

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

INTRODUCED

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.

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 MAY BE COMMENCED AT ANY TIME

1 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 ~~WOULD CONSTITUTE AN OFFENSE PURSUANT TO PART 4 OF ARTICLE 3 OF~~
13 ~~TITLE 18 AND OTHER CRIMINAL BEHAVIOR OF A SEXUAL NATURE,~~
14 ~~INCLUDING BUT NOT LIMITED TO REQUESTS FOR SEXUAL FAVORS~~
15 ~~ACCOMPANIED BY COERCION, THREAT, OR VIOLENCE.~~

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

18 (3.5) (a) ~~For the purpose of this section, "person under disability"~~
19 ~~means any person who is a minor under eighteen years of age, a person~~
20 ~~who has been declared mentally incompetent, or a person under other~~
21 ~~legal disability and who does not have a legal guardian. "Person under~~
22 ~~disability" also includes a victim of a sexual assault when the victim is in~~
23 ~~a special relationship with the perpetrator of the assault or is a victim of~~
24 ~~a sexual offense against a child or is a victim who is residing in an~~
25 ~~institutional facility, such as a nursing home, regional center, or~~
26 ~~residential facility for the treatment and care of persons with a behavioral~~
27 ~~or mental health disorder or for the care of persons with intellectual and~~

1 ~~developmental disabilities and where the victim is psychologically or~~
2 ~~emotionally unable to acknowledge the assault or offense and the~~
3 ~~resulting harm. For the purpose of this subsection (3.5), "special~~
4 ~~relationship" means a relationship between the victim and the perpetrator~~
5 ~~of the sexual assault which is a confidential, trust-based relationship, such~~
6 ~~as attorney-client, doctor-patient, psychotherapist-patient,~~
7 ~~minister-parishioner, teacher-student, or familial relationship. It is the~~
8 ~~intent of the general assembly to leave in place the six-year limitation for~~
9 ~~adults subjected to a sexual assault except in the situations described in~~
10 ~~this subsection (3.5)(a) in which the victim is in a special relationship~~
11 ~~with the perpetrator of the assault. In the circumstances in which a victim~~
12 ~~is in a special relationship with the perpetrator of the assault or is a victim~~
13 ~~of a sexual offense against a child or a victim who is residing in an~~
14 ~~institutional facility, such as a nursing home, regional center, or~~
15 ~~residential facility for the treatment and care of persons with a behavioral~~
16 ~~or mental health disorder or for the care of persons with intellectual and~~
17 ~~developmental disabilities and where the victim is psychologically or~~
18 ~~emotionally unable to acknowledge the assault or offense and the~~
19 ~~resulting harm, the six-year limitation is tolled until the disability is~~
20 ~~removed. 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 ~~commences with the last in the series of acts, subject to the provisions of~~
25 ~~this section regarding disability. However, as elements of the cause of~~
26 ~~action, a person under disability who is psychologically or emotionally~~
27 ~~unable to acknowledge the assault or offense and the resulting harm has~~

1 the burden of proving that the assault or offense occurred and that he or
2 she was actually psychologically or emotionally unable to acknowledge
3 the assault or offense and the resulting harm.

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

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

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

24 ~~(3.7) An action may not be brought pursuant to subsection (3.5)~~
25 ~~of this section if the defendant is deceased or is incapacitated to the extent~~
26 ~~that the defendant is incapable of rendering a defense to the action.~~

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

1 ~~to extend the statute of limitations as to civil actions based on offenses~~
2 ~~described in subsection (1) of this section for which the applicable statute~~
3 ~~of limitations in effect prior to July 1, 1990, has not yet run on July 1,~~
4 ~~1990.~~

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

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

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

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

25 **25-1-1202. Index of statutory sections regarding medical**
26 **record confidentiality and health information.** (1) Statutory provisions
27 concerning policies, procedures, and references to the release, sharing,

1 and use of medical records and health information include the following:

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

5 **SECTION 3. Effective date.** This act takes effect January 1,
6 2021.

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