
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 Accordingly, the purpose of this Act is to:

- 6 (1) Expand the time period by which a civil action for
7 childhood sexual abuse may be initiated;
- 8 (2) Adopt procedural requirements prior to the filing of a
9 civil action for childhood sexual abuse or naming of
10 "Doe" defendants; and
- 11 (3) Allow a court to order the personnel of a legal entity
12 against whom a claim is brought to undergo training on
13 trauma-informed response to sexual abuse allegations.

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

16 **"§657-1.8 Civil action arising from sexual offenses;**
17 **application; certificate of merit[-]; trauma-informed response.**

18 (a) Notwithstanding any law to the contrary, [~~except as~~
19 ~~provided under subsection (b),~~] no action for recovery of
20 damages based on physical, psychological, or other injury or
21 condition suffered by a victim when the victim was a minor,



1 arising from the sexual abuse of the [~~minor~~] victim by any
2 person when the victim was a minor, shall be commenced against
3 the person who committed the act of sexual abuse more than:

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

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

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

18 (b) [~~For a period of eight years after April 24, 2012, a~~
19 ~~victim of child sexual abuse that occurred in this State may~~
20 ~~file a claim in a circuit court of this State against the person~~
21 ~~who committed the act of sexual abuse if the victim is barred~~



1 ~~from filing a claim against the victim's abuser due to the~~
2 ~~expiration of the applicable civil statute of limitations that~~
3 ~~was in effect prior to April 24, 2012.]~~

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

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

11 (2) The person who committed the act of sexual abuse and
12 the victim were engaged in an activity over which the
13 legal entity had a degree of responsibility or
14 control.

15 Damages against the legal entity shall be awarded under
16 this subsection only if there is a finding of gross negligence
17 on the part of the legal entity.

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



1 sole basis for a determination that an accusation had no basis
2 in fact and was made with malicious intent. The court shall
3 make an independent finding of an improper motive [~~prior to~~]
4 before awarding attorney's fees under this section.

5 (d) In any civil action filed pursuant to subsection (a)
6 or (b), a certificate of merit for each defendant named in the
7 complaint shall be filed by the attorney for the plaintiff, and
8 shall be [~~sealed~~] electronically filed under seal and remain
9 confidential. The certificate of merit shall include a
10 notarized statement by a:

- 11 (1) Psychologist licensed pursuant to chapter 465;
 - 12 (2) Marriage and family therapist licensed pursuant to
13 chapter 451J;
 - 14 (3) Mental health counselor licensed pursuant to
15 chapter 453D; or
 - 16 (4) Clinical social worker licensed pursuant to
17 chapter 467E;
- 18 who is knowledgeable in the relevant facts and issues involved
19 in the action, and who is not a party to the action.

20 The notarized statement included in the certificate of
21 merit shall set forth in reasonable detail the facts and



1 opinions relied upon to conclude that there is a reasonable
2 basis to believe that the plaintiff was subject to one or more
3 acts that would result in an injury or condition specified in
4 [‡]subsection[‡] (a).

5 (e) In any action filed pursuant to subsection (b), a
6 defendant shall not be served, and the duty to serve a defendant
7 with process shall not attach, until the court, other than a
8 judge who is or will be the trier of fact in that action, has
9 reviewed the certificates of merit filed pursuant to subsection
10 (d) with respect to that defendant, and has found in camera,
11 based solely on those certificates of merit, that there is
12 reasonable and meritorious cause for the filing of the action
13 against that defendant. At that time, the duty to serve that
14 defendant with process shall attach. The failure to file
15 certificates of merit shall be grounds for a motion to dismiss
16 the complaint.

17 (f) In any action filed pursuant to subsection (b), a
18 defendant shall be named by "Doe" designation in any pleadings
19 or papers filed in the action until there has been a showing of
20 corroborative fact as to the charging allegations against that
21 defendant. Notwithstanding Rule 17 of the Hawaii Rules of Civil



1 Procedure regarding unidentified defendants, the plaintiff may
2 at any time after the action is filed apply to the court for
3 permission to amend the complaint to substitute the name of the
4 defendant or defendants for the fictitious designation, as
5 follows:

6 (1) The application shall be accompanied by a certificate
7 of corroborative fact executed by the attorney for the
8 plaintiff. The certificate shall declare that the
9 attorney has discovered one or more facts
10 corroborative of one or more of the charging
11 allegations against a defendant or defendants, and
12 shall set forth in clear and concise terms the nature
13 and substance of the corroborative fact. If the
14 corroborative fact is evidenced by the statement of a
15 witness or the contents of a document, the certificate
16 shall declare that the attorney has personal knowledge
17 of the statement of the witness or of the contents of
18 the document, and the identity and location of the
19 witness or document shall be included in the
20 certificate. For purposes of this paragraph, a fact
21 is corroborative of an allegation if it confirms or



1 supports the allegation. The opinion of any mental
2 health professional concerning the plaintiff shall not
3 constitute a corroborative fact for purposes of this
4 paragraph;

5 (2) If the application to name a defendant is made before
6 that defendant's appearance in the action, neither the
7 application nor the certificate of corroborative fact
8 by the attorney shall be served on the defendant or
9 defendants, nor on any other party or their counsel of
10 record; and

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

17 The court shall review the application and the certificate of
18 corroborative fact in camera and, based solely on the
19 certificate and any reasonable inferences to be drawn from the
20 certificate, shall order that the complaint may be amended to
21 substitute the name of the defendant or defendants; provided



1 that one or more facts corroborative of one or more of the
 2 charging allegations against a defendant has been shown. The
 3 court shall keep under seal and confidential from the public and
 4 all parties to the litigation, other than the plaintiff, any and
 5 all certificates of corroborative fact filed pursuant to this
 6 subsection.

7 (g) With respect to a legal entity against whom a claim is
 8 brought pursuant to subsection (b), a plaintiff may request, and
 9 a court may order, the personnel of the legal entity to undergo
 10 training on trauma-informed response to allegations of sexual
 11 abuse. As used in this subsection, "trauma-informed response"
 12 may include:

- 13 (1) Fully integrating research about the effects and
 14 impacts of trauma into policies, procedures, and
 15 practices;
- 16 (2) Understanding the ways in which stress and trauma may
 17 affect attention, cognition, behavior, and memory
 18 processes;
- 19 (3) Creating an environment that is safe, non-judgmental,
 20 and free of gratuitous re-triggering; and



1 (4) Listening to and documenting victims' statements
2 without judgment."

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

5 SECTION 4. This Act shall take effect on July 1, 2060.

6



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, including an otherwise time-barred action. Adopts certain procedural requirements prior to the filing of a civil action for childhood sexual abuse or naming of "Doe" defendants. Authorizes a court to require personnel of legal entities to undergo training on trauma-informed response. Effective 7/1/2060. (HD1)

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

