



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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Friday, February 9, 2024 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 016 and Videoconference

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

Chair Rhoads and Members of the Committee:

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

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

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

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

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

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

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

We respectfully recommend amending the proposed bill to reflect a more reasonable time period within which plaintiffs can allege a cause of action. We would be happy to work with the Legislature to find the best solution that is fair to all parties.

Thank you for the opportunity to provide comments.

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

Date: Friday, February 9, 2024

Time: 9:30 a.m.

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

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

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

Moreover, HAJ would recommend an amendment on Page 2, line 11, to remove “gross” to make the threshold for a claim for damages against a legal entity just negligence. Including a reasonableness standard would make a legal entity more accountable for their actions or omissions in these types of cases.

The proposed measure properly accounts for the challenges that victims face when electing to pursue justice. HAJ supports the intent of the measure with the provided amendments. Thank you for allowing us to testify regarding this measure. Please feel free contact us should you have any questions or desire additional information.

SB-2439

Submitted on: 2/2/2024 8:26:58 PM

Testimony for JDC on 2/9/2024 9:30:00 AM

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

Comments:

Aloha Senators,

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

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

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

Mahalo nui loa,

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

SB-2439

Submitted on: 2/8/2024 7:56:16 AM

Testimony for JDC on 2/9/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Ann S Freed	Testifying for American Association of University Women	Comments	Remotely Via Zoom

Comments:

Aloha Chair Rhoads, Vice Chair Gabbard and members,

While we appreciate the intent of the bill to extend the statute of limitations for victims of sex abuse, in particular those who have suffered childhood sex abuse and as adults continue to suffer, we have misgivings about the onerous requirements placed upon the victims in this bill. In particular the following language/requirements:

"(d) In any civil action filed pursuant to subsection (a), a certificate of merit shall be filed by the attorney for the plaintiff, and shall be sealed and remain confidential. The certificate of merit shall include a notarized statement by a:

Psychologist licensed pursuant to chapter 465;

Marriage and family therapist licensed pursuant to chapter 451J;

Mental health counselor licensed pursuant to chapter 453D;

or

Clinical social worker licensed pursuant to chapter 467E; who is knowledgeable in the relevant facts and issues involved in the action, who is not a party to the action.

The notarized statement included in the certificate of merit shall set forth in reasonable detail the facts and opinions relied upon to conclude that there is a reasonable basis to believe that the plaintiff was subject to one or more acts that would result in an injury or condition specified in subsection (b)."

Does the language mean that a victim is required to get notarized statements from three or four professionals? If that is the case or even if it was only one or two, what victim would be able to put themselves through this red tape in order to secure justice for the soul-stealing crime that has been committed against them, him or her.

Suggest an amendment to reduce the certifying professionals to one and remove the requirement for notarization. A professional's license should be sufficient.

We look forward to clarification.

Mahalo for allowing us to testify,

Ann S. Freed, Policy Committee of AAUW

February 8, 2024

The Hon. Karl Rhoads
Chairman, Senate Judiciary Committee
Hawaii State Capitol, Room 228
415 South Beretania Street
Honolulu, HI 96813

Re: S.B. 2439: Opposition to Reviving Time-Barred Claims (Hearing 2/9/24)

Dear Chairman Rhoads:

In past years, our organization, the American Tort Reform Association (ATRA) has expressed concern that enacting legislation reviving lawsuits for which the statute of limitations has expired would set a troubling precedent, undermining the predictability and fairness of the state's civil justice system. While we appreciate the good intentions behind S.B. 2439, this legislation shows that this slippery slope has arrived even sooner than we anticipated.

As you know, in 2012, Hawaii extended its time to file civil claims alleging injuries stemming from sexual abuse during childhood. The 2012 law included a controversial two-year "reviver window," which allowed lawsuits to be filed no matter how many decades have gone by and even where the statute of limitations for filing a claim has long expired. This window was scheduled to close in 2014, but was repeatedly extended, ultimately ending after six years on April 24, 2020. The legislation cast aside the statute of limitations and opened the door lawsuits alleging that organizations, decades ago, should have, through its hiring, supervising, or training of employees, done more to protect children from sexual abuse. While some of these lawsuits targeted churches, others named schools, youth groups, state agencies, and other organizations as defendants. Those lawsuits sought damages for injuries stemming from abuse alleged to have occurred as far back as the 1950s and 1960s, when the perpetrator and staff from that period are likely dead or gone, and after records have been discarded.

When that reviver law passed in 2012, and later extended, ATRA was concerned that if the legislature opened a window for time-barred childhood sexual abuse lawsuits, it would not be long before legislators would be encouraged to take this approach for other types of claims. This is inevitable because, as any plaintiffs' lawyer will tell you, it is always difficult to tell a person who has experienced an injury that the time to sue has ended. Yet, without statutes of limitations, the civil justice system cannot accurately and fairly assess whether or not a party is responsible for an injury.

Now, soon after the window for filing *childhood* sexual abuse claims has closed, S.B. 2439 proposes taking the same approach for lawsuits seeking damages stemming from the sexual abuse of *adults*. As with 2014 legislation, perpetrators of abuse are not likely to be the primary targets of this legislation. This time the lawsuits will name Hawaii's colleges and universities, healthcare providers, and employers as defendants

and assert that they did not do enough, years ago, to protect individuals from abuse by others. These lawsuits will be evaluated in hindsight based on what we now know and the steps to detect and respond to perpetrators that we take for granted today, not what was understood or expected at the time.

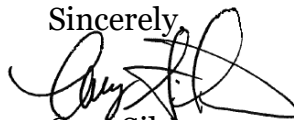
ATRA has no issue with providing a reasonable period for survivors of sexual abuse to file lawsuits against those who are responsible, extending that period if necessary. It is important to recognize, however, that tort (personal injury) law often addresses situations in which individuals experience serious life-long injuries, but that every civil claim has a finite statute of limitations to protect the integrity of the civil justice system. Reviving time-barred claims makes a statute of limitations meaningless.

The approach taken in S.B. 2439 should concern all Hawaiians because statutes of limitations are essential for judges and juries to make decisions about liability based on the best evidence available – when witnesses and records are available, and when memories are fresh. Statutes of limitations also protect the public by encouraging those who have been harmed to come forward without undue delay. In addition, statutes of limitations provide predictability and certainty to businesses and nonprofit organizations by allowing them make financial, insurance coverage, and document retention decisions accordingly. For these reasons, statutes of limitations should be finite and any extension should be made prospectively.

If Hawaii again revives time-barred claims here, you can expect others seeking similar treatment, as is occurring now. Why not take the same approach in other situations where there are allegations of wrongful conduct that occurred decades ago? As discussed earlier, however, taking this approach will make Hawaii's civil justice system unpredictable, unreliable, and unfair. It would send a message that those who live and work in Hawaii cannot rely on its laws and are exposed to indefinite liability.

ATRA urges you not to advance S.B. 2439 in its current form. Rather, if members of the Committee view the current period to file a lawsuit seeking damages for abuse that occurred while an adult is inadequate, an appropriate course is setting a longer, but finite, period and applying that period prospectively.

Sincerely,



Cary Silverman

Counsel to the

American Tort Reform Association

cc: Members of the Senate Judiciary Committee

SB-2439

Submitted on: 2/9/2024 3:46:18 AM

Testimony for JDC on 2/9/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Carolyn M Golojuch	Testifying for Rainbow Family 808	Support	In Person

Comments:

To: Senate JDC Chair and Committee Board Members

From: Rainbow Family 808 – Non-Profit Organization

Date: February 7, 2024

RE: Strong Support of Rape Survivors and Victims – SB2439

Aloha Senate Chairs and Committee Board Members,

Thank you for hearing this critical Senate Bill. Rainbow Family 808 strongly supports with clarification to bring Justice to the Survivors and Victims.

Clarification to SB2439:

Add the word “rape” every time the words “sexual offense/s” “sexual abuse”. The crime needs this clarification for benefit of the Survivors. No euphemism adequately explains the seriousness of the crime. The public needs to understand exactly what has happened to the Survivors and Victims.

Examples of the criminal actions/rape:

1. 1940-60. A father after the death of his wife, begins sleeping with the daughter as his sexual partner. The family blames the daughter and shuns her. This silence is not incest but another euphemism that further harms the daughter and the community due to lack of education. In this Colorado farming community, no one understands the situation. It's not incest but Rape.
2. In 1988, we were at a USAF combined base for Italians and the Americans, when one of chaplains was taken off the Naval Base (a two-hour drive from the USAF base). He was a naval officer and a part of the Marriage Encounter team. He was very close with one of the couples living on the Naval Base and would have dinner with them frequently and after dinner, he would go upstairs to hear their kindergarten son's Nighttime prayers. They were so proud to have such an esteemed man as their friend. One day at school, the class was given a "Good Touch, Bad Touch" presentation by the Naval Security. At the end, they were asked if there was anyone who made them feel uncomfortable with touching them. The child told the Security Forces about the Nighttime prayers with the chaplain. Once other classes were given the same presentation, other students told similar "Good Touch, Bad Touch" experiences. An investigation was held, a court martial was held and he was taken off base in handcuffs to Leavenworth Federal Prison. The couple had a rough time but came out stronger after all the horror of dealing with the rape of their church. The pain and suffering of rape affects others in the family. I think of the little boy and hope he's doing better.
3. In 1989, we were still at the Italian/American base when we read in a US newspaper that a young man reported that the former Bishop Joseph Ferrario had raped him when he went for help because the former parish priest had raped him. He came from a small parish on the Windward side of Oahu, St. Anthony. His mother worked for the parish. The young man was blamed for appearing in the shadows on a national TV show. Only Catholics understand the brainwashing that a member experiences. One never questions authority figures of any kind, especially the priests and other clerics. These rapes are serial in the Roman Catholic Church. * "See Clerical Sexual Abuse in the Diocese of Honolulu." Page 10 – 24.
4. In the 1990's, a family member reveals that her father's brother had raped her since she was a young child. Children trust family members. When she was a teenager, her cousins during a sleepover told of being raped by the same uncle. No one wants to accuse a family member believing that they won't be believed. At first, they don't have the language to explain the rape. As young children have been told no to disrespect their elders. In later years, my family member was raped by a Christian Youth Minister. This time she told her mother but was told that no one would believe her. She still has bouts with PTSD and depression. The uncle was never brought to justice. These rapes cause a lifetime of pain and suffering. In Hawa'i, I was told about the euphemism "Funny Uncle" that has since been told this is a name used on the continent as well.
5. 1990 USAF wife reveals that her father raped her as a child. She said her mother had been raped prior to her own rape. This wife didn't reveal her continuous rape until her husband retired from the Air Force. She had buried her pain for years. The wife was

working through the trauma and kept in touch with me and then the notes ended. We've lost track of her in the last few years. May she continue therapy she will need for the rest of her life.

6. In the mid-1990's Mike and I attended a SNAP Retreat for the Survivors of Clergy Rape in Wisconsin. The Survivors suffered horrid PTSD at the retreat. The location at the Seminary was revealed at the end of the retreat that the Seminary had been required by a court judgement to do community service after losing a case for Rape by some of the clergy on campus. There were convicted rapists on campus. This is only one more example of the deception actions by the Roman Catholic. A) Brother revealed that he was raped by the parish priest. He told his father and was beaten by his father for lying about such a good man. His brother denies he was raped even though he exhibits troubling examples of one who was raped, his wife doesn't understand why he needs support; B) Young woman was raped by her rabbi when he drove her home after babysitting for the family, she had sued the temple; C) the rapes of so many people still suffering.
7. In the mid-1990's, I was attending a summer course outside of Mexico City. There were flyers around town regarding Support Groups meetings for Survivors of Clergy Rape. I felt hope that a Catholic country like Mexico was supporting Rape Survivors. Hawai'i needs more avenues of Rape Support for Survivors. SB2439 is a step forward for Hawai'i until Rape in Hawai'i no longer has a SOL law. The time has come and is overdue for justice for our Rape Survivors and Victims.
8. In the mid-1990's while working for the Honolulu Catholic diocese at St. Stephan's, the Rapist Priest Joe O'Brien was in the office next to me. He was the first convicted rapist priest in Hawai'i.
9. Late 1990's, an attorney called me from Chicago looking for a priest who had raped his adopted son and the son was missing. He had the Catholic School principal take the son from class to his office. She would stand guard outside the office until she took him back to the classroom. It was common knowledge that Bishop Ferrario was recruiting problem priests from across the country to work in Hawai'i. There were two rehab centers used by the Catholic Church for Alcoholism and rapists. One in New Mexico and the other outside of Washington DC. I checked the list of parish priests listed in a local publication. It bothered me that I couldn't find the priest for the suffering parents. This family is listed because they are an example of how rape causes Run Away youth is one more example of how rape has additional results of Rape in our society. Not all runaways are Rape Survivors, but they do affect our Homeless Youth.
- 10.

In the mid-2000's, I was shopping for a new screen door, when an employee told me about being a Rape Survivor of one our local Catholic schools. My "I love my Rainbow Family" button gives some the idea that I'm a safe person. For a couple of years, he would call or visit me. He was interested in any progress being made in the SOL situation in Hawai'i. During this time, his case with the local Roman Catholic was settled. The positive outcome of his case gave him satisfaction that he'd been heard and believed. Being able to have a day in court is part of the healing process.

- 1.

In the past few years, I've met other Rape survivors. The local woman who was raped by her high-ranking military officer. She remembers being raped by her high-ranking father. On graduation from high school, she left Hawai'i and didn't return until she graduated with her master's in music and a solid career. She sued him, won her case. He told her that he'd never leave Hawai'i because he and his friends are safe here with the weak laws. SB2439 will create a strong footing for justice for the rape Survivors. There are still problems she deals with every day, but her healing has improved.

Thank you for introducing SB2439 for justice's sake. There are many of us who will keep working for the day that Hawai'i will no longer have the SOL that benefits the rapists at the expense of the Survivors and Victims. SB2439 will also help those caught up in Sex Trafficking, Homelessness, poverty and medical problems. There will always be injustice but society needs.

Carolyn Martinez Golojuch, MSW

President/Founder Rainbow Family 808

HPD Citizen's Police Academy Graduate

SB-2439

Submitted on: 2/6/2024 7:46:27 AM

Testimony for JDC on 2/9/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Theodora Harrison	Individual	Support	In Person

Comments:

Chairman Rhoads

Vice Chairman Gabbard & Members

I urge you to support SB2439. It would recognize my peers and me, all of us "old ladies," who have been humiliated and shamed by sexual assault over the years, often more than one time. We ladies were victims when attitudes and laws dictated that we not breathe a word, not seek appropriate psychological help, certainly not seek justice.

We have suffered in secret. When we have dared whisper the truth to another, we have been vilified, accused of lies and attempts to defame and assassinate the character of a good citizen, a patriot, a leader, to ruin his life and get all his money, **the actual perpetrator of the rape** (or sexual assault) **upon us**. We old ladies have been forced to watch as the rapist rises to heights of popularity, influence and power while we skulk in the background, smiling feigned approval. Our lives have been made smaller, opportunities forgone

I am 80 years old. My kidnapping, sexual assault and battery occurred years ago. I was damaged and mortified and vilification has continued until and including today.

I implore this Committee to allow this late justice for *kupuna wahine* to have a chance at self respect and most important: **justice**.

/s/Theodora M. Harrison, RN

SB-2439

Submitted on: 2/2/2024 6:19:32 PM

Testimony for JDC on 2/9/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Mike Golojuch, Sr.	Individual	Comments	Written Testimony Only

Comments:

I support the intent of SB2439 but the statute of limitation should be eliminated. From several adults I know, it took them years to finally be able to speak out about their sexual assault. Please amend the bill and then pass it.

Mike Golojuch, Sr.

SB-2439

Submitted on: 2/3/2024 1:34:57 PM

Testimony for JDC on 2/9/2024 9:30:00 AM

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

Comments:

Aloha Senators and Representatives!

I am Christine Johnson, Retired Registered Nurse, Activist and advocate for Sexual ASsault Victims and for Maternal Child Health issues.

I hope to see complete removal of ALL time and age limits(Statutes of Limitations) on Sexual Assault both Child and Adult,

going forward

and retroactively..

GONE NADA

end of story.!

It's TIME.

I support SB2439

Mahalo!

Respectfully,

Christine Johnson

Makaha

.

SB-2439

Submitted on: 2/5/2024 8:04:20 AM

Testimony for JDC on 2/9/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Yvonne Alvarado	Individual	Support	Written Testimony Only

Comments:

I Yvonne Alvarado supports Bill SB2439

SB-2439

Submitted on: 2/6/2024 9:38:34 AM

Testimony for JDC on 2/9/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Rebeca Lee	Individual	Support	Remotely Via Zoom

Comments:

Aloha

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

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

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

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

When I came forward about the abuse of this member of society, I had to endure horrendous investigation strategies. I had to be questioned by private investigators, required take a Polygraph , submit phone records that contained up to 20 calls day and night up to 2 am from Sacred Heart Parish. This technique is known today as "love bombing" and textbook manipulation to break down a victim. I also had to answer hideous questions about the details of the abuse again and again. I had to explain and re explain what happened to me. This man violated me in the worse way, using his power and authority. Abuse of a vulnerable adult is as horrendous as Child SA. In my case, as a double victim of abuse, I can honestly say that the abuse by the man in power and authority was by far worse than the abuse I endured as a child.

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

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

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

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

SB-2439

Submitted on: 2/7/2024 4:36:44 PM

Testimony for JDC on 2/9/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Dara Carlin, M.A.	Individual	Support	Written Testimony Only

Comments:

Stand in SUPPORT