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March 23, 2012

VIA HAND DELIVERY

Mike Mauer, Director
Colorado Legislative Council Staff
Room 029
State Capitol Building
Denver, Colorado 80203
E-mail: lcs.ga@state.co.us

Dear Mr. Mauer:

Attached please find one draft initiative, submitted for the 2012 ballot, dealing with statutes of limitations in connection with sexual abuse. The designated representatives of this measure are:

Frances Koncilja; 6930 South Polo Ridge Drive; Littleton, CO 80128;
fkoncilja@koncilja.com

Adam Mordecai; 56 W. 3rd Ave; Denver, CO 80223; adam@theideaplant.com

If you would direct all related correspondence to them, as required by law, but also provide copies to me, as their counsel, I would appreciate it. My address is:

Mark Grueskin, 2401 15th St., Ste. 300, Denver, CO 80202; mgrueskin@hpgfirm.com

Thank you very much.

Sincerely,

A handwritten signature in blue ink that reads 'Mark G. Grueskin'.

Mark G. Grueskin

Sexual Abuse Statute of Limitations

Be it Enacted by the People of the State of Colorado:

SECTION 1. LEGISLATIVE DECLARATION. (1) THE ELECTORATE OF COLORADO FINDS THAT:

(a) SEXUAL ABUSE IS A REPREHENSIBLE SOCIAL WRONG THAT OFTEN OCCURS AS A SERIES OF SEPARATE INCIDENTS OVER A PERIOD OF TIME;

(b) SEXUAL ABUSE VICTIMS, PARTICULARLY CHILD VICTIMS, FREQUENTLY DELAY REPORTING SEXUAL ABUSE FOR REASONS SUCH AS REPRESSED MEMORY, FEAR OF RIDICULE, FEAR OF RETALIATION, CONCERN FOR OR GUILT TOWARD THE PERPETRATOR OR AN INSTITUTION IN WHICH THE ABUSE OCCURRED, AND AN INSTITUTION'S DENIAL AND CONCERTED AND VEILED EFFORTS TO PROTECT THE PERPETRATOR;

(c) FOR THESE REASONS, SOME VICTIMS ULTIMATELY REPORT SEXUAL ABUSE YEARS OR EVEN DECADES AFTER THE ABUSE OCCURRED, BUT BY THEN ARE EITHER COMPLETELY PRECLUDED BY THE STATUTE OF LIMITATIONS FROM SEEKING CIVIL RELIEF OR ARE RESTRICTED TO RELATIVELY MINIMAL DAMAGES;

(d) THE STATUTE OF LIMITATIONS IN COLORADO FOR BRINGING A CIVIL CLAIM FOR SEXUAL ABUSE IS A PROCEDURAL AND REMEDIAL MECHANISM GOVERNING THE TIME PERIOD IN WHICH THE CLAIM MUST BE BROUGHT. AMONG OTHER THINGS, THE STATUTE:

(I) LIMITS A SEXUAL ABUSE VICTIM TO BRINGING A CLAIM FOR SEXUAL ASSAULT OR SEXUAL OFFENSE AGAINST A CHILD WITHIN SIX YEARS AFTER THE CAUSE OF ACTION ACCRUES OR WITHIN SIX YEARS AFTER A DISABILITY HAS BEEN REMOVED FROM A PLAINTIFF WITH A DISABILITY;

(II) EXEMPTS VICARIOUS LIABILITY CLAIMS FROM THE SIX-YEAR PERIOD, THEREBY INVOKING A SUBSTANTIALLY SHORTER STATUTE OF LIMITATIONS FOR INSTITUTIONAL OR INDIVIDUAL DEFENDANTS WHO MAY BE VICARIOUSLY LIABLE;

(III) RESTRICTS A SEXUAL ABUSE VICTIM WHO BRINGS A SEXUAL ABUSE CLAIM FIFTEEN YEARS OR MORE AFTER THE VICTIM TURNS EIGHTEEN YEARS OF AGE TO RECOVERING ONLY TREATMENT AND COUNSELING EXPENSES; AND

(IV) PROHIBITS A VICTIM FROM BRINGING A SEXUAL ABUSE CLAIM AGAINST A DEFENDANT WHO IS DECEASED OR INCAPACITATED.

(e) THE CURRENT STATUTE OF LIMITATIONS DOES NOT TAKE INTO ACCOUNT THE FREQUENTLY AND UNDERSTANDABLY DELAYED REPORTING OF SEXUAL ABUSE INCIDENTS, AND IT DISPROPORTIONATELY APPLIES A SUBSTANTIALLY SHORTER TIME PERIOD TO VICARIOUS LIABILITY CLAIMS COMPARED TO THE TIME PERIOD ALLOWED FOR A SEXUAL ABUSE CLAIM ASSERTED DIRECTLY AGAINST A PERPETRATOR;

(f) CONSEQUENTLY, MANY SEXUAL ABUSE CLAIMS THAT WERE ONCE VIABLE, WHETHER DIRECTLY AGAINST A PERPETRATOR OR VICARIOUSLY AGAINST AN INSTITUTION OR ANOTHER INDIVIDUAL, ARE NO LONGER ACTIONABLE, AND PERSONS VICTIMIZED BY SEXUAL ABUSE ARE WITHOUT JUSTICE;

(g) PROVIDING VICTIMS WITH A TEMPORARY TIME WINDOW WITHIN WHICH TO BRING CLAIMS FOR PAST SEXUAL ABUSE WITHOUT THE IMPOSITION OF A STATUTE OF LIMITATIONS IS A LEGITIMATE GOVERNMENT INTEREST AND LEGITIMATE EXERCISE OF THE STATE'S POLICE POWER, BECAUSE IT ADVANCES THE OVERRIDING PUBLIC INTEREST IN PROTECTING THE HEALTH, SAFETY, AND WELFARE OF CHILDREN AND PERSONS WHO BY REASON OF THEIR POSITION, ENVIRONMENT, JOB, AGE, DISABILITY, STATUS, OR OTHER CIRCUMSTANCES HAVE BEEN UNABLE TO TIMELY BRING SEXUAL ABUSE CLAIMS.

(2) THE ELECTORATE OF COLORADO, THEREFORE, DETERMINES AND DECLARES THAT IT IS NECESSARY TO ENACT A STATUTE THAT ADDRESSES PAST SEXUAL ABUSE INJUSTICES, INCLUDING BUT NOT LIMITED TO CHILDHOOD SEXUAL ABUSE, THAT WILL ASSIST SEXUAL ABUSE VICTIMS WHO ARE CURRENTLY WITHOUT A REMEDY TO VINDICATE THEIR DIGNITY AND OBTAIN JUSTICE BY:

(a) PROVIDING A PROCEDURAL AND REMEDIAL MEASURE IN THE FORM OF A TWO-YEAR STATUTE OF LIMITATIONS WINDOW THAT WILL RETROACTIVELY APPLY TO SEXUAL ABUSE INCIDENTS THAT OCCURRED AT ANY TIME BEFORE THE EFFECTIVE DATE OF THIS ACT AND WITHIN WHICH A VICTIM MAY BRING A CIVIL CLAIM BASED UPON SEXUAL ASSAULT OR SEXUAL OFFENSE AGAINST A CHILD AS A PERPETRATOR OR AN INSTITUTION OR ANOTHER INDIVIDUAL WHO MAY BE VICARIOUSLY LIABLE;

(b) PERMANENTLY ELIMINATING THE EXEMPTION VICARIOUS LIABILITY CLAIMS HAVE FROM THE STATUTE OF LIMITATIONS APPLICABLE TO DIRECT CLAIMS, THUS PUTTING VICARIOUS LIABILITY CLAIMS ON AN EVEN FOOTING WITH DIRECT CLAIMS;

(c) PERMANENTLY ELIMINATING THE DAMAGES RESTRICTION ON ANY SEXUAL ABUSE VICTIM WHO BRINGS A CLAIM FIFTEEN YEARS OR MORE AFTER THE VICTIM TURNS EIGHTEEN YEARS OF AGE; AND

(d) PERMITTING, RATHER THAN PROHIBITING, A VICTIM TO BRING A SEXUAL ABUSE CLAIM AGAINST A DEFENDANT WHO IS DECEASED OR INCAPACITATED.

(3) IT IS THE INTENT OF THE ELECTORATE TO ADVANCE THE PUBLIC INTEREST BY:

(a) EXPOSING CHILD MOLESTERS AND OTHER SEXUAL ABUSE ACTORS, HOLDING THOSE THAT ENABLE THEM ACCOUNTABLE, AND SHIFTING AT LEAST A PORTION OF THE COSTS INCURRED BY VICTIMS FROM THE COLORADO TAXPAYERS TO THE RESPONSIBLE PARTIES;

(b) ENSURING THAT THOSE WHO PROTECT CHILD MOLESTERS DO NOT HAVE A BONA FIDE INTEREST OR REASONABLE EXPECTATION IN AN ARBITRARY TIME LIMIT THAT REMOVES ALL CIVIL LIABILITY FOR THEIR ACTS; AND

(c) AIDING LONGSTANDING SEXUAL ABUSE VICTIMS WHOSE CLAIMS ARE FORECLOSED BY A STATUTE OF LIMITATIONS THAT, WHEN ENACTED, FAILED TO TAKE INTO ACCOUNT THE DIFFICULTIES ASSOCIATED

WITH VICTIMS COMING FORWARD TO REPORT SEXUAL MISCONDUCT AND WITH PIERCING THE INSTITUTIONAL VEIL TO ACHIEVE JUSTICE.

SECTION 2. 13-80-103.7 (1), (3.5)(a) (c), and (3.7), Colorado Revised Statutes, are amended, and the said 13-80-103.7 is further amended BY THE ADDITION OF THE FOLLOWING LANGUAGE AND NEW SUBSECTIONS, to read:

13-80-103.7. General limitation of actions - sexual assault or sexual offense against a child - six years.

(1) (a) 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 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.~~

(b) THE STATUTORY PERIODS DESCRIBED IN THIS SUBSECTION (1) SHALL, IN ACCORDANCE WITH THE PROVISIONS OF SUBSECTIONS (6) AND (7) OF THIS SECTION, APPLY TO CLAIMS BASED ON SEXUAL ASSAULT OR A SEXUAL OFFENSE OF A CHILD AGAINST AN ENTITY OR INDIVIDUAL THAT MAY BE VICARIOUSLY LIABLE, INCLUDING BUT NOT LIMITED TO VICARIOUS LIABILITY CLAIMS.

(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 subjected 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, THE DISABILITY PERIOD INCLUDES ANY TIME ~~and~~ where the victim is psychologically or emotionally unable to acknowledge the assault or offense, ~~and~~ the harm resulting therefrom, OR THE CONNECTION BETWEEN THE ASSAULT OR OFFENSE AND THE HARM. ~~the~~ 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, OR THE CONNECTION BETWEEN THE ASSAULT OR OFFENSE AND THE HARM, 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, OR THE CONNECTION BETWEEN THE ASSAULT OR OFFENSE AND THE HARM. THIS DETERMINATION SHALL BE MADE BY A FACT FINDER.

~~(3.5) (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.~~

~~(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.~~

(6) (a) THE PROVISIONS OF THIS SECTION SHALL APPLY TO ANY CAUSE OF ACTION THAT IS BROUGHT AGAINST A PERSON OR ENTITY THAT IS NOT THE PERPETRATOR OF THE SEXUAL ASSAULT OR THE SEXUAL OFFENSE AGAINST A CHILD ON WHICH THE CAUSE OF ACTION IS BASED IF:

(I) THE PERSON OR ENTITY KNEW, HAD REASON TO KNOW, OR WAS OTHERWISE ON NOTICE OF ANY UNLAWFUL SEXUAL CONDUCT BY THE PERPETRATOR WHO, AT THE TIME OF THE CONDUCT, WAS AN EMPLOYEE, VOLUNTEER, REPRESENTATIVE, OR AGENT OF THE PERSON OR ENTITY; AND

(II) THE PERSON OR ENTITY FAILED TO TAKE REASONABLE STEPS AND IMPLEMENT REASONABLE SAFEGUARDS TO AVOID PROSPECTIVE ACTS OF UNLAWFUL SEXUAL CONDUCT BY THE PERPETRATOR, INCLUDING BUT NOT LIMITED TO PREVENTING OR AVOIDING PLACEMENT OF THE PERPETRATOR IN A POSITION, FUNCTION, OR ENVIRONMENT IN WHICH CONTACT WITH CHILDREN IS AN ESSENTIAL PART OF THE POSITION, FUNCTION, OR ENVIRONMENT.

(b) FOR PURPOSES OF THIS SUBSECTION (6), MERELY PROVIDING OR REQUIRING COUNSELING SHALL BE DEEMED INSUFFICIENT TO CONSTITUTE A REASONABLE STEP OR REASONABLE SAFEGUARD TO AVOID PROSPECTIVE ACTS OF UNLAWFUL SEXUAL CONDUCT.

(7) (a) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (B) OF THIS SUBSECTION (7), THE PROVISIONS OF 13-80-103.7, AS AMENDED, APPLY TO ANY CLAIM FOR DAMAGES PENDING ON, COMMENCED ON, OR COMMENCED AFTER JANUARY 1, 2013.

(b) (I) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A CLAIM FOR DAMAGES THAT IS GOVERNED BY THIS SECTION AND THAT WOULD OTHERWISE BE BARRED AS OF JANUARY 1, 2013, SOLELY BECAUSE THE APPLICABLE STATUTE OF LIMITATIONS OR TIME LIMIT HAS EXPIRED, IS HEREBY REVIVED AND MAY

BE COMMENCED WITHIN TWO YEARS OF THE JANUARY 1, 2013 EFFECTIVE DATE OF THIS AMENDMENT. NOTHING IN THIS SUBSECTION (7) SHALL BE CONSTRUED TO ALTER THE APPLICABLE STATUTE OF LIMITATIONS PERIOD FOR A CIVIL ACTION THAT IS NOT TIME-BARRED AS OF JANUARY 1, 2013.

(II) IT IS THE INTENT OF THE ELECTORATE OF COLORADO THAT THE PROVISIONS OF THIS PARAGRAPH (B) BEAR A RATIONAL RELATIONSHIP TO THE LEGITIMATE GOVERNMENT INTEREST OF PROTECTING SEXUAL ABUSE VICTIMS, EXPOSING PERPETRATORS, HOLDING INSTITUTIONS ACCOUNTABLE FOR THE PREVENTION OF SEXUAL ABUSE, AND PROVIDING SEXUAL ABUSE VICTIMS WITH CIVIL JUSTICE.

SECTION 3. Effective date. This initiated statute shall become effective on January 1, 2013.

