

**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTY-FIRST LEGISLATURE, 2021**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 570, RELATING TO SEXUAL ABUSE OF MINORS.

**BEFORE THE:**

HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES, AND HOMELESSNESS

**DATE:** Tuesday, February 2, 2021 **TIME:** 9:30 a.m.

**LOCATION:** State Capitol, Room 329

**TESTIFIER(S):** Clare E. Connors, Attorney General, or  
Caron Inagaki, Deputy Attorney General

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Chair Yamane and Members of the Committee:

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

The purpose of the bill is to amend the remedies available to victims of child sexual abuse in section 657-1.8, Hawaii Revised Statutes (HRS).

The amendments to section 657-1.8(a), HRS, at page 3, line 9, through page 3, line 17, would extend the statute of limitations for a victim of child sexual abuse to bring a civil claim for money damages against any person to fifty years after the eighteenth birthday of the victim regardless of when the incident occurred and to five years after the date the victim discovers or reasonably should have discovered that psychological injury or illness occurring after the victim's eighteenth birthday was caused by the sexual abuse that occurred when the victim was a minor.

The bill amends section 657-1.8(b) at page 4, lines 3 through 11, to extend the window of time for a victim of child sexual abuse to bring a claim against the perpetrator or a legal entity domiciled within the State, from eight years to twelve years after April 24, 2012, if the victim was barred from filing a claim due to the expiration of the statute of limitations.

At page 5, lines 3 through 14, the bill further amends subsection (b) to provide that a victim may recover up to treble damages against a legal entity if the victim proves

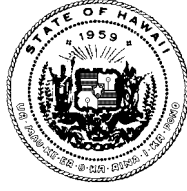
that the sexual abuse was the result of the legal entity's reckless disregard of evidence relating to a prior incident of sexual abuse of a minor.

Finally, the bill adds a new subsection (e) which is problematic in several ways. Subsection (e)(1), which seeks to prohibit any provision within a settlement agreement that prevents the disclosure of factual information related to a civil action brought under this statute "[n]otwithstanding any other law to the contrary," is overly broad. As worded, the parties cannot agree to protect information that is confidential or prohibited from disclosure by state or federal law, or where the parties, including the victim, agree that certain information be kept confidential. Subsection (e)(2), which seeks to prohibit a court from entering certain orders, violates the separation of powers doctrine between the judiciary and the legislative branches of government.

Because the contemplated amendments will extend the statute of limitations for many decades, the lengthy passage of time could prejudice the parties in a lawsuit. Memories fade, witnesses move or pass away, and documents are lost or destroyed. Most entities have records retention policies that call for the destruction of documents after a certain period of time, which also creates evidentiary challenges.

Although we appreciate that victims of sexual abuse may need additional time before they are ready to file a lawsuit, we express our concerns that the passage of very long periods of time could be severely prejudicial to, and create evidentiary issues for, the litigants. We also respectfully recommend that the amendments related to subsection (e) be deleted.

Thank you for the opportunity to testify.



‘O kēia ‘ōlelo hō’ike no ke  
**Komikina Kūlana Olakino o Nā Wāhine**

Testimony on behalf of the  
**Hawai‘i State Commission on the Status of  
Women**

IN SUPPORT OF HB570  
February 1, 2021

Aloha Chair Yamane, Vice Chair Tam and Honorable Members,

The Hawai‘i State Commission on the Status of Women supports HB570, which would extend the time period by which a civil action for childhood sexual abuse must be initiated and the period during which a victim of childhood sexual abuse may bring an otherwise time-barred action against the victim's abuser or an entity having a duty of care. The measure allows recovery of treble damages in certain circumstances. The measure also prohibits settlement agreements and court orders that restrict disclosure of certain information. In addition, HB570 also provides for training on trauma-informed response and applies retroactively to 4/24/2020.

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.

**Recommended Amendment:**

Eliminate the civil statute of limitations for cases of child sexual abuse altogether.

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 have been heard. This is a hugely important step for many survivors to recover from trauma.

Accordingly, the Commission strongly supports HB570. Thank you for this opportunity to provide testimony on this issue.

Sincerely,

Khara Jabola-Carolus



## HB 570, RELATING TO SEXUAL ABUSE OF MINORS

FEBRUARY 2, 2021 · HOUSE HEALTH, HUMAN SERVICES, AND HOMELESSNESS COMMITTEE · CHAIR SEN. RYAN YAMANE

**POSITION:** Support.

**RATIONALE:** Imua Alliance supports HB 570, relating to sexual abuse of minors, which expands the time period by which a civil action for childhood sexual abuse must be initiated; extends the period during which a victim of childhood sexual abuse may bring an otherwise time-barred action against the victim's abuser or an entity having a duty of care; allows recovery of treble damages in certain circumstances; prohibits settlement agreements and court orders that restrict disclosure of certain information; provides for training on trauma-informed response; and applies retroactively to 4/24/2020.

Imua Alliance is one of the state's largest victim service providers for survivors of sex trafficking, **who often suffer childhood sexual abuse before being exploited in our state's prolific slave trade.** Over the past 10 years, we have provided comprehensive direct intervention (victim rescue) services to 150 victims, successfully emancipating them from slavery and assisting in their restoration, while providing a range of targeted services to over 1,000 victims and individuals at risk of sexual exploitation. Each of the victims we have assisted has suffered from complex and overlapping trauma, including post-traumatic stress disorder, depression and anxiety, dissociation, parasuicidal behavior, and substance abuse. Trafficking-related trauma can lead to a complete loss of identity. A victim we cared for in 2016, for example, had become so heavily trauma bonded to her pimp that while under his grasp, she couldn't remember her own name.

Yet, sadly, many of the victims with whom we work are misidentified as so-called “voluntary prostitutes” and are subsequently arrested and incarcerated, with no financial resources from which to pay for their release.

Sex trafficking is a profoundly violent crime. The average age of entry into commercial sexual exploitation in Hawai'i may be as low as 14-years-old, with 60 percent of trafficked children being under the age of 16. Based on regular outreach and monitoring, we estimate that approximately 150 high-risk sex trafficking establishments operate in Hawai'i. In a recent report conducted by the State Commission on the Status of Women, researchers from Arizona State University found that 1 in every 11 adult males living in our state buys sex online. When visitors are also counted, that number worsens to 1 in every 7 men walking the streets of our island home and a daily online sex buyer market of 18,614 for O'ahu and a total sex buyer population for the island of 74,362, including both tourists and residents.

ASU's findings are grim, but not surprising to local organizations that provide services to survivors of sex trafficking. Imua Alliance, for example, has trained volunteers to perform outreach to victims in high-risk locations, like strip clubs, massage parlors, and hostess bars. More than 80 percent of runaway youth report being approached for sexual exploitation while on the run, over 30 percent of whom are targeted within the first 48 hours of leaving home. With regard to mental health, sex trafficking victims are twice as likely to suffer from PTSD as a soldier in a war zone. Greater than 80 percent of victims report being repeatedly raped and 95 percent report being physically assaulted, numbers that are underreported, according to the United States Department of State and numerous trauma specialists, because of the inability of many victims to recognize sexual violence. As one underage survivor told Imua Alliance prior to being rescued, “I can't be raped. Only good girls can be raped. I'm a bad girl. If I *want* to be raped, I have to *earn* it.”

Accordingly, we support measures to advance our state's ability to crack down on sexual slavery, including this measure's extension of the statutory limitations on the time period in which a survivor of childhood sexual abuse may file a civil suit. According to the National Center for Victims of Crime, self-report studies show that 20 percent of adult females and 5-10 percent of adult males in the U.S recall a childhood sexual assault or sexual abuse incident. Over 50 percent of the sex trafficking victim population we serve experienced childhood sexual trauma. According to peer

reviewed psychiatric research, **between 60 and 80 percent of childhood sexual abuse victims withhold disclosure, often because of limited access to quality psychological care and social attitudes that induce shame about victimization.** We must allow these survivors as much time as possible to speak out and receive justice, so that they do not spend the rest of their lives suffering in silence.

We are heartened by this measure's emphasis on trauma-informed care. Given the severity of the trauma inflicted by perpetrators of childhood sexual violence, we believe that it is entirely appropriate for trauma-informed services and training to be made available upon request in the process of making a victim whole, especially since so many survivors of sexual violence have been shamed and silenced for the pain they've endured.

ADMITTED TO THE PRACTICE OF LAW IN THE STATES OF HAWAII, NEW YORK AND NEW JERSEY

# TALBERT LAW LLLC

Patricia Medina Talbert - NY, NJ & Hawai'i  
Mililani B. Trask, Of Counsel - Hawai'i

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HOUSE OF REPRESENTATIVES  
THE THIRTY-FIRST LEGISLATURE  
REGULAR SESSION OF 2021  
COMMITTEE ON HEALTH, HUMAN SERVICE & HOMELESSNESS

TO: Honorable Rep. Ryan I. Yamane, Chair  
Honorable Rep. Adrian K. Tam, Vice-Chair

FROM: TALBERT LAW LLLC, Honolulu, Hawai'i  
Represents Plaintiff Victims of Child Sexual Abuse

Hearing Date: Tuesday, February 2, 2021

I. *Support for HB 570 and SB 833, Relating to Sexual Abuse of Minors.*

Pending HB 570 and SB 833 are unequivocal and continuing efforts by you, the Legislators, to give to Hawaii's children (who have become adults), a "meaningful opportunity to seek justice." We support passage of HB 570 and SB 833. Importantly, these bills close loopholes and remove ambiguities that defendants and entities are using to sidestep responsibility for child sexual abuse.

II. *Who we are.*

We are beneficiaries of the endowment established by Princess Bernice Pauahi Bishop, Ke Ali'i in the line of Kamehameha, for the children of Hawai'i. She charged the Trustees of her endowment to create the Kamehameha Schools wherein children would be educated and instructed on the morals that "may tend to make [them] good and industrious men and women...." Our Princess must be weeping as she watches the dream she had for the children of Hawai'i turn into a nightmare for those subjected to child sexual abuse.



We advocate for these revisions not only because we are Native Hawaiian beneficiaries who feel it is our obligation to hold the Trustees of Kamehameha Schools to their sacred trust, but we are also plaintiff's lawyers who have experience as prosecutor, deputy attorney general, jurist in the criminal part, diplomat to the United Nations. Our practices have focussed on protecting individual civil rights and liberties in the interest of social justice. We have and are representing adults who led dysfunctional lives until they connected child sexual abuse with their traumatized existence. These adults who were given a chance to seek justice seized upon it as a critical step to healing.

*III. HB 570 and SB 833 are needed to close loopholes being used by defendants to avoid liability and responsibility for child sexual abuse.*

A. The language in (2)(b) stating the child abuse must have "occurred in this State" must be deleted.

*The Loophole.* The Hawai'i window statute is the only opportunity for an adult, who was a child victim, to seek justice for sexual molestation occurring decades ago. At the same time, this law also applies in the here and now to victims of child sexual abuse ("CSA"). All victims are being disadvantaged by this geographic loophole and it gives child molesters a free pass to abuse our children when they are taken outside of Hawai'i.

At least one court has interpreted this section of the law to dismiss a claim against a defendant when the molestation occurred during a school-sponsored activity outside Hawaii's borders. A victim is without recourse.

It is a common practice for our students to participate in nationally held athletics, leadership, social, cultural, academic and other types of school-sponsored activities and competitions. They must travel off-island to do so. The Legislature could not have intended the courts to dismiss claims against alleged pedophiles who sexually abuse beyond Hawaii's boundaries, a mere three nautical miles!

As a concrete example, sexual abuse perpetrated upon student athletes has come to light and is being litigated in our circuit courts. At a national level, we know of Larry Nassar who pled guilty to federal child pornography charges, and was sentenced to 60 years in prison on December 7, 2017. Nassar was a

longtime USA Gymnastics (USAG) national team doctor who travelled with child gymnasts and sexually abused them in hotels and training camps under the guise of osteopathic manipulation. This is an example of abuse that occurs at a time when a child is most vulnerable and often in a special relationship of trust and/or dependency with the abuser.

A child's trust and dependency upon his or her chaperone, teacher, coach are, in fact, heightened when you take the school-age child off campus. The child is in a vulnerable position, perhaps more so than when at school. Intended or not, this loophole giving a "free pass" to abusers exists and is being exploited by abusers. HB 570 and SB 833 remove this loophole in (2)(b) and must be passed.

*IV. In the interest of protecting and guiding Hawaii's citizens, the law should require any plaintiff and/or legal entity to be a resident of and/or domiciled in the State of Hawai'i at the time of the child sexual abuse.*

We also support the concept that the child sexual abuse complained of must have a nexus, a legally recognized connection to Hawai'i to ensure protection of our children and to make clear the conduct that is prohibited. For these reasons, we support the inclusion of the language in (2)(b) requiring a plaintiff to be a resident of Hawai'i; and stating a legal entity can be held responsible if it is "domiciled within the State."

The revisions and clarifications ensure the intent of the Legislature is realized in practical terms. And, the changes also send a clear message to our citizens that we will protect our child victims and hold legal entities responsible who are conducting business in Hawai'i.

*V. In §657-1.8, section 2, the statement "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" does not extend constitutional and procedural rights in a criminal prosecutions to this civil case.*

HB 570 and SB 833 refer to part V or VI of chapter 707 in defining the basis for a civil cause of action sounding in child abuse. Chapter 707 in Hawaii's laws refers to our Penal Code. At least one Court has concluded that due to this

reference, a defendant in a civil case for child sexual abuse is therefore entitled to the protections given a defendant in a criminal matter. The civil court plaintiff must prove certain elements of the crime to succeed on the civil side. One way of looking at this is to say a plaintiff must try a “case within a case.” He or she must prove a criminal offense occurred as it would be tried in the criminal part in order to succeed on the civil side.

It seems unlikely the Legislature intended the Penal Code to be infused into a civil case for child sexual abuse to that degree. Certainly, the Penal Code definition of sexual abuse can be used to define the wrongdoing forming the basis for a civil cause of action. **In order to eliminate any ambiguity about the Legislature’s intent, we recommend the following be included in Committee reports:**

The purpose of HB 570 and SB 833 is to amend various Sections of 657-1.8, Hawaii Revised Statutes. This law incorporates the definition of sexual acts by stating in section (2): 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. This reference to Hawaii’s Penal Code and the definition of cognizable claims in a civil case is not intended to grant a plaintiff in a civil cause of actions any of the procedural requirements and/or constitutional protections afforded to a criminal defendant being prosecuted pursuant to Hawaii’s Penal Code.

We recommend this inclusion in the committee record because there is a distinct difference between the procedural and constitutional rights allowed a defendant accused of a crime and the rights of a defendant in a civil case.

Constitutional protections are in place in a criminal prosecution because, if found guilty, one is deprived of civil liberties, indeed, in some states a loss of life. In a civil lawsuit, a finding of liability results in an award of monetary damages and/or certain performance requirements. Constitutional protections such as due process, the right to counsel, the right to remain silent do not apply in a civil case. Put another way, if you're a convicted felon, one of the penalties imposed upon you is the loss of your right to vote. If you're found liable in a civil case, there are damages, not penalties, and not the loss of your right to vote.

Thus, guidance to the courts and to practitioners is critical to eliminate any ambiguity that is then open to judicial interpretation. The reference to Hawaii's Penal Code is for the purpose of defining the prohibited sexual contact and not for the purpose of affording a civil defendant the rights inherent in a criminal prosecution.

## VI. CONCLUSION.

HB 570 and SB 833 before the Legislature are doing more than expanding the window statute. It is shoring up loopholes and removing ambiguities that we believe are diverting litigants away from the intent of the Legislature. At the end of the day, the law is not an intellectual framework. It is a practical journey a victim of child sexual abuse can embark upon to achieve justice. In simple terms and as one victim, who was 14 at the time, says: "I had no choice where it happened, but I live with its impact daily."

Respectfully submitted,

*Patricia Medina Talbert*

Patricia Medina Talbert

*Mililani B. Trask*

Mililani B. Trask

Encl: Proposed Committee Statement: *"The purpose of referring to Hawaii's Penal Code, in HRS §657-1.8, section 2, is to define a civil cause of action for the sexual abuse of a minor which does not include importing procedural and constitutional rights afforded a person in a criminal prosecution."*

### **Proposed HH&H Committee Statement**

**“The purpose of referring to Hawaii’s Penal Code, in HRS §657-1.8, section 2, is to define a civil cause of action for the sexual abuse of a minor, which does not include importing procedural and constitutional rights afforded a person in a criminal prosecution. ”**

The purpose of HB 570 and SB 833 is to amend various Sections of 657-1.8, Hawaii Revised Statutes. These bills continue to incorporate the definition of sexual acts by stating in section (2): 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. This reference to Hawaii’s Penal Code is not intended to grant a plaintiff in a civil cause of actions any of the procedural requirements and/or constitutional protections afforded to a criminal defendant being prosecuted pursuant to Hawaii’s Penal Code.

Constitutional protections are in place in a criminal prosecution because, if found guilty, one is deprived of civil liberties, indeed, in some states a loss of life. In a civil lawsuit, a finding of liability results in an award of monetary damages and/or certain performance requirements. Constitutional protections such as due process, the right to counsel, the right to remain silent do not apply in a civil case. If you're found liable in a civil case, there are generally monetary damages, not penalties and the loss of one’s civil liberties.

Thus, guidance to the courts and to practitioners is critical to eliminate any ambiguity that is then open to judicial interpretation. A plaintiff need not prove a crime was committed and/or assisted by any person and/or legal entity. The reference to Hawaii’s Penal Code is for the purpose of defining the prohibited sexual contact and not for the purpose of affording a civil defendant the procedural and constitutional rights inherent in a criminal prosecution. //

02/02/2021



Galihier DeRobertis & Waxman

January 31, 2021

HOUSE OF REPRESENTATIVES  
THE THIRTY-FIRST LEGISLATURE  
REGULAR SESSION OF 2021  
HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES, & HOMELESSNESS

TO: The Honorable Ryan I. Yamane, Chair  
The Honorable Adrian K. Tam, Vice Chair

FROM: GALIHER DEROBERTIS & WAXMAN, LLP, Honolulu, Hawai'i  
Represents Plaintiff Victims of Child Sexual Abuse

Hearing Date: Tuesday, February 2, 2021

Re: **SUPPORT HB 570 Relating to Sex Abuse of Minors**

Dear Representatives:

We write in **strong support** of this bill to extend the statute of limitations for victims of childhood sexual assault. The purpose of this bill is to amend the current version of HRS § 657-1.8 by, in part, extending the statute of limitations for childhood sexual assault victims to bring civil actions against an individual or entity. The express purpose of this law when it was originally enacted was to protect children from sexual abuse by allowing additional time for victims to seek action. Stand. Com. Rep. No. 2473, S.B. No. 2588, Mar. 1, 2012. Unfortunately, the current language of HRS § 657-1.8 provides for a loophole and split of authority, which was not foreseen nor intended by the legislature when in originally enacted this statute.

We are attorneys who currently represent a survivor of childhood sexual assault who was a student of Kamehameha Schools when he was abused by an employee of Kamehameha Schools on a school-sponsored trip to Western Samoa in the early 1980s. HRS § 657-1.8 as currently written provides two mechanisms for extending the statute of limitations for childhood sexual assault. Subsection (a) allows a victim of childhood sexual abuse to bring a civil claim against their abuser up to eight (8) years after their eighteenth birthday of the minor or for three years after the date the minor discovers or reasonably should have discovered that psychological injury or illness occurring after the age of the minor's eighteenth birthday was caused by sexual abuse, whichever comes later. A civil cause of action under subsection (a) for sexual abuse of a minor must be based upon sexual acts that constituted or would have constituted a criminal offense under part V or VI of chapter 707. Subsection (b) allows a victim of childhood sexual abuse "that occurred in this State" who had been barred from filing a claim against the victim's abuser due to the expiration of the applicable statute of limitations to file a claim against the abuse for two years after April 24, 2012. This statute was twice amended to extend the deadline to file a claim to April 24, 2020. Subsection (b) also allowed a civil claim to brought against a legal entity if the

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Gary O. Galihier (1946-2016) • L. Richard DeRobertis\* • Ilana K. Waxman\*† • Allison M. Aoki • Alyssa R. Segawa

\*Also licensed to practice in California. †Also licensed to practice in Massachusetts.

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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.

As previously stated, our client was a student at Kamehameha Schools in the early 1980s. He was a member of the Kamehameha Schools Concert Glee Club and was sexually abused on a school-sponsored trip with the Glee Club to Western Samoa by the Glee Club's instructor who also chaperoned the trip to Western Samoa. As a result of the inclusion of the "occurred in this State" language in subsection (b), our client's claims against his abuser, a Kamehameha Schools employee, as well as against Kamehameha Schools the entity were dismissed under subsection (b) of HRS § 657-1.8. The court found that although he was a resident of the State of Hawaii, and his abuser was a resident of the State of Hawaii, the fact that his sexual abuse occurred in Western Samoa did not satisfy the plain language of HRS § 657-1.8(b), and was therefore time-barred under HRS § 657-1.8(b). Furthermore, the presiding judge found that the language under subsection (a), that the cause of action must be based on sexual acts that constituted a criminal offense under part V or VI of chapter 707, also contained a geographical limitation that required the sexual assault to have occurred in the State of Hawaii.

Therefore, the current language of HRS § 657-1.8 creates a gross loophole which allows for abusers who reside in Hawaii, as well as their employers, to get a free pass when they take the children of Hawai'i out of state and sexually abuse them. Certainly, such an unjust result was not the intention of the legislature in enacting HRS § 657-1.8. Furthermore, in dismissing our client's claims against his abuser, the presiding judge stated that although the legislature might not have intended such a result, "the purpose of the statute really cannot overcome the express language of the statute. And the many logical, well-formed arguments of the plaintiff must be made to the legislature, not to the Court under these circumstances." See Attachment 1, at 51:4-8. Under the current language of the statute, a sexual predator who resides in Hawaii can take a child out of the State of Hawaii, sexually assault, molest, and abuse the child, and then return to the State of Hawaii without fear of civil liability in the courts of the State of Hawaii.

The United States District Court for the District of Hawai'i reached a different result when confronted with a similar fact pattern, finding that HRS § 657-1.8(b) permits a claim against an entity for acts of sexual abuse that occurred outside the State of Hawai'i. See *Wagner v. Church*, 208 F.Supp.3d 1138 (D. Haw. 2016). However, the presiding State Court judge in our client's case found such reasoning unpersuasive and held that HRS § 657-1.8(b) did not permit a claim against the entity Kamehameha Schools for acts of sexual abuse that occurred outside the State of Hawai'i. Therefore, the current language of HRS § 657-1.8 allows for a gross loophole that gives certain abusers a free pass, but it creates a split of authority that leads to unjust results that were clearly not intended by the legislature.



Galiher DeRobertis & Waxman

As representatives of plaintiff victims of child sexual abuse, we urge this legislature to pass HB 570 to close this loophole that gives predators a free pass to take the children of Hawai'i out of state to subject them to sexual abuse. Thank you for this opportunity to testify.

Very truly yours,

GALIHDEROBERBERTIS & WAXMAN LLP

Ilana K. Waxman

Alyssa R. Segawa



IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

DANIEL K. KAOHIMAUNU,		)	1CCV-20-0000522
		)	
Plaintiff,		)	
		)	
vs.		)	
		)	
TRUSTEES OF THE ESTATE OF		)	
BERNICE PAUAHI BISHOP, dba		)	
KAMEHAMEHA SCHOOLS, et al.,		)	
		)	
Defendants.		)	

TRANSCRIPT OF ELECTRONICALLY RECORDED

PROCEEDINGS had before the HONORABLE GARY W. B. CHANG, Judge presiding, on JULY 16, 2020, regarding the above-entitled matter; to wit, 1) Defendant Stender's Motion to Dismiss; and 2) Defendants Trustees' Motion to Dismiss.

APPEARANCES:

ALYSSA SEGAWA, ESQ.	For the Plaintiff
PATRICIA M. TALBERT, ESQ.	
PHILIP W. MIYOSHI, ESQ.	For Defendant Stender
KELLY LaPORTE, ESQ.	For Defendants Trustees
	of the Estate of
	Bernice Pauahi Bishop,
	etc., et al.

TRANSCRIBED BY:  
Jamie S. Miyasato

1 JULY 16, 2020

2 -o0o-

3 THE CLERK: On the Civil Calendar, calling  
4 Case No. 1, 1CCV-20-0000522. Daniel Kaohimaunu versus  
5 Kamehameha Schools, etc., et al. For one, defendant  
6 Robert Holoua Stender's motion to dismiss plaintiff  
7 Daniel K. Kaohimaunu's first amended complaint filed  
8 April 27, 2020; and 2) Defendants Trustees of the Estate  
9 of Bernice Pauahi Bishop, dba Kamehameha Schools, etc.,  
10 et al's motion to dismiss.

11 THE COURT: Okay. This is Judge Gary Chang.  
12 And let the record reflect that we are conducting this  
13 hearing by video conference.

14 So counsel, I would like to respectfully  
15 remind you that if I or the -- someone else directs a  
16 question to you by name, you don't have to state your  
17 name. You can just start responding. But if you should  
18 speak spontaneously, for example, if I direct a question  
19 to one attorney and when they are done another attorney  
20 wants to speak, that would be a spontaneous utterance,  
21 then please begin by stating your name because if this  
22 matter is transcribed, the transcriber may not understand  
23 or recognize who is speaking. So the transcriber may  
24 have to guess who is speaking if you start speaking  
25 spontaneously without saying your name. So in order to

1 have a clear record, if you start speaking spontaneously,  
2 then please state your name before your -- the substance  
3 of your remark.

4 All right. We will begin with the entry of  
5 appearances. So who is appearing for the plaintiff?

6 MS. SEGAWA: Good afternoon, Your Honor.  
7 Alyssa Segawa for the plaintiff. And with me I have  
8 Patricia Medina Talbert.

9 THE COURT: All right. And who is appearing  
10 for Defendant Stender?

11 MR. MIYOSHI: Good afternoon, Your Honor.  
12 Philip Miyoshi on behalf of Defendant Robert Stender.

13 THE COURT: All right. And appearing on  
14 behalf of the trustees?

15 MR. LaPORTE: Good afternoon, Your Honor.  
16 Kelly LaPorte.

17 THE COURT: Okay. Anyone else appearing  
18 today? All right.

19 MS. TOMA: Good afternoon, Your Honor.  
20 Sabrina Toma, client representative, for Kamehameha  
21 Schools.

22 THE COURT: All right. Ms. Toma, have you  
23 filed any motion today or joinder?

24 MS. TOMA: Your Honor, Mr. LaPorte is  
25 representing Kamehameha Schools' interest.

1 MR. LaPORTE: She's just appearing on behalf  
2 of the client, Your Honor. Not making any argument.

3 THE COURT: Oh, I see. I see. All right.

4 So Mr. LaPorte, are you appearing on behalf of  
5 the entity, the defendant named as Kamehameha Schools, as  
6 well as the trustees and the individual trustees?

7 MR. LaPORTE: Well, Your Honor, that's an  
8 interesting issue because we -- nobody can. We note in  
9 our motion under the law, it's just a trade name and no  
10 one can sue or no one can be sued on -- using that  
11 entity. However, we are making the argument that it's an  
12 improper party. So we are making that argument just to  
13 point out that it is not an entity that either can sue  
14 or -- or can be sued.

15 THE COURT: So you are representing the entity  
16 named as Kamehameha Schools?

17 MR. LaPORTE: I'm making an argument on behalf  
18 of that. That's fair, Your Honor.

19 THE COURT: Okay. I have a few questions, and  
20 then after the questions are done, we can proceed to  
21 anyone submitting further arguments if you wish.

22 I have had a chance to review the memoranda,  
23 and you don't have to repeat it verbatim, but if you  
24 would like to highlight something after I'm done with my  
25 questions or in the course of the questions, please feel

1 free to do so.

2 Okay. Why don't we start with the statute of  
3 limitations since it's common to both movants. And we're  
4 going to consolidate the hearing on the two motions to  
5 dismiss.

6 And I would like to have a clean record. So  
7 I'm trying to as best as I can isolate the two sections  
8 of 657-1.8 between (a) and (b). So let's focus first  
9 upon 657-1.8(a). I realize some of the arguments are  
10 common to both Subsections (a) and (b), but let's just  
11 focus on Subsection (a) for now, if you would kindly do  
12 so.

13 Mr. Miyoshi, your client is more focused on  
14 the statute of limitation than any other argument or  
15 issue today, so maybe you can start with your  
16 presentation about the phrase "within the state."

17 I would like to know or hear from Mr. Stender  
18 why would the legislature include that requirement, if it  
19 is required, in Subsection (a).

20 MR. MIYOSHI: Your Honor, when looking at the  
21 legislative history, there's obviously no -- as indicated  
22 in the briefs, there's really no -- there is no clear  
23 discussion about the use of that particular term "in this  
24 state." So it could be, Your Honor, that it's simply  
25 just a confirmation of how the statute was -- was

1 written.

2           There are two different sections. There --  
3 the section in (a) obviously requires that the claim  
4 arise from a criminal offense that would constitute a  
5 crime under Chapter 707. And our argument has been that  
6 under Chapter 707, you would naturally have to read  
7 territorial application that the crime -- that in order  
8 to constitute a crime under 707, that it would have to  
9 have occurred in the state.

10           And so it could simply have been just a base  
11 and strap type of legislative analysis when they put this  
12 together. But our argument is that whether it's under  
13 (a) or whether it's under (b), I think the statute makes  
14 clear that it has to have -- a claim arising under this  
15 particular provision has to have occurred in the State of  
16 Hawaii.

17           THE COURT: Okay. I would prefer --  
18 appreciate if counsel would try to import more precision  
19 in their arguments. There was a reference to 1.8(b), and  
20 I really am not wanting to confuse the record. So if all  
21 counsel will please focus on 657-1.8(a), because the  
22 language is a little different. And 1.8(a) -- I don't  
23 see the words "within the state" in the -- in the text of  
24 1.8(a). I see it in 1.8(b), but we're not talking about  
25 1.8(b). We're talking about 1.8(a).

1           And I will point out to counsel that any time  
2           our appellate courts analyze a statute, there is quite a  
3           bit of precision in how a Court should analyze a statute.  
4           So I would urge counsel to frame your arguments with the  
5           same precision that our courts analyze language in a  
6           statute and try not to be so cavalier. I know both sides  
7           are trying to advocate a position, but you know, it makes  
8           it difficult for this Court as well as any appellate  
9           court when you choose to be cavalier about answering a  
10          question like the Court is posing.

11           I would prefer and appreciate if you couch  
12          your answers in the language that is traditionally used  
13          in construing a statute. So not, Well, Judge, this is  
14          what I would like it to say, or, This is what I hope or  
15          what I think. I think of greater importance is what the  
16          legislature was thinking. So that would be helpful when  
17          you frame your comments in response to the Court's  
18          question.

19           Now, Mr. Miyoshi, why would the legislature in  
20          a remedial statute such as 657-1.8(a) include the  
21          requirement that the sexual abuse occur "within the  
22          state"?

23           MR. MIYOSHI: Your Honor, I don't -- I don't  
24          think I have the answer to that question candidly. All I  
25          can say is that when you look at Subsection (a), which we

1 are discussing at the moment and which the Court has  
2 asked the question about, when we look at the statute and  
3 the reference to that, the claim has to constitute a  
4 crime under Chapter 707 in order to raise such a claim  
5 under Section (a).

6 And then going -- moving forward, looking at  
7 707 in the application of that and what would constitute  
8 a crime under 707, I think you necessarily have to look  
9 at the territorial application under HRS 701-106, which  
10 requires that any of the causes -- any of the -- the  
11 crimes within 707 must have occurred "within the state."

12 And so -- and I think if you -- if you look at  
13 the cases that we've cited, I think both the Hawaii case  
14 and the Idaho case, I think they -- they clearly indicate  
15 that the jurisdictional application of a criminal statute  
16 is clearly an element of the crime itself. And so  
17 although Subsection (a) doesn't clearly use the words  
18 "within the state," it does clearly require that it  
19 constitute a crime under 707.

20 THE COURT: Is it Mr. Stender's position that  
21 the phrase "within the state" is an element of the crime  
22 under 707-732?

23 MR. MIYOSHI: That is our position, that  
24 the -- in order to constitute a crime under 707-732, it  
25 has to have occurred within the state of Hawaii.



1           THE COURT: Okay. Let me go on to Mr. LaPorte  
2 as the other movant.

3           Same question. Why does 657-1.8(a) include  
4 the necessity to show that the sexual abuse occurred  
5 within the state?

6           MR. LaPORTE: Your Honor, it's not explicit,  
7 but I agree with Mr. Miyoshi's interpretation. It's  
8 logical and it follows. And I think I understand how --  
9 how that provision came to be. And it came to be because  
10 the Hawaii legislature was concerned with --  
11 (inaudible) -- by the Hawaii state attorney general that  
12 the proposed statute at various iterations was going to  
13 violate due process concerns for -- for the parties that  
14 may be subject to it.

15           So what the -- what we do know is that the  
16 legislature patterned the 657-1.8 on the Delaware code,  
17 and very, very closely to that code. And -- and that  
18 code, like the Hawaii code, expressly stated that a civil  
19 cause of action for sexual abuse of a minor shall be  
20 based upon sexual acts that would constitute a criminal  
21 offense under the Delaware code.

22           And so that's -- I think what the Hawaii  
23 legislature did is they used that same language and then  
24 they changed it to under part V or VI of Chapter 707. So  
25 I believe that's how the legislature got there.

1           And then as noted in our brief, that's clear  
2     in the Senate Standing Committee Report No. 1083 -- I'm  
3     sorry -- House Report where they were quoting page 11  
4     from our motion, stating that the purpose of the bill is,  
5     among other things, No. 2, allowing victims of sexual  
6     abuse that occurred in Hawaii who were previously barred  
7     by the running of the statute of limitations to file  
8     civil actions, etc., etc.

9           So I believe in short they were looking to  
10    another state that had promulgated not just a -- a  
11    similar statute but had in fact withstood a judicial  
12    challenge to due process concerns. So that's my  
13    understanding of it, Your Honor.

14           THE COURT: The plaintiff argues that it  
15    really does not make sense for the legislature to attempt  
16    to afford these child victims of sexual abuse many, many  
17    years or decades ago and interpose this requirement in  
18    657-1.8(a) that the sexual abuse have occurred within the  
19    state when you have at least one prior appellate court  
20    case -- the Dunlea, D-u-n-l-e-a, case, and the case at  
21    bar, where Hawaii residents transport the child out of  
22    state for an activity during which the alleged sexual  
23    abuse occurs and then the child and the alleged abuser  
24    return back to the State of Hawaii.

25           And why would that victim, child victim, not

1 have the same opportunity as Hawaii resident offender and  
2 victim both in Hawaii when the abuse occurred? Why would  
3 it prevent the victim from suing just because the Hawaii  
4 offender transported the victim to an out-of-state  
5 location? Why would that be the intention of the  
6 legislature? Mr. LaPorte?

7 MR. LaPORTE: Your Honor, I don't think the --  
8 that was contemplated frankly by the legislature.  
9 They -- you know, there's many different scenarios. What  
10 I believe they focused on was defining as clearly as they  
11 could be what would constitute sexual abuse of a minor  
12 was the term they used. And it could be many different  
13 things. So I think they wanted to give it clarity. And  
14 they said, well, sexual abuse of a minor shall be acts  
15 that constituted or would have constituted a criminal  
16 offense under V or VI of Chapter 707.

17 So I don't think that particular scenario was  
18 contemplated. What they wanted to do was to be very  
19 particular about the outlines of what would constitute  
20 sexual abuse of a minor.

21 THE COURT: And I don't mean to steal  
22 Ms. Segawa's thunder, but let me ask Mr. LaPorte. Just a  
23 moment.

24 Well, maybe I should not argue for the  
25 plaintiff. And let's see if Ms. Segawa raises a point in

1 connection with this discussion.

2 Okay. Ms. Segawa, any comment on this  
3 question? And we are dealing with 657-1.8(a) and the  
4 alleged requirement that the sexual abuse occur within  
5 the state.

6 MS. SEGAWA: Thank you, Your Honor. I think  
7 the Court hit the nail on the head when it noted the  
8 absence of the "within the state" language from  
9 Subsection (a). Defendants are trying to import another  
10 requirement into Subsection (a) that's not there in the  
11 plain language of the text.

12 The statute says would consti -- would have  
13 constituted a criminal defense under part IV -- part V or  
14 VI of Chapter 707. That is merely identifying what  
15 conduct would be actionable under Subsection (a). It  
16 does not state where the conduct should have occurred,  
17 merely what the conduct is.

18 And admittedly, Your Honor, I am not a  
19 criminal attorney, so criminal codes and how they  
20 interact with each other are a little confusing to me.  
21 But as I read the statute, it identifies what conduct is  
22 actionable in a civil case.

23 The territorial application statute that  
24 they're trying to import into Subsection (a) is merely  
25 for who can be convicted of a crime in the State of

1 Hawaii.

2 Mr. Stender is not on trial in a criminal  
3 case. He is not at risk to be convicted. He's merely --  
4 he merely conducted acts that would have constituted  
5 sexual abuse under Chapter 707 -- part V and VI of  
6 Chapter 707. That's what the statute entails. Does not  
7 have a "within the state" requirement, as the Court noted  
8 earlier.

9 THE COURT: Well, Mr. Miyoshi indicated that  
10 to constitute the crime of sexual abuse under 707-732,  
11 one of the elements of the crime -- and the crime cannot  
12 be constituted unless all elements are existing -- in  
13 existence. But one of the elements of the crime is to  
14 prove that the sexual abuse occurred "within the state."  
15 So are you contending that under 657-1.8(a), this Court  
16 can disregard one of the elements of the crime of sexual  
17 abuse when evaluating what must be shown under  
18 657-1.8(a)?

19 MS. SEGAWA: I don't think that where the  
20 crime occurred is an element of the crime. I think the  
21 statute that Subsection (a) refers to is outlining what  
22 conduct can constitute the crime. But whether you can be  
23 convicted of this crime is under the territorial  
24 application. So it's not -- the location of the crime as  
25 I've read the statute does not include this territorial

1 limit, as Mr. Miyoshi argues.

2 So the Court would not be ignoring the  
3 location requirement because I don't believe under the  
4 statute it's part of the crime.

5 THE COURT: So --

6 MS. SEGAWA: Again, I'm not an expert on  
7 criminal law. So as I understand it, it's the act that  
8 constitutes a crime, not the location.

9 THE COURT: So if a Samoan perpetrator and a  
10 Samoan child were to engage in the conduct alleged in  
11 this case in Western Samoa, could that plaintiff then  
12 come to Hawaii and sue?

13 MS. SEGAWA: I do not believe so. I don't  
14 believe -- oh, I believe that would be under a personal  
15 jurisdiction issue, not a statute issue. I think that's  
16 very different from the facts of this case. But I think  
17 courts would look at that and say -- still say that's a  
18 crime. If he was convicted of it in Samoa, he'd have to  
19 register as a sex offender in this state. It's still a  
20 crime. But we're not going to convict you of it because  
21 you are not under our territorial application for our  
22 criminal statutes to be able to be convicted of this  
23 crime.

24 THE COURT: So you mentioned or alluded to  
25 what I interpret to be the long-arm statute or

1 jurisdiction of a civil court to take jurisdiction over a  
2 foreign tort that occurs with foreign citizens. So that  
3 imports a due process analysis when we look at the  
4 long-arm statute.

5 Mr. LaPorte made a due process argument. You  
6 care to respond to Mr. LaPorte's argument that this  
7 requirement of "within the state" in Subsection (a) is in  
8 the nature of a due process consideration or factor?

9 MS. SEGAWA: Well, again, since that language  
10 is absent from Subsection (a), I believe that the  
11 legislature probably understood that claims that have no  
12 nexus to the State of Hawaii, non-Hawaii children,  
13 non-Hawaii perpetrator, those claims would not be brought  
14 in this court in the first place. 'Cause this due  
15 process -- there's no due process argument in this case  
16 and Mr. LaPorte has not made such an argument because we  
17 have a Hawaii child and a Hawaii predator. A predator  
18 who assaulted a child of Hawaii in another country out of  
19 state and then came back to Hawaii. There is no due  
20 process problem in this case.

21 THE COURT: Okay. Mr. Miyoshi, any response  
22 to Ms. Segawa's comments on this question?

23 MR. MIYOSHI: Your Honor, I would just say  
24 with respect to the territorial application and whether  
25 or not that constitutes an element of the crime, I think

1 we've obviously cited some case law that has indicated  
2 that the jurisdictional element is an element of a crime.

3 And so I don't think you can simply dispense  
4 with something that you would otherwise have to prove in  
5 order to convict somebody and say that that is -- you can  
6 essentially say that that doesn't -- that's simply a  
7 locational issue and doesn't -- is not an element of the  
8 crime. And so I don't -- I wholly disagree with  
9 Ms. Segawa on that point.

10 THE COURT: Okay. Mr. LaPorte, any comments  
11 in response to Ms. Segawa's remarks?

12 MR. LaPORTE: Yeah. Just two, Your Honor.  
13 First of all, and for Kamehameha Schools, we didn't argue  
14 657-1.8(a) because that whole subsection only pertains to  
15 requirements for a claim against the abuser. So we've  
16 been focusing on Subsection (b). But I do believe  
17 that --

18 THE COURT: Don't talk about Subsection (b)  
19 please. Don't talk about Subsection (b) please. Do not  
20 talk about Subsection (b).

21 MR. LaPORTE: But again, I think, you know,  
22 you have to focus on the language of would it be con --  
23 did it constitute or would it have constituted a criminal  
24 offense under part V or VI of Chapter 707? So let's --  
25 you know, could a Hawaii prosecutor -- if it had been



1        apprised of what allegedly happened in Samoa at the time  
2        it happened, would a Hawaii prosecutor have been able to  
3        successfully prosecute Mr. Stender based on what happened  
4        in Western Samoa under part V or VI of Chapter 707? And  
5        the answer is no. And that's because it would not have  
6        been a crime because it was not within the territorial  
7        application of part V or VI of Chapter 707.

8                THE COURT: Okay. I'd like to focus on the  
9        United States District Court case for the District of  
10       Hawaii, the Wagner, W-a-g-n-e-r, v. Church, C-h-u-r-c-h,  
11       case. Almost everyone discussed this. I'm not sure if  
12       the trustees discussed it. But I would like to hear from  
13       counsel, and we'll follow the same order, their reading  
14       of the *Wagner* case and how it applies, if at all, to  
15       657-1.8(a).

16                Mr. Miyoshi?

17                MR. MIYOSHI: Thank you, Your Honor. I think  
18       with respect to my client, it's a little bit different  
19       than, you know, Mr. LaPorte's client. The case obviously  
20       wasn't on all fours with Mr. Stender's situation. In  
21       that case the individual -- the alleged individual  
22       perpetrator wasn't being sued. It was simply the entity.

23                However, Judge Gillmor in her analysis in  
24       reading the statute I think made clear in her comments  
25       and discussion that had a claim been made against the

1 perpetrator, that that would not have stood because in  
2 that instance, the events took place in Texas and the  
3 statute under 657-1.5(b) clearly required that the  
4 conduct occur within the state. And so admittedly it was  
5 not a -- again her direct holding, but I think her  
6 analysis of the statute is persuasive.

7 THE COURT: Okay. Mr. LaPorte, any comment on  
8 the *Wagner* case with respect to Subsection (a)?

9 MR. LaPORTE: Not as to Subsection (a), Your  
10 Honor.

11 THE COURT: Okay. Thank you.

12 Ms. Segawa?

13 MS. SEGAWA: Your Honor, I don't see the Court  
14 discussing Subsection (a) in the *Wagner* case. I believe  
15 the *Wagner* case was on Subsection (b) of the statute and  
16 did not get into Subsection (a).

17 THE COURT: Okay. Mr. Miyoshi, however,  
18 suggests that the *Wagner* court may have made some  
19 reference to Subsection (b) and what the requirements  
20 would have been if the action were brought against the  
21 alleged perpetrator. Do you have any comment on that?

22 MS. SEGAWA: As to (b)? You're talking about  
23 Subsection (b) now?

24 THE COURT: Well, Mr. Miyoshi, are you -- is  
25 your argument as to Subsection (a) or Subsection (b)?

1           MR. MIYOSHI: Your Honor, it is actually with  
2     respect to Subsection (b). And I apologize if we weren't  
3     discussing that yet. But a question was posed regarding  
4     the *Wagner* case. And so I concur with Ms. Segawa that  
5     the *Wagner* case solely dealt with Subsection (b).

6           THE COURT: Okay. Thank you.

7           And Mr. Miyoshi, is your client's motion based  
8     on Subsection (a) or Subsection (b) or both?

9           MR. MIYOSHI: Both, Your Honor.

10          THE COURT: Okay. All right. I'd like to  
11     move to Subsection (b) now. And if -- let's start with  
12     Mr. LaPorte on this one. The statute requires a --  
13     Subsection (b) requires that the abuse occur within the  
14     state or occurred in the state. That's the language.  
15     Why would the legislature have that requirement in  
16     Subsection (b)? And it can be the same as Subsection  
17     (a). You don't have to repeat your argument if it's the  
18     same logic. But any difference with respect to Section  
19     1.8(b) as to why the legislature would include that  
20     language?

21          MR. LaPORTE: Your Honor, I think they were  
22     just following what Delaware had done in the -- persuaded  
23     by the Delaware courts. And I forget which -- which case  
24     might have been decided before that. But there is a  
25     Delaware case where the courts discussed the territory

1 limitation. And what they lay out is that because the --  
2 the state itself cannot legislate conduct outside its  
3 borders, then it makes sense that in criminal matters,  
4 they were tying it to that. That's all I -- that's my  
5 understanding of it, Your Honor.

6 THE COURT: Why would the legislature include  
7 that phrase "outside the state" in Subsection (b) but not  
8 Subsection (a)?

9 MR. LaPORTE: I don't know, Your Honor.

10 THE COURT: Okay. Mr. Miyoshi, any comments  
11 on Subsection (b) now?

12 MR. MIYOSHI: No, Your Honor. I guess I would  
13 concur with the comments that were made by Mr. LaPorte  
14 regarding the rationale for including that language in  
15 Subsection (b).

16 THE COURT: What is the difference between  
17 Subsection (a) and Subsection (b) that might support  
18 including or not including that requirement of the sexual  
19 assault or acts being -- occurring in or out of the  
20 state?

21 MR. MIYOSHI: Your Honor, I think that the --  
22 the difference may be that in Subsection (a), it was a  
23 clearer reference to the criminal statute. And for  
24 whatever reason, the -- that same language relating to  
25 the criminal statute was not included in Subsection (b).

1 And so when you look at I think both of those sections  
2 and what the actual meanings or the requirements are,  
3 when it comes down to it, I think both require that the  
4 conduct occur within the state. Whether it's under the  
5 territory application under Chapter 700 of the criminal  
6 statute or under the plain language of Subsection (b),  
7 both require that the conduct occur in the state.

8 THE COURT: Okay. Let me -- before we go to  
9 Ms. Segawa, let me ask Mr. LaPorte, what is the  
10 difference between Subsection (a) and Subsection (b) that  
11 would explain why the "within the state" was not in  
12 Subsection (a) but was -- was expressly included in  
13 Subsection (b)?

14 MR. LaPORTE: Your Honor, I can't divine the  
15 rationale for one or the other, although I agree with  
16 Mr. Miyoshi. They are -- they're consonant with each  
17 other. They are harmonious. Both requirement of a  
18 criminal offense under part V or VI of Chapter 707 or  
19 expressly stating that it occurred in this state. You  
20 know, if we had a Venn diagram, they'd be overlapping.  
21 But I don't know why one would be expressly stated in one  
22 section and not the other.

23 THE COURT: Okay. And is your client's motion  
24 based upon 657-1.8(a), 1.8(b), or both?

25 MR. LaPORTE: It is expressly pertaining to

1 Subsection (b) pertaining to the claims may be brought --  
2 brought against an entity. However, it does import  
3 the -- the term child sexual abuse, which is laid out  
4 in -- in Subsection (b).

5 THE COURT: Okay. Thank you.

6 And -- okay. Let's see if Ms. Segawa has any  
7 comments, and I'll ask another question later.

8 Ms. Segawa, any response to the two movants?

9 MS. SEGAWA: Your Honor, after the Court's  
10 question to them why would the Court -- why would the  
11 legislature include that statement in one section and not  
12 the other, and I think Mr. LaPorte had said earlier that  
13 this language was basically just copied over from a  
14 Delaware statute. I believe the legislature wanted the  
15 sexual abuse to have some nexus in Hawaii, and that's why  
16 they kept that language. But I do not believe that the  
17 legislature contemplated this phrase, this "occurred in  
18 this state" phrase, to be applied narrow -- so narrowly  
19 as they are asking the Court to do in this case to give  
20 Kamehameha Schools and Stender a free pass to take a  
21 Hawaii child out of state, commit a sexual assault upon  
22 them, and come back to the state and face no  
23 consequences. I do not believe that is what the  
24 legislature contemplated.

25 Aside from them importing this language with

1 the Delaware statute, I'm on the same boat as them. I  
2 don't know why the legislature included it in this  
3 section but not the other. But I believe in both  
4 sections, the legislature did not intend to give abusers  
5 and their employers a free pass to take Hawaii children  
6 out of state, assault them, come back to Hawaii, and face  
7 no consequences.

8 THE COURT: Okay. Thank you.

9 Mr. LaPorte, any response?

10 MR. LaPORTE: Nothing further than what I've,  
11 you know, stated before. The language is what the  
12 language is, and that governs the issues.

13 THE COURT: Okay. Mr. Miyoshi?

14 MR. MIYOSHI: Your Honor, I just want to make  
15 one comment. And I think that the narrative that's being  
16 expressed by the plaintiffs about somebody taking a child  
17 out of the state to assault them in another jurisdiction  
18 or state and to bring them back and not be held  
19 accountable I think is a little disingenuous in terms of  
20 what their allegations were in our complaint. There's  
21 been no allegation that Mr. Stender had any involvement  
22 in transporting, inducing, or taking the plaintiff out of  
23 state. He was a participant, like anybody else. And so  
24 I think that that's -- you know, again, if somebody had  
25 intentionally taken somebody, you know, outside their

1 will to another jurisdiction, that might be a basis for  
2 another type of claim. And so it's not clear that  
3 they -- that that situation at all would not be  
4 recoverable.

5 But in this instance, even under their own  
6 facts as alleged either in the first amended complaint or  
7 their proposed second amended complaint, they're not  
8 alleging that Mr. Stender transported, induced, or took  
9 their client out of the jurisdiction to assault him. And  
10 I just wanted to make that clear.

11 THE COURT: Okay. Ms. Segawa, any response?

12 MS. SEGAWA: Yes, Your Honor. This was a  
13 school sponsored trip to Western Samoa for which  
14 Mr. Stender was the chaperone. He was the hula and song  
15 teacher at Kamehameha Schools. And it was his job to  
16 chaperone these students from Hawaii to Western Samoa for  
17 the concert glee trip and back.

18 I'm not saying he lured him to Western Samoa.  
19 I'm not saying that. But he was a chaperone whose job it  
20 was to take the students to Western Samoa and back. And  
21 when he went to Western Samoa, that's when he committed  
22 the assault, then came back to Hawaii and expects to face  
23 no consequences.

24 THE COURT: So Mr. LaPorte, why would the  
25 legislature -- and I'm just using the plaintiff's



1 words -- want to give Mr. Stender a free pass just  
2 because the assault took place in Western Samoa rather  
3 than here in Hawaii?

4 MR. LaPORTE: Your Honor, like many laws, the  
5 legislature cannot contemplate even a thousand different  
6 scenarios. I think they were intending to provide  
7 particularity to what would be defined as sexual abuse of  
8 a minor and they settled on what would be a crime under  
9 part V or VI of Chapter 707.

10 They had an alternative. They could have  
11 listed in the statute all the things that they believe  
12 could have constituted child abuse no matter where it  
13 happened. And I think -- I think they would -- it  
14 couldn't do that practically because there's -- there's  
15 thousands of different ways. So I think they settled on  
16 we want to give particularity. We don't want the statute  
17 to be void for vagueness. And the wheel has already been  
18 invented as to what constitutes a sexual abuse against  
19 minors. And it's -- this legislature has created that  
20 regime, and it's in part V or part VI of Chapter 707. So  
21 that is how we're going to define that. No more, no  
22 less.

23 And again, someone, you know, spirits someone  
24 out of the state. There may be -- there may be other --  
25 other criminal offenses that may be at play there, but

1       it's not under part V or VI of Chapter 707. It just  
2       wasn't contemplated, Your Honor.

3               THE COURT: Okay. Mr. Miyoshi, any --

4               MR. MIYOSHI: Yeah, Your Honor. I do have one  
5       comment. I think when you look at Section (b), Section  
6       (b) is the extender statute. And what that effectively  
7       allowed Ms. Segawa's client to do is to raise a claim  
8       essentially 38 years after its occurrence. And so the  
9       "in the state" could plausible be read to have been a  
10      trade-off to say, listen, if you're going to take  
11      advantage of a statute that essentially lets you extend  
12      the statute of limitations for 40 or more years, you  
13      know, there has to be some limitation on -- on these  
14      things because facts, witnesses, all of those things, if  
15      it occurred in a different jurisdiction, would be  
16      extremely difficult to secure and obtain.

17              And so I think that is another plausible  
18      rationale for why -- that this limitation of "in this  
19      state" occurred -- is because they were essentially  
20      giving plaintiffs an ability to extend the statute of  
21      limitations for many tens of years. That's all I'd add  
22      in that matter.

23              THE COURT: Okay. Ms. Segawa, any response?

24              MS. SEGAWA: Yes, Your Honor. Thank you.

25      Mr. LaPorte stated that he doesn't believe the

1 legislator -- legislature contemplated this scenario.  
2 And I think that's exactly the point. Where a remedial  
3 statute like this is being interpreted, you must apply it  
4 as the legislature intended it to apply. You must  
5 liberally construe it to suppress the perceived evil and  
6 advance the enacted remedy.

7           So we have to look at what did the legislature  
8 intend. Did they intend to give Kamehameha Schools and  
9 Stender a get-out-of-jail-free card -- free pass for an  
10 assault that was committed by a Hawaii resident against a  
11 Hawaii child in another jurisdiction? And I think it's  
12 clear when you read the statute and you read the  
13 legislative history, that is not what the legislature  
14 intended.

15           Mr. Miyoshi's argument that the part (b) had  
16 the "occurred in the state" language because it wanted  
17 some limitation -- to a certain extent, I agree. I  
18 believe, as I stated earlier, the Hawaii legislature  
19 wanted some nexus to Hawaii. We have that in this case.  
20 A Hawaii child, a Hawaii predator. Maybe the legislature  
21 was afraid that given -- 'cause it is the revival of a --  
22 of a case -- section of the statute.

23           Maybe the legislature was concerned that  
24 people from Maryland had moved here 20 years ago and now  
25 think they have a claim against their predator in

1 Maryland. No. We would -- we would agree that that  
2 person cannot bring a claim in the State of Hawaii  
3 because there's no other nexus besides that that person  
4 has now moved to Hawaii, on top of the fact that you  
5 wouldn't have personal jurisdiction over the perpetrator  
6 in another state.

7 But that's what -- I agree that there needs to  
8 be some nexus to Hawaii, which we have in this case.  
9 Hawaii child, Hawaii resident.

10 THE COURT: Ms. Segawa, if the Court were to  
11 read the statute 657-1.8 such that Subsection (a) has no  
12 "occurred in the state" requirement but Subsection (b)  
13 does have an "occurred in the state" requirement, would  
14 this case survive the motion to dismiss because the  
15 assault clearly did not occur in the State of Hawaii? So  
16 the fact that one subsection has that requirement and one  
17 does not -- does this case survive either motion?

18 MS. SEGAWA: If I understand the Court's  
19 question, I believe the answer would be yes. I believe  
20 we would have a claim against Stender under Subsection  
21 (a) as it does not contain a geographical qualifier. And  
22 I believe under Subsection (b), if the Court follows the  
23 interpretation that the District of Hawaii Court did in  
24 *Wagner*, then -- then we have a case against Kamehameha  
25 Schools as well.

1                   But on top of that -- on top of that, Your  
2 Honor, the "occurred in this state" language I also think  
3 should be broadly read to include in 707-703 "cause  
4 sexual contact to occur." And I believe, as we stated in  
5 our proposed second amended complaint that there were  
6 acts in Hawaii that Stender committed upon Daniel that  
7 later caused the sexual contact to be accomplished in  
8 Western Samoa. That would be the grooming, the changed  
9 behavior that caused Daniel to be more submissive and  
10 willing to please and continue to stay in the good graces  
11 of Stender. That conduct took place in Hawaii and later  
12 caused Stender to be able to accomplish the sexual  
13 contact in Western Samoa.

14                   Does that answer the Court's question?

15                   THE COURT: Yes. What paragraphs were the  
16 grooming alleged in?

17                   MS. SEGAWA: In the second amended -- we --  
18 it's not in our first amended complaint, but we did move  
19 within our opposition to file a second amended complaint.  
20 And the proposed second amended complaint which is  
21 attached as Exhibit 18 -- just one second, Your Honor --  
22 would be from --

23                   THE COURT: That's okay. If it's not in the  
24 first amended -- my question dealt with the first  
25 amended.

1 MS. SEGAWA: It's not in the first amended  
2 complaint. There might -- one second, Your Honor. Yeah.  
3 I believe it's in our proposed second amended complaint  
4 that contains the allegations as to grooming.

5 THE COURT: Okay. Thank you.

6 So let me get back to this *Wagner v. Church*  
7 case now that we're talking about Subsection (b). And  
8 let me ask Mr. LaPorte, what is the trustees' reading of  
9 that case with respect to Subsection 1.8(b)?

10 MR. LaPORTE: Simply put, Your Honor, Judge  
11 Gillmor ignored the plain language contained in  
12 Subsection (b). She looked to the general duty that a  
13 school in Hawaii has to its students under *DOE Parents*  
14 *No. 1*, which is -- which is to take reasonable steps to  
15 ensure the safety of its children and use that holding to  
16 just nullify the language -- the clear language in 60 --  
17 657-1.8(b). There's no other way around it, Your Honor.

18 THE COURT: Well, I believe she states at page  
19 1,143, quote, The plain language of the statute, however,  
20 does not contain a geographical qualifier on claims  
21 against the employing or supervisory entities, period.  
22 So she indicates or the Court, Federal Court, indicated  
23 the plain language has no geographical qualifier.

24 So you're saying that that is a false  
25 statement?

1           MR. LaPORTE: I -- I would never accuse a  
2 federal judge of making a false statement. I will say it  
3 is an illogical statement, and here's why. Okay?  
4 Because it is certainly in Subsection (b). And with  
5 Subsection (b), the very first sentence says for a period  
6 of eight years after April 24th, 2012, a victim of child  
7 sex abuse that occurred in this state may file a claim in  
8 the Circuit Court of this state. So -- so you must  
9 import that language or you don't have a claim. You do  
10 not have a possible claim.

11           And so to divorce that first sentence from the  
12 claim that may also be brought under -- under this  
13 subsection, Subsection (b) -- we're not a separate  
14 subsection -- against a legal entity if.

15           So Your Honor, I believe she made a mistake  
16 and disregarded the plain language of when a civil claim  
17 may be brought within that eight-year window against an  
18 entity.

19           THE COURT: Okay. Thank you.

20           Mr. Miyoshi, you care to comment on the *Wagner*  
21 case as it applies to Subsection (b)?

22           MR. MIYOSHI: No, Your Honor. Only with  
23 respect to the comments I've previously made about the  
24 *Wagner* case and Judge Gillmor's comments related to her  
25 hypothetical about if this claim has been brought

1 directly against the alleged perpetrator, that the  
2 geographical qualifier would clearly be required.

3 THE COURT: Okay. Ms. Segawa, any comments on  
4 the *Wagner* case as it applies to Subsection (b)?

5 MS. SEGAWA: Just to say, Your Honor, that I  
6 do not believe Judge was -- or Judge Gillmor was confused  
7 or misread the statute. I believe if you're going to  
8 read plain language, read the plain language. "Occurred  
9 in this state" is not in that section.

10 And also the Court gives reasons why it's  
11 not -- the legislature didn't include it in that section  
12 when it looks at the Standing Committee Report that it  
13 cited to right below where the judge cited and said that  
14 they wanted to give victims a fair chance to pursue  
15 claims against perpetrators and the entities that hold  
16 some degree of responsibility for placing the victim in a  
17 position where he may be abused.

18 And I think the Court was correct to look to  
19 how the Hawaii Supreme Court has treated schools in the  
20 past, in the *DOE Parents* case. And that is why the  
21 geographical limitation that's in the first part of  
22 Subsection (b) isn't included in the section that applies  
23 to the employing entities.

24 THE COURT: So does the Hawaii State Teacher's  
25 Association case that Judge Gillmor cited in the *Wagner*



1 case indicate that a Court can disregard express language  
2 in a Hawaii statute in order to, quote, effect the  
3 legislative purpose, end quote?

4 MS. SEGAWA: I don't think that's what that  
5 case said. I can't recall it off the top of my head, but  
6 I don't think that's what the judge is doing. I don't  
7 think it's ignoring language. I think that language  
8 isn't there, as the judge said. The language just isn't  
9 there for the legal entity provision.

10 THE COURT: Does Subsection (b) of 657-1.8  
11 state that, "For a period of four years after April 24,  
12 2012, a victim of child sexual abuse that occurred in  
13 this state may file a claim in a Circuit Court, etc."?  
14 Did I read that --

15 MS. SEGAWA: My version -- my version says  
16 eight years. But the rest of it is correct, Your Honor.

17 THE COURT: Okay. So the statute does include  
18 the language "occurred in this state"?

19 MS. SEGAWA: As to the perpetrators, yes, Your  
20 Honor.

21 THE COURT: So what you're saying is that  
22 the -- if the claim against the perpetrator is alleged,  
23 then that must occur within the state? The sexual  
24 assault must occur within the state?

25 MS. SEGAWA: That that's what a plain reading

1 of the statute states. But I don't believe in this case  
2 with these facts that is the intention of the legislature  
3 when it included that language.

4 THE COURT: So Subsection (b) applies to  
5 Mr. Stender, but not to the trustees?

6 MS. SEGAWA: The first part of Subsection (b).

7 THE COURT: Yes.

8 MS. SEGAWA: Yeah.

9 THE COURT: Okay.

10 MS. SEGAWA: And then it also says against the  
11 entities that supervise and employ, or the legal entity.

12 THE COURT: Okay. And Mr. LaPorte, any  
13 response to that analysis?

14 MR. LaPORTE: To -- Your Honor, again, to page  
15 11 of our motion, it was here's the express words of  
16 the -- the legislature and Standing Committee  
17 Representative Report No. 1083 that put in this very  
18 language. The purpose of the bill is, among other  
19 things, allowing victims of sexual abuse that occurred in  
20 Hawaii who were previously barred by the running of the  
21 statute of limitations to file civil actions within two  
22 years of the effective date of this bill against the  
23 natural person who committed sexual abuse or a public or  
24 private entity. And that was -- that was when the  
25 language first came in.

1           And if -- again, going back to my earlier  
2     comment, if you excise that first section and say, this  
3     only pertains to the abuser, then you don't have -- you  
4     don't have any statute of limitations window at all.  
5     It's forever. Because the only window in Subsection (b)  
6     that allows a claim to be brought against anyone is for a  
7     period of eight years after April 24th, 2012.

8           You know, plaintiff is taking the position  
9     they did not have to file their claim against an entity  
10    before April 24th, 2012. They could have filed it today.  
11    They could have filed it ten years from now.

12           Your Honor, the entire history of this statute  
13    is against that. There was very deliberate concerns and  
14    issues balanced to allow claims to be brought within a  
15    particular window. And if you read out that first  
16    sentence of Subsection (b), you have no limitations  
17    whatsoever. And that is not -- that is clearly contrary  
18    to the plain language of this statute.

19           And also they use the same language. Okay?  
20    So when it talks about a claim may also be brought under  
21    the section -- against a legal entity if, one, the person  
22    committed the act of sexual abuse. And that ties it to  
23    the first sentence, a victim of child sexual abuse. And  
24    they use the same language in Subsection (2) of  
25    Subsection (b). The person who committed the actual act

1 of sexual abuse on the victim or engaged in activity.

2 So this is all consonant with the very first  
3 sentence. You can't -- if there's only one person who  
4 committed the act of sexual abuse, it's no different than  
5 the person in the first sentence, Your Honor.

6 THE COURT: Okay. Ms. Segawa, any response to  
7 Mr. LaPorte's argument that Subsection (b) applies to  
8 both the alleged perpetrator and the legal entity?

9 MS. SEGAWA: Thank you, Your Honor. Nothing  
10 further other than I believe that the judge in *Wagner v.*  
11 *Church's* reasoning was sound.

12 But I think what's happening here is we're  
13 losing the forest to the trees. We're focusing so  
14 intensely on what four words mean that we're losing sight  
15 of what the statute was intended to do when the  
16 legislature enacted it.

17 Did our legislature in extending the right to  
18 bring a civil lawsuit for childhood sexual abuse intend  
19 to give a free pass to pedophiles, abusers, and their  
20 employers who sexually abuse and molest our children when  
21 they take our children out of the state?

22 And that clear answer, Your Honor, is no.  
23 That would be an absurd -- not absurd -- horrific result  
24 if abusers were allowed to do that. Think of the  
25 precedent that would set. That is not what the

1 legislature intended. And honing in on these four words  
2 to exclude Stender's conduct would produce an absurd  
3 result.

4 And then on top of that, Your Honor, the  
5 "occurred in the state" language could be read and should  
6 be read broadly to include the action in the State of  
7 Hawaii. Again, not in our first amended complaint, but  
8 in our proposed second amended complaint. That caused  
9 the sexual contact in Hawaii.

10 So no one's asking the Court to disregard that  
11 language. But we're saying that language does not  
12 preclude this act -- these facts from allowing Daniel's  
13 case against Stender and against KS for Stender's  
14 conduct.

15 THE COURT: Okay. Thank you. That's all the  
16 questions that I have. So let me open this up to any  
17 further argument if you wish. Starting with Mr. Miyoshi,  
18 any further argument?

19 MR. MIYOSHI: Your Honor, I just would like to  
20 make a comment with respect to Ms. Segawa's argument  
21 related to the proposed second amended complaint. And I  
22 understand that, you know, we really didn't discuss that  
23 much. But the argument that the activities or conduct  
24 before and after the Western Samoa trip would somehow  
25 constitute a crime under Chapter 707-732 -- I just -- I

1 think is inconsistent with the criminal statute. It's  
2 inconsistent with some of the cases I have interpreted  
3 what can constitute a crime under 707-732.

4 There was no -- even under the proposed second  
5 amended complaint, the plaintiff is not alleging any  
6 sexual conduct or contact that occurred prior to or  
7 after. And so even if the Court were to -- is inclined  
8 to allow the amendment, we don't think that those  
9 allegations would give rise to a claim under -- under  
10 this statute.

11 THE COURT: Okay. Thank you.

12 Mr. LaPorte.

13 MR. LaPORTE: Your Honor, are you only  
14 addressing Stender or are you addressing anything else?

15 THE COURT: No. And now the floor is open to  
16 any other comment you wish to submit.

17 MR. LaPORTE: Okay. So Kamehameha Schools --  
18 I think we've addressed all the issues regarding claims  
19 arising from Mr. Stender. Now, we've also sought  
20 dismissal of three particular counts of the six-count  
21 complaint.

22 The punitive damages I think plaintiffs agree  
23 that can't be a separate count. So we are concerned  
24 about the sexual assault and battery count that they have  
25 asserted, Count 1. And it only names three defendants --

1       Dunn, Stender, and Turchi. It doesn't name Kamehameha  
2       Schools at all. We raised that issue at the beginning in  
3       this motion to dismiss because we wanted to be clear, you  
4       know, if you want to bring against -- claims against  
5       those three defendants, we understand that. However, to  
6       the extent you're trying to hold Kamehameha Schools  
7       liable under that particular count, notwithstanding the  
8       five other counts that you're trying to hold them liable  
9       for, you know, we don't believe that's proper.

10               And they came back and said, Okay, well, yeah,  
11       gee whiz, we -- we need to file a second amended  
12       complaint and then allege expressly that Kamehameha  
13       Schools can indeed be liable for sexual assault and  
14       battery under Count 1 or under a theory of respondeat  
15       superior.

16               And our response is simply under controlling  
17       Hawaii law, that's not possible. In the beginning with  
18       the Supreme Court's decision in *Sharples v. State*, that's  
19       when you had a state psychiatrist who had sexual  
20       relations with a patient and they tried to hold the state  
21       liable and the Supreme Court came back in 1990 and said,  
22       you know, the sexual assault of a psychiatrist of his  
23       pa -- of his patient was as a matter of law not within  
24       the scope of employment and, therefore, you can't be held  
25       liable under respondeat superior.

1                   Fast-forward about a quarter century. *Winfrey*  
2     *v. GGP Ala Moana* in 2013. Justice McKenna writing for  
3     the Supreme Court again holds expressly vicarious  
4     liability would not extend to intentional torts.

5                   THE COURT: Can you spell the names of these  
6     cases? Can you spell the names please?

7                   MR. LaPORTE: Yes, Your Honor. *Sharples v.*  
8     *State. S-h-a-r-p-l-e-s v. State.* That's 1990. And the  
9     second case was *Winfrey, W-i-n-f-r-e-y v. GGP Ala Moana.*

10                  THE COURT: Thank you.

11                  MR. LaPORTE: And so those are the controlling  
12     law under Hawaii -- by the Hawaii Supreme Court. And it  
13     was acknowledged in I think -- which is probably the most  
14     instructive case in this matter. And that's the *DOE*  
15     *Parents No. 1 v. The Department of Education.* And there  
16     they acknowledge that, like here, the plaintiff had  
17     asserted a claim against the school district under  
18     respondeat superior. And this is again -- this is Judge  
19     McKenna when she was sitting as the trial judge in that  
20     case held as a matter of law, and it was referenced in  
21     the Supreme Court decision, that a -- a sexual abuse of  
22     two fifth grade students is not within the scope of a  
23     teacher's employment.

24                  And we cited -- referred back to the *Mary M.*  
25     Case, *Mary* with the letter M, California Supreme Court



1 case that plaintiffs raised in their opposition. And in  
2 that case it did hold that a police officer can be held  
3 liable for sexual assault of essentially a prisoner. But  
4 if you read the entire case, it makes a very express  
5 disclaimer of going any further beyond a police  
6 department and expressly talks about and reaffirms its  
7 prior holding of a school teacher's sexual assault of a  
8 minor and says, we will not go there.

9 And I don't think this Court or any Court in  
10 the State of Hawaii will ever go as far to say a sexual  
11 assault and battery of a student is ever within the scope  
12 of a teacher's employment. That's just not -- no fact is  
13 going to be developed. That is a matter of law.

14 And so that's -- and then the second problem  
15 with the -- the -- trying to hold Kamehameha Schools  
16 liable for sexual assault and battery is because this is  
17 being brought under 657-1.8. And that statute requires a  
18 higher bar against the entity -- that if you're going to  
19 hold the entity liable, not the perpetrator, but the --  
20 but the entity liable, you have to have a finding of  
21 gross negligence on the part of the legal entity.

22 And we all know respondeat superior, the --  
23 what the employer did or didn't do is irrelevant. So if  
24 you were to hold Kamehameha Schools liable for a  
25 perpetrator's intentional sexual assault and battery

1 under respondeat superior theory, you would again nullify  
2 this language here.

3 So you've got the controlling Hawaii law,  
4 intentional torts that do not allow employers to be held  
5 liable for intentional torts, especially sexual assaults  
6 of employers, and you have the added bar of 657-1.8 that  
7 requires a consideration of the conduct of the employer  
8 to determine whether or not they can be liable.

9 The second -- the second issue we want to have  
10 dismissed as a claim against Kamehameha Schools is the  
11 alleged conduct of an individual who we really don't know  
12 who he is, but is named Mr. Wells, who's not a defendant  
13 in this case. And Mr. Wells, the plaintiff alleged,  
14 picked up the plaintiff while he was at Queen's Medical  
15 Center, took him to his house, showed him some apparently  
16 photographs of partially dressed -- partially dressed and  
17 totally undressed boys. And again, this is being brought  
18 under 657-1.8. Kamehameha Schools is not an employer of  
19 Mr. Wells. And the activity that we're -- they were  
20 engaged in -- Mr. Wells was not engaged in any activity  
21 that Kamehameha School had any control over.

22 And then the third reason is that the -- the  
23 alleged statute that they say was -- you know,  
24 constituted the sexual abuse was HRS 707-750-1. But  
25 that's not the statute that was in effect at the time.

1 The statute that was in effect at the time, which is in  
2 our reply, you had to have -- the photographs that had to  
3 have shown had to be children engaging in the performance  
4 of sexual acts, acts of masturbation, homosexuality,  
5 lesbianism, bestiality, etc., etc.

6 So if you go back to the statute that was in  
7 effect at that time, even -- even if Mr. Wells -- even if  
8 was employed by Kamehameha Schools and this activity was  
9 under his control, at that time, this would not have  
10 constituted an offense.

11 And then another count we believe should be  
12 dismissed as a matter of law is a separate count, No. 4,  
13 for breach of fiduciary duty that has been asserted  
14 against Kamehameha Schools.

15 Now, what plaintiff says is, look, under the  
16 student -- *Parent No. 1 DOE* case, the Supreme Court  
17 acknowledged that the school does have a special  
18 relationship with its students. We agree with that. And  
19 the special relationship is articulated as under the  
20 doctrine of *in loco parentis*, standing in the shoes of  
21 the parents. But that is not a fiduciary duty. That's a  
22 separate duty. That's a duty that the Hawaii Supreme  
23 Court articulates very clearly in the DOE case. And  
24 it -- it goes through nine separate pages of how we get  
25 to define the duty of a school that is owed to its

1 students.

2 And it begins with *Miller v. Yoshimoto*. It's  
3 Miller, M-i-l-l-e-r, versus Yoshimoto, Y-o-s-h-i-m-o-t-o,  
4 in 1975. And the issue there was could a school be held  
5 liable when another student is assaulted with rocks by  
6 another student? And then it takes you through *Kim v.*  
7 *State*, K-i-m versus State. That was a student violently  
8 assaulted during class. And then in this nine pages, the  
9 Supreme Court outlines what the duty of a school to  
10 ensure the safety of its students are.

11 And nowhere in no Hawaii case has any court  
12 ever imposed a fiduciary duty upon a student. And in  
13 fact, Hawaii courts have expressly rejected fiduciary  
14 duty. And I think one of the most recent ones is in  
15 *Cochrane v. Azman*. C-o-h-r-a-n-e (sic) versus Azman,  
16 A-z-m-a-n, in 2011. And that was the ICA. And they  
17 rejected the argument that a defendant doctor owed a  
18 fiduciary duty to his patient. Certainly the doctor owed  
19 a duty of care to his patient, but it's not a fiduciary  
20 duty.

21 Do you have any questions, Your Honor?

22 THE COURT: Can you spell in loco parentis  
23 please?

24 MR. LaPORTE: I-n l-o-c-o p-a-r-e-n-t-i-s.

25 THE COURT: Okay. Thank you. I have no

1 further questions.

2 Ms. Segawa.

3 MS. SEGAWA: Thank you, Your Honor. As to the  
4 fiduciary duty issue, the Supreme Court has said that a  
5 fiduciary duty can arise from a special relationship. A  
6 fiduciary duty is when someone is in a position of trust  
7 such that he has a duty to act for the benefit of  
8 another. It's not as limited as Kamehameha argues.

9 Furthermore, we're not arguing that this  
10 fiduciary duty is owed just to Daniel at the expense or  
11 to the exclusion of all other students. We're saying  
12 this duty, this fiduciary duty or special duty or  
13 heightened duty, whatever you want to call it, is owed to  
14 all students of Kamehameha Schools. And especially to  
15 minor boarders who lived on campus at minors.

16 An accountant who has multiple clients doesn't  
17 owe a fiduciary duty to one client above all others. He  
18 owes that fiduciary duty to all of his clients.

19 If -- if the Court has a problem with the term  
20 fiduciary duty as it believes it's not the correct --  
21 what word to call this special duty that the DOE has -- I  
22 mean, that the Supreme Court has articulated, then we're  
23 comfortable with saying it's the duty of care that the  
24 Supreme Court articulated in the *DOE Parents* case that  
25 Mr. LaPorte referenced. And it's a duty to take whatever

1 precautions are necessary reasonably to ensure the safety  
2 and welfare of the children entrusted to its custody and  
3 control against harm that the DOE or, in this case,  
4 Kamehameha Schools anticipates or reasonably should  
5 anticipate.

6 The foregoing duty arises from the special  
7 relationship that Kamehameha Schools has -- shares with  
8 its students, and it can be characterized as one -- as a  
9 special duty in loco parentis, which I don't think I need  
10 to spell again, to exercise reasonable care to protect a  
11 student from foreseeable harm. It's -- and this is  
12 especially true in this case where there's minor students  
13 boarding, living at Kamehameha Schools without their  
14 parents. Kamehameha Schools stepped into the shoes of  
15 their parents in that case.

16 And the *Restatement Second of Torts*, Section  
17 320, which was favorably cited by the Supreme Court in  
18 that DOE opinion states that one who voluntarily takes  
19 the custody of another under circumstances such as to  
20 deprive the other of the normal power of self-protection  
21 or subjects him to association with persons likely to  
22 harm him is under a duty to exercise reasonable care so  
23 to control the conduct of third persons and to prevent  
24 them from intentionally harming the other if the actor  
25 knows or has reason to know that he has the ability to

1 control the conduct of the third person or knows or  
2 should know of the necessity and opportunity for  
3 exercising such control.

4 Here, Kamehameha took -- voluntarily took  
5 custody of Daniel, a minor student, when they offered him  
6 to be a boarding student at their Honolulu campus,  
7 depriving him of the protection of his parents and  
8 subjecting him to associations -- to associations with  
9 persons likely to harm him, that being Stender and Dunn,  
10 his teachers and Turchi and Wells, who are strangers but  
11 that were given unfettered access to Daniel on Kamehameha  
12 Schools' campus into their complete lack of security.

13 Kamehameha Schools therefore had a duty to  
14 exercise reasonable care to control the conduct of their  
15 teachers and the security of their campus to prevent them  
16 from intentionally harming Daniel. This is the duty.  
17 Whether they have a problem with us calling it a  
18 fiduciary duty, which I believe it is, or if they want us  
19 to just articulate this duty, this is the duty that they  
20 have.

21 As to Wells' conduct, honestly, Your Honor, we  
22 don't know the extent of the photographs that were taken  
23 and shown to Wells -- I mean, taken and shown to Daniel  
24 by Wells. But I think under Rule 8, it suffices to give  
25 notice that there are allegations of child pornography,

1 even if we don't know the full details of what were  
2 depicted in the photos.

3 And also the -- going back to Statute 657-1.8,  
4 it doesn't clearly state which version of 707 governs.  
5 As I read it, it doesn't say the statute that was in  
6 effect at the time the crime was committed.

7 And I think if we, you know, follow the  
8 Supreme Court's directive to liberally construe these  
9 remedial statutes, you have to read it in a way that  
10 expands the rights of children.

11 The statute was intended to protect our  
12 children now better than they were protected in the past.  
13 It was intended to give them more rights than they had  
14 before. And I think if we read the statute narrowly to  
15 exclude claims of child -- of the photos of Daniel that  
16 were taken by Wells, I believe that would be diminishing  
17 rather than expanding the rights of children.

18 And additionally, Kamehameha had control over  
19 the situation. They had control over where their  
20 children went to seek medical attention, as we all know  
21 from the Dr. Brown case. They had control over  
22 transporting Daniel to and from Queen's. He stated that  
23 he was waiting for his ride from Kamehameha to pick him  
24 back up when he was encountered by Wells. They had  
25 control over the situation. And that is under Subsection



1 (b) (2), not (1). And I think that's all.

2 As to the -- oh, as to the allegations about  
3 the respondeat superior for sexual assault issue, I'm  
4 going to rest on the pleadings on that. I believe it's a  
5 tough issue for us, and I'll just -- I gave my best shot  
6 in my opposition and I'll rest on those pleadings, Your  
7 Honor.

8 THE COURT: Okay. Mr. Miyoshi, any final  
9 comment?

10 MR. MIYOSHI: Nothing here, Your Honor.

11 THE COURT: Okay. Mr. LaPorte, anything  
12 final?

13 MR. LaPORTE: Yes, Your Honor. It seems to be  
14 a tacit acknowledgment that they just want to say that  
15 there was a breach of the duties under in loco parentis.  
16 I think that's included in their claim or counts already  
17 for gross negligence, Count 2; Count 3, negligent  
18 retention, supervision, and training; Count 5, for  
19 negligent infliction for emotional distress.

20 So, you know, I don't think there's any  
21 dispute from Kamehameha Schools that its duty -- the  
22 special relationship between the school and its students  
23 is that of in loco parentis as determined -- outlined by  
24 the Supreme Court. Our only issue is that we don't  
25 believe this separate count for breach of fiduciary duty

1 is supported by the law.

2 With respect to Wells, whatever he was shown,  
3 they still can't get past the 657-1.8 bar under (b) --  
4 Subsection (b)(2), that the person who committed the act  
5 of sexual abuse, and that was Wells, was not -- he was  
6 not engaged in activity for which Kamehameha Schools had  
7 a degree of control. You need that nexus there between  
8 the abuser and the school. The plaintiff may have been,  
9 but you need both. It's in the conjunctive. I have  
10 nothing further, Your Honor.

11 THE COURT: Okay. Let -- let the Court first  
12 address the question of the statute of limitation. The  
13 big controversy is whether Subsection 657-1.8(a) and  
14 1.8(b) require that the alleged sexual assault take place  
15 within the State of Hawaii or occurred in the State of  
16 Hawaii. And I did not hear argument that if only one of  
17 those sections applied, only (a) or (b), that it would  
18 enable the plaintiff to survive this motion. Both  
19 Mr. Stender and the trustees move as to Subsection  
20 1.8(b), and Mr. Stender also moves pursuant to 1.8(a).

21 So 1.8(b) applies to both movants. And in  
22 reading 1.8(b), it clearly and expressly requires that  
23 the sexual abuse "occurred in this state." And with  
24 great deference to Judge Gillmor in the *Wagner* case,  
25 that's the plain reading of the statute. It has that

1 requirement in Subsection (b).

2 And this Court is not deaf or blind to the  
3 very logical and forceful argument about the purpose of  
4 the statute. But the purpose of the statute really  
5 cannot overcome the express language of the statute. And  
6 the many logical, well-formed arguments of the plaintiff  
7 must be made to the legislature, not to the Court under  
8 these circumstances.

9 So in the plain reading -- the Court's plain  
10 reading of Section 657-1.8(b), it does expressly require  
11 that the sexual assault have occurred in the state. And  
12 at least with respect to Mr. Stender, his alleged assault  
13 upon the plaintiff did not occur in the state. And  
14 therefore, the statute of limitation is not extended as  
15 to Mr. Stender's activities and vicariously to the  
16 trustees.

17 The trustees also move as to Count 1 for the  
18 conduct of Mr. Wells. And Mr. Wells also is not by the  
19 language in the first amended complaint an employee and  
20 was not engaged in the required sexual conduct or sexual  
21 abuse of the victim as defined by statute. So the  
22 conduct of Mr. Wells also forms no basis for the  
23 vicarious liability of the trustees. So Mr. Stender's  
24 motion is granted, and the trustees' motion is granted as  
25 to Count 1.

1           The trustees further move to dismiss Count 4,  
2           which involves the fiduciary duty question. And upon  
3           this Court's review of the applicable law, the cases do  
4           not impose a, quote, fiduciary duty, end quote, upon the  
5           principal or in this case the trustees. There may be  
6           other duties that are imposed by law by virtue of the in  
7           loco parentis relationship between a school and a  
8           student, but the plaintiffs have not cited any case that  
9           persuades this Court that the duty that is imposed upon  
10          the school is a fiduciary duty.

11           So therefore, this Court concludes there is no  
12          basis to impose a fiduciary duty upon the trustees and,  
13          therefore, Court concludes there is good cause to grant  
14          the motion as to Count 4.

15           Count 6 is a punitive damage claim. And  
16          plaintiffs to their credit acknowledge that punitive  
17          damage is not an independent, freestanding cause of  
18          action. And so the Court will grant the motion to  
19          dismiss as to Count 6 pertaining to the trustees.

20           The opposition to the trustees' motion  
21          contained a request by the plaintiff that the plaintiff  
22          be allowed to file a second amended complaint. But such  
23          an informal request cannot be granted in a case of this  
24          contentious nature without an appropriate motion and  
25          opportunity for all parties to brief the questions. So

1 the Court will respectfully deny without prejudice the  
2 plaintiff's request for leave to file a second amended  
3 complaint. And the Court will entertain an appropriate  
4 motion filed by plaintiff with full opportunity for all  
5 parties to brief that question.

6 As to any future motion for leave to file  
7 second amended complaint that the plaintiff may file, the  
8 Court will order that in the event that Defendant Stender  
9 is dismissed from the case, that plaintiff can merely  
10 serve the appropriate motion papers upon Mr. Miyoshi's  
11 office and that will constitute service upon Mr. Stender.

12 I think that disposes of all of the matters  
13 before the Court today.

14 For the trustees, movant, Mr. LaPorte,  
15 anything further for today?

16 MR. LaPORTE: Your Honor, are you also going  
17 to rule on our motion to dismiss the -- the defendant  
18 that was named, the Kamehameha Schools -- the one that we  
19 don't believe has any ability to be sued or to sue? And  
20 they never responded to that in our -- in our motion.

21 THE COURT: Can you clarify what you mean?  
22 I -- I thought the motion only as to Count 1 related to  
23 Mr. Stender and Mr. Wells. Is it applying to someone  
24 else?

25 MR. LaPORTE: Well, that's actually a separate

1 issue. There is a third person, a Mr. Dunn, which we  
2 didn't -- we didn't -- we didn't move separately on that.  
3 But our motion to dismiss Count 1 was as a whole because  
4 whatever -- you know, if it's a teacher and they did some  
5 intentional sexual assault, as a matter of law it can't  
6 be -- the school -- (inaudible). That was Assault 1  
7 blanketly.

8 And then with respect to what we did move for  
9 the other count of negligence -- (inaudible) -- itself  
10 with negligent was any claims arising -- as you talked  
11 about already, arising from the conduct of Mr. Stender or  
12 Mr. Wells.

13 And then lastly, we requested at the very  
14 conclusion of our motion on page 19, is that Defendant  
15 Kamehameha Schools, that is actually the very first  
16 defendant, which they have defined as Kamehameha Schools,  
17 aka Kamehameha Schools Bishop Estate as a separate  
18 defendant -- we just pointed out that that's -- the law  
19 is clear that's just a trade name. That can't be a party  
20 defendant. Can't be a party plaintiff. And just for  
21 more of a housekeeping measure, to have that defendant  
22 removed.

23 THE COURT: Okay. As to Mr. Dunn, I did not  
24 see him included in the motion. So this ruling does not  
25 include Mr. Dunn.

1 MR. LaPORTE: I understand.

2 THE COURT: The negligence argument, I also  
3 did not see that expressed in the motion. So I am not  
4 granting any relief as to any claims of negligence.

5 As to the Kamehameha Schools defendant, yes,  
6 the Court will grant the motion as to the Kamehameha  
7 Schools defendant. So you can include that in the ruling  
8 in this matter.

9 MR. LaPORTE: Okay.

10 THE COURT: Okay?

11 MR. LaPORTE: Thank you.

12 THE COURT: All right. For the --

13 MS. SEGAWA: Your Honor -- Your Honor, Alyssa  
14 Segawa.

15 THE COURT: Hold on. Hold on.

16 MS. SEGAWA: Okay.

17 THE COURT: I'm going movant, movant, and then  
18 you'll get a chance to speak. So write your notes of  
19 what you want to say, because I'm going to ask  
20 Mr. Miyoshi.

21 Mr. Miyoshi -- oh, before I go to Mr. Miyoshi,  
22 Mr. LaPorte, will you kindly prepare an appropriate  
23 order?

24 MR. LaPORTE: Yes, Your Honor.

25 THE COURT: Okay. Thank you.

1 Mr. Miyoshi, any questions? Mr. Miyoshi?

2 MR. MIYOSHI: I'm sorry. My -- I was muted.

3 THE COURT: Okay.

4 MR. MIYOSHI: Nothing further, Your Honor.

5 THE COURT: Okay. Would you kindly prepare --

6 MR. MIYOSHI: I'll prepare an order.

7 THE COURT: Would you kindly prepare an  
8 appropriate order?

9 MR. MIYOSHI: I will. Thank you.

10 THE COURT: Okay. Thank you.

11 Okay. I'm sorry, Ms. Segawa. Your turn now.  
12 You have any comments or questions?

13 MS. SEGAWA: Yeah. Just a clarification. The  
14 Court ruled as to Section 1.8(b). Did the Court also  
15 find that under Subsection (a), Stender's motion is  
16 granted?

17 THE COURT: Well, the analysis is a little  
18 different under 1.8(a) because 1.8(a) does not -- does  
19 not contain the express language "occurred in this  
20 state." So there would have to be some construction.  
21 But it -- as I understand it, Mr. Stender is moving to  
22 dismiss under both Sections (a) and (b). So I think it  
23 would be dicta for this Court to -- to make a specific  
24 ruling on 1.8(a).

25 MS. SEGAWA: Well, the -- the statute is for



1 statute of limitations. So if plaintiff's claim survives  
2 under Subsection (a) and that the discovery rule applies.  
3 And if the Court finds that Subsection (a) did not  
4 contain a geographical limitation, then plaintiff would  
5 still have claim -- would have survived the statute of  
6 limitations under (a) regardless of whether their claims  
7 don't survive under the revival, Subsection (b).

8 So -- so does that make sense? Like yeah,  
9 maybe our claims wouldn't survive under (b), but (a)  
10 still exists.

11 THE COURT: Well, that's why I asked my  
12 question about the plaintiffs being successful under (a)  
13 or (b) and would that affect the ruling on this motion.  
14 And I heard the plaintiff say no, it would not affect the  
15 ruling. But now you're saying it would affect the  
16 ruling. So is -- is that correct?

17 MS. SEGAWA: Then I might have -- I might have  
18 misunderstood the question. I thought the question was,  
19 do plaintiffs have a claim under (a) or (b) for the  
20 statute of limitations. And I meant to say -- I'm sorry  
21 if it didn't come across clearly, but we would still have  
22 survived the statute of limitations under Subsection (a)  
23 because he discovered the abuse within the three years of  
24 the discovery of -- he discovered the causal connection  
25 within three years of filing the claim. And again,

1 that's the -- the conduct did not have to occur in Hawaii  
2 under Subsection (a).

3 And then also we believe that under (b), we  
4 would have kept Kamehameha Schools in. So I apologize,  
5 but -- and you know, our complaint isn't exactly clear on  
6 this as well, which is why we, you know, are not going to  
7 bring the second amended complaint. But that there's two  
8 alternative ways that plaintiff's claims against Stender  
9 would survive the statute of limitations. The Court has  
10 ruled on (b) and said the "occurred in the state  
11 language" -- that plain language governs and, therefore,  
12 you're not allowed under (b). But we believe under (a)  
13 the discovery rule, were within the three years, does not  
14 have to occur within the State of Hawaii.

15 THE COURT: Okay. That makes a lot of sense  
16 now. And so I -- I appreciate your -- your question. If  
17 that is the case, then as to 657-1.8(a), this Court  
18 concludes that the language of Subsection (a) does  
19 require that the offense have occurred within the state.  
20 For this reason -- well, there are several reasons. But  
21 primarily, the statute requires that the sexual acts that  
22 constituted or would have constituted a criminal offense  
23 under Chapter 707. And that's what Subsection (a)  
24 requires. So it requires the reader to look at what the  
25 elements are of the criminal offense under 707. And I

1 think in this case we are talking about 707-732, which is  
2 assault against a person.

3 So it was argued by the movant, Mr. Miyoshi  
4 for Mr. Stender, that one of the elements of the crime is  
5 the territorial restriction, which is in a different  
6 section, 70 -- excuse me -- 701-106(a). And that section  
7 requires that the offense occur within the state.

8 And so by incorporating by reference a  
9 criminal offense under Chapter 707, the legislature  
10 imported into Subsection (a) the requirement that the  
11 sexual assault have occurred within the state.

12 Now, Subsection (a) and Subsection (b) are  
13 different in terms of the express language in the  
14 statute. Subsection (b) clearly requires that the sexual  
15 assault occur within the state. But Subsection (a) does  
16 not expressly require it. However, it incorporates by  
17 reference a criminal offense, one of the elements of  
18 which is that the violation occur within the state.

19 So the Court construes both Subsection (a) and  
20 Subsection (b) to be consistent, and both require that  
21 the sexual acts occur within the state.

22 So even under Subsection (a), which does not  
23 expressly require that the sexual assault occur within  
24 the state, but by virtue of construction of Subsection  
25 (a) and its express incorporation of violations under

1 Chapter 707, that this Court concludes that the  
2 Subsection (a), that's 657-1.8(a), does legally require  
3 that the sexual act occur within the state.

4 So that is the basis for this Court's analysis  
5 of Section 657-1.8(a). And the motion as to Mr. Stender  
6 would also be granted under 657-1.8(a).

7 MS. SEGAWA: Thank you for the clarification,  
8 Your Honor.

9 THE COURT: Okay. Thank you for the question.  
10 And once again, Ms. Segawa, I want your client to  
11 understand that much of the argument that was made in  
12 terms of how to construe 657-1.8(a) and the intention of  
13 the statute being remedial are very logical, well-  
14 thought-out arguments. But those need -- arguments I  
15 think need to be made to the legislature. This Court  
16 does not engage generally in what people call judicial  
17 activism or judicial legislation. And I think this Court  
18 does its best to read the statute and interpret the  
19 statute as written.

20 But please do not think that your pleas and  
21 your good arguments went unheard. I think it's just not  
22 the right forum for me to do anything about it because I  
23 am constrained with what the legislature did.

24 So I think that's all I can say as to that for  
25 now.

1 MS. SEGAWA: Thank you, Your Honor.

2 THE COURT: Any further questions or comment?

3 MS. SEGAWA: Nothing further, Your Honor.

4 THE COURT: Okay. Thank you. So the Court's  
5 rulings have not changed except I've expanded the bases  
6 for Mr. Stender's motion. It is still granted. And I  
7 would ask that counsel be clear in their orders what  
8 counts are being dismissed.

9 And Mr. LaPorte, I think it just struck the  
10 Court that in this -- in granting the motion as to Count  
11 6, the Court will grant the dismissal without prejudice  
12 to the plaintiff asserting remedies in the form of  
13 punitive damages, but not an independent claim.

14 So Mr. LaPorte, if you would kindly add that  
15 to your order to clarify the ruling on Count 6.

16 MR. LaPORTE: Yes, Your Honor.

17 THE COURT: Okay. Thank you very much.

18 Then I think that concludes the hearing today.  
19 Thank you very much. The Court stands in recess. And  
20 all counsel can disengage from this video conference.  
21 Thank you.

22 MS. SEGAWA: Thank you, Your Honor.

23 (End of proceedings.)

24 -o0o-

25

1 STATE OF HAWAII )  
 )  
 2 )  
 )  
 3 CITY AND COUNTY OF HONOLULU )  
 )  
 4 )  
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 5 \_\_\_\_\_ )

6

7 I, JAMIE S. MIYASATO, hereby certify that the  
 8 foregoing comprises a full, true, and correct  
 9 transcription of an electronically recorded proceeding  
 10 had before the Honorable Gary W. B. Chang, presiding in  
 11 the above-entitled matter, so transcribed by me to the  
 12 best of my ability.

13 Dated this 21st day of July 2020.

14

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*/s/ Jamie S. Miyasato*

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JAMIE S. MIYASATO, CSR 394

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25 ccv-kaohimaunu

Executive Director  
Cindy Shimomi-Saito

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**Date:** February 2, 2021

**To:** The Honorable Ryan Yamane, Chair  
The Honorable Adrian Tam, Vice Chair  
House Committee on Health, Human Services, & Homelessness

**From:** Cindy Shimomi-Saito, Executive Director  
The Sex Abuse Treatment Center  
A Program of Kapi'olani Medical Center for Women & Children

**RE:** Testimony in Strong Support of HB 570  
Relating to Sexual Abuse of Minors

**Hearing:** Tuesday, February 2, 2021, Via videoconference

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Good morning Chair Yamane, Vice Chair Tam, and Members of the Committee:

The Sex Abuse Treatment Center (SATC) is in very **strong support of HB 570**.

Studies on delayed discovery through CHILD USA<sup>1</sup> confirm what we see at the SATC; survivors of childhood sexual abuse more often than not, withhold disclosure for many, many years. The impact of manipulation and grooming by the offender, threats made, concerns about the reactions of others, fear of consequences, feelings of self-blame, and fear of being blamed by others are amongst the myriad of reasons children remain silent. Sometimes children attempt disclosure but are subjected to silencing by the reactions of others.

Child predators rely on the silence of their victims. Hawai'i's current statute of limitations (SOL) to age 26, and 3 year discovery rule, do not sufficiently account for the time needed by survivors to break their silence.

As studies have shown age 52 as the average age of disclosure for victims of child sexual abuse, there is a national trend toward the elimination of civil SOL. Currently, 10 states have eliminated civil SOL and 14 states have extended civil SOL past age 50. HB 570's extension of the SOL to within fifty years of the 18<sup>th</sup> birthday of the minor would place Hawai'i in line with this national trend.

HB 570 also extends the time a survivor of childhood sexual abuse may bring forth an otherwise time-barred action. This not only gives survivors the opportunity for justice, but it also serves to inform the public of predators who may otherwise remain hidden and protected.

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<sup>1</sup> Delayed discovery studies available at [www.childusa.org/delayed-disclosure](http://www.childusa.org/delayed-disclosure).

At SATC, we see first-hand the tremendous courage it takes for a minor to disclose sexual assault. We also see the harmful impacts when a survivor's disclosure is minimized or ignored. Failure to respond appropriately to a disclosure of victimization reinforces the minor's belief that he/she is unsafe, heightens a sense of powerlessness, and further victimizes the survivor.

All of us share responsibility in keeping children safe. Entities with a duty of care for children are responsible for ensuring a safe environment, and for minimizing risk. HB 570 allows for treble damages when gross negligence is found. While the SATC believes punitive damages should be awarded on an individual case basis, the SATC supports the inclusion of failure to report evidence of sexual abuse of a minor to authorities in its definition of reckless disregard. However, the SATC would like to suggest the inclusion of the language highlighted below in Section 2, subsection (b)(2) to read as follows:

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[-]; provided that a victim may recover up to treble damages, unless prohibited by another law, if the victim proves that the victim's sexual abuse was the result of the legal entity's reckless disregard of **the need to exercise reasonable care including but not limited to reckless disregard of** evidence relating to a prior incident of sexual abuse of a minor. For purposes of this subsection, a legal entity's reckless disregard of evidence relating to a prior incident of sexual abuse of a minor shall include the legal entity's failure to report the prior incident to law enforcement authorities as required by law.

HB 570 further includes the possibility of court ordered trauma-informed response training for the personnel of the legal entity involved. Ensuring an environment in which trauma is understood is beneficial to all. As research has shown that adverse childhood experiences can become toxic stress which can negatively impact a child's emotional, physical, and spiritual health, trauma-informed training can equip personnel to respond to children in a manner that is responsible, safe, non-judgmental, and supportive.

HB 570 serves survivors by giving them the time needed to regain their voice, and the opportunity to seek delayed, but healing, justice. Additionally, it serves the community as it has the potential to expose child predators who have been hidden. And lastly, it ensures measures to protect the children of Hawai'i and reduce future risk.

For these reasons, the SATC strongly supports HB 570 and respectfully asks you to take this needed action. Thank you for the opportunity to provide testimony.



To: Hawai'i State House Health, Human Services, and Homeslessness Committee  
Hearing Date/Time: Tuesday, Feb. 2, 2021, 9:30 am  
Place: Hawai'i State Capitol, Rm. 329  
Re: Testimony of Planned Parenthood Votes Northwest and Hawai'i in support of HB 570

Dear Chair Yamane and Members of the Committee,

Planned Parenthood Votes Northwest and Hawai'i ("PPVNH") writes in support of HB 570 and supports the amendments recommended by the Sex Abuse Treatment Center.

- Survivors of childhood sexual abuse more often than not, withhold disclosure for many, many years.
- Child predators rely on the silence of their victims. Hawai'i's current statute of limitations (SOL) to age 26, and 3 year discovery rule, do not sufficiently account for the time needed by survivors to break their silence.
- Studies have shown age 52 as the average age of disclosure for victims of child sexual abuse. HB 570 extends the SOL to within fifty years of the 18<sup>th</sup> birthday of the minor. This aligns with the national trend to either eliminate or extend civil SOL
- HB 570 also extends the time a survivor of childhood sexual abuse may bring forth an otherwise time-barred action.
- It takes tremendous courage for a minor to disclose sexual assault. Failure to respond appropriately to a disclosure of sexual abuse heightens trauma. HB 570 allows for treble damages when gross negligence is found.
- The possibility of court ordered trauma-informed response training for the personnel of the legal entity involved is included. As research has shown that adverse childhood experiences can become toxic stress which can negatively impact a child's emotional, physical, and spiritual health, trauma-informed training can equip personnel to respond to children in a manner that is responsible, safe, non-judgmental, and supportive.
- HB 570 gives survivors the time needed to regain their voice, and the opportunity to seek delayed, but healing, justice. Additionally, it serves the community as it has the potential to expose child predators who have been hidden. And lastly, it ensures measures to protect the children of Hawai'i and reduce future risk.

Thank you for this opportunity to testify in support of this important legislation.

Sincerely,  
Laurie Field  
Hawai'i State Director

LATE

**HB-570**

Submitted on: 2/1/2021 5:27:36 PM

Testimony for HHH on 2/2/2021 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jessica Munoz	Ho'ola Na Pua	Support	No

Comments:

Ho'ola Na Pua is in strong support of HB570 Relating to Sexual Abuse of Minors.

Sexual abuse inflicts psychological trauma on youth, negatively impacting development and future attachments. Abuse of this kind inflicts social deprivations such as stigmatization, social isolation, and mistrust of others which internalize the events of abuse and make it extremely difficult for youth to disclose.

The current statute of limitations to age 26 does not give victims enough time to process their trauma. Hawaii should follow the national trend to either eliminate or extend the SOL.

We also support damages towards gross negligence in handling a disclosure, as it is such a delicate process for the victim and can be retraumatizing should someone with authority not act appropriately towards a minor who provides evidence.

HB 570 gives survivors the time needed to regain their voice, and the opportunity to seek delayed, but healing, justice. Additionally, it serves the community as it has the potential to expose child predators who have been hidden. And lastly, it ensures measures to protect the children of Hawai'i and reduce future risk.



**HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES, & HOMELESSNESS**

**Rep. Ryan Yamane, Chair**

**Rep. Adrian Tam, Vice Chair**

**DATE: Tuesday, February 2, 2021**

**TIME: 9:30 am**

**Via Videoconference**

**STRONG SUPPORT FOR HB 570, Relating to Sexual Abuse of Minors**

Aloha Chair Yamane, Vice Chair Tam and members,

The Coalition continues to support this important legislation. Age-appropriate training for students, teachers and parents may well prevent the horrific abuse children have suffered, and continue to suffer, throughout our society. The Sex Assault Treatment Center (SATC) reports that victims of sexual abuse in childhood are very likely to withhold disclosure for years.

The current Hawaii law on child sexual abuse gives the victim only up to age 26, 3 year discovery rule, to come forward. This time frame does not give these survivors ample time to feel ready to report their experience. Studies have shown that age 52 is the average age of disclosure for victims of child sexual abuse. As such, there is a national trend toward the elimination of the civil statute of limitations (SOL). Currently, 10 states have eliminated civil SOL and 14 states have extended civil SOL past age 50. HB 570's extension of the SOL to within fifty years of the 18<sup>th</sup> birthday of the minor would place Hawai'i in line with this national trend.

HB 570 would provide child sexual abuse survivors with the time needed to feel safe. This would allow survivors to eventually come forward, and bring perpetrators to justice. For these reasons, we are in strong support of this measure.

Mahalo for the opportunity to testify,

Cindy Shimomi-Saito, on behalf of Hawai'i Women's Coalition

Contact: [cindy.shimomi-saito@hawaiipacifichealth.org](mailto:cindy.shimomi-saito@hawaiipacifichealth.org)

**HB-570**

Submitted on: 1/31/2021 5:03:43 PM

Testimony for HHH on 2/2/2021 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
cathy lee	Individual	Support	No

Comments:

Studies on CPTSD are showing that our minds and bodies train ourselves into survival mode. Therefore, it can be years for a memory to surface or for the individual to recognize that abuse has occurred, especially for those who have endured childhood sexual trauma. I would know. By expanding the time period by which a civil action for childhood sexual abuse can be initiated, the Legislature is making a clear statement that it is working to create trauma-informed laws for its people.

**HB-570**

Submitted on: 1/31/2021 5:30:18 PM

Testimony for HHH on 2/2/2021 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Glenn Nagao	Individual	Support	No

## Comments:

I am writing in support of HB570. If seeking justice and protecting citizens (especially children) is the goal of government, then this bill should be passed. Victims of such crimes face a multitude of psychological and societal factors that sometimes prevent them from coming forward in the immediate aftermath of their attacks and even long after. Guilt, shame, fear can all play a role in any person--much less a child--not coming forward and reporting sexual abuse.

Removes time limitations on when sexual battery on a minor can be prosecuted and pass HB570.

LATE

**HB-570**

Submitted on: 2/1/2021 10:27:06 AM

Testimony for HHH on 2/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Alani Bagcal	Individual	Support	No

Comments:

**Representative Ryan Yamane, Chair**

**Representative Adrian Tam, Vice Chair**

**House Committee on Health, Human Services and Homelessness**

**Dear Chair Yamane, Vice-Chair Tam, and esteemed members of the committee:**

**My name is Alani Bagcal and I am writing today in support for HB570.**

**I truly admire this bill, as a survivor myself, I believe that HB750 gives survivors healing justice- because you cannot heal properly without knowing what happened to you, without the right tools and without guidance. It took me 9 years to even say it out loud, only then was I able to reach for help from a licensed therapist provided to me by the Sexual Abuse Treatment Center, which has impacted my life significantly. To this day I have not taken my abuser to court because in the state where my abuse took place allows a pathetic 2 year statute of limitations, I was still being abused during that 2 year mark and there was no way I was able to get out of the situation I was in. If I spoke up, my safety would have been compromised, and I had no idea about the resources available to me by the state to protect me as a minor. Knowing that I DONT have the ability to seek justice in this situation reminds me of how the state I used to live in, does not serve my best interest and continues to limit survivors time to acknowledge and heal. Hawai'i has the ability to do better.**

**Studies have shown it takes up to 50 years for survivors ability to speak up about what happened to them, therefore it is absolutely vital to extend the civil statute of limitations to at least 50 years, I would go as far as to say eliminate it completely. The ability to speak up takes tremendous courage, the process of going through court is even more triggering, thus trauma-informed response training for the personnel of the legal entity and alleged abuser is necessary.**

**HB570 gives survivors the time needed to regain their voice, and the opportunity to seek delayed, but healing, justice. Additionally, it serves the community as it**

**has the potential to expose child predators who have been hidden. And lastly, it ensures measures to protect the children of Hawai'i and reduce future risk.**

**Thank you for the opportunity to testify in support for this bill,**

**Alani Bagcal**

**96815**

LATE

HOUSE OF REPRESENTATIVES  
THIRTY-FIRST LEGISLATURE, 2021  
HB570  
February 2, 2021  
VIDEO CONFERENCE 9:30 AM

My name is Jordan Sleeth, I am currently a student at UH Manoa in the MSW program. I plan to become a licensed clinical social worker. As a student, I have witnessed over previous cases and current cases in my fieldwork how trauma can affect someone. It can completely alter the state of mind that the person is in for a long time. I support the bill because of this reason, trauma takes time to process, to understand, and to be able to face.

If you have someone who has been through a trauma, hesitant to come forward already not welcomed into a safe environment, they will not come forward. If the victims are not welcomed to a judgment-free safe place why would they share their trauma? If those who are there to help cannot understand how this trauma may have affected the victim, they will not be able to completely help and create this safe place for them. Trauma-informed care is very important and I believe will be very beneficial for those involved in the case to be trained in it. I have been through a trauma in the past and if it weren't for the understanding, the supportive therapist I had worked with I would be where I am today able to share my story and support others. A little knowledge and understanding can go a long way in these cases.

In closing, I believe this measure relating to the sexual abuse of minors should be passed and would be extremely beneficial to those who have experienced such trauma. The more people know the more they can help

Jordan Sleeth



LATE

Dear Chair Yamane, Vice Chair Tam, and committee members:

I am a survivor of childhood sex abuse and I support HB 570.

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 mental health attention needed to accept and move on. I lead a men's peer support group in Hawaii that has attendees of up to 10 men at a meeting, with many more men aware of the group but not ready to meet in a group just yet. The men are in favor of extending the window legislation and the civil statute of limitations but would rather have the statute eliminated entirely. Also, the men consider limiting the monetary damages a victim can recover to only "treble damages" is a slap in the face. These entities chose money and reputation over the safety of children and should not be protected by insincere politicians like Rep Belatti, who has killed past statute of limitation bills in the past. It's a joke to think "trauma-informed response" will have any credible or lasting effect on entities. Entities need the fear of punitive damages to make any real and lasting changes to protect children.

I ask the respected committee members today to please consider HB570 but eliminate the statute of limitations and the language limiting damages (treble damages). 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