

JAN 19 2024

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
14 that the sexual abuse may cause dysfunction in their 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 allegations of sexual
11 abuse.

12 This Act shall not be deemed retroactive. This Act shall
13 only apply prospectively and does not revive any action that has
14 passed the existing statute of limitations.

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

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

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



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

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

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

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

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



1 ~~who committed the act of sexual abuse if the victim is barred~~
2 ~~from filing a claim against the victim's abuser due to the~~
3 ~~expiration of the applicable civil statute of limitations that~~
4 ~~was in effect prior to April 24, 2012.]~~

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

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

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

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

19 (c) A defendant against whom a civil action is commenced
20 may recover attorney's fees if the court determines that a false
21 accusation was made with no basis in fact and with malicious



1 intent. A verdict in favor of the defendant shall not be the
2 sole basis for a determination that an accusation had no basis
3 in fact and was made with malicious intent. The court shall
4 make an independent finding of an improper motive [~~prior to~~]
5 before awarding attorney's fees under this section.

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

- 11 [~~(1)~~ ~~Psychologist licensed pursuant to chapter 465;~~
12 ~~(2)~~ (1) Marriage and family therapist licensed pursuant
13 to chapter 451J;
14 [~~(3)~~ (2) Mental health counselor licensed pursuant to
15 chapter 453D; ~~(4)~~
16 (3) Psychologist licensed pursuant to chapter 465; or
17 (4) Clinical social worker licensed pursuant to chapter
18 467E;

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



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

7 (e) 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 upon its approval.

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S.B. NO. 2601

Report Title:

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

Description:

Expands the time period by which a civil action for childhood sexual abuse may be initiated. 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.

