

Second Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 08-0009.01 Julie Pelegrin

HOUSE BILL 08-1011

HOUSE SPONSORSHIP

Green,

SENATE SPONSORSHIP

(None),

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE STATUTE OF LIMITATIONS APPLICABLE TO CIVIL
102 ACTIONS ARISING FROM THE COMMISSION OF SEXUAL ASSAULTS
103 AGAINST CHILDREN.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Creates an unlimited statute of limitations for civil actions based on damages arising from a sexual assault on a child. Makes the unlimited statute of limitations apply to civil actions against the perpetrator or a third party. In an action against a third party, requires the plaintiff to prove that the third party had control over the perpetrator, knew that the perpetrator had previously committed unlawful sexual conduct, and failed

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

to take steps to prevent additional incidents of unlawful sexual conduct.

Creates a 2-year period during which a person may file a cause of action for damages arising from a sexual assault on a child even though the preexisting statute of limitations applicable to the action has run.

Repeals language that limits the damages a person may recover if the person brings suit 15 or more years after reaching 18 years of age. Allows a person to bring suit against an entity or third party even though the perpetrator of the sexual offense against a child is deceased or incapacitated.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration - short title.** (1) The
3 general assembly hereby finds that:

4 (a) Sexual abuse is a reprehensible social wrong that often occurs
5 as a series of separate incidents over a period of time;

6 (b) Sexual abuse victims, particularly child victims, frequently
7 delay reporting sexual abuse for reasons such as repressed memory, fear
8 of ridicule, fear of retaliation, concern for or guilt toward the perpetrator
9 or an institution in which the abuse occurred, and an institution's denial
10 and concerted and veiled efforts to protect the perpetrator;

11 (c) For these reasons, some victims ultimately report sexual abuse
12 years or even decades after the abuse occurred, but by then are either
13 completely precluded by the statute of limitations from seeking civil relief
14 or are restricted to relatively minimal damages;

15 (d) The statute of limitations in Colorado for bringing a civil claim
16 for sexual abuse is a procedural and remedial mechanism governing the
17 time period in which the claim must be brought. Among other things, as
18 it exists prior to the effective date of this act, the statute:

19 (I) Limits a sexual abuse victim to bringing a claim for sexual
20 assault or sexual offense against a child within six years after the cause

1 of action accrues or within six years after a disability has been removed
2 from a plaintiff with a disability;

3 (II) Exempts vicarious liability claims from the six-year period,
4 thereby invoking a substantially shorter statute of limitations for
5 institutional or individual defendants who may be vicariously liable;

6 (III) Restricts a sexual abuse victim who brings a sexual abuse
7 claim fifteen years or more after the victim turns eighteen years of age to
8 recovering only treatment and counseling expenses; and

9 (IV) Prohibits a victim from bringing a sexual abuse claim against
10 a perpetrator who is deceased or incapacitated.

11 (e) The statute of limitations existing prior to the effective date of
12 this act does not take into account the frequently and understandably
13 delayed reporting of sexual abuse incidents, and it disproportionately
14 applies a substantially shorter time period to vicarious liability claims
15 compared to the time period allowed for a sexual abuse claim asserted
16 directly against a perpetrator;

17 (f) Consequently, many sexual abuse claims that were once viable,
18 whether directly against a perpetrator or vicariously against an institution
19 or another individual, are no longer actionable, and persons victimized by
20 sexual abuse are without justice;

21 (g) Providing victims with a temporary time window within which
22 to bring claims for past sexual abuse without the imposition of a statute
23 of limitations is a legitimate government interest and legitimate exercise
24 of the state's police power, because it advances the overriding public
25 interest in protecting the health, safety, and welfare of children and
26 persons who by reason of their position, environment, job, age, disability,
27 status, or other circumstances have been unable to timely bring sexual

1 abuse claims.

2 (2) The general assembly, therefore, determines and declares that
3 it is necessary to enact legislation that addresses past sexual abuse
4 injustices, including but not limited to childhood sexual abuse, that will
5 protect children from sexual predators and assist sexual abuse victims
6 who are currently without a remedy to vindicate their dignity and obtain
7 justice by:

8 (a) Providing a procedural and remedial measure in the form of a
9 two-year statute of limitations window that will retroactively apply to
10 sexual abuse incidents that occurred at any time before the effective date
11 of this act and within which a victim may bring a civil claim for sexual
12 offense against a child against a perpetrator or an institution or another
13 individual who may be vicariously liable;

14 (b) Permanently eliminating the exemption that vicarious liability
15 claims have from the statute of limitations applicable to direct claims,
16 thus putting vicarious liability claims on an even footing with direct
17 claims;

18 (c) Raising the damages restriction on any sexual abuse victim
19 who brings a claim fifteen years or more after the victim turns eighteen
20 years of age; and

21 (d) Allowing a sexual abuse victim to bring a claim against an
22 institution or a third party that may be vicariously liable, even though the
23 perpetrator of the offense is deceased or incapacitated.

24 (3) It is the intent of the general assembly in enacting this act to
25 advance the public interest by:

26 (a) Protecting children from pedophiles by exposing child
27 molesters and other sexual abuse actors, holding those that enable them

1 accountable, and shifting at least a portion of the costs incurred by
2 victims from the Colorado taxpayers to the responsible parties;

3 (b) Ensuring that those who protect child molesters do not have
4 a bona fide interest or reasonable expectation in an arbitrary time limit
5 that removes all civil liability for their acts; and

6 (c) Aiding longstanding sexual abuse victims whose claims are
7 foreclosed by a statute of limitations that, when enacted, failed to take
8 into account the difficulties associated with victims coming forward to
9 report sexual misconduct and with piercing the institutional veil to
10 achieve justice.

11 (4) The general assembly therefore adopts this act to be known as
12 "The Child Protection and Victims' Justice Act".

13 **SECTION 2.** 13-80-103.7, Colorado Revised Statutes, is
14 amended to read:

15 **13-80-103.7. General limitation of actions - sexual assault -**
16 **sexual offense against a child.** (1) (a) Notwithstanding any other statute
17 of limitations specified in this article, or any other provision of law that
18 can be construed to reduce the statutory period set forth in this section,
19 ~~any~~ A civil action based on a sexual assault, ~~or~~ OTHER THAN a sexual
20 offense against a child, shall be commenced within six years after a
21 disability has been removed for a person under disability, as such term is
22 defined in subsection (3.5) of this section, or within six years after ~~a~~ THE
23 cause of action accrues, whichever occurs later, and not thereafter.

24 (b) (I) NOTWITHSTANDING ANY OTHER STATUTE OF LIMITATIONS
25 SPECIFIED IN THIS ARTICLE, OR ANY OTHER PROVISION OF LAW THAT CAN
26 BE CONSTRUED TO REDUCE THE STATUTORY PERIOD SET FORTH IN THIS
27 SECTION, A CIVIL ACTION BASED ON A SEXUAL OFFENSE AGAINST A CHILD

1 MAY BE COMMENCED AT ANY TIME AFTER THE CAUSE OF ACTION ACCRUES
2 IF THE CAUSE OF ACTION IS:

3 (A) AGAINST THE PERPETRATOR; OR

4 (B) AGAINST ANOTHER ENTITY, AS SAID CAUSE OF ACTION IS
5 DESCRIBED IN SUBSECTION (6) OF THIS SECTION.

6 (II) IT IS THE INTENT OF THE GENERAL ASSEMBLY IN ENACTING
7 THIS PARAGRAPH (b) TO EXTEND THE STATUTE OF LIMITATIONS AS TO
8 CIVIL ACTIONS DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (b)
9 FOR WHICH THE APPLICABLE STATUTE OF LIMITATIONS IN EFFECT PRIOR TO
10 THE EFFECTIVE DATE OF THIS PARAGRAPH (b) HAS NOT YET RUN AS OF THE
11 EFFECTIVE DATE OF THIS PARAGRAPH (b).

12 (c) (I) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A
13 CLAIM FOR DAMAGES THAT IS GOVERNED BY PARAGRAPH (b) OF THIS
14 SUBSECTION (1) AND THAT WOULD OTHERWISE BE BARRED AS OF JULY 1,
15 2008, SOLELY BECAUSE THE APPLICABLE STATUTE OF LIMITATIONS HAS
16 EXPIRED, IS HEREBY REVIVED AND MAY BE COMMENCED BEFORE JULY 1,
17 2010. NOTHING IN THIS PARAGRAPH (c) SHALL BE CONSTRUED TO ALTER
18 THE APPLICABLE STATUTE OF LIMITATIONS PERIOD FOR A CIVIL ACTION
19 THAT IS NOT TIME-BARRED AS OF JULY 1, 2008.

20 (II) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE
21 PROVISIONS OF THIS PARAGRAPH (c) BEAR A RATIONAL RELATIONSHIP TO
22 THE LEGITIMATE GOVERNMENT INTEREST OF PROTECTING SEXUAL ABUSE
23 VICTIMS, EXPOSING PERPETRATORS, HOLDING INSTITUTIONS ACCOUNTABLE
24 FOR THE PREVENTION OF SEXUAL ABUSE, AND PROVIDING SEXUAL ABUSE
25 VICTIMS WITH CIVIL JUSTICE.

26 (III) IT IS FURTHER THE INTENT OF THE GENERAL ASSEMBLY THAT,
27 IF THE PROVISIONS OF THIS PARAGRAPH (c) ARE FOUND TO BE

1 UNCONSTITUTIONAL, THE REMAINING PROVISIONS OF THIS SECTION ARE
2 NEITHER ESSENTIALLY NOR INSEPARABLY CONNECTED WITH, NOR
3 DEPENDENT UPON, THE PROVISIONS OF THIS PARAGRAPH (c) AND ARE
4 THEREFORE VALID AND ARE INTENDED TO STAND ALONE WITHOUT THE
5 PROVISIONS OF THIS PARAGRAPH (c).

6 (d) Nothing in this section shall be construed to extend the
7 statutory period with respect to vicarious liability IN A CIVIL ACTION
8 BASED ON A SEXUAL ASSAULT OTHER THAN A SEXUAL OFFENSE AGAINST
9 A CHILD.

10 (2) For the purpose of this section, "sexual assault" means
11 subjecting another person of any age to sexual contact, as defined in
12 section 18-3-401 (4), C.R.S.; sexual intrusion, as defined in section
13 18-3-401 (5), C.R.S.; or sexual penetration, as defined in section
14 18-3-401 (6), C.R.S.

15 (3) For the purposes of this section, "sexual offense against a
16 child" shall include all offenses listed in section 18-3-411, C.R.S.

17 (3.5) (a) For the purpose of this section, "person under disability"
18 means any person who is a minor under eighteen years of age, a mental
19 incompetent, or a person under other legal disability and who does not
20 have a legal guardian. "Person under disability" also includes a victim of
21 a sexual assault when the victim is in a special relationship with the
22 perpetrator of the assault or is a victim of a sexual offense against a child
23 or is a victim who is residing in an institutional facility, such as a nursing
24 home, regional center, or residential facility for the treatment and care of
25 persons with mental illness or for the care of persons with developmental
26 disabilities and where the victim is psychologically or emotionally unable
27 to acknowledge the assault or offense and the harm resulting therefrom.

1 (b) For the purpose of this subsection (3.5), "special relationship"
2 means a relationship between the victim and the perpetrator of the sexual
3 assault which is a confidential, trust-based relationship, such as
4 attorney-client, doctor-patient, psychotherapist-patient,
5 minister-parishioner, teacher-student, or familial relationship.

6 (c) It is the intent of the general assembly to leave in place the
7 six-year limitation for adults subjected to a sexual assault except in the
8 situations described in ~~this paragraph (a)~~ PARAGRAPH (a) OR (b) OF THIS
9 SUBSECTION (3.5) in which the victim is in a special relationship with the
10 perpetrator of the assault. In the circumstances in which a victim is in a
11 special relationship with the perpetrator of the assault or is a victim of a
12 sexual offense against a child or a victim who is residing in an
13 institutional facility, such as a nursing home, regional center, or
14 residential facility for the treatment and care of persons with mental
15 illness or for the care of persons with developmental disabilities and
16 where the victim is psychologically or emotionally unable to acknowledge
17 the assault or offense and the harm resulting therefrom, the six-year
18 limitation, WHERE APPLICABLE, shall be tolled until the disability is
19 removed.

20 (d) For the purpose of this section, where the plaintiff is a victim
21 of a series of sexual assaults or sexual offenses against a child, the
22 plaintiff need not establish which act of a series of acts caused the
23 plaintiff's injury, and the statute of limitations set forth in this section
24 shall commence with the last in the series of acts, subject to the
25 provisions of this section regarding disability. However, as elements of
26 the cause of action, a person under disability who is psychologically or
27 emotionally unable to acknowledge the assault or offense and the harm

1 resulting therefrom shall have the burden of proving that the assault or
2 offense occurred and that such person was actually psychologically or
3 emotionally unable to acknowledge the assault or offense and the harm
4 resulting therefrom.

5 (b) (e) Notwithstanding the provisions of section 13-90-107, the
6 filing of a claim pursuant to this subsection (3.5) is deemed to be a
7 limited waiver of the doctor-patient privilege or the psychologist-patient
8 privilege to persons who are necessary to resolve the claim, and a doctor
9 or psychologist who provided medical care and treatment or counseling
10 and treatment to the plaintiff for injuries upon which an action under this
11 subsection (3.5) is based may be examined as a witness. All medical
12 records pertaining to any relevant medical care and treatment or
13 counseling and treatment of the plaintiff are admissible into evidence in
14 an action brought pursuant to this subsection (3.5) and shall be available
15 for inspection upon request by the parties to the action.

16 ~~(c) If the plaintiff brings a civil action under this subsection (3.5)~~
17 ~~fifteen years or more after the plaintiff attains the age of eighteen, the~~
18 ~~plaintiff may only recover damages for medical and counseling treatment~~
19 ~~and expenses, plus costs and attorney fees.~~

20 (d) (f) It is the intent of the general assembly in enacting this
21 subsection (3.5) to extend the statute of limitations as to civil actions
22 based on offenses described in subsection (1) of this section as amended
23 on July 1, 1993, for which the applicable statute of limitations in effect
24 prior to July 1, 1993, has not yet run on July 1, 1993.

25 (3.7) An action may not be brought pursuant to subsection (3.5)
26 of this section AGAINST A DEFENDANT WHO IS THE PERPETRATOR OF THE
27 SEXUAL ASSAULT OR THE SEXUAL OFFENSE AGAINST A CHILD if the

1 defendant is deceased or is incapacitated to the extent that the defendant
2 is incapable of rendering a defense to the action. AN ACTION AS
3 DESCRIBED IN SUBSECTION (6) OF THIS SECTION MAY BE BROUGHT AGAINST
4 A PERSON OR ENTITY THAT IS NOT THE PERPETRATOR OF THE SEXUAL
5 OFFENSE AGAINST A CHILD ON WHICH THE CAUSE OF ACTION IS BASED
6 REGARDLESS OF WHETHER THE PERPETRATOR IS DECEASED OR
7 INCAPACITATED.

8 (4) It is the intent of the general assembly in enacting this section
9 to extend the statute of limitations as to civil actions based on offenses
10 described in subsection (1) of this section for which the applicable statute
11 of limitations in effect prior to July 1, 1990, has not yet run on July 1,
12 1990.

13 (5) The provisions of this section shall not be construed to extend
14 or suspend the statute of limitations or statute of repose applicable to a
15 claim alleging negligence in the course of providing professional services
16 in the practice of medicine. This subsection (5) shall not be construed to
17 preclude pursuing a civil action pursuant to this section alleging a sexual
18 offense based on a legal theory other than negligence in the course of
19 providing professional services in the practice of medicine, unless the
20 sexual assault forms the basis for a claim of such negligence.

21 (6) (a) THE PROVISIONS OF PARAGRAPH (b) OF SUBSECTION (1) OF
22 THIS SECTION SHALL APPLY TO ANY CAUSE OF ACTION THAT IS BROUGHT
23 AGAINST A PERSON OR ENTITY THAT IS NOT THE PERPETRATOR OF THE
24 SEXUAL OFFENSE AGAINST A CHILD ON WHICH THE CAUSE OF ACTION IS
25 BASED IF:

26 (I) THE PERSON OR ENTITY KNEW, HAD REASON TO KNOW, OR WAS
27 OTHERWISE ON NOTICE OF ANY UNLAWFUL SEXUAL CONDUCT BY THE

1 PERPETRATOR WHO, AT THE TIME OF THE CONDUCT, WAS THE PERSON'S OR
2 ENTITY'S EMPLOYEE, VOLUNTEER, REPRESENTATIVE, OR AGENT; AND

3 (II) THE PERSON OR ENTITY FAILED TO TAKE REASONABLE STEPS
4 AND IMPLEMENT REASONABLE SAFEGUARDS TO AVOID PROSPECTIVE ACTS
5 OF UNLAWFUL SEXUAL CONDUCT BY THE PERPETRATOR, INCLUDING BUT
6 NOT LIMITED TO PREVENTING OR AVOIDING PLACEMENT OF THE
7 PERPETRATOR IN A POSITION, FUNCTION, OR ENVIRONMENT IN WHICH
8 CONTACT WITH CHILDREN IS AN ESSENTIAL PART OF THE POSITION,
9 FUNCTION, OR ENVIRONMENT.

10 (b) FOR PURPOSES OF THIS SUBSECTION (6), MERELY PROVIDING OR
11 REQUIRING COUNSELING SHALL BE DEEMED INSUFFICIENT TO CONSTITUTE
12 A REASONABLE STEP OR SAFEGUARD TO AVOID PROSPECTIVE ACTS OF
13 UNLAWFUL SEXUAL CONDUCT.

14 **SECTION 3. Safety clause.** The general assembly hereby finds,
15 determines, and declares that this act is necessary for the immediate
16 preservation of the public peace, health, and safety.