survivors their voice back and to speak against their abusers. The United States is currently in the era of the #MeToo movement, which has inspired many young women and men to speak out about their own horrific experiences with child sexual abuse. The National Center for Victims of Crime also asserts that survivors often don't disclose their sexual abuse due to the fear of being

victimized, misunderstood, misjudged and not being believed. This fear will consume the thoughts of the survivor, just like I was consumed. The National Sexual Violence Resource Center states that only 12% of child sexual abuse is ever reported to the authorities in the United States. Senate Bill 1035 will give survivors in Hawai'i the fight to have their voices heard. Regardless of the time frame an individual chooses to disclose their abuse, they have a right to their decisions. Thank you for the opportunity to testify on this bill.

Thank you,

Cassandra Dimailig



# Law Office of Mark Gallagher

66 Kaiholu Place Kailua, HI 96734

Tel. 808-535-1500 Fax 888-806-1531 mgallagher@hawaiiantel.net

February 13, 2019

To: Chair Rhoads, Vice Chair Wakai and Committee Members

From: Mark Gallagher

Re: Testimony in support of SB1035

Relating To Sexual Violence

Thank you for the opportunity to provide testimony in support of S.B. No. 1035, Relating to Sexual Violence.

S.B. No. 1035 would provide additional protection for Hawaii's children and assist survivors of childhood sexual abuse to obtain justice and closure. While I believe abolition of the statute of limitations for such offenses would be appropriate, 22 years after a survivors 18th birthday certainly is a step in the right direction.

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.

Criminal statutes have changed over the years to remove various statutes of limitations for sexual assault on children, i.e. 18 U.S.C. § 2243 regarding sex-

1

ual abuse of a ward or child. However, <u>ex post facto</u> considerations prevent criminal statutes of limitations from retroactively being amended to provide justice for many past offenses. The removal of civil statutes of limitations is therefore the available mechanism to provide a measure of accountability and justice.

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

Very truly yours, Mark F. Gallagher

<u>SB-1035</u> Submitted on: 2/13/2019 5:59:25 PM

Testimony for JDC on 2/14/2019 9:30:00 AM



Submitted By	Organization	Testifier Position	Present at Hearing
chelsea pang	Individual	Support	No

Comments:

<u>SB-1035</u> Submitted on: 2/14/2019 7:03:43 AM

Testimony for JDC on 2/14/2019 9:30:00 AM



Submitted By	Organization	Testifier Position	Present at Hearing	
Nako'olani Warrington	Individual	Support	No	

Comments:

In STRONG SUPPORT...mahalo for this bill!



<u>SB-1035</u> Submitted on: 2/14/2019 7:21:16 AM

Testimony for JDC on 2/14/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Bridgit Bales	Individual	Support	No

Comments:

I STRONGLY support his Bill.