

CHAPTER 75

COURTS

HOUSE BILL 12-1085

BY REPRESENTATIVE(S) Fields, Casso, Duran, Gardner B., Looper, Nikkel, Todd, Young;
also SENATOR(S) Carroll and Hudak, Aguilar, Boyd, Foster, Giron, Guzman, Heath, Hodge, Jahn, Johnston, King S., Morse,
Newell, Nicholson, Schwartz, Spence, Steadman, Tochtrop, White, Williams S., Shaffer B.

AN ACT

**CONCERNING AN EXCEPTION TO THE HEARSAY RULE TO ALLOW TESTIMONY FROM PERSONS WITH
DEVELOPMENTAL DISABILITIES.**

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

SECTION 1. In Colorado Revised Statutes, **add** 13-25-129.5 as follows:

13-25-129.5. Statements of persons with developmental disabilities - hearsay exception. (1) AN OUT-OF-COURT STATEMENT MADE BY A PERSON WITH A DEVELOPMENTAL DISABILITY, AS DEFINED IN SECTION 27-10.5-102 (11) (a), C.R.S., NOT OTHERWISE ADMISSIBLE BY A STATUTE OR COURT RULE THAT PROVIDES AN EXCEPTION TO THE OBJECTION OF HEARSAY IS ADMISSIBLE IN ANY CRIMINAL OR DELINQUENCY PROCEEDING IN WHICH THE PERSON IS ALLEGED TO HAVE BEEN A VICTIM IF THE CONDITIONS OF SUBSECTION (5) OF THIS SECTION ARE SATISFIED.

(2) (a) AN OUT-OF-COURT STATEMENT MADE BY A PERSON WITH A DEVELOPMENTAL DISABILITY, AS DEFINED IN SECTION 27-10.5-102 (11) (a), C.R.S., THAT DESCRIBES ALL OR PART OF AN OFFENSE DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION (2) PERFORMED WITH, BY, ON, OR IN THE PRESENCE OF THE DECLARANT, AND THAT IS NOT OTHERWISE ADMISSIBLE BY A STATUTE OR COURT RULE THAT PROVIDES AN EXCEPTION TO THE OBJECTION OF HEARSAY, IS ADMISSIBLE IN ANY CRIMINAL, DELINQUENCY, OR CIVIL PROCEEDING IF THE CONDITIONS OF SUBSECTION (5) OF THIS SECTION ARE SATISFIED.

(b) THE EXCEPTION DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (2) APPLIES TO AN OUT-OF-COURT STATEMENT MADE BY A PERSON WITH A DEVELOPMENTAL DISABILITY, WHICH STATEMENT DESCRIBES ALL OR PART OF ANY OF THE FOLLOWING OFFENSES:

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

- (I) SEXUAL ASSAULT, AS DESCRIBED IN SECTION 18-3-402, C.R.S.;
 - (II) UNLAWFUL SEXUAL CONTACT, AS DESCRIBED IN SECTION 18-3-404, C.R.S.;
 - (III) SEXUAL ASSAULT ON A CHILD, AS DESCRIBED IN SECTION 18-3-405, C.R.S.;
 - (IV) SEXUAL ASSAULT ON A CHILD BY ONE IN A POSITION OF TRUST, AS DESCRIBED IN SECTION 18-3-405.3, C.R.S.;
 - (V) INTERNET EXPLOITATION OF A CHILD, AS DESCRIBED IN SECTION 18-3-405.4, C.R.S.;
 - (VI) SEXUAL ASSAULT ON A CLIENT BY A PSYCHOTHERAPIST, AS DESCRIBED IN SECTION 18-3-405.5, C.R.S.;
 - (VII) INCEST, AS DESCRIBED IN SECTION 18-6-301, C.R.S.;
 - (VIII) AGGRAVATED INCEST, AS DESCRIBED IN SECTION 18-6-302, C.R.S.;
 - (IX) TRAFFICKING IN CHILDREN, AS DESCRIBED IN SECTION 18-3-502, C.R.S.;
 - (X) SEXUAL EXPLOITATION OF A CHILD, AS DESCRIBED IN SECTION 18-6-403, C.R.S.;
 - (XI) INDECENT EXPOSURE, AS DESCRIBED IN SECTION 18-7-302, C.R.S.; OR
 - (XII) CRIMINAL ATTEMPT TO COMMIT ANY OF THE ACTS SPECIFIED IN THIS PARAGRAPH (b).
- (3) AN OUT-OF-COURT STATEMENT BY A PERSON WITH A DEVELOPMENTAL DISABILITY, AS DEFINED IN SECTION 27-10.5-102 (11) (a), C.R.S., THAT DESCRIBES ANY ACT OF CHILD ABUSE, AS DEFINED IN SECTION 18-6-401, C.R.S., TO WHICH THE DECLARANT WAS SUBJECTED OR WHICH THE DECLARANT WITNESSED, AND THAT IS NOT OTHERWISE ADMISSIBLE BY A STATUTE OR COURT RULE THAT PROVIDES AN EXCEPTION TO THE OBJECTION OF HEARSAY, IS ADMISSIBLE IN EVIDENCE IN ANY CRIMINAL, DELINQUENCY, OR CIVIL PROCEEDING IN WHICH A CHILD IS ALLEGED TO BE A VICTIM OF CHILD ABUSE OR THE SUBJECT OF A PROCEEDING ALLEGING THAT A CHILD IS NEGLECTED OR DEPENDENT UNDER SECTION 19-1-104 (1) (b), C.R.S., IF THE CONDITIONS OF SUBSECTION (5) OF THIS SECTION ARE SATISFIED.
- (4) AN OUT-OF-COURT STATEMENT MADE BY A PERSON WITH A DEVELOPMENTAL DISABILITY, AS DEFINED IN SECTION 27-10.5-102 (11) (a), C.R.S., THAT DESCRIBES ALL OR PART OF AN OFFENSE CONTAINED IN PART 1 OF ARTICLE 3 OF TITLE 18, C.R.S., OR THAT DESCRIBES AN ACT OF DOMESTIC VIOLENCE AS DEFINED IN SECTION 18-6-800.3 (1), C.R.S., NOT OTHERWISE ADMISSIBLE BY STATUTE OR COURT RULE THAT PROVIDES AN EXCEPTION TO THE OBJECTION OF HEARSAY, IS ADMISSIBLE IN EVIDENCE IN ANY CRIMINAL, DELINQUENCY, OR CIVIL PROCEEDING IF THE CONDITIONS OF SUBSECTION (5) OF THIS SECTION ARE SATISFIED.
- (5) THE EXCEPTIONS TO THE OBJECTION OF HEARSAY DESCRIBED IN SUBSECTIONS

(1), (2), (3), AND (4) OF THIS SECTION SHALL APPLY ONLY IF THE COURT FINDS IN A HEARING CONDUCTED OUTSIDE THE PRESENCE OF THE JURY THAT THE TIME, CONTENT, AND CIRCUMSTANCES OF THE STATEMENT PROVIDE SUFFICIENT SAFEGUARDS OF RELIABILITY; AND EITHER:

(a) THE STATEMENT IS A NONTESTIMONIAL STATEMENT; OR

(b) (I) THE DECLARANT TESTIFIES AT THE PROCEEDINGS; OR

(II) IF THE DECLARANT IS UNAVAILABLE TO TESTIFY, THE DEFENDANT HAS HAD AN OPPORTUNITY TO CROSS-EXAMINE THE DECLARANT IN A PREVIOUS PROCEEDING AND THERE IS CORROBORATIVE EVIDENCE OF THE ACT WHICH IS THE SUBJECT OF THE STATEMENT.

(6) IF A STATEMENT IS ADMITTED PURSUANT TO THIS SECTION, THE COURT SHALL INSTRUCT THE JURY IN THE FINAL WRITTEN INSTRUCTIONS THAT DURING THE PROCEEDING THE JURY HEARD EVIDENCE REPEATING A PERSON'S OUT-OF-COURT STATEMENT, THAT IT IS FOR THE JURY TO DETERMINE THE WEIGHT AND CREDIT TO BE GIVEN THE STATEMENT, AND THAT, IN MAKING THE DETERMINATION, THE JURY SHALL CONSIDER THE NATURE OF THE STATEMENT, THE CIRCUMSTANCES UNDER WHICH THE STATEMENT WAS MADE, AND ANY OTHER RELEVANT FACTOR.

(7) THE PROPONENT OF THE STATEMENT SHALL GIVE THE ADVERSE PARTY REASONABLE NOTICE OF HIS OR HER INTENTION TO OFFER THE STATEMENT AND THE PARTICULARS OF THE STATEMENT.

SECTION 2. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 8, 2012, if adjournment sine die is on May 9, 2012); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2012 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: April 3, 2012