

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 21-0016.01 Conrad Imel x2313

SENATE BILL 21-073

SENATE SPONSORSHIP

Danielson and Coram,

HOUSE SPONSORSHIP

Michaelson Jenet and Soper,

Senate Committees
Health & Human Services

House 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, 2022.

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 derivative claims and 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, 2022, or a cause of action accruing prior to January 1, 2022, so long as the applicable statute of limitations has not yet run as of January 1, 2022.

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, the filing of a claim alleging sexual misconduct by a person under disability is deemed a limited waiver of the doctor- or psychologist-patient privilege. The bill eliminates the limited waiver.

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.

Under existing law, a claim for negligence in the practice of medicine that is based on a sexual assault is exempt from the statute of limitations for claims involving sexual assault and instead is subject to the same limitation as any other claim for negligence in the practice of medicine. The bill removes this exemption.

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~~

1 ~~been removed for a person under disability, as such term is defined in~~
2 ~~subsection (3.5) of this section, or within six years after a cause of action~~
3 ~~accrues, whichever occurs later, and not thereafter. Nothing in this section~~
4 ~~shall be construed to extend the statutory period with respect to vicarious~~
5 ~~liability~~ SEXUAL MISCONDUCT, INCLUDING ANY DERIVATIVE CLAIM, MAY
6 BE COMMENCED AT ANY TIME WITHOUT LIMITATION.

7 (b) THIS SUBSECTION (1) APPLIES TO CAUSES OF ACTION ACCRUING
8 ON OR AFTER JANUARY 1, 2022, AND TO CAUSES OF ACTION ACCRUING
9 BEFORE JANUARY 1, 2022, IF THE APPLICABLE STATUTE OF LIMITATIONS,
10 AS IT EXISTED PRIOR TO JANUARY 1, 2022, HAS NOT YET RUN ON JANUARY
11 1, 2022.

12 (2) ~~For the purpose of this section, "sexual assault" means~~
13 ~~subjecting another person of any age to sexual contact, as defined in~~
14 ~~section 18-3-401 (4), C.R.S.; sexual intrusion, as defined in section~~
15 ~~18-3-401 (5), C.R.S.; or sexual penetration, as defined in section~~
16 ~~18-3-401 (6), C.R.S.~~ AS USED IN THIS SECTION, UNLESS THE CONTEXT
17 OTHERWISE REQUIRES, "SEXUAL MISCONDUCT" MEANS ANY CONDUCT
18 THAT FORMS THE BASIS OF A CIVIL ACTION THAT IS ENGAGED IN FOR THE
19 PURPOSE OF THE SEXUAL AROUSAL, GRATIFICATION, OR ABUSE OF ANY
20 PERSON, AND THAT CONSTITUTES ANY OF THE FOLLOWING:

21 (a) AN OFFENSE DESCRIBED IN PART 3 OR 4 OF ARTICLE 3 OF TITLE
22 18 OR IN ARTICLE 6 OR 7 OF TITLE 18;

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

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

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

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

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

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

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

1 adults subjected to a sexual assault except in the situations described in
2 this subsection (3.5)(a) in which the victim is in a special relationship
3 with the perpetrator of the assault. In the circumstances in which a victim
4 is in a special relationship with the perpetrator of the assault or is a victim
5 of a sexual offense against a child or a victim who is residing in an
6 institutional facility, such as a nursing home, regional center, or
7 residential facility for the treatment and care of persons with a behavioral
8 or mental health disorder or for the care of persons with intellectual and
9 developmental disabilities and where the victim is psychologically or
10 emotionally unable to acknowledge the assault or offense and the
11 resulting harm, the six-year limitation is tolled until the disability is
12 removed. For the purpose of this section, where the plaintiff is a victim
13 of a series of sexual assaults or sexual offenses against a child, the
14 plaintiff need not establish which act of a series of acts caused the
15 plaintiff's injury, and the statute of limitations set forth in this section
16 commences with the last in the series of acts, subject to the provisions of
17 this section regarding disability. However, as elements of the cause of
18 action, a person under disability who is psychologically or emotionally
19 unable to acknowledge the assault or offense and the resulting harm has
20 the burden of proving that the assault or offense occurred and that he or
21 she was actually psychologically or emotionally unable to acknowledge
22 the assault or offense and the resulting harm.

23 (b) Notwithstanding the provisions of section 13-90-107, the
24 filing of a claim pursuant to this subsection (3.5) is deemed to be a
25 limited waiver of the doctor-patient privilege or the psychologist-patient
26 privilege to persons who are necessary to resolve the claim, and a doctor
27 or psychologist who provided medical care and treatment or counseling

1 and treatment to the plaintiff for injuries upon which an action under this
2 subsection (3.5) is based may be examined as a witness. All medical
3 records pertaining to any relevant medical care and treatment or
4 counseling and treatment of the plaintiff are admissible into evidence in
5 an action brought pursuant to this subsection (3.5) and shall be available
6 for inspection upon request by the parties to the action.

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

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

16 (3.7) An action may not be brought pursuant to subsection (3.5)
17 of this section if the defendant is deceased or is incapacitated to the extent
18 that the defendant is incapable of rendering a defense to the action.

19 (4) It is the intent of the general assembly in enacting this section
20 to extend the statute of limitations as to civil actions based on offenses
21 described in subsection (1) of this section for which the applicable statute
22 of limitations in effect prior to July 1, 1990, has not yet run on July 1,
23 1990.

24 (5) The provisions of this section shall not be construed to extend
25 or suspend the statute of limitations or statute of repose applicable to a
26 claim alleging negligence in the course of providing professional services
27 in the practice of medicine. This subsection (5) shall not be construed to

1 ~~preclude pursuing a civil action pursuant to this section alleging a sexual~~
2 ~~offense based on a legal theory other than negligence in the course of~~
3 ~~providing professional services in the practice of medicine, unless the~~
4 ~~sexual assault forms the basis for a claim of such negligence.~~

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

9 (b) THIS SUBSECTION (6) APPLIES TO CAUSES OF ACTION ACCRUING
10 ON OR AFTER JANUARY 1, 2022, AND TO CAUSES OF ACTION ACCRUING
11 BEFORE JANUARY 1, 2022, IF THE APPLICABLE STATUTE OF LIMITATIONS,
12 AS IT EXISTED PRIOR TO JANUARY 1, 2022, HAS NOT YET RUN ON JANUARY
13 1, 2022.

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

16 **25-1-1202. Index of statutory sections regarding medical**
17 **record confidentiality and health information.** (1) Statutory provisions
18 concerning policies, procedures, and references to the release, sharing,
19 and use of medical records and health information include the following:

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

23 **SECTION 3. Effective date.** This act takes effect January 1,
24 2022.

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