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I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'LAHEN GUÅHAN*

This is to certify that **Bill No. 34-31 (COR), "AN ACT TO *AMEND* §11306, AND TO *ADD* A NEW §11306.50 OF ARTICLE 3, CHAPTER 11 OF TITLE 7, GUAM CODE ANNOTATED, RELATIVE TO THE STATUTE OF LIMITATIONS FOR CIVIL ACTIONS INVOLVING CHILD SEXUAL ABUSE" ,** was on the 24th day of February, 2011, duly and regularly passed.

Judith T. Won Pat, Ed.D.
Speaker

Attested:

Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahen Guåhan* this 25th day of Feb, 2011, at 7:14 o'clock P.M.

James G. Santos
Assistant Staff Officer
Maga'lahi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'lahen Guåhan

Date: _____

Public Law No. _____

I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (FIRST) Regular Session

Bill No. 34-31 (COR)
As amended on the Floor.

Introduced by: B. J.F. Cruz
T. C. Ada
V. Anthony Ada
F. F. Blas, Jr.
Chris M. Duenas
Judith P. Guthertz, DPA
Sam Mabini, Ph.D.
T. R. Muña Barnes
Adolpho B. Palacios, Sr.
v. c. pangelinan
R. J. Respicio
Dennis G. Rodriguez, Jr.
M. Silva Taijeron
Aline A.Yamashita, Ph.D.
Judith T. Won Pat, Ed.D.

AN ACT TO *AMEND* §11306, AND TO *ADD* A NEW §11306.50 OF ARTICLE 3, CHAPTER 11 OF TITLE 7, GUAM CODE ANNOTATED, RELATIVE TO THE STATUTE OF LIMITATIONS FOR CIVIL ACTIONS INVOLVING CHILD SEXUAL ABUSE.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that child sexual abuse survivors often are disabled from revealing abuse at the time they suffer it and for many years thereafter. For some, the abuser was a parent, stepparent, or relative, a member of the clergy, a teacher or other trusted

adult. Some victims blame themselves and fear retribution if the abuse is revealed. For many, the trauma itself prevents them from coming forward earlier. As adults, victims may not connect the assault to its long-lasting impact until they seek therapeutic help years later. Many of the injuries associated with childhood sexual abuse do not manifest themselves until much later in life. The expiration of applicable statute of limitations during this period had the effect of barring many meritorious claims. This has allowed many child sexual abusers to escape civil liability. If evidence is sufficient to prove civil liability, the mere passage of time should not foreclose child sexual abuse survivors from seeking justice. Therefore, *I Liheslatura* finds that justice for child sexual abuse survivors may be achieved by reviving the statute of limitations for civil actions for past child sexual abuse for a two (2) year period.

Section 2. §11306 of Article 3, Chapter 11 of Title 7, Guam Code Annotated, is hereby *amended* to read:

"**§11306. Within Two Years.**

(1) An action for assault, battery, false imprisonment, seduction of a person below the age of legal consent, or for injury to, or for the death of, a person caused by the wrongful act or neglect of another, *except* as provided for in §11308.

(2) Notwithstanding the provisions of Subsection (1) of this Section, for a period of two (2) years following the effective date of this Act, victims of child sexual abuse that occurred on Guam who have been barred from filing suit against their abusers by virtue of the expiration of the civil statute of limitations *shall* be permitted to file those claims in the Guam Superior Court.

(3) A person against whom a suit is filed may recover attorney's fees and damages where the Court determines that a false accusation was

made with *no* basis in fact and with malicious intent. A verdict in favor of the accused *shall not* be the sole basis for a determination that an accusation was false. The Court must make an independent finding of an improper motive to award attorney's fees and damages under this Section."

Section 3. A new §11306.50 of Article 3, Chapter 11 of Title 7, Guam Code Annotated, is hereby *added* as follows:

"**§11306.50. Certificates of Merit.** Every plaintiff at the time an action is filed pursuant to Subsection (2) of § 11306 of this Chapter *shall* file certificates of merit as follows:

(a) Certificates of merit *shall* be executed by the attorney for the plaintiff and by a licensed mental health practitioner selected by the plaintiff declaring, respectively, as follows, setting forth the facts which support the declaration:

(1) that the attorney has reviewed the facts of the case; that the attorney has consulted with at least one (1) mental health practitioner who the attorney reasonably believes is knowledgeable of the relevant facts and issues involved in the particular action; and that the attorney has concluded on the basis of that review and consultation that there is reasonable and meritorious cause for the filing of the action. The person consulted may *not* be a party to the litigation;

(2) that the mental health practitioner is *not* treating and has *not* treated the plaintiff, and that the practitioner has interviewed the plaintiff and is knowledgeable of the relevant facts and issues involved in the particular action, and has concluded on the basis of his or her knowledge of the facts and issues, that in his or her professional opinion there is a

reasonable basis to believe that the plaintiff had been subject to childhood sexual abuse;

(3) that the attorney was unable to obtain consultation required by Item (1) because a statute of limitations would impair the action, and that the certificates required by Items (1) and (2) could *not* be obtained before the impairment of action. If a certificate is executed pursuant to this Item (3), the certificates required by Items (1) and (2) *shall* be filed within sixty (60) days after filing the complaint.

(b) Where certificates are required, the attorney for the plaintiff *shall* execute a separate certificate of merit for each defendant named in the complaint.

(c) In any action, *no* defendant may be served, and the duty to serve a defendant with process does *not* attach, until the Court has reviewed the certificates of merit filed with respect to that defendant, and has found, in camera, based solely on those certificates of merit, that there is reasonable and meritorious cause for the filing of the action against that defendant. At that time, the duty to serve that defendant with process *shall* attach.

(d) A violation of this Section *shall* constitute unprofessional conduct, and *shall* be grounds for discipline against the attorney.

(e) At any time after the action is filed, the plaintiff may apply to the Court for permission to amend the complaint to substitute the name of the defendant or defendants for the fictitious designation, as follows:

(1) The application *shall* be accompanied by a certificate of corroborative fact executed by the attorney for the

plaintiff. The certificate *shall* declare that the attorney has discovered one (1) or more facts corroborative of one (1) or more of the charging allegations against a defendant or defendants, and *shall* set forth in clear and concise terms the nature and substance of the corroborative fact. If the corroborative fact is evidenced by the statement of a witness or the contents of a document, the certificate *shall* declare that the attorney has personal knowledge of the statement of the witness or of the contents of the document, and the identity and location of the witness or document *shall* be included in the certificate. For purposes of this Section, a fact is corroborative of an allegation *if* it confirms or supports the allegation. The opinion of any mental health practitioner concerning the plaintiff *shall not* constitute a corroborative fact for purposes of this Section.

(2) Where the application to name a defendant is made prior to that defendant's appearance in the action, neither the application nor the certificate of corroborative fact by the attorney shall be served on the defendant or defendants, nor on any other party or their counsel of record.

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

(f) The Court *shall* review the application and the certificate of corroborative fact in camera and, based solely on the certificate and

any reasonable inferences to be drawn from the certificate, *shall*, if one (1) or more facts corroborative of one (1) or more of the charging allegations against a defendant has been shown, order that the complaint may be amended to substitute the name of the defendant or defendants.

(g) Upon the favorable conclusion of the litigation with respect to any defendant for whom a certificate of merit was filed or for whom a certificate of merit should have been filed pursuant to this Section, the Court *shall,* upon the motion of a party or upon the Court's own motion, verify compliance with this Section by requiring the attorney for the plaintiff who was required to execute the certificate to reveal the name, address, and telephone number of the person or persons consulted that were relied upon by the attorney in preparation of the certificate of merit. The name, address, and telephone number *shall* be disclosed to the trial judge in camera and in the absence of the moving party. If the Court finds there has been a failure to comply with this Section, the Court *shall* order a party, a party's attorney, or both, to pay any reasonable expenses, including attorney's fees, incurred by the defendant for whom a certificate of merit should have been filed."