

June 27, 2016; Prospects of Justice are Dim

Justice denied. That just about sums up the possibility on Guam of pursuing traditional legal remedies against persons in position of trust who committed sexual crimes against minors years ago. This is the unfortunate reality facing those men who are accusing Archbishop Apuron of molesting them decades ago.

Why is the prospect of legal justice so dim? There are two main reasons. The first is an expired statute of limitations and the second is the lack of a “deep pocket.” Let’s look at both of these factors in some detail.

Those who molest minors face the possibility of both criminal and civil charges. The criminal charges can land the accused in jail, while a civil case can cost the suspect money. However, under the law, both criminal and civil actions must be filed within a specific period of time. This is known as the statute of limitations. With only a few exceptions, if you fail to file an action within the stated time, you forever lose the opportunity to pursue the matter.

The reason for statutes of limitation is based on common sense. With time, a case goes stale - witnesses forget or die, memories fade, and evidence is lost or tainted. There is also the fact that victims, suspects, and witnesses need to move on with their lives.

Both federal and state legislatures have some flexibility with changing statutes of limitations. However, because of Constitutional constraints, the level of flexibility for criminal cases is very limited. This is because both the U.S. Constitution and Guam’s Organic Act prohibit “*expo facto*,” or, “after the fact” laws. The U.S. Supreme Court has ruled that attempts to expand the statute of limitations for crimes where the statute of limitations has already expired amount to “*expo facto*” laws and are therefore constitutionally prohibited.

An example from Guam may help to make this clearer. Up until 2010, a criminal sexual case on Guam involving a victim who was a minor at the time of the time of the incident, had to be charged by the victim’s 21st birthday. Many states had a similar statute of limitations. Psychologists and psychiatrists tell us that young victims of sexual abuse frequently don’t tell anyone about the abuse for years after the incident. By then, the statute of limitations has run. As a result, most sex crimes against minors went unpunished.

In response to this situation, beginning in the 2000s, many states, and Guam, changed their criminal statutes of limitation to allow more time to pursue criminal cases against adults who molest minors. In fact, in 2011, the Guam Legislature completely eliminated the statute of limitations for sexual crimes against minors. This means that a criminal case against a person suspected of molesting a minor could be pursued years after the incident. This seemingly would open a window of opportunity to file a criminal case against Archbishop Apuron.

However, because of the prohibition against “*ex po facto*” laws, the new statute of limitations applies only to future criminal activity and can’t be used to prosecute past crimes where the statute of limitations has already expired. As a result, Bishop Apuron won’t face criminal charges for alleged incidents that occurred years ago. He’ll join the ranks of hundreds of other priests accused of sexual crimes against minors who will never face a criminal indictment.

Next, let’s look at the possibility of pursuing a civil lawsuit against Apuron. In a successful civil action, a victim might be able to get some monetary compensation directly from him for damages caused by proven incidents of sexual molestation. As with a criminal case, the starting point is with the statute of limitations. The relevant Guam statute requires such cases to be filed within two years of the incident. Obviously, the pending allegations against Apuron go back decades. Therefore, under current law, the accusers can’t file a civil action against the Archbishop.

However, Senator Frank Blas has introduced a Bill to completely eliminate any time restriction for filing a civil case against adults who sexually abuse children. Further, the Bill would permit victims who were barred by the old statute of limitations to again pursue their cases. Other states have successfully passed similar legislation. Appellate courts have shown greater flexibility in allowing both the expansion and retroactivity of statutes of limitations in civil matters.

But, there is a major problem with this approach on Guam. This isn’t the first time our Legislature has opened a window of opportunity to civilly pursue past incidents of child sex abuse. In 2011, senators passed a law giving past victims of child sexual abuse a two-year window of opportunity to file a civil lawsuit. No one did.

Although appellate courts may allow a legislature to alter the civil statute of limitations for pursuing cases of child sexual abuse once, there is serious doubt that they will allow it twice. This may well be considered an *ex po facto* law. And, even if the appellate courts do permit it, for reasons I’ll discuss next week, I think that Senator Blas’ bill, as currently written, is glaringly ineffective.