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SENATE BILL 21-073

BY SENATOR(S) Danielson and Coram, Bridges, Buckner, Coleman, Cooke, Fenberg, Fields, Ginal, Gonzales, Hansen, Hisey, Holbert, Jaquez Lewis, Kirkmeyer, Kolker, Lee, Liston, Lundeen, Moreno, Pettersen, Priola, Scott, Simpson, Story, Winter, Woodward, Zenzinger, Garcia;

also REPRESENTATIVE(S) Michaelson Jenet and Soper, Amabile, Bacon, Bennett, Bird, Caraveo, Cutter, Daugherty, Duran, Esgar, Exum, Froelich, Geitner, Gonzales-Gutierrez, Gray, Herod, Hooton, Jackson, Jodeh, Kennedy, Kipp, Lontine, Lynch, McCluskie, McCormick, McLachlan, Ortiz, Ricks, Roberts, Sirota, Snyder, Sullivan, Tipper, Valdez D., Weissman, Young, Garnett.

CONCERNING CHANGING THE STATUTE OF LIMITATIONS APPLICABLE TO CIVIL ACTIONS ALLEGING SEXUAL MISCONDUCT FOR WHICH THE STATUTE OF LIMITATIONS HAS NOT YET RUN AS OF JANUARY 1, 2022.

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

SECTION 1. In Colorado Revised Statutes, **amend** 13-80-103.7 as follows:

13-80-103.7. General limitation of actions - sexual misconduct

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

- third-party liability - definition. (1) (a) Notwithstanding any other statute of limitations specified in this ~~article~~ ARTICLE 80, or any other provision of law that can be construed to ~~reduce the statutory period set forth~~ LIMIT THE TIME PERIOD TO COMMENCE AN ACTION DESCRIBED in this section, any civil action based on ~~a sexual assault or a sexual offense against a child shall be commenced within six years after a disability has been removed for a person under disability, as such term is defined in subsection (3.5) of this section, or within six years after a cause of action accrues, whichever occurs later, and not thereafter. Nothing in this section shall be construed to extend the statutory period with respect to vicarious liability~~ SEXUAL MISCONDUCT, INCLUDING ANY DERIVATIVE CLAIM, MAY BE COMMENCED AT ANY TIME WITHOUT LIMITATION.

(b) THIS SUBSECTION (1) APPLIES TO CAUSES OF ACTION ACCRUING ON OR AFTER JANUARY 1, 2022, AND TO CAUSES OF ACTION ACCRUING BEFORE JANUARY 1, 2022, IF THE APPLICABLE STATUTE OF LIMITATIONS, AS IT EXISTED PRIOR TO JANUARY 1, 2022, HAS NOT YET RUN ON JANUARY 1, 2022.

(2) ~~For the purpose of this section, "sexual assault" means subjecting another person of any age to sexual contact, as defined in section 18-3-401 (4), C.R.S.; sexual intrusion, as defined in section 18-3-401 (5), C.R.S.; or sexual penetration, as defined in section 18-3-401 (6), C.R.S. AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES, "SEXUAL MISCONDUCT" MEANS ANY CONDUCT THAT FORMS THE BASIS OF A CIVIL ACTION THAT IS ENGAGED IN FOR THE PURPOSE OF THE SEXUAL AROUSAL, GRATIFICATION, OR ABUSE OF ANY PERSON, AND THAT CONSTITUTES ANY OF THE FOLLOWING:~~

(a) A FIRST DEGREE MISDEMEANOR OR A FELONY OFFENSE DESCRIBED IN PART 3 OR 4 OF ARTICLE 3 OF TITLE 18 OR A FELONY OFFENSE DESCRIBED IN ARTICLE 6 OR 7 OF TITLE 18;

(b) HUMAN TRAFFICKING FOR SEXUAL SERVITUDE, AS DESCRIBED IN SECTION 18-3-504;

(c) A FEDERAL SEX OFFENSE AS DEFINED IN THE FEDERAL "SEX OFFENDER REGISTRATION AND NOTIFICATION ACT", 34 U.S.C. SEC. 20911 (5)(A)(iii);

(d) OBSCENE VISUAL REPRESENTATIONS OF THE SEXUAL ABUSE OF CHILDREN, AS DESCRIBED IN 18 U.S.C. SEC. 1466A;

(e) TRANSFER OF OBSCENE MATERIAL TO MINORS, AS DESCRIBED IN 18 U.S.C. SEC. 1470; OR

(f) ATTEMPT OR CONSPIRACY TO COMMIT SEX TRAFFICKING OF CHILDREN OR BY FORCE, FRAUD, OR COERCION, AS DESCRIBED IN 18 U.S.C. SEC. 1594.

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

~~(3.5) (a) For the purpose of this section, "person under disability" means any person who is a minor under eighteen years of age, a person who has been declared mentally incompetent, or a person under other legal disability and who does not have a legal guardian. "Person under disability" also includes a victim of a sexual assault when the victim is in a special relationship with the perpetrator of the assault or is a victim of a sexual offense against a child or is a victim who is residing in an institutional facility, such as a nursing home, regional center, or residential facility for the treatment and care of persons with a behavioral or mental health disorder or for the care of persons with intellectual and developmental disabilities and where the victim is psychologically or emotionally unable to acknowledge the assault or offense and the resulting harm. For the purpose of this subsection (3.5), "special relationship" means a relationship between the victim and the perpetrator of the sexual assault which is a confidential, trust-based relationship, such as attorney-client, doctor-patient, psychotherapist-patient, minister-parishioner, teacher-student, or familial relationship. It is the intent of the general assembly to leave in place the six-year limitation for adults subjected to a sexual assault except in the situations described in this subsection (3.5)(a) in which the victim is in a special relationship with the perpetrator of the assault. In the circumstances in which a victim is in a special relationship with the perpetrator of the assault or is a victim of a sexual offense against a child or a victim who is residing in an institutional facility, such as a nursing home, regional center, or residential facility for the treatment and care of persons with a behavioral or mental health disorder or for the care of persons with intellectual and developmental disabilities and where the victim is psychologically or emotionally unable to acknowledge the assault or offense and the resulting~~

~~harm, the six-year limitation is tolled until the disability is removed. For the purpose of this section, where the plaintiff is a victim of a series of sexual assaults or sexual offenses against a child, the plaintiff need not establish which act of a series of acts caused the plaintiff's injury, and the statute of limitations set forth in this section commences with the last in the series of acts, subject to the provisions of this section regarding disability. However, as elements of the cause of action, a person under disability who is psychologically or emotionally unable to acknowledge the assault or offense and the resulting harm has the burden of proving that the assault or offense occurred and that he or she was actually psychologically or emotionally unable to acknowledge the assault or offense and the resulting harm.~~

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

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

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

~~(3.7) An action may not be brought pursuant to subsection (3.5) of this section if the defendant is deceased or is incapacitated to the extent that the defendant is incapable of rendering a defense to the action.~~

~~(4) It is the intent of the general assembly in enacting this section to~~

~~extend the statute of limitations as to civil actions based on offenses described in subsection (1) of this section for which the applicable statute of limitations in effect prior to July 1, 1990, has not yet run on July 1, 1990.~~

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

(6) (a) THIS SECTION ALSO APPLIES TO ANY CAUSE OF ACTION ARISING FROM FACTUAL CIRCUMSTANCES THAT INCLUDE SEXUAL MISCONDUCT THAT IS BROUGHT AGAINST A PERSON OR ENTITY THAT IS NOT THE PERPETRATOR OF THE SEXUAL MISCONDUCT.

(b) THIS SUBSECTION (6) APPLIES TO CAUSES OF ACTION ACCRUING ON OR AFTER JANUARY 1, 2022, AND TO CAUSES OF ACTION ACCRUING BEFORE JANUARY 1, 2022, IF THE APPLICABLE STATUTE OF LIMITATIONS, AS IT EXISTED PRIOR TO JANUARY 1, 2022, HAS NOT YET RUN ON JANUARY 1, 2022.

SECTION 2. In Colorado Revised Statutes, 25-1-1202, **repeal** (1)(x) as follows:

25-1-1202. Index of statutory sections regarding medical record confidentiality and health information. (1) Statutory provisions concerning policies, procedures, and references to the release, sharing, and use of medical records and health information include the following:

~~(x) Section 13-80-103.7, C.R.S., concerning a limited waiver of medical information in civil actions related to sexual assault or sexual offenses against a child;~~

SECTION 3. Effective date. This act takes effect January 1, 2022.

SECTION 4. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Leroy M. Garcia
PRESIDENT OF
THE SENATE

Alec Garnett
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO