

JAN 22 2021

A BILL FOR AN ACT

RELATING TO SEXUAL ABUSE OF MINORS.

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

1 SECTION 1. The legislature finds that child sexual abuse
2 is extremely prevalent and that most children do not immediately
3 disclose the fact that they were abused. In the United States,
4 one in five girls and one in twenty boys is a victim of child
5 sexual abuse, and studies show that between sixty and eighty per
6 cent of survivors withhold disclosure. Of those who delay
7 disclosure until adulthood, the average delay has been found to
8 be approximately twenty years, with some survivors delaying up
9 to fifty years.

10 The legislature further finds that there are many reasons
11 children delay disclosing sexual abuse. These reasons range
12 from their particular stage of cognitive development, limited
13 capacity to understand what happened, inability to recognize the
14 sexual abuse as the cause of their dysfunctional adult life,
15 confusion about their feelings, or limited ability to adequately
16 express complaints, to the fact that a majority of survivors
17 know the perpetrator and may fear retaliation or harmful impacts



1 on their family or community. Moreover, when survivors disclose
2 abuse, they may also be subjected to disbelief, accusations,
3 silencing, and retraumatizing reactions by the recipients of the
4 disclosure.

5 Accordingly, the purpose of this Act is to:

- 6 (1) Expand the time period by which a civil action for
7 childhood sexual abuse must be initiated;
- 8 (2) Extend the period during which a victim of childhood
9 sexual abuse may bring an otherwise time-barred action
10 against the victim's abuser or an entity having a duty
11 of care;
- 12 (3) Allow victims to recover treble damages in certain
13 circumstances;
- 14 (4) Prohibit settlement agreements and court orders that
15 restrict disclosure of certain information; and
- 16 (5) Provide for training of legal entities on trauma-
17 informed response to sexual abuse allegations.

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

20 "§657-1.8 Civil action arising from sexual offenses;
21 application; certificate of merit[-]; disclosure of information;



1 trauma-informed response. (a) Notwithstanding any law to the
 2 contrary, except as provided under subsection (b), no action for
 3 recovery of damages based on physical, psychological, or other
 4 injury or condition suffered by a victim when the victim was a
 5 minor, arising from the sexual abuse of the victim [~~minor~~] by
 6 any person when the victim was a minor, shall be commenced
 7 against the person who committed the act of sexual abuse more
 8 than:

9 (1) [~~Eight~~] Fifty years after the eighteenth birthday of
 10 the [~~minor or the person who committed the act of~~
 11 ~~sexual abuse attains the age of majority, whichever~~
 12 ~~occurs later,~~] victim; or

13 (2) [~~Three~~] Five years after the date the [~~minor~~] victim
 14 discovers or reasonably should have discovered that
 15 psychological injury or illness occurring after the
 16 [~~minor's~~] victim's eighteenth birthday was caused by
 17 the sexual abuse,
 18 whichever [~~comes~~] occurs later.

19 A civil cause of action for the sexual abuse of a minor
 20 shall be based upon sexual acts that constituted or would have



1 constituted a criminal offense under part V or VI of chapter
2 707.

3 (b) For a period of [~~eight~~] twelve years after April 24,
4 2012, a victim of child sexual abuse [~~that occurred in this~~
5 ~~State may file a claim~~] who resided in the State at the time of
6 the abuse may file an otherwise time-barred claim in a circuit
7 court of this State against the person who committed the act of
8 sexual abuse if the victim is barred from filing a claim against
9 the victim's abuser due to the expiration of the applicable
10 civil statute of limitations that was in effect prior to April
11 24, 2012.

12 A claim may also be brought under this subsection against a
13 legal entity if:

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

19 (2) The person who committed the act of sexual abuse and
20 the victim were engaged in an activity over which the



1 legal entity had a degree of responsibility or
2 control.

3 Damages against the legal entity shall be awarded under
4 this subsection only if there is a finding of gross negligence
5 on the part of the legal entity[-]; provided that a victim may
6 recover up to treble damages, unless prohibited by another law,
7 if the victim proves that the victim's sexual abuse was the
8 result of the legal entity's reckless disregard of evidence
9 relating to a prior incident of sexual abuse of a minor. For
10 purposes of this subsection, a legal entity's reckless disregard
11 of evidence relating to a prior incident of sexual abuse of a
12 minor shall include the legal entity's failure to report the
13 prior incident to law enforcement authorities as required by
14 law.

15 (c) A defendant against whom a civil action is commenced
16 may recover attorney's fees if the court determines that a false
17 accusation was made with no basis in fact and with malicious
18 intent. A verdict in favor of the defendant shall not be the
19 sole basis for a determination that an accusation had no basis
20 in fact and was made with malicious intent. The court shall

1 make an independent finding of an improper motive prior to
2 awarding attorney's fees under this section.

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

- 8 (1) Psychologist licensed pursuant to chapter 465;
- 9 (2) Marriage and family therapist licensed pursuant to
10 chapter 451J;
- 11 (3) Mental health counselor licensed pursuant to chapter
12 453D; or
- 13 (4) Clinical social worker licensed pursuant to chapter
14 467E;

15 who is knowledgeable in the relevant facts and issues involved
16 in the action, who is not a party to the action.

17 The notarized statement included in the certificate of
18 merit shall set forth in reasonable detail the facts and
19 opinions relied upon to conclude that there is a reasonable
20 basis to believe that the plaintiff was subject to one or more



1 acts that would result in an injury or condition specified in
2 [+]subsection[+] (a).

3 (e) Notwithstanding any other law to the contrary:

4 (1) A provision within a settlement agreement that
5 prevents the disclosure of factual information related
6 to a civil action filed pursuant to subsection (a) or
7 (b) shall be prohibited; and

8 (2) In a civil action filed pursuant to subsection (a) or
9 (b), a court shall not enter, by stipulation or
10 otherwise, an order that restricts the disclosure of
11 information in a manner that conflicts with paragraph
12 (1);

13 provided that, paragraphs (1) and (2) shall not preclude an
14 agreement preventing the disclosure of any medical information
15 or personal identifying information relating to the victim or of
16 any information revealing the nature of the relationship between
17 the victim and the defendant. This subsection shall not be
18 construed to limit the right of a victim to disclose this
19 information.

20 (f) With respect to a legal entity against whom a claim is
21 brought pursuant to subsection (b), a plaintiff may request, and



1 a court may order, the personnel of the legal entity to undergo
2 training on trauma-informed response to allegations of sexual
3 abuse. As used in this subsection, "trauma-informed response"
4 includes:

5 (1) Fully integrating research about the effects and
6 impacts of trauma into policies, procedures, and
7 practices;

8 (2) Understanding the ways in which stress and trauma may
9 affect attention, cognition, behavior, and memory
10 processes;

11 (3) Creating an environment that is safe, non-judgmental,
12 and free of gratuitous re-triggering; and

13 (4) Listening to and documenting victims' statements
14 without judgment."

15 SECTION 3. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 4. This Act shall take effect on July 1, 2021, and
18 shall apply retroactively to April 24, 2020.

19
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S.B. NO. 833

Report Title:

Sexual Abuse of Minors; Civil Action; Statute of Limitations; Damages; Information Disclosure; Trauma-Informed Response

Description:

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. Applies retroactively to 4/24/2020.

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

