

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 20-0244.02 Conrad Imel x2313

HOUSE BILL 20-1296

HOUSE SPONSORSHIP

Michaelson Jenet and Soper,

SENATE SPONSORSHIP

Gonzales and Coram,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING CHANGING THE STATUTE OF LIMITATIONS APPLICABLE**
102 **TO CIVIL ACTIONS ALLEGING SEXUAL MISCONDUCT FOR WHICH**
103 **THE STATUTE OF LIMITATIONS HAS NOT YET RUN AS OF JANUARY**
104 **1, 2021.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Under existing law, the statute of limitations to bring a civil claim based on sexual assault or a sexual offense against a child is 6 years, but the statute is tolled when the victim is a person under disability or is in a

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

HOUSE
Amended 2nd Reading
May 26, 2020

special relationship with the perpetrator of the assault. The bill defines sexual misconduct and removes the limitation on bringing a civil claim based on sexual misconduct, including claims brought against a person or entity that is not the perpetrator of the sexual misconduct. The statutory period to commence a civil action described in the bill applies to a cause of action that accrues on or after January 1, 2021, or a cause of action accruing prior to January 1, 2021, so long as the applicable statute of limitations has not yet run as of January 1, 2021.

The bill removes the provision that a plaintiff who is a victim of a series of sexual assaults does not need to establish which act in the series caused the plaintiff's injuries.

Under existing law, a plaintiff who brings a civil action alleging sexual misconduct 15 years or more after the plaintiff turns 18 is limited to recovering only certain damages. The bill eliminates this restriction.

Under existing law, a victim who is a person under disability or is in a special relationship with the perpetrator of the assault may not bring an action against a defendant who is deceased or incapacitated. The bill eliminates this restriction.

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

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

4 **13-80-103.7. General limitation of actions - sexual misconduct**
5 **- third-party liability - definition.** (1) (a) Notwithstanding any other
6 statute of limitations specified in this ~~article~~ ARTICLE 80, or any other
7 provision of law that can be construed to ~~reduce the statutory period set~~
8 ~~forth~~ LIMIT THE TIME PERIOD TO COMMENCE AN ACTION DESCRIBED in this
9 section, any civil action based on a ~~sexual assault or a sexual offense~~
10 ~~against a child shall be commenced within six years after a disability has~~
11 ~~been removed for a person under disability, as such term is defined in~~
12 ~~subsection (3.5) of this section, or within six years after a cause of action~~
13 ~~accrues, whichever occurs later, and not thereafter. Nothing in this section~~
14 ~~shall be construed to extend the statutory period with respect to vicarious~~
15 ~~liability~~ SEXUAL MISCONDUCT, INCLUDING ANY DERIVATIVE CLAIM, MAY

1 BE COMMENCED AT ANY TIME WITHOUT LIMITATION.

2 (b) THE PROVISIONS OF THIS SUBSECTION (1) APPLY TO CAUSES OF
3 ACTION ACCRUING ON OR AFTER JANUARY 1, 2021, AND TO CAUSES OF
4 ACTION ACCRUING BEFORE JANUARY 1, 2021, IF THE APPLICABLE STATUTE
5 OF LIMITATIONS, AS IT EXISTED PRIOR TO JANUARY 1, 2021, HAS NOT YET
6 RUN ON JANUARY 1, 2021.

7 (2) For the purpose of this section, ~~"sexual assault" means~~
8 ~~subjecting another person of any age to sexual contact, as defined in~~
9 ~~section 18-3-401 (4), C.R.S.; sexual intrusion, as defined in section~~
10 ~~18-3-401 (5), C.R.S.; or sexual penetration, as defined in section~~
11 ~~18-3-401 (6), C.R.S.~~ "SEXUAL MISCONDUCT" MEANS ANY CONDUCT THAT
12 FORMS THE BASIS OF A CIVIL ACTION THAT IS ENGAGED IN FOR THE
13 PURPOSE OF THE SEXUAL AROUSAL, GRATIFICATION, OR ABUSE OF ANY
14 PERSON, AND THAT CONSTITUTES ANY OF THE FOLLOWING:

15 (a) AN OFFENSE DESCRIBED IN PART 3 OR 4 OF ARTICLE 3 OF TITLE
16 18 OR IN ARTICLE 6 OR 7 OF TITLE 18;

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

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

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

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

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

1 SEC. 1594.

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

4 (3.5) (a) ~~For the purpose of this section, "person under disability"~~
5 ~~means any person who is a minor under eighteen years of age, a person~~
6 ~~who has been declared mentally incompetent, or a person under other~~
7 ~~legal disability and who does not have a legal guardian. "Person under~~
8 ~~disability" also includes a victim of a sexual assault when the victim is in~~
9 ~~a special relationship with the perpetrator of the assault or is a victim of~~
10 ~~a sexual offense against a child or is a victim who is residing in an~~
11 ~~institutional facility, such as a nursing home, regional center, or~~
12 ~~residential facility for the treatment and care of persons with a behavioral~~
13 ~~or mental health disorder or for the care of persons with intellectual and~~
14 ~~developmental disabilities and where the victim is psychologically or~~
15 ~~emotionally unable to acknowledge the assault or offense and the~~
16 ~~resulting harm. For the purpose of this subsection (3.5), "special~~
17 ~~relationship" means a relationship between the victim and the perpetrator~~
18 ~~of the sexual assault which is a confidential, trust-based relationship, such~~
19 ~~as attorney-client, doctor-patient, psychotherapist-patient,~~
20 ~~minister-parishioner, teacher-student, or familial relationship. It is the~~
21 ~~intent of the general assembly to leave in place the six-year limitation for~~
22 ~~adults subjected to a sexual assault except in the situations described in~~
23 ~~this subsection (3.5)(a) in which the victim is in a special relationship~~
24 ~~with the perpetrator of the assault. In the circumstances in which a victim~~
25 ~~is in a special relationship with the perpetrator of the assault or is a victim~~
26 ~~of a sexual offense against a child or a victim who is residing in an~~
27 ~~institutional facility, such as a nursing home, regional center, or~~

1 residential facility for the treatment and care of persons with a behavioral
2 or mental health disorder or for the care of persons with intellectual and
3 developmental disabilities and where the victim is psychologically or
4 emotionally unable to acknowledge the assault or offense and the
5 resulting harm, the six-year limitation is tolled until the disability is
6 removed. For the purpose of this section, where the plaintiff is a victim
7 of a series of sexual assaults or sexual offenses against a child, the
8 plaintiff need not establish which act of a series of acts caused the
9 plaintiff's injury, and the statute of limitations set forth in this section
10 commences with the last in the series of acts, subject to the provisions of
11 this section regarding disability. However, as elements of the cause of
12 action, a person under disability who is psychologically or emotionally
13 unable to acknowledge the assault or offense and the resulting harm has
14 the burden of proving that the assault or offense occurred and that he or
15 she was actually psychologically or emotionally unable to acknowledge
16 the assault or offense and the resulting harm.

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

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

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

10 (3.7) An action may not be brought pursuant to subsection (3.5)
11 of this section if the defendant is deceased or is incapacitated to the extent
12 that the defendant is incapable of rendering a defense to the action.

13 (4) It is the intent of the general assembly in enacting this section
14 to extend the statute of limitations as to civil actions based on offenses
15 described in subsection (1) of this section for which the applicable statute
16 of limitations in effect prior to July 1, 1990, has not yet run on July 1,
17 1990.

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

26 (6) (a) THE PROVISIONS OF THIS SECTION ALSO APPLY TO ANY
27 CAUSE OF ACTION ARISING FROM FACTUAL CIRCUMSTANCES THAT INCLUDE

1 SEXUAL MISCONDUCT THAT IS BROUGHT AGAINST A PERSON OR ENTITY
2 THAT IS NOT THE PERPETRATOR OF THE SEXUAL MISCONDUCT.

3 (b) THE PROVISIONS OF THIS SUBSECTION (6) APPLY TO CAUSES OF
4 ACTION ACCRUING ON OR AFTER JANUARY 1, 2021, AND TO CAUSES OF
5 ACTION ACCRUING BEFORE JANUARY 1, 2021, IF THE APPLICABLE STATUTE
6 OF LIMITATIONS, AS IT EXISTED PRIOR TO JANUARY 1, 2021, HAS NOT YET
7 RUN ON JANUARY 1, 2021.

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

10 **25-1-1202. Index of statutory sections regarding medical**
11 **record confidentiality and health information.** (1) Statutory provisions
12 concerning policies, procedures, and references to the release, sharing,
13 and use of medical records and health information include the following:

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

17 **SECTION 3. Effective date.** This act takes effect January 1,
18 2021.

19 **SECTION 4. Safety clause.** The general assembly hereby finds,
20 determines, and declares that this act is necessary for the immediate
21 preservation of the public peace, health, or safety.