

Honolulu, Hawaii

March 23, 2011

RE: S.B. No. 217  
S.D. 2  
H.D. 1

Honorable Calvin K.Y. Say  
Speaker, House of Representatives  
Twenty-Sixth State Legislature  
Regular Session of 2011  
State of Hawaii

Sir:

Your Committee on Human Services, to which was referred S.B. No. 217, S.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO LIMITATION OF ACTIONS,"

begs leave to report as follows:

The purpose of this bill is to expand the ability of sex abuse victims to seek civil claims and compensation for damages by, among other things:

- (1) Allowing an action for recovery of damages based on physical, psychological, or other injury or condition suffered by a minor arising from the sexual abuse of the minor by an adult to commence at any time following the commission of the act or acts that constituted sexual abuse;
- (2) Permitting victims of child sexual abuse that occurred in Hawaii who have been barred from filing suit against their abusers by virtue of the expiration of the former civil statute of limitations to file those claims in the circuit courts within two years of the effective date of this bill;
- (3) Authorizing damages to be awarded against a legal entity if the person committing the act of sexual abuse against the minor was employed by a legal entity that owed a



duty of care to the victim, or the accused and the minor were engaged in an activity over which the legal entity had some degree of responsibility or control; and

- (4) Allowing a person against whom a suit is filed to recover attorney's fees where the court determines that a false accusation was made with no basis in fact and with malicious intent.

The Sex Abuse Treatment Center and several concerned individuals supported this bill. The Department of the Attorney General (AG) and Hawaii Catholic Conference opposed this measure.

Your Committee acknowledges that testimony from the Hawaii Catholic Conference points out that this bill could cause problems for all types of public and private programs and nonprofit organizations. Since this bill would allow the assertion of claims to go back many years, institutions might have to defend themselves in situations where the abuser and anyone who may have been at fault for negligently overseeing or supervising the abuser are no longer a part of the institution.

Moreover, due to the lack of a statute of limitations, the State could be exposed to numerous claims for potential sex crimes or sexual abuse committed by employees in public schools or other government programs. Private institutions could also face such litigation. Nonprofit organizations' ability to remain open and provide services could be affected, since the cost of defending against claims brought under this bill could strain nonprofit organizations' budgets, especially during economically challenging times.

The AG also expressed concerns that the lack of any statute of limitations for a civil action is troubling and unprecedented in Hawaii. Instead, extending the statute of limitations to a longer, reasonable length of time would be preferable.

Your Committee has amended this bill by, among other things:

- (1) Requiring the time for commencement of the action for recovery of damages to be within eight years of the date the plaintiff attains the age of majority or within three years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual abuse;

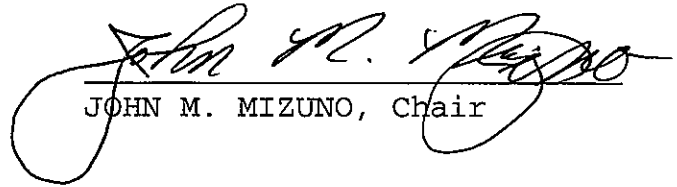


- (2) Allowing victims of sexual abuse that occurred in Hawaii who were previously barred by the running of the statute of limitations to file civil actions within two years of the effective date of this bill against the natural person who committed sexual abuse or a public or private legal entity, except for the State, under certain conditions;
  - (3) In civil actions under paragraphs (1) and (2), requiring a certificate of merit to:
    - (A) Be filed by the attorney for the plaintiff;
    - (B) Contain a notarized statement by a licensed psychologist, marriage and family therapist, mental health counselor, or clinical social worker who is knowledgeable in the relevant facts and issues involved in the particular civil action; and
    - (C) State facts and opinions that the licensed psychologist, marriage and family therapist, mental health counselor, or clinical social worker has relied on to conclude that there is a reasonable basis to believe that the plaintiff has been subject to one or more acts that would constitute an offense;
- and
- (4) Making technical, nonsubstantive amendments, for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Human Services that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 217, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 217, S.D. 2, H.D. 1, and be referred to the Committee on Judiciary.



Respectfully submitted on  
behalf of the members of the  
Committee on Human Services,


  
JOHN M. MIZUNO, Chair



State of Hawaii  
House of Representatives  
The Twenty-sixth Legislature

HSCR 1083

**Record of Votes of the Committee on Human Services**

| Bill/Resolution No.:<br><b>SB 217, SD 2</b>   | Committee Referral:<br><b>HUS, JUD</b> | Date:<br><b>3/14/2011</b> |      |          |
|---|--|---------------------------|------|----------|
| <input type="checkbox"/> The committee is reconsidering its previous decision on the measure.   |  |                           |      |          |
| The recommendation is to: <input type="checkbox"/> Pass, unamended (as is) <input checked="" type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold<br><input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit) |  |                           |      |          |
| HUS Members   | Ayes                                   | Ayes (WR)                 | Nays | Excused  |
| 1. MIZUNO, John M. (C)  | ✓                                      |                           |      |          |
| 2. JORDAN, Jo (VC)  | ✓                                      |                           |      |          |
| 3. BELATTI, Della Au  |  |                           |      | ✓        |
| 4. HANOHANO, Faye P.  | ✓                                      |                           |      |          |
| 5. LEE, Chris   | ✓                                      |                           |      |          |
| 6. MORIKAWA, Dee  | ✓                                      |                           |      |          |
| 7. WOOLEY, Jessica  |  |                           |      | /        |
| 8. YAMANE, Ryan I.  |  |                           |      | ✓        |
| 9. CHING, Corinne W.L.  | ✓                                      |                           |      |          |
| 10. PINE, Kymberly Marcos   | ✓                                      |                           |      |          |
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| <b>TOTAL (10)</b>   | <b>7</b>                               |                           |      | <b>3</b> |
| The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted<br>If joint referral, _____ did not support recommendation.<br>committee acronym(s)   |  |                           |      |          |
| Vice Chair's or designee's signature: _____    |  |                           |      |          |
| <b>Distribution:</b> Original (White) – Committee      Duplicate (Yellow) – Chief Clerk's Office      Duplicate (Pink) – HMSO   |  |                           |      |          |