

JAN 21 2021

A BILL FOR AN ACT

RELATING TO CHILDHOOD SEXUAL ABUSE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that survivors of
2 childhood sexual abuse often do not divulge the truth about
3 their experiences until they reach adulthood. The delay may
4 stem from fear, disbelief, anger, helplessness, anxiety,
5 embarrassment, or other feelings that are not the survivors'
6 fault.

7 For example, USA Gymnastics team doctor Lawrence Gerard
8 Nassar's first public accuser, who was fifteen years old when
9 she was assaulted, did not come forward until sixteen years
10 later, when she was thirty-one. Although many other survivors
11 remained silent even longer, Nassar was accused of sexually
12 assaulting at least two hundred fifty girls and young women over
13 a period of thirty years. He was ultimately convicted of
14 multiple counts of sexual assault and possession of child
15 pornography.

16 The legislature further finds that some studies have
17 estimated that between sixty and eighty per cent of childhood



1 sexual abuse survivors withhold disclosure of their abuse until
2 adulthood. The average delay is approximately twenty years,
3 while some survivors delay disclosure for up to fifty years.

4 Hawaii law currently requires that a lawsuit alleging
5 childhood sexual abuse be filed within eight years of a survivor
6 of childhood sexual abuse turning eighteen, or three years after
7 discovering that an injury or illness during adulthood was
8 caused by childhood sexual abuse. Under these limitations, many
9 survivors of childhood sexual abuse may be barred from seeking
10 civil redress in the courts.

11 Accordingly, the purpose of this Act is to:

- 12 (1) Amend statutory limitations on the time periods in
13 which a survivor of childhood sexual abuse may file a
14 civil action; and
15 (2) Specify the remedies available in civil cases arising
16 from the sexual abuse of a minor.

17 SECTION 2. Section 657-1.8, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "§657-1.8 Civil action arising from sexual offenses;
20 application; certificate of merit. (a) Notwithstanding section
21 657-7 or any other law to the contrary, [~~except as provided~~



1 ~~under subsection (b), no]~~ an action for recovery of damages
2 based on physical, psychological, or other injury or condition
3 suffered by a minor arising from the sexual abuse of the minor
4 by any person [~~shall]~~ may be commenced [~~against the person who~~
5 ~~committed the act of sexual abuse more than:~~

6 ~~(1) Eight years after the eighteenth birthday of the minor~~
7 ~~or the person who committed the act of sexual abuse~~
8 ~~attains the age of majority, whichever occurs later,~~
9 ~~or~~

10 ~~(2) Three years after the date the minor discovers or~~
11 ~~reasonably should have discovered that psychological~~
12 ~~injury or illness occurring after the minor's~~
13 ~~eighteenth birthday was caused by the sexual abuse,~~
14 ~~whichever comes later.]~~ within fifty years of the eighteenth
15 birthday of the minor.

16 A civil cause of action for the sexual abuse of a minor
17 shall be based upon sexual acts that constituted or would have
18 constituted a criminal offense under part V or VI of chapter
19 707.

20 (b) [~~For a period of eight years after April 24, 2012, a~~
21 ~~victim of child sexual abuse that occurred in this State may~~



1 ~~file a claim in a circuit court of this State against the person~~
2 ~~who committed the act of sexual abuse if the victim is barred~~
3 ~~from filing a claim against the victim's abuser due to the~~
4 ~~expiration of the applicable civil statute of limitations that~~
5 ~~was in effect prior to April 24, 2012.] Monetary relief for~~
6 ~~claims brought under this section may include punitive damages.~~
7 At its discretion, the court may order restorative justice
8 measures, including victim impact panels, victim impact classes,
9 or community service, if requested by the victim.

10 (c) A claim may [alse] be brought under this [subsection]
11 section against a legal entity if:

12 (1) The person who committed the act of sexual abuse
13 against the victim was employed by an institution,
14 agency, firm, business, corporation, or other public
15 or private legal entity that owed a duty of care to
16 the victim; or

17 (2) The person who committed the act of sexual abuse and
18 the victim were engaged in an activity over which the
19 legal entity had a degree of responsibility or
20 control.



1 Damages against the legal entity shall be awarded under
2 this subsection only if there is a finding of gross negligence
3 on the part of the legal entity.

4 [~~(e)~~] (d) A defendant against whom a civil action is
5 commenced may recover attorney's fees if the court determines
6 that a false accusation was made with no basis in fact and with
7 malicious intent. A verdict in favor of the defendant shall not
8 be the sole basis for a determination that an accusation had no
9 basis in fact and was made with malicious intent. The court
10 shall make an independent finding of an improper motive prior to
11 awarding attorney's fees under this section.

12 [~~(d)~~] (e) In any civil action filed pursuant to subsection
13 (a) or [~~(b)~~], (c), a certificate of merit shall be filed by the
14 attorney for the plaintiff, and shall be sealed and remain
15 confidential. The certificate of merit shall include a
16 notarized statement by a:

- 17 (1) Psychologist licensed pursuant to chapter 465;
18 (2) Marriage and family therapist licensed pursuant to
19 chapter 451J;
20 (3) Mental health counselor licensed pursuant to chapter
21 453D; or



1 (4) Clinical social worker licensed pursuant to chapter
2 467E;
3 who is knowledgeable in the relevant facts and issues involved
4 in the action, who is not a party to the action.

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

11 SECTION 3. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 4. This Act shall take effect upon its approval.

14

INTRODUCED BY:



A handwritten signature in black ink, appearing to be 'C. W.', is written over a horizontal line.



S.B. NO. 163

Report Title:

Childhood Sexual Abuse; Civil Actions; Statute of Limitations;
Remedies

Description:

Amends statutory limitations on the time period in which a survivor of childhood sexual abuse may file a civil suit. Allows punitive damages. Permits the court to order restorative justice measures at its discretion, if requested by the victim.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

