

EDDIE BAZA CALVO
Governor



RAY TENORIO
Lieutenant Governor

Office of the Governor of Guam

31-11-316

March 9, 2011

Honorable Judith T. Won Pat, Ed.D.
Speaker
I Mina' Trentai Unu na Liheslaturan Guåhan
155 Hesler Place
Hagatna, Guam 96932

3-10-11
3:40 pm
[Signature]

2011 MAR 11 AM 7:35

Dear Madam Speaker,

Transmitted herewith is Bill No. 34-31 (COR), entitled: "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", which I signed into law on March 9, 2011 as **Public Law 31-07**.

In signing this bill into law, I applaud the work of *I Mina' Trentai Unu Na Liheslaturan Guåhan* to afford renewed opportunity to victims of child sexual abuse to seek redress in court through a civil action brought against the offending individual. As noted in the legislation's intent, often times many of the psychological injuries associated with child sexual abuse do not manifest themselves until much later in life. Thus the lapse of a civil statute of limitations in the law may consequently bar meritorious claims, allowing child sex abusers to escape civil liability. This legislation thankfully enables a short period for child sexual abuse survivors to seek justice from the individual abuser that the mere passage of time might otherwise prevent.

I initially had concerns about the version of the bill as originally introduced because it included language which took the focus away from individual sex offender and instead sought to involve further removed institutions and organizational entities. Fortunately, *I Liheslaturan Guåhan* amended the bill on the floor in appropriate ways which properly brought the focus back to restoring an opportunity to impose civil liability upon the culpable individual. By the removal of language pertaining to all entities apart from the individual, the legislative intent in the present law to exclude them is clear and unambiguous. Therefore, I am enacting this law solely and exclusively given, and subject to, the interpretation that institutions, agencies, firms, businesses, corporations, or other private or public entities may not be named as parties in any way in civil actions which otherwise could not be filed if not for this legislation.

Senseramente,

[Signature]
EDDIE BAZA CALVO

Attachment: copy of Bill

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

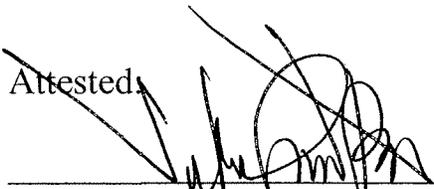
CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'LAHEN GUÅHAN*

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.

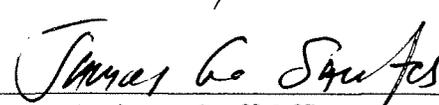


Judith T. Won Pat, Ed.D.
Speaker

Attested


Tina Rose Muña Barnes
Legislative Secretary

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


Assistant Staff Officer
Maga'lahi's Office

APPROVED:


EDWARD J.B. CALVO
I Maga'lahaen Guåhan

Date:

MAR 09 2011

Public Law No. 31-07

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.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

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

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

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

15 **“§11306. Within Two Years.**

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

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

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

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

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

7 "§11306.50. **Certificates of Merit.** Every plaintiff at the time an
8 action is filed pursuant to Subsection (2) of § 11306 of this Chapter *shall* file
9 certificates of merit as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

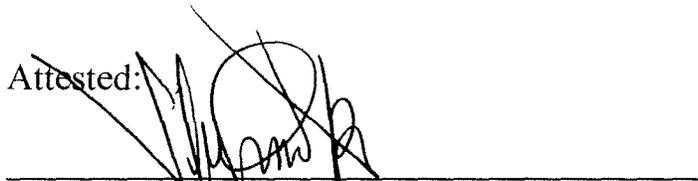
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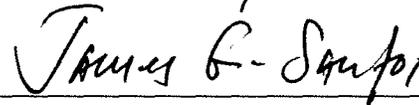


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Speaker

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.



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

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5 abuse do not manifest themselves until much later in life. The expiration of
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6

I MINA' TRENTAI UNU NA LIHESLATURAN GUÅHAN

2011 (FIRST) Regular Session

Date: 2/24/11

VOTING SHEET

Bill No. 34-31 (COR)

Resolution No. _____

Question: _____

<u>NAME</u>	<u>YEAS</u>	<u>NAYS</u>	<u>NOT VOTING/ ABSTAINED</u>	<u>OUT DURING ROLL CALL</u>	<u>ABSENT</u>
ADA, Thomas C.	✓				
ADA, V. Anthony		✓			
BLAS, Frank F., Jr.		✓			
CRUZ, Benjamin J. F.	✓				
DUENAS, Christopher M.		✓			
GUTHERTZ, Judith Paulette		✓			
MABINI, Sam //	✓				
MUNA-BARNES, Tina Rose	✓				
PALACIOS, Adolpho Borja, Sr. //	✓				
PANGELINAN, vicente (ben) cabrera	✓				
RESPICIO, Rory J.		✓			
RODRIGUEZ, Dennis G., Jr.		✓			
SILVA TAIJERON, Mana	✓				
WON PAT, Judith T.	✓				
YAMASHITA, Aline A.	✓				

TOTAL

9 6 0 0 0

CERTIFIED TRUE AND CORRECT:

Clerk of the Legislature

* 3 Passes = No vote
EA = Excused Absence