

JAN 19 2023

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; and
- 8 (2) Allow a court to order the personnel of a legal entity
9 against whom a claim is brought to undergo training on
10 trauma-informed response to sexual abuse allegations.

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

13 **"§657-1.8 Civil action arising from sexual offenses;
14 application; certificate of merit[-]; trauma-informed response.**

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



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

5 (2) [~~Three~~] Five years after the date the [~~minor~~] victim
6 discovers or reasonably should have discovered that
7 psychological injury or illness occurring after the
8 [~~minor's~~] victim's eighteenth birthday was caused by
9 the sexual abuse,

10 whichever [~~comes~~] occurs later.

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

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



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

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

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

12 Damages against the legal entity shall be awarded under
13 this subsection only if there is a finding of gross negligence
14 on the part of the legal entity.

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 before 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 for each defendant named in the
5 complaint shall be filed by the attorney for the plaintiff, and
6 shall be [~~sealed~~] electronically filed under seal and remain
7 confidential. The certificate of merit shall include a
8 notarized statement by a:

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

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

18 The notarized statement included in the certificate of
19 merit shall set forth in reasonable detail the facts and
20 opinions relied upon to conclude that there is a reasonable
21 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) With respect to a legal entity against whom a claim is
4 brought pursuant to subsection (b), a plaintiff may request, and
5 a court may order, the personnel of the legal entity to undergo
6 training on trauma-informed response to allegations of sexual
7 abuse. As used in this subsection, "trauma-informed response"
8 may include:

9 (1) Fully integrating research about the effects and
10 impacts of trauma into policies, procedures, and
11 practices;

12 (2) Understanding the ways in which stress and trauma may
13 affect attention, cognition, behavior, and memory
14 processes;

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

17 (4) Listening to and documenting victims' statements
18 without judgment."

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

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



S.B. NO. 238

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S.B. NO. 238

Report Title:

Sexual Abuse; Minors; Civil Action; Statute 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. 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.

