

CHAPTER 319

COURTS

HOUSE BILL 93-1259

BY REPRESENTATIVES Kreutz, Fleming, Tucker, George, Acquafresca, Agler, Allen, Armstrong, Benavidez, Berry, Chlouber, Coffman, DeGette, Eisenach, Epps, Friednash, Grampsas, Greenwood, Hagedorn, R. Hernandez, June, Kaufman, Keller, Lawrence, Lyle, Morrison, Pierson, Reeves, Rupert, Snyder, Tanner, and Wright;
also SENATORS Mares and Johnson.

AN ACT**CONCERNING THE STATUTE OF LIMITATIONS IN CIVIL ACTIONS INVOLVING SEXUAL OFFENSES.**

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

SECTION 1. 13-80-103.7, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

13-80-103.7. General limitation of actions - sexual assault or sexual offense against a child - six years. (1) Notwithstanding any other statute of limitations specified in this article, or any other provision of law that can be construed to reduce the statutory period set forth 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 ~~section 13-81-101 (3)~~ 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.

(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.

(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.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(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 MENTAL 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 MENTAL ILLNESS OR FOR THE CARE OF PERSONS WITH DEVELOPMENTAL DISABILITIES AND WHERE THE VICTIM IS PSYCHOLOGICALLY OR EMOTIONALLY UNABLE TO ACKNOWLEDGE THE ASSAULT OR OFFENSE AND THE HARM RESULTING THEREFROM. 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 SUBJECT TO A SEXUAL ASSAULT EXCEPT IN THE SITUATIONS DESCRIBED IN THIS PARAGRAPH (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 MENTAL ILLNESS OR FOR THE CARE OF PERSONS WITH DEVELOPMENTAL DISABILITIES AND WHERE THE VICTIM IS PSYCHOLOGICALLY OR EMOTIONALLY UNABLE TO ACKNOWLEDGE THE ASSAULT OR OFFENSE AND THE HARM RESULTING THEREFROM, THE SIX-YEAR LIMITATION SHALL BE 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 SHALL COMMENCE 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 HARM RESULTING THEREFROM SHALL HAVE THE BURDEN OF PROVING THAT THE ASSAULT OR OFFENSE OCCURRED AND THAT SUCH PERSON WAS ACTUALLY PSYCHOLOGICALLY OR EMOTIONALLY UNABLE TO ACKNOWLEDGE THE ASSAULT OR OFFENSE AND THE HARM RESULTING THEREFROM.

(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.

SECTION 2. Effective date. This act shall take effect July 1, 1993.

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

Approved: June 8, 1993