

Honorable Aimée Sutton  
Trial Date: July 8, 2019  
Hearing Date: June 21, 2019

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

K.M.P., a minor child, by and through her  
natural mother and custodial parent,  
SARAH HALL PINHO,

Plaintiffs,

v.

BIG BROTHERS BIG SISTERS OF  
PUGET SOUND, and MICHAEL WAYNE  
SANCHEZ, an individual,

Defendants.

No. 17-2-19614-2 KNT

PLAINTIFFS' MOTION FOR  
SUMMARY JUDGEMENT

**I. INTRODUCTION**

Plaintiffs<sup>1</sup> K.M.P., a minor child, by and through her natural mother and custodial parent, Sarah Hall Pinho, and Sarah Hall Pinho, individually, move for summary judgment on the defamation and associated counterclaims asserted by defendant Michael Wayne Sanchez. Those claims are premised on facts that, as a matter of law, make the plaintiffs statutorily immune from any civil liability under RCW 4.24.510. Additionally, Mr. Sanchez

<sup>1</sup> Plaintiffs have advised Mr. Sanchez that they do not intend on further pursuing any claims against him in this litigation, having previously and unsuccessfully attempted to dismiss all claims against him. For ease of understanding, however, Plaintiffs will continue to refer to themselves as such to avoid confusion.

1 has failed to proffer evidence that would establish a prima facie case for defamation, false  
2 light and intentional or negligent infliction of emotional distress, several of which were  
3 alleged after the statute of limitations had run.

## 4 **II. RELIEF REQUESTED**

5 Plaintiffs K.M.P. and her mother, Sarah Hall Pinho, respectfully request that all  
6 counterclaims brought by Michael Sanchez be dismissed pursuant to RCW 4.24.510 and his  
7 failure to present sufficient evidence to establish a prima facie case of defamation, false light,  
8 and intentional infliction of emotional distress.

## 9 **III. STATEMENT OF FACTS**

10 Plaintiff Sarah Hall Pinho, a registered nurse, is a single mother of three children,  
11 including 12-year-old plaintiff, K.M.P. Given her work schedule and other maternal  
12 responsibilities at the time of this incident in 2016, Sarah wanted then nine-year-old K.M.P  
13 to have more individualized attention than she could provide on her own. She enlisted the  
14 help of the Big Brothers Big Sisters (BBBS) program, which Sarah anticipated would allow  
15 K.M.P. to have an opportunity to develop a positive relationship with an adult. One of  
16 BBBS's volunteers, Darla Tishman, was assigned to K.M.P as a "big sister."

17 K.M.P. and Ms. Tishman had their first outing on April 29, 2016, and K.M.P. wanted  
18 to go to Steel Lake Park in Federal Way, Washington. At the park, they walked around and  
19 K.M.P. went swimming, but soon found herself most interested in watching the individuals  
20 fishing off the dock. One of these individuals was defendant Michael Sanchez.  
21 Unbeknownst to K.M.P. or Ms. Tishman, Mr. Sanchez had recently been released from  
22 prison after serving approximately 23 years for the murder of 11-year-old Shannon Potter.  
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1 As she was wandering up and down the dock watching the fishermen, Mr. Sanchez  
2 called to K.M.P. that he had hooked a fish, and asked if she wanted to help him reel it in.  
3 Declaration of Richard Anderson, Ex. 1, Deposition of Michael Sanchez at 50:2-22. K.M.P.  
4 excitedly agreed. Contemporaneous photos taken by Ms. Tishman reflect Mr. Sanchez  
5 squatting behind K.M.P. with his arms around her holding the fishing rod while K.M.P.  
6 attempted to reel it in. Decl. of Anderson, Ex. 2, Deposition of Darla Tishman at 63:1-65:6.  
7 Shortly thereafter, Mr. Sanchez tied the fish to K.M.P.'s wrist so she could walk back and  
8 forth along the dock with the fish in the water beside her. A few minutes later, Mr. Sanchez  
9 would insist on holding on to K.M.P. and her jacket while she laid down on the dock and  
10 leaned over to wash her hands in the water. *Id.* at 73:21-74:8. Ms. Tishman believed that Mr.  
11 Sanchez's behavior, while not overtly concerning at the time, seemed unnecessarily  
12 overprotective. *Id.* at 78:12-24. As they were leaving, Mr. Sanchez once again approached  
13 K.M.P. and offered to retie her fishing line so it was longer. *Id.* at 74:20-75:5. In all, K.M.P.  
14 and Ms. Tishman's interaction with Mr. Sanchez lasted only a few minutes, and it was not  
15 until they were in the car to begin the trip home that K.M.P. revealed that Mr. Sanchez had  
16 touched her. *Id.* at 84:19-85:7.

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19 Ms. Tishman, taken completely unawares by K.M.P.'s remarks, asked her a few  
20 questions to clarify whom K.M.P. was talking about and where and when this happened. *Id.*  
21 at 85:8-19. Just as they were about to leave the parking lot, Sarah called to find out how  
22 things were going. Ms. Tishman told her quickly what was happening, and then hung up to  
23 call 911. *Id.* at 89:17-90:10.

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25 Federal Way Police Department arrived at the park a few minutes later to interview  
26 witnesses. One of the responding officers, Officer Wong, spoke to K.M.P. and asked her to

1 tell him what happened. K.M.P. told him that she was “touched inappropriately” by a man  
2 that was helping her catch a fish. When asked for clarification, K.M.P. indicated that he  
3 touched her “private parts” “kind of secretly.” She described the touching as “rubbing”  
4 both on the outside and inside of her clothing. After speaking with Mr. Sanchez, Officer  
5 Wong re-contacted K.M.P. and asked her again to tell him what happened, noting that her  
6 subsequent account was extremely consistent with her initial recitation. *Declaration of*  
7 *Officer Nick Wong*, Ex. 1, FWPD Police Report, p. 8 of 16 and 9 of 16.  
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9 Defendant was subsequently arrested and charged with Child Molestation in the First  
10 Degree. After negotiations with the prosecuting attorney, Mr. Sanchez entered a guilty plea  
11 to Attempted Child Molestation in the Second Degree, and was sentenced to nearly 16  
12 months in prison. *Decl. of Richard Anderson*, Ex. 3, Statement of Defendant on Plea of  
13 Guilty, Ex. 4, Judgment and Sentence. In the allocution paragraph of his guilty plea, Mr.  
14 Sanchez acknowledged that he has reviewed the discovery and police reports associated with  
15 his criminal case and concluded that “if this matter proceeded to trial there is a substantial  
16 likelihood that I would be found guilty.” *Decl. of Richard Anderson*, Ex. 3, Statement of  
17 Defendant on Plea of Guilty, p.16.  
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19 The statements at issue in this matter are the report of sexual assault that K.M.P.  
20 made to Darla Tishman and later the Federal Way Police Department and King County  
21 Prosecuting Attorney’s Office. Mr. Sanchez has alleged in his amended counterclaim that  
22 other statements were made, but has presented no evidence or circumstances of such  
23 statements.  
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1 **IV. STATEMENT OF ISSUES**

2 1. Whether the reporting of a crime by a nine year-old and her mother is a matter  
3 “reasonably of concern” to law enforcement and therefore provides complete civil immunity  
4 from all claims related to that report?

5 2. Whether a nine year-old’s report of sexual assault to a chaperone acting in  
6 loco parentis and her mother should be considered privileged communications in defamation  
7 actions?

8 3. Whether a defamation plaintiff must present clear and convincing evidence of  
9 “actual malice” to withstand summary judgment once the defendant presents evidence of a  
10 qualified or conditional privilege?  
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12 4. Whether the failure to present any evidence that the defendant “publicized” a  
13 matter placing the plaintiff in a false light is fatal to a claim of invasion of privacy/false  
14 light?  
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16 5. Whether the failure to present any medical documentation or testimony of  
17 objective symptomatology warrants dismissal at summary judgment of a negligent infliction  
18 of emotional distress claim?

19 6. Whether a nine year-old’s report of sexual assault, even if assumed to be false,  
20 constitutes conduct so extreme and outrageous as to go beyond the bounds of decency and is  
21 so atrocious that it is utterly intolerable in a civilized community?  
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23 7. Whether the failure to bring claims of defamation and false light within two  
24 years of the statements giving rise to those claims results in dismissal under the statute of  
25 limitations?  
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V. EVIDENCE RELIED UPON

Defendants to counterclaims rely on the Declaration of Richard Anderson, Declaration of Officer Kris Durell, and Declaration of Officer Nick Wong in Support of Defendants’ Motion for Summary Judgment and exhibits attached thereto, as well as all of the pleadings, documents, and exhibits already on file in this matter.

VI. ARGUMENT AND AUTHORITY

A. **Summary Judgment Standard**

Under CR 56, the entry of a summary judgment is mandated when the evidence in the record shows no genuine issue of material fact. A motion for summary judgment must be granted against a non-moving party who fails to prove an essential element of his claim. *Hines v. Data Line System, Inc.*, 114 Wn.2d 127, 787 P.2d 8 (1990). Once the moving party submits adequate evidence, the non-moving party must set forth specific facts which sufficiently rebut the movant’s contentions and disclose the existence of a genuine issue of material fact. *Meyer v. University of Washington*, 105 Wn.2d 847, 791 P.2d 98 (1986). The non-moving party must demonstrate the existence of such a genuine issue of material fact by setting forth specific facts which go beyond mere unsupported allegations. *Brame v. St. Regis Paper Company*, 97 Wn.2d 748, 649 P.2d 836 (1982).

In the present case, Defendant Sanchez’ causes of action are directly related to the plaintiffs’ report to law enforcement of a crime and should therefore be dismissed. Furthermore, Mr. Sanchez has failed to proffer sufficient evidence to establish a prima facie case for each of his counterclaims.

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**B. RCW 4.24.500-.520 Provides Complete Civil Immunity to the Plaintiffs**

**1. History of Anti-SLAPP Litigation in Washington**

In 1989, the Washington Legislature passed the “Brenda Hill Bill,” providing immunity from civil liability for claims based on good faith communications with the government regarding matters “reasonably of concern.” 1989 Wash. Sess. Laws 1119-20. Brenda Hill, after discovering that her real estate company owed the state hundreds of thousands of dollars in unpaid taxes, was sued for defamation and harassed by her company to the point of bankruptcy after she reported the company to the state. The bill was the first modern anti-SLAPP (Strategic Lawsuit Against Public Participation) statute in the United States, intending to protect free expression to government agencies against frivolous lawsuits. *Davis v. Cox*, 183 Wn.2d 269, 275, 351 P.3d 862 (2015).

In 2002, the act was amended to remove the “good faith” requirement, effectively granting immunity to all protected communications, regardless of defendant’s intent. 2002 Wash. Sess. Laws 1057. In addition, the act permitted courts to award statutory damages of \$10,000 to individuals forced to defend against these frivolous lawsuits. RCW 4.24.510. A subsequent attempt in 2010 to amend the statute and create an even more streamlined approach<sup>2</sup> to early dismissal of these actions was held unconstitutional in *Davis v. Cox*, 183 Wn.2d 269, 351 P.3d 862 (2015). Nonetheless, the original immunities granted by earlier iterations of the statute remain intact to protect communications with government agencies. *Id.* at 276 (“The new statute did not amend or repeal the prior statute and instead codifies its new procedures in one new statutory section.”)

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<sup>2</sup> See RCW 4.24.525.

1                   2.     **RCW 4.24.500-.520 Protects All Reports to Government Agencies**  
2                   **that are Reasonably of Concern to that Agency**

3                   The provision for complete immunity from civil liability for communications to  
4 government agencies is clear:

5                   A person who communicates a complaint or information to any branch or  
6 agency of federal, state, or local government, . . . is immune from civil  
7 liability for claims based upon the communication to the agency or  
8 organization regarding any matter reasonably of concern to that agency or  
9 organization. A person prevailing upon the defense provided for in this  
10 section is entitled to recover expenses and reasonable attorney’s fees incurred  
11 in establishing the defense and in addition shall receive statutory damages of  
12 ten thousand dollars. Statutory damages may be denied if the court finds that  
13 the complaint or information was communicated in bad faith.

14 RCW 4.24.510. In this case, each of Mr. Sanchez’s counterclaims<sup>3</sup> derive from the basic  
15 premise that K.M.P. made a false report to the Federal Way Police Department and later to  
16 the King County Prosecuting Attorney’s Office that Mr. Sanchez touched her  
17 inappropriately. *First Amended Counterclaim*, Dkt. 83, ¶3.1-3.11. Because all of K.M.P.’s  
18 and her mother’s statements are communications to a government agency, all of Mr.  
19 Sanchez’s claims must be dismissed.

20                   3.     **K.M.P.’s Allegations of Child Molestation are Communications**  
21                   **Reasonably of Concern to Law Enforcement Agencies**

22                   K.M.P.’s report to government officials that Mr. Sanchez molested her are  
23 unquestionably of concern to both local police and county prosecuting authorities. *See Lowe*  
24 *v. Rowe*, 173 Wn. App. 253, 261, 294 P.3d 6 (2012) (“There is no doubt that enforcement of  
25 the state criminal laws is a matter of concern for the Columbia County Sheriff’s Office.”)  
26 *Hisey v. Ellis*, 2017 WL 7053653 \*2 (W.D. Wash. November 28, 2017) (applying RCW

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<sup>3</sup> Mr. Sanchez alleges in his amended counterclaim: defamation, defamation per se, false light, and negligent/intentional infliction of emotional distress.



1 4.24.510 in dismissing defamation claims based on a report to the Vancouver Police  
2 Department); *Engler v. City of Bothell*, 2016 WL 3453664 \*7-8 (W.D. Wash. June 20, 2016)  
3 (“an unwanted trespasser is a ‘matter reasonably of concern to’ the Redmond Police  
4 Department”). The immediate response of the Federal Way Police Department to investigate  
5 the allegations on April 29<sup>th</sup>, 2016, and the subsequent filing of charges by the King County  
6 Prosecuting Attorney’s Office several days later more than amply demonstrates the critical  
7 importance of K.M.P.’s allegations to those agencies.

9 4. **All of Sanchez’s Counterclaims Must Be Dismissed Pursuant to**  
10 **RCW 4.24.510, As All of his Damages Stem from his Arrest and**  
11 **Subsequent Court Action**

12 Mr. Sanchez has alleged from the outset that all of his purported damages stem from  
13 K.M.P.’s statements to Darla Tishman at Steel Lake Park. “KMP originally and  
14 spontaneously made her knowingly false and defamatory statements to private individuals  
15 with whom she had no statutory or common law privilege, with full knowledge they were  
16 false. *All other communications which may have been privileged, were proximately caused*  
17 *by her original unprivileged statements.” First Amended Counterclaim, Dkt. 83, ¶3.6.*  
18 (emphasis added).

19 Furthermore, in response to interrogatories, Mr. Sanchez detailed his general damages  
20 as loss of reputation and respect in the community, being labeled a sex offender, emotional  
21 distress, incarceration following his arrest, and prejudice to any legal action where his  
22 character may be at issue. He outlined his actual damages as \$20,000 in attorney’s fees to his  
23 criminal defense attorney, and debts from legal financial obligations imposed as a result of  
24 his conviction. Declaration of Richard Anderson, Ex. 5, *Plaintiffs’ First Set of*  
25 *Interrogatories and Requests for Production to Defendant Michael Wayne Sanchez and*  
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1 *Objections and Responses Thereto, Interrogatory No. 3; First Amended Counterclaim, Dkt.*  
2 83, ¶¶3.10-3.11. All of these damages, if true, are the direct result from K.M.P.’s report to the  
3 police of Mr. Sanchez’s molestation, and are therefore protected under RCW 4.24.510.

4 None of the purported damages were proximately caused by K.M.P.’s statements to  
5 either Darla Tishman, her BBBS chaperone, or to Sarah Hall Pinho, her mother. Instead, as  
6 described in his own words, all of his damages resulted from Ms. Tishman contacting the  
7 police and K.M.P.’s subsequent statements (or in defamation terms, “publication” of her  
8 allegedly defamatory statements) to law enforcement. All of K.M.P.’s statements to law  
9 enforcement, whether made in good faith or otherwise, are immune from civil liability.  
10 Therefore, Mr. Sanchez presents no genuine issues of material fact related to damages that  
11 would allow some of K.M.P.’s statements to those other than law enforcement<sup>4</sup> to survive  
12 summary judgment, and all counterclaims should be dismissed.  
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15 **C. Any Statements by K.M.P. to Darla Tishman and Sarah Pinho Are**  
16 **Privileged**

17 "To establish a prima facie defamation claim, the plaintiff must show (1) that the  
18 defendant's statement was false, (2) that the statement was unprivileged, (3) that the  
19 defendant was at fault, and (4) that the statement proximately caused damages." *Alpine*  
20 *Indus. Computers, Inc. v. Cowles Pub. Co.*, 114 Wn. App. 371, 378, 57 P.3d 1178 (2002).  
21 To defeat a summary judgment motion, the plaintiff must raise a genuine issue of material  
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23 <sup>4</sup> Mr. Sanchez also responded to Interrogatory No. 3 with “It is unknown how many people or who KMP  
24 repeated her defamatory, malicious, and unprivileged statements to in addition to the above because the  
25 discovery process has not been complete.” (In context, the reference to “the above” clearly references Darla  
26 Tishman and Sarah Hall Pinho.) On the contrary, the discovery period is complete. The interrogatory response  
was provided on May 20<sup>th</sup> 2019, which was the deadline for conducting discovery according to the case  
schedule. Naturally, any attempt by Mr. Sanchez to survive summary judgment by alleging K.M.P. made  
statements to other “unknown” people is clearly unsubstantiated and improper. Declaration of Richard  
Anderson, Exh. 5.

1 fact as to each of the required elements of the claim. *Id.* “The prima facie case must consist  
2 of specific, material facts, rather than conclusory statements, that would allow a jury to find  
3 that each element of defamation exists.” *LaMon v. Butler*, 112 Wn.2d 193, 197, 770 P.2d  
4 1027 (1989). Truth is an absolute defense to a claim of defamation. *Lee v. Columbian, Inc.*,  
5 64 Wn. App. 534, 538 (1991).

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7 Statements that would otherwise be defamatory incur no liability if they are  
8 privileged. *Alpine Indus. Computers, Inc. v. Cowles Pub. Co.*, 114 Wn. App. at 381 (“Certain  
9 absolute or conditional privileges will shield a defendant from liability for uttering an  
10 otherwise defamatory statement”). The court determines the existence of a privilege as a  
11 question of law. *Moe v. Wise*, 97 Wn. App. 950, 957, 989 P.2d 1148 (1999). The individual  
12 defending against a defamation claim has the initial burden of showing that a privilege covers  
13 a challenged communication. *Alpine Indus. Computers, Inc. v. Cowles Pub. Co.*, 114 Wn.  
14 App. at 382. In this case, K.M.P.’s statements to Darla Tishman and Sarah Hall Pinho about  
15 the incident are privileged.  
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17 1. **K.M.P.’s Statements are Protected by the “Common Interest” or**  
18 **Family Privileges**

19 Otherwise defamatory speech is protected if the speaker can show a common interest  
20 shared with the recipient. *Valdez-Zontek V. Eastmont School Dist.*, 154 Wn. App. 147, 225  
21 P.3d 339 (2010). The rationale for the protection is that the recipient is reasonably entitled to  
22 know the information. *Pete v. Tye Motor Inn, Inc.*, 77 Wn.2d 819, 821, 467 P.2d 301  
23 (1970); 16A Wash. Prac. §20.18; David Elder, *Defamation: A Lawyer's Guide*, § 2:24  
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1 (2018). Clearly, K.M.P. and both Ms. Tishman and Ms. Pinho share a common interest with  
2 K.M.P. in keeping her safe from harm.<sup>5</sup>

3       Regarding the common interests of family members, the comments in the  
4 Restatement state that “Everyone has a sufficient interest in the physical, moral, and social  
5 well-being of the members of his immediate family to make it proper for him to protect their  
6 well-being by the publication of defamatory matter concerning another when, if the matter  
7 were true, the recipient’s knowledge would be of service in protecting their well-being.”  
8 *Restatement (Second) of Torts* § 597, comment (c). Though Mr. Sanchez may argue that Ms.  
9 Tishman is not a member of K.M.P.’s family, under the circumstances of this case, Ms.  
10 Tishman was acting *in loco parentis* while chaperoning K.M.P.’s visit to the park, and had all  
11 the responsibilities of a parent in keeping K.M.P. safe from harm.  
12

13       In *Hitter v. Bellevue School Dist.*, the court upheld the dismissal of a similar  
14 defamation claim based on the common interest privilege. 66 Wn. App. 391, 401, 832 P.2d  
15 130 (1992). The defamation claim in *Hitter* concerned a statement made by a school  
16 principal to a student’s mother regarding allegations that a teacher (Hitter) had been accused  
17 of improperly touching her daughter. The court determined that the student’s mother had a  
18 common interest in the subject matter of the investigation into the alleged improper touching,  
19 and thus the principal’s statements to the mother were privileged and not actionable. *Id.*  
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22 \_\_\_\_\_  
23 <sup>5</sup> “The *Restatement Second* classifies defamatory statements concerning the well-being of an immediate family  
24 member between one member of the family and the third person as subject to a special conditional privilege  
25 encompassing family relationships. Although there is no question as to the validity or existence of this  
26 privilege, it probably does not require any independent classification as a special privilege; it is, rather, merely  
an application of either the interest-of-another privilege or the common-interest privilege, or both.”  
2 *Law of Defamation* § 8:57 (2d ed.). See also, *Kimble v. Kimble*, 14 Wash. 369, 44 P. 866 (1896) (qualified  
privilege may exist in a family relationship).

1 Other jurisdictions have reached similar conclusions. In *Doe v. Salisbury University*,  
2 the common interest privilege was extended to persons informing intimate friends and family  
3 of her status as a likely sexual assault victim. 123 F. Supp. 3d 748 (D. Md. 2015) (arguing  
4 that the defamatory statements were likely made “in furtherance of her legitimate interest in  
5 personal safety and the safety of those closest to her”). The court was “mindful of the  
6 objectionable policy implications that could follow in a world where such statements were  
7 unprivileged. Victims would have to weigh, on the one hand, the value of reaching out for  
8 help in the aftermath of a traumatic sexual assault, and on the other hand the risk that they  
9 could be subject to civil liability for defamation if the occurrence of sexual assault is  
10 contested by the alleged perpetrator.” *Id.* at 759. Forcing K.M.P. to make a similar choice at  
11 the age of only nine years old is even more repugnant.  
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14 **2. There is No Evidence of Actual Malice**

15 If a conditional privilege applies, the burden shifts to the proponent of the defamation  
16 claim to show an abuse of that privilege by clear and convincing evidence. *Bender v. City of*  
17 *Seattle*, 99 Wn.2d 582, 600-01, 664 P.2d 492 (1983); *Herron v. KING Broadcasting Co.*, 112  
18 Wn.2d 762, 768, 776 P.2d 98 (1989) (“The plaintiff responding to a motion for summary  
19 judgment in a defamation case must show that the jury could decide in his favor while  
20 applying the clear and convincing evidence standard.”)  
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22 To prove abuse of a privilege, a plaintiff must show actual malice, which is a false  
23 statement made either with actual knowledge of its falsity or reckless disregard for its truth or  
24 falsity. *Herron v. KING Broadcasting Co.*, 112 Wn.2d at 775; *Momah v. Bharti*, 144 Wn.  
25 App. 731, 742, 182 P.3d 455 (2008). To prove that K.M.P. made her statements with reckless  
26 disregard, Sanchez must present clear and convincing evidence that K.M.P. in fact

1 entertained serious doubts as to the truth of her report of abuse. *Herron v. KING*  
2 *Broadcasting Co.*, 112 Wn.2d at 775.

3 Mr. Sanchez has not presented even a scintilla of evidence that K.M.P. had actual,  
4 subjective knowledge that the allegations were false. There is no evidence of a recantation,  
5 supporting deposition testimony, or other admissible statement that would demonstrate  
6 K.M.P. was not telling the truth, or at worst not simply mistaken or confused as to any  
7 touching perpetrated by Mr. Sanchez. His self-serving assertions that he “didn’t do it,” or that  
8 “no one saw me do it” only demonstrate that the touching may not have occurred as she  
9 described, but do not allege malice.

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11 Furthermore, there is no evidence of any bias, dislike, or other improper motive on  
12 the part of K.M.P. or her mother. Mr. Sanchez testified that he did not hit K.M.P., yell at her,  
13 raise a hand to her, threaten her, and that he was polite and friendly to her. *Decl. of Richard*  
14 *Anderson*, Ex. 1, Deposition of Michael Sanchez at 47:7-48:22. In addition, they did not  
15 know each other, and Mr. Sanchez never told her anything about his prior conviction or  
16 anything else about himself. In fact, K.M.P. seemed excited and proud that Mr. Sanchez was  
17 allowing her to reel in his fish. *Decl. of Richard Anderson*, Ex. 2, Deposition of Darla  
18 Tishman, p. 63:1-20.

19  
20 Likewise, there is a complete absence of evidence of reckless disregard, which must  
21 be demonstrated by the fact that K.M.P. entertained serious doubts as to the truth of her  
22 report. K.M.P. initially told Ms. Tishman that Mr. Sanchez touched her “inappropriately.”  
23 *Id.* at 84:19-7. When asked by the responding Federal Way Police Officer Wong, K.M.P.  
24 repeated her allegation of inappropriate touching, and then consistently retold the story to  
25 Officer Wong a few minutes later. *See, Declaration of Ofc. Nicholas Wong*, Ex. 1.

1 Approximately a week later, on May 2, 2016, K.M.P. told a child interview specialist at the  
2 King County Prosecuting Attorney’s Office that Mr. Sanchez touched her several times on  
3 her “privates” both over and under her swimsuit. See, *Declaration of Kris Durrell*.

4 Taken in the light most favorable to Mr. Sanchez, at best, his only evidence that  
5 K.M.P.’s statements are false are his denials of her allegations. Proof of falsity alone will not  
6 overcome the privilege. *Mark*, 96 Wn.2d at 492; *Wood v. Battle Ground Sch. Dist.*, 107 Wn.  
7 App. 550, 569–70, 27 P.3d 1208, 1220 (2001). Mr. Sanchez’s wishful thinking or hope that  
8 K.M.P. will simply recant her allegations during a trial are insufficient to demonstrate a  
9 prima facie case of defamation. *Turgren v. King County*, 104 Wn.2d 293, 306, 705 P.2d 258  
10 (1985) (evidence used for impeachment will not support the elements of a cause of action).  
11 Moreover, Mr. Sanchez has previously acknowledged, both in a guilty plea statement and in  
12 his deposition testimony, that a jury would likely believe K.M.P. See, *Decl. of Richard*  
13 *Anderson*, Ex. 3 (guilty plea statement) and Ex. 1 (Deposition of Michael Sanchez at 24:9-17  
14 and 55:5-56:10.  
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17 Thus, there is no genuine issue of material fact as to whether her statements were  
18 made with actual malice.<sup>6</sup> Absent such evidence, Mr. Sanchez cannot present a prima facie  
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21 <sup>6</sup> In addition, Sanchez must also show evidence of actual malice in order to establish a prima facie case  
22 for the element of fault in his defamation claim. Where a private plaintiff is allegedly defamed by a statement,  
23 he or she must show actual malice for the claim to be actionable if the statement was a matter of public  
24 concern. *Alpine Indus. Computers, Inc. v. Cowles Pub. Co.*, 114 Wn. App. at 393. Whether or not the  
25 statement pertains to a matter of public concern depends on the content, form and context of the statement as  
26 shown by the surrounding circumstances. *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749,  
761, 105 S. Ct. 2939, 86 L. Ed. 2d 593 (1985).

K.M.P.’s statements about her alleged molestation are unquestionably matters of public concern. The  
statements involved a stranger in a public park where kids were present and likely to congregate, were made  
contemporaneously with the event by a nine-year-old child about her own experiences, and were made only to  
Ms. Tishman, a BBBS chaperone acting in the role of a caregiver at the time. For similar reasons, any  
subsequent statements by K.M.P. to the police or to her mother, Sarah, would similarly be matters of public

1 case of defamation on the element that the “statement was unprivileged” and his defamation  
2 claims must be dismissed.

3 **D. Sanchez’s Claim of False Light Should be Dismissed**

4 A false light claim may be brought when a defendant (1) publicizes a matter that  
5 places another in false light, (2) the false light would be highly offensive to a reasonable  
6 person, and (3) the defendant knew of or recklessly disregarded its falsity. *Eastwood v.*  
7 *Cascade Broad. Co.*, 106 Wn.2d 466, 470-71, 722 P.2d 1295 (1986). False light claims are  
8 considered invasion of privacy claims and are derived from the Restatement (Second) of  
9 Torts. As explained in the comments section:  
10

11 The form of invasion of the right of privacy covered in this Section depends  
12 upon publicity given to the private life of the individual. “Publicity,” as it is  
13 used in this Section, differs from “publication,” as that term is used in § 577 in  
14 connection with liability for defamation. “Publication,” in that sense, is a word  
15 of art, which includes any communication by the defendant to a third person.  
16 “Publicity,” on the other hand, means that the matter is made public, by  
17 communicating it to the public at large, or to so many persons that the matter  
18 must be regarded as substantially certain to become one of public knowledge.  
19 The difference is not one of the means of communication, which may be oral,  
20 written or by any other means. It is one of a communication that reaches, or is  
21 sure to reach, the public.

22 Thus it is not an invasion of the right of privacy, within the rule stated  
23 in this Section, to communicate a fact concerning the plaintiff’s private life to  
24 a single person or even to a small group of persons.

25 *Restatement (Second) of Torts* § 652D (1977).

26 Here, Mr. Sanchez has not alleged any facts that would support a claim that either  
K.M.P. or her mother “publicized” anything. On the contrary, his complaint is wholly silent  
on the issue. *First Amended Counterclaim*, Dkt. 83, ¶¶3.1-3.11. While there were some news

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concern. Thus, Sanchez’s failure to produce evidence of actual malice is also fatal to the element of “fault” in  
his prima facie case of defamation, and warrants summary judgment dismissal on that basis as well.



1 reports and newspaper articles surrounding Mr. Sanchez’s arrest and the subsequent filing of  
2 charges, there is no evidence that those reports were initiated by either K.M.P. or her mother  
3 rather than the more typical recitation of court filings.

4 Mr. Sanchez has failed to proffer any evidence whatsoever that K.M.P. or Sarah  
5 Pinho publicized anything regarding this incident, and therefore any claims of false light  
6 must be dismissed.  
7

8 **E. Sanchez’s Claim of Intentional Infliction of Emotional Distress Must be  
9 Dismissed<sup>7</sup>**

10 In Washington, the tort of intentional infliction of emotional distress, also known as  
11 the tort of outrage, requires proof of three elements: 1) extreme and outrageous conduct, 2)  
12 intentional or reckless infliction of emotional distress, and 3) actual result to the plaintiff of  
13 severe emotional distress. *Kloepfel v. Bokor*, 149 Wn.2d 192, 195, 66 P.3d 630 (2003).  
14 Individuals can only be liable when the defendant’s conduct has been so “outrageous in  
15 character and extreme in degree as to go beyond all possible bounds of decency and to be  
16 regarded as atrocious and utterly intolerable in a civilized community.” *Grimsby v. Sampson*,  
17 85 Wn.2d 52, 59, 530 P.2d 291 (1975) (quoting Restatement 2<sup>nd</sup> of Torts § 46 cmt. d (1965)).  
18  
19  
20

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21 <sup>7</sup> Defendant titled this claim “Negligent Infliction of Emotional Distress,” but then described the conduct at  
22 issue as intentional or reckless, as well as extreme and outrageous. In the event that Mr. Sanchez does in fact  
23 wish to bring a claim of negligent infliction of emotional distress, that claim necessarily fails from the  
24 complete absence of any evidence of physical manifestations of his distress or any proffered medical  
25 testimony.

26 *See, Kloepfel v. Bokor*, 149 Wn.2d 192, 196–97, 66 P.3d 630, 633 (2003) (“For negligent infliction of  
emotional distress, a plaintiff must prove he has suffered emotional distress by ‘objective symptomatology,’  
and the ‘emotional distress must be susceptible to medical diagnosis and proved through medical  
evidence.’ *Hegel v. McMahon*, 136 Wash.2d 122, 135, 960 P.2d 424 (1998). The symptoms of emotional  
distress must also “constitute a diagnosable emotional disorder.” *Id.*”)

1           Although claims for intentional infliction of emotional distress are typically questions  
2 of fact, a trial court must make an initial determination as to whether the conduct at issue  
3 may be reasonably regarded as so extreme and outrageous as to warrant a factual  
4 determination by the jury. *Sutton v. Tacoma Sch. Distr. No. 10*, 180 Wn. App. 859, 869, 324  
5 P.3d 763 (2014); *Strong v. Terrell*, 147 Wn. App. 376, 385, 195 P.3d 977 (2008). The  
6 requirement of outrageousness is not an easy one to meet, and the level of outrageousness  
7 required is extremely high. *Christian v. Tohmeh*, 191 Wn. App. 709, 736, 366 P.3d 16  
8 (2015) (citations omitted). Washington courts, like other jurisdictions, render an “initial  
9 screening to determine whether the defendant’s conduct and mental state, together with the  
10 plaintiff’s mental distress, rise to the level necessary to make out a prima facie case.” *Id.* at  
11 736.  
12

13           An allegation of molestation made by a nine year old, even if later deemed  
14 unsubstantiated or false, is not so outrageous or extreme as to be “atrocious and utterly  
15 intolerable in a civilized community.” Children of that age are presumed incapable of even  
16 committing a crime, much less understanding all the parameters and consequences of  
17 reporting one. RCW 9A.04.050.  
18

19           K.M.P. is merely a child – even a false accusation (which, of course, is greatly  
20 disputed) does not come close to going “beyond all possible bounds of decency” such that it  
21 would permit a jury to reasonably find extreme and outrageous conduct in this case. In  
22 addition, as explained above (see Sec. C, 2), Mr. Sanchez has presented no evidence of  
23 intentional or reckless conduct. Once again, Mr. Sanchez fails to present prima facie  
24 evidence of his claims, and his claim of intentional infliction of emotional distress must also  
25 be dismissed.  
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**F. Defendant’s Claims Do Not Survive the Statute of Limitations**

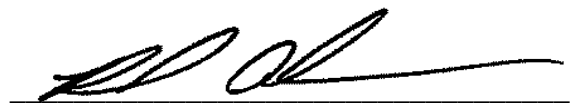
Actions for defamation and false light must be brought within two years of the alleged defamatory statements. RCW 4.16.100; *Eastwood v. Cascade Broadcasting Co.*, 106 Wn.2d 466, 474, 722 P.2d 1295 (1986). In this case, the alleged defamatory statements at issue were made on April 29, 2016, whether allegedly made by K.M.P. or her mother, Sarah Hall Pinho in their communications with police. Defendant alleges his damages were incurred the same day, as he was immediately arrested following the report of K.M.P. to the Federal Way Police Department. *First Amended Counterclaim*, Dkt. 83, ¶3.10. Nonetheless, Mr. Sanchez did not allege his counterclaims until over two years later, on June 4, 2018. *Defendant Sanchez’s Answer to Plaintiff’s Complaint & Defendant’s Counterclaim*, Dkt. 60. Those counterclaims are therefore barred by the statute of limitations, and should be dismissed.

**VII. CONCLUSION**

For the foregoing reasons, the court should grant summary judgment in favor of Plaintiffs K.M.P. and Sarah Hall Pinho, dismissing Defendant Michael Wayne Sanchez’ counterclaims of Defamation, Defamation Per Se, False Light, and Negligent Infliction of Emotional Distress.

DATED this 24<sup>th</sup> day of May, 2019.

SCHROETER, GOLDMARK & BENDER



RICHARD L. ANDERSON, WSBA #25115  
Counsel for Plaintiffs K.M.P. and Sarah Pinho

I certify that this memorandum contains 4,898 words, in compliance with the Local Civil Rules.

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**CERTIFICATE OF SERVICE**

I certify that I caused to be served in the manner noted below a copy of the foregoing pleading on the following individual(s):

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§ 47. Privileged publication or broadcast, CA CIVIL § 47

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KeyCite Yellow Flag - Negative Treatment  
Unconstitutional or Preempted Prior Version Limited on Preemption Grounds by Johnson v. JP Morgan Chase Bank DBA Chase Manhattan, E.D.Cal., Mar. 12, 2008

West's Annotated California Codes
Civil Code (Refs & Annos)
Division 1. Persons (Refs & Annos)
Part 2. Personal Rights (Refs & Annos)

West's Ann.Cal.Civ.Code § 47

§ 47. Privileged publication or broadcast

Effective: January 1, 2019

Currentness

A privileged publication or broadcast is one made:

(a) In the proper discharge of an official duty.

(b) In any (1) legislative proceeding, (2) judicial proceeding, (3) in any other official proceeding authorized by law, or (4) in the initiation or course of any other proceeding authorized by law and reviewable pursuant to Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure, except as follows:

(1) An allegation or averment contained in any pleading or affidavit filed in an action for marital dissolution or legal separation made of or concerning a person by or against whom no affirmative relief is prayed in the action shall not be a privileged publication or broadcast as to the person making the allegation or averment within the meaning of this section unless the pleading is verified or affidavit sworn to, and is made without malice, by one having reasonable and probable cause for believing the truth of the allegation or averment and unless the allegation or averment is material and relevant to the issues in the action.

(2) This subdivision does not make privileged any communication made in furtherance of an act of intentional destruction or alteration of physical evidence undertaken for the purpose of depriving a party to litigation of the use of that evidence, whether or not the content of the communication is the subject of a subsequent publication or broadcast which is privileged pursuant to this section. As used in this paragraph, "physical evidence" means evidence specified in Section 250 of the Evidence Code or evidence that is property of any type specified in Chapter 14 (commencing with Section 2031.010) of Title 4 of Part 4 of the Code of Civil Procedure.

(3) This subdivision does not make privileged any communication made in a judicial proceeding knowingly concealing the existence of an insurance policy or policies.

**§ 47. Privileged publication or broadcast, CA CIVIL § 47**

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(4) A recorded lis pendens is not a privileged publication unless it identifies an action previously filed with a court of competent jurisdiction which affects the title or right of possession of real property, as authorized or required by law.

(c) In a communication, without malice, to a person interested therein, (1) by one who is also interested, or (2) by one who stands in such a relation to the person interested as to afford a reasonable ground for supposing the motive for the communication to be innocent, or (3) who is requested by the person interested to give the information. This subdivision applies to and includes a communication concerning the job performance or qualifications of an applicant for employment, based upon credible evidence, made without malice, by a current or former employer of the applicant to, and upon request of, one whom the employer reasonably believes is a prospective employer of the applicant. This subdivision applies to and includes a complaint of sexual harassment by an employee, without malice, to an employer based upon credible evidence and communications between the employer and interested persons, without malice, regarding a complaint of sexual harassment. This subdivision authorizes a current or former employer, or the employer's agent, to answer, without malice, whether or not the employer would rehire a current or former employee and whether the decision to not rehire is based upon the employer's determination that the former employee engaged in sexual harassment. This subdivision shall not apply to a communication concerning the speech or activities of an applicant for employment if the speech or activities are constitutionally protected, or otherwise protected by Section 527.3 of the Code of Civil Procedure or any other provision of law.

(d)(1) By a fair and true report in, or a communication to, a public journal, of (A) a judicial, (B) legislative, or (C) other public official proceeding, or (D) of anything said in the course thereof, or (E) of a verified charge or complaint made by any person to a public official, upon which complaint a warrant has been issued.

(2) Nothing in paragraph (1) shall make privileged any communication to a public journal that does any of the following:

(A) Violates Rule 5-120 of the State Bar Rules of Professional Conduct.

(B) Breaches a court order.

(C) Violates any requirement of confidentiality imposed by law.

(e) By a fair and true report of (1) the proceedings of a public meeting, if the meeting was lawfully convened for a lawful purpose and open to the public, or (2) the publication of the matter complained of was for the public benefit.

**Credits**

(Enacted in 1872. Amended by Code Am.1873-74, c. 612, p. 184, § 11; Stats.1895, c. 163, p. 167, § 1; Stats.1927, c. 866, p. 1881, § 1; Stats.1945, c. 1489, p. 2763, § 3; Stats.1979, c. 184, p. 403, § 1; Stats.1990, c. 1491 (A.B.3765), § 1; Stats.1991, c.

**§ 47. Privileged publication or broadcast, CA CIVIL § 47**

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432 (A.B.529), § 1; Stats.1992, c. 615 (S.B.1804), § 1; Stats.1994, c. 364 (A.B.2778), § 1; Stats.1994, c. 700 (S.B.1457), § 2.5; Stats.1996, c. 1055 (S.B.1540), § 2; Stats.2002, c. 1029 (A.B.2868), § 1, eff. Sept. 28, 2002; Stats.2004, c. 182 (A.B.3081), § 4, operative July 1, 2005; Stats.2018, c. 82 (A.B.2770), § 1, eff. Jan. 1, 2019.)

**Editors' Notes**

**LAW REVISION COMMISSION COMMENTS**

**2004 Amendment**

Subdivision (b) of Section 47 is amended to reflect nonsubstantive reorganization of the rules governing civil discovery. [33 Cal.L.Rev.Comm. Reports 977 (2003)].

**Notes of Decisions (2075)**

West's Ann. Cal. Civ. Code § 47, CA CIVIL § 47

Current with urgency legislation through Ch. 860 of the 2019 Reg.Sess. Some statute sections may be more current, see credits for details.

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**End of Document**

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**2019 Legislative Session: 4th Session, 41st Parliament**  
**THIRD READING**

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The following electronic version is for informational purposes only.  
The printed version remains the official version.

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Certified correct as passed Third Reading on the 7th day of March, 2019  
Kate Ryan-Lloyd, Acting Clerk of the House

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**HONOURABLE DAVID R. P. EBY**  
**ATTORNEY GENERAL**

**BILL 2 – 2019**  
**PROTECTION OF PUBLIC PARTICIPATION ACT**

**Contents**

- 1 Definitions
- 2 Application
- 3 Qualified privilege
- 4 Application to court
- 5 No further steps
- 6 No amendments unless permitted
- 7 Costs
- 8 Award for damages
- 9 Procedure on application
- 10 Appeals
- 11 Stay of administrative proceedings
- 12 Rights not limited
- 13 Application of *Offence Act*
- 14 Commencement

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

**Definitions**

**1** In this Act:

**"administrative proceeding"** means an application or other process for bringing a matter before a tribunal;

**"applicant"** means a person making an application under section 4;

**"court"** means the Supreme Court of British Columbia;

**"dismissal order"** means an order under section 4 dismissing a proceeding;

**"expression"** means any communication, whether it is made verbally or non-verbally, publicly or privately, and whether it is directed or not directed at a person or entity;



**"proceeding"** has the same meaning as in the *Supreme Court Act*;

**"respondent"** means a person responding to an application made under section 4;

**"tribunal"** has the same meaning as in the *Judicial Review Procedure Act*.

### **Application**

2 This Act applies in respect of proceedings commenced on or after May 15, 2018.

### **Qualified privilege**

3 If an oral or written communication on a matter of public interest, between persons who have a direct interest in the matter, has qualified privilege, that communication has qualified privilege regardless of whether the communication is witnessed or reported by the media or other persons.

### **Application to court**

4 (1) In a proceeding, a person against whom the proceeding has been brought may apply for a dismissal order under subsection (2) on the basis that

(a) the proceeding arises from an expression made by the applicant, and

(b) the expression relates to a matter of public interest.

(2) If the applicant satisfies the court that the proceeding arises from an expression referred to in subsection (1), the court must make a dismissal order unless the respondent satisfies the court that

(a) there are grounds to believe that

(i) the proceeding has substantial merit, and

(ii) the applicant has no valid defence in the proceeding, and

(b) the harm likely to have been or to be suffered by the respondent as a result of the applicant's expression is serious enough that the public interest in continuing the proceeding outweighs the public interest in protecting that expression.

### **No further steps**

5 (1) Subject to subsection (2), if an applicant serves on a respondent an application for a dismissal order under section 4, no party may take further steps in the proceeding until the application, including any appeals, has been finally resolved.

(2) Subsection (1) does not apply to an application for an injunction.

### **No amendments unless permitted**

6 Unless the court orders otherwise, a respondent may not amend the respondent's pleadings

- (a) in order to prevent or avoid a dismissal order under section 4, or
- (b) in order to continue the proceeding if the proceeding is dismissed.

### **Costs**

- 7 (1) If the court makes a dismissal order under section 4, the applicant is entitled to costs on the application and in the proceeding, assessed as costs on a full indemnity basis unless the court considers that assessment inappropriate in the circumstances.
- (2) If, on an application for a dismissal order under section 4, the court does not dismiss the proceeding, the respondent is not entitled to costs on that application unless the court considers it appropriate in the circumstances.

### **Award for damages**

- 8 On an application for a dismissal order under section 4, the court may, on its own motion or on application by the applicant, award the damages it considers appropriate against a respondent if it finds that the respondent brought the proceeding in bad faith or for an improper purpose.

### **Procedure on application**

- 9 (1) Subject to this Act, an application for a dismissal order under section 4 must be made in accordance with the Supreme Court Civil Rules.
- (2) An application for a dismissal order under section 4 may be made at any time after the proceeding has commenced.
- (3) An application for a dismissal order under section 4 must be heard as soon as practicable.
- (4) Subject to subsections (5) and (6) of this section, on an application for a dismissal order under section 4, evidence must be given by affidavit.
- (5) An applicant or respondent may, before the hearing of the application,
- (a) call, out of court before an official reporter, the witness who swore or affirmed the affidavit for cross-examination on the witness's affidavit, and
  - (b) cross-examine the witness on the witness's affidavit, provided that
    - (i) the total period of cross-examination of all applicants in the proceeding does not exceed 7 hours in duration, and
    - (ii) the total period of cross-examination of all respondents in the proceeding does not exceed 7 hours in duration.
- (6) The court may extend the period permitted for cross-examination under subsection (5) if the court considers it necessary in the interests of justice.

### **Appeals**

- 10** An appeal of a dismissal order under this Act to the Court of Appeal must be heard as soon as practicable.

### **Stay of administrative proceedings**

- 11** (1) This section applies if a respondent has commenced an administrative proceeding that the applicant believes to be related to the same matter of public interest alleged by the applicant to be the basis of the proceeding that is the subject of the applicant's application for a dismissal order under section 4.
- (2) The applicant may serve the tribunal with a copy of the notice of the application for the dismissal order.
- (3) Service by the applicant on the tribunal under subsection (2) operates as a stay of the administrative proceeding.
- (4) The tribunal must give to each party a notice of the stay and a copy of the notice of the application that was served on the tribunal.
- (5) A stay of an administrative proceeding under subsection (3) remains effective until
- (a) the application for a dismissal order, including any appeals, has been finally resolved, or
  - (b) an earlier date, if, on application, the court considers that
    - (i) the proceeding that is the subject of the application for a dismissal order and the administrative proceeding that was stayed under subsection (3) are not connected enough to warrant a stay, or
    - (ii) the stay is causing, or would likely cause, a party undue hardship.
- (6) An application for the costs of any proceeding under this section must be heard only on the basis of written submissions unless
- (a) the tribunal is satisfied that a party would suffer significant prejudice if the tribunal did not allow oral submissions, or
  - (b) the applicant and respondent consent to oral submissions and the tribunal agrees.

### **Rights not limited**

- 12** The remedies under this Act are in addition to any other right or remedy that may be available to an applicant or a respondent.

### **Application of *Offence Act***

- 13** Section 5 of the *Offence Act* does not apply to this Act.

### **Commencement**

- 14** This Act comes into force on the date of Royal Assent.

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**§ 27.002. Purpose**

**Citation: TX CIV PRAC & REM § 27.002**

**V.T.C.A., Civil Practice & Remedies Code § 27.002**

**Effective: June 17, 2011**

The purpose of this chapter is to encourage and safeguard the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government to the maximum extent permitted by law and, at the same time, protect the rights of a person to file meritorious lawsuits for demonstrable injury.

**§ 27.003. Motion to Dismiss**

**Citation: TX CIV PRAC & REM § 27.003**

**V.T.C.A., Civil Practice & Remedies Code § 27.003**

**Effective: September 1, 2019**

(a) If a legal action is based on or is in response to a party's exercise of the right of free speech, right to petition, or right of association or arises from any act of that party in furtherance of the party's communication or conduct described by Section 27.010(b), that party may file a motion to dismiss the legal action. A party under this section does not include a government entity, agency, or an official or employee acting in an official capacity.

(b) A motion to dismiss a legal action under this section must be filed not later than the 60th day after the date of service of the legal action. The parties, upon mutual agreement, may extend the time to file a motion under this section or the court may extend the time to file a motion under this section on a showing of good cause.

(c) Except as provided by Section 27.006(b), on the filing of a motion under this section, all discovery in the legal action is suspended until the court has ruled on the motion to dismiss.

(d) The moving party shall provide written notice of the date and time of the hearing under Section 27.004 not later than 21 days before the date of the hearing unless otherwise provided by agreement of the parties or an order of the court.

(e) A party responding to the motion to dismiss shall file the response, if any, not later than seven days before the date of the hearing on the motion to dismiss unless otherwise provided by an agreement of the parties or an order of the court.

**§ 27.004. Hearing**

**Citation: TX CIV PRAC & REM § 27.004**

**V.T.C.A., Civil Practice & Remedies Code § 27.004**

**Effective: June 14, 2013**

(a) A hearing on a motion under Section 27.003 must be set not later than the 60th day after the date of service of the motion unless the docket conditions of the court require a later hearing, upon a showing of good cause, or by agreement of the parties, but in no event shall the hearing occur more than 90 days after service of the motion under Section 27.003, except as provided by Subsection (c).

(b) In the event that the court cannot hold a hearing in the time required by Subsection (a), the court may take judicial notice that the court's docket conditions required a hearing at a later date, but in no event shall the hearing occur more than 90 days after service of the motion under Section 27.003, except as provided by Subsection (c).

(c) If the court allows discovery under Section 27.006(b), the court may extend the hearing date to allow discovery under that subsection, but in no event shall the hearing occur more than 120 days after the service of the motion under Section 27.003.

**§ 27.005. Ruling**

**V.T.C.A., Civil Practice & Remedies Code § 27.005**

**Citation: TX CIV PRAC & REM § 27.005**

**Effective: September 1, 2019**

- (a) The court must rule on a motion under Section 27.003 not later than the 30th day following the date the hearing on the motion concludes.
- (b) Except as provided by Subsection (c), on the motion of a party under Section 27.003, a court shall dismiss a legal action against the moving party if the moving party demonstrates that the legal action is based on or is in response to:
- (1) the party's exercise of:
    - (A) the right of free speech;
    - (B) the right to petition; or
    - (C) the right of association; or
  - (2) the act of a party described by Section 27.010(b).
- (c) The court may not dismiss a legal action under this section if the party bringing the legal action establishes by clear and specific evidence a prima facie case for each essential element of the claim in question.
- (d) Notwithstanding the provisions of Subsection (c), the court shall dismiss a legal action against the moving party if the moving party establishes an affirmative defense or other grounds on which the moving party is entitled to judgment as a matter of law .

**§ 27.006. Proof**

**V.T.C.A., Civil Practice & Remedies Code § 27.006**

**Citation: TX CIV PRAC & REM § 27.006**

**Effective: September 1, 2019**

- (a) In determining whether a legal action is subject to or should be dismissed under this chapter, the court shall consider the pleadings, evidence a court could consider under Rule 166a, Texas Rules of Civil Procedure, and supporting and opposing affidavits stating the facts on which the liability or defense is based.
- (b) On a motion by a party or on the court's own motion and on a showing of good cause, the court may allow specified and limited discovery relevant to the motion.

**§ 27.007. Additional Findings**

**V.T.C.A., Civil Practice & Remedies Code § 27.007**

**Citation: TX CIV PRAC & REM § 27.007**

**Effective: September 1, 2019**

- (a) If the court awards sanctions under Section 27.009(b) , the court shall issue findings regarding whether the legal action was brought to deter or prevent the moving party from exercising constitutional rights and is brought for an improper purpose, including to harass or to cause unnecessary delay or to increase the cost of litigation.
- (b) The court must issue findings under Subsection (a) not later than the 30th day after the date a request under that subsection is made.

**§ 27.008. Appeal**

**V.T.C.A., Civil Practice & Remedies Code § 27.008**

**Citation: TX CIV PRAC & REM § 27.008**

**Effective: June 14, 2013**

- (a) If a court does not rule on a motion to dismiss under Section 27.003 in the time prescribed by Section 27.005, the motion is considered to have been denied by operation of law and the moving party may appeal.
- (b) An appellate court shall expedite an appeal or other writ, whether interlocutory or not, from a trial court order on a motion to dismiss a legal action under Section 27.003 or from a trial court's failure to rule on that motion in the time prescribed by Section 27.005.
- (c) Repealed by Acts 2013, 83rd Leg., ch. 1042 (H.B. 2935), § 5.

**§ 27.009. Damages and Costs:**  
**V.T.C.A., Civil Practice & Remedies Code § 27.009**

**Citation: TX CIV PRAC & REM § 27.009**  
**Effective: September 1, 2019**

(a) Except as provided by Subsection (c), if the court orders dismissal of a legal action under this chapter, the court :

(1) shall award to the moving party court costs and reasonable attorney's fees incurred in defending against the legal action ; and (2) may award to the moving party sanctions against the party who brought the legal action as the court determines sufficient to deter the party who brought the legal action from bringing similar actions described in this chapter.

(b) If the court finds that a motion to dismiss filed under this chapter is frivolous or solely intended to delay, the court may award court costs and reasonable attorney's fees to the responding party.

(c) If the court orders dismissal of a compulsory counterclaim under this chapter, the court may award to the moving party reasonable attorney's fees incurred in defending against the counterclaim if the court finds that the counterclaim is frivolous or solely intended for delay.

West's Delaware Code Annotated
Title 10. Courts and Judicial Procedure
Part V. Limitation of Actions
Chapter 81. Personal Actions

10 Del.C. § 8136

§ 8136. Actions involving public petition and participation

Currentness

(a) For purposes of this section, the following terms shall have the meaning ascribed herein:

(1) An “action involving public petition and participation” is an action, claim, cross-claim or counterclaim for damages that is brought by a public applicant or permittee, and is materially related to any efforts of the defendant to report on, rule on, challenge or oppose such application or permission.

(2) “Communication” shall mean any statement, claim or allegation in a proceeding, decision, protest, writing, argument, contention or other expression.

(3) “Government body” shall mean the State and any county, city, town, village or any other political subdivision of the State; any public improvement or special district, public authority, commission, agency or public benefit corporation; any other separate corporate instrumentality or unit of State or local government; or the federal government.

(4) “Public applicant or permittee” shall mean any person who has applied for or obtained a permit, zoning change, lease, license, certificate or other entitlement for use or permission to act from any government body, or any person with an interest, connection or affiliation with such person that is materially related to such application or permission.

(b) In an action involving public petition and participation, damages may only be recovered if the plaintiff, in addition to all other necessary elements, shall have established by clear and convincing evidence that any communication which gives rise to the action was made with knowledge of its falsity or with reckless disregard of whether it was false, where the truth or falsity of such communication is material to the cause of action at issue.

(c) Nothing in this section shall be construed to limit any constitutional, statutory or common-law protection of defendants to actions involving public petition and participation.



**§ 8136. Actions involving public petition and participation, DE ST TI 10 § 8136**

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**Credits**

68 Laws 1992, ch. 391, § 1.

**Notes of Decisions (2)**

10 Del.C. § 8136, DE ST TI 10 § 8136

Current through 81 Laws 2018, chs. 200-425. Revisions to 2018 Acts by the Delaware Code Revisors were unavailable at the time of publication.

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End of Document

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# Make them scared

A wiki dedicated to exposing the names of sexual harassers/attackers created in the University of Washington Seattle area.

## Our Purpose

UPDATE: As of 6/1/2019, we are still accepting and publishing submissions. If you're here to report a name, go [here](#) or click 'Report a name' in the sidebar.

Make Them Scared is a communal wiki created in the UW/Seattle area to give survivors of sexual violence a voice and a place to expose the names of their sexual harassers/attackers. We now accept and publish submissions from everywhere, not only the UW/Seattle area.

- **This website is not a court of law. If someone's name is on the list, all it means is that we have received an accusation against them. If the name of someone you know appears on this list, take note and proceed with caution, but it does not mean they have necessarily committed a crime.**
- **We do not have the ability to determine whether any accused party is legally "guilty" or "innocent."** That being said, we no longer allow names to be submitted anonymously (the point when this changed is marked on the list), which means all accusers have given us some form of personal identification, in addition to some form of identification of the accused in order to avoid misunderstanding and confusion. If we have any reason to believe an accusation may be false, we will not publish it. Our intention is to do everything we can to avoid publishing false claims.
- **Make them scared does not encourage the use of violence.** The mission of this site is to make information that is usually buried and silenced publicly available, to make the world a safer place, and to give survivors of sexual violence a means of obtaining justice in a world whose institutions are biased against them.
- **Make them scared is intended to be a last resort for those who other official reporting systems have failed. It is not intended to be a substitution for these reporting systems.** We encourage all survivors to first make an official report. Only official authorities have the ability to conduct a thorough investigation and determine guilt or innocence.
- **We want to start a movement.** This wiki was originally created by students at the University of Washington, but it is our hope that people interested in outing the names of sexual harassers/attackers from other college campuses will follow suit. Until then, we'll continue to publish names from anywhere on our list. Make Them Scared has no affiliation with the university.
- **We want to be the best we can.** If you have any suggestions for how we can do what we're doing better, please let us know. This has been a learning process for us, and we want to do everything we can to handle a sensitive topic with care and responsibility.

[makethemscared@gmail.com](mailto:makethemscared@gmail.com) Twitter: [@makethemscared](https://twitter.com/makethemscared) [#makethemscared](https://twitter.com/makethemscared)

on Friday, October 5, 2018 | [make them scared](#), [makethemscared](#)

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