
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
5 childhood sexual abuse, and studies show that between sixty and
6 eighty per cent of survivors withhold disclosure. Of those who
7 delay disclosure until adulthood, the average delay has been
8 found to be approximately twenty years, with some survivors
9 delaying up 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 The legislature further finds that in addition to
6 protecting the rights of childhood sexual abuse victims, legal
7 entities may also need protection from unsubstantiated or
8 fraudulent claims. Section 340.1 of the California Civil Code
9 recognizes this balance by requiring a plaintiff's attorney to
10 file a certificate of merit for each defendant in the case and
11 requiring that all defendants be identified as "Doe" defendants
12 until a court has approved a certificate of corroborative fact
13 as to the allegations in the complaint. Failure to comply with
14 the above requirements may result in the award of attorney's
15 fees and costs to the defendant. These procedural requirements
16 help to ensure that claims of childhood sexual abuse are
17 examined by the court prior to being associated with a
18 particular organization or individual.

19 Accordingly, the purpose of this Act is to:

20 (1) Expand the time period by which a civil action for
21 childhood sexual abuse may be initiated;



1 (2) Adopt procedural requirements prior to the filing of a
2 civil action for childhood sexual abuse or naming of
3 "Doe" defendants; and

4 (3) Allow a court to order the personnel of a legal entity
5 against whom a claim is brought to undergo training on
6 trauma-informed response to sexual abuse allegations.

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

9 "§657-1.8 Civil action arising from sexual offenses;
10 application; certificate of merit[-]; trauma-informed response.

11 (a) Notwithstanding any law to the contrary, [~~except as~~
12 ~~provided under subsection (b),~~] no action for recovery of
13 damages based on physical, psychological, or other injury or
14 condition suffered by a victim when the victim was a minor,
15 arising from the sexual abuse of the [~~minor~~] victim by any
16 person when the victim was a minor, shall be commenced against
17 the person who committed the act of sexual abuse more than:

18 (1) [~~Eight~~] Thirty-two years after the eighteenth birthday
19 of the [~~minor or the person who committed the act of~~
20 ~~sexual abuse attains the age of majority, whichever~~
21 ~~occurs later,~~] victim; or



1 (2) [~~Three~~] Five years after the date the [~~minor~~] victim
2 discovers or reasonably should have discovered that
3 psychological injury or illness occurring after the
4 [~~minor's~~] victim's eighteenth birthday was caused by
5 the sexual abuse,
6 whichever [~~comes~~] occurs later.

7 A civil cause of action for the sexual abuse of a minor
8 shall be based upon sexual acts that constituted or would have
9 constituted a criminal offense under part V or VI of chapter
10 707.

11 (b) [~~For a period of eight years after April 24, 2012, a~~
12 ~~victim of child sexual abuse that occurred in this State may~~
13 ~~file a claim in a circuit court of this State against the person~~
14 ~~who committed the act of sexual abuse if the victim is barred~~
15 ~~from filing a claim against the victim's abuser due to the~~
16 ~~expiration of the applicable civil statute of limitations that~~
17 ~~was in effect prior to April 24, 2012.]~~

18 A claim may also be brought under this [~~subsection~~] section
19 against a legal entity if:

20 (1) The person who committed the act of sexual abuse
21 against the victim was employed by an institution,

1 agency, firm, business, corporation, or other public
2 or private legal entity domiciled within the State
3 that owed a duty of care to the victim; or

4 (2) The person who committed the act of sexual abuse and
5 the victim were engaged in an activity over which the
6 legal entity had a degree of responsibility or
7 control.

8 Damages against the legal entity shall be awarded under
9 this subsection only if there is a finding of gross negligence
10 on the part of the legal entity.

11 (c) A defendant against whom a civil action is commenced
12 may recover attorney's fees if the court determines that a false
13 accusation was made with no basis in fact and with malicious
14 intent. A verdict in favor of the defendant shall not be the
15 sole basis for a determination that an accusation had no basis
16 in fact and was made with malicious intent. The court shall
17 make an independent finding of an improper motive [~~prior to~~]
18 before awarding attorney's fees under this section.

19 (d) In any civil action filed pursuant to subsection (a)
20 or (b), a certificate of merit for each defendant named in the
21 complaint shall be filed by the attorney for the plaintiff, and



1 shall be [~~sealed~~] electronically filed under seal and remain
2 confidential. The certificate of merit shall include a
3 notarized statement by a:

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

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

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

19 (e) In any action filed pursuant to subsection (b), a
20 defendant shall not be served, and the duty to serve a defendant
21 with process shall not attach, until the court has reviewed the



1 certificates of merit filed pursuant to subsection (d) with
2 respect to that defendant, and has found in camera, based solely
3 on those certificates of merit, that there is reasonable and
4 meritorious cause for the filing of the action against that
5 defendant. At that time, the duty to serve that defendant with
6 process shall attach. The failure to file certificates of merit
7 shall be grounds for a motion to dismiss the complaint.

8 (f) In any action filed pursuant to subsection (b), a
9 defendant shall be named by "Doe" designation in any pleadings
10 or papers filed in the action until there has been a showing of
11 corroborative fact as to the charging allegations against that
12 defendant. Notwithstanding Rule 17 of the Hawaii Rules of Civil
13 Procedure regarding unidentified defendants, the plaintiff may
14 at any time after the action is filed apply to the court for
15 permission to amend the complaint to substitute the name of the
16 defendant or defendants for the fictitious designation, as
17 follows:

18 (1) The application shall be accompanied by a certificate
19 of corroborative fact executed by the attorney for the
20 plaintiff. The certificate shall declare that the
21 attorney has discovered one or more facts



1 corroborative of one or more of the charging
2 allegations against a defendant or defendants, and
3 shall set forth in clear and concise terms the nature
4 and substance of the corroborative fact. If the
5 corroborative fact is evidenced by the statement of a
6 witness or the contents of a document, the certificate
7 shall declare that the attorney has personal knowledge
8 of the statement of the witness or of the contents of
9 the document, and the identity and location of the
10 witness or document shall be included in the
11 certificate. For purposes of this paragraph, a fact
12 is corroborative of an allegation if it confirms or
13 supports the allegation. The opinion of any mental
14 health practitioner concerning the plaintiff shall not
15 constitute a corroborative fact for purposes of this
16 paragraph;

17 (2) If the application to name a defendant is made before
18 that defendant's appearance in the action, neither the
19 application nor the certificate of corroborative fact
20 by the attorney shall be served on the defendant or



1 defendants, nor on any other party or their counsel of
2 record; and

3 (3) If the application to name a defendant is made after
4 that defendant's appearance in the action, the
5 application shall be served on all parties and proof
6 of service provided to the court, but the certificate
7 of corroborative fact by the attorney shall not be
8 served on any party or their counsel of record.

9 The court shall review the application and the certificate of
10 corroborative fact in camera and, based solely on the
11 certificate and any reasonable inferences to be drawn from the
12 certificate, shall order that the complaint may be amended to
13 substitute the name of the defendant or defendants; provided
14 that one or more facts corroborative of one or more of the
15 charging allegations against a defendant has been shown. The
16 court shall keep under seal and confidential from the public and
17 all parties to the litigation, other than the plaintiff, any and
18 all certificates of corroborative fact filed pursuant to this
19 subsection.

20 (g) 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 may include:

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 upon its approval.

18

INTRODUCED BY: 
JAN 25 2022



H.B. NO. 2208

Report Title:

Sexual Abuse; Minors; Civil Action; State of Limitations;
Certificate of Merit; Trauma-Informed Response

Description:

Expands the time period by which a civil action for childhood sexual abuse may 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 a legal entity having a duty of care. Specifies that certificates of merit for each named defendant shall be filed electronically under seal and remain confidential. Requires that certain findings be made *in camera* based on certificates of merit before service of a complaint on a defendant. Authorizes a court to require personnel of legal entities to undergo training on trauma-informed response.

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

