A BILL FOR AN ACT

CONCERNING THE STATUTE OF LIMITATIONS APPLICABLE TO CIVIL ACTIONS ARISING FROM THE COMMISSION OF SEXUAL ASSAULTS AGAINST CHILDREN.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Creates an unlimited statute of limitations for civil actions based on damages arising from a sexual assault on a child. Makes the unlimited statute of limitations apply to civil actions against the perpetrator or a third party. In an action against a third party, requires the plaintiff to prove that the third party had control over the perpetrator, knew that the perpetrator had previously committed unlawful sexual conduct, and failed...
to take steps to prevent additional incidents of unlawful sexual conduct.

Creates a 2-year period during which a person may file a cause of action for damages arising from a sexual assault on a child even though the preexisting statute of limitations applicable to the action has run.

Repeals language that limits the damages a person may recover if the person brings suit 15 or more years after reaching 18 years of age. Allows a person to bring suit against an entity or third party even though the perpetrator of the sexual offense against a child is deceased or incapacitated.

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

SECTION 1. Legislative declaration - short title. (1) The general assembly hereby 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, as it exists prior to the effective date of this act, 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 perpetrator who is deceased or incapacitated.

   (e) The statute of limitations existing prior to the effective date of this act 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

-3-    HB08-1011
(2) The general assembly, therefore, determines and declares that it is necessary to enact legislation that addresses past sexual abuse injustices, including but not limited to childhood sexual abuse, that will protect children from sexual predators and 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 for sexual offense against a child against a perpetrator or an institution or another individual who may be vicariously liable;

(b) Permanently eliminating the exemption that 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) Raising 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) Allowing a sexual abuse victim to bring a claim against an institution or a third party that may be vicariously liable, even though the perpetrator of the offense is deceased or incapacitated.

(3) It is the intent of the general assembly in enacting this act to advance the public interest by:

(a) Protecting children from pedophiles by 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.

(4) The general assembly therefore adopts this act to be known as
"The Child Protection and Victims' Justice Act".

SECTION 2. 13-80-103.7, Colorado Revised Statutes, is
amended to read:

13-80-103.7. General limitation of actions - sexual assault -
sexual offense against a child. (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 A civil action based on a sexual assault, or OTHER THAN 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 THE
cause of action accrues, whichever occurs later, and not thereafter.

(b) (I) 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, A CIVIL ACTION BASED ON A SEXUAL OFFENSE AGAINST A CHILD
MAY BE COMMENCED AT ANY TIME AFTER THE CAUSE OF ACTION ACCRUES

IF THE CAUSE OF ACTION IS:

(A) AGAINST THE PERPETRATOR; OR

(B) AGAINST ANOTHER ENTITY, AS SAID CAUSE OF ACTION IS DESCRIBED IN SUBSECTION (6) OF THIS SECTION.

(II) IT IS THE INTENT OF THE GENERAL ASSEMBLY IN ENACTING THIS PARAGRAPH (b) TO EXTEND THE STATUTE OF LIMITATIONS AS TO CIVIL ACTIONS DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) FOR WHICH THE APPLICABLE STATUTE OF LIMITATIONS IN EFFECT PRIOR TO THE EFFECTIVE DATE OF THIS PARAGRAPH (b) HAS NOT YET RUN AS OF THE EFFECTIVE DATE OF THIS PARAGRAPH (b).

(c) (I) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A CLAIM FOR DAMAGES THAT IS GOVERNED BY PARAGRAPH (b) OF THIS SUBSECTION (I) AND THAT WOULD OTHERWISE BE BARRED AS OF JULY 1, 2008, SOLELY BECAUSE THE APPLICABLE STATUTE OF LIMITATIONS HAS EXPIRED, IS HEREBY REVIVED AND MAY BE COMMENCED BEFORE JULY 1, 2010. NOTHING IN THIS PARAGRAPH (c) SHALL BE CONSTRUED TO ALTER THE APPLICABLE STATUTE OF LIMITATIONS PERIOD FOR A CIVIL ACTION THAT IS NOT TIME-BARRED AS OF JULY 1, 2008.

(II) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE PROVISIONS OF THIS PARAGRAPH (c) 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.

(III) IT IS FURTHER THE INTENT OF THE GENERAL ASSEMBLY THAT, IF THE PROVISIONS OF THIS PARAGRAPH (c) ARE FOUND TO BE
UNCONSTITUTIONAL, THE REMAINING PROVISIONS OF THIS SECTION ARE
NEITHER ESSENTIALLY NOR INSEPARABLY CONNECTED WITH, NOR
DEPENDENT UPON, THE PROVISIONS OF THIS PARAGRAPH (c) AND ARE
THEREFORE VALID AND ARE INTENDED TO STAND ALONE WITHOUT THE
PROVISIONS OF THIS PARAGRAPH (c).

(d) Nothing in this section shall be construed to extend the
statutory period with respect to vicarious liability IN A CIVIL ACTION
BASED ON A SEXUAL ASSAULT OTHER THAN A SEXUAL OFFENSE AGAINST
A CHILD.

(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.

(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.
(b) 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.

(c) 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) PARAGRAPH (a) OR (b) OF THIS SUBSECTION (3.5) 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, WHERE APPLICABLE, shall be tolled until the disability is removed.

(d) 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) (e) 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) (f) 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 AGAINST A DEFENDANT WHO IS THE PERPETRATOR OF THE
SEXUAL ASSAULT OR THE SEXUAL OFFENSE AGAINST A CHILD if the
defendant is deceased or is incapacitated to the extent that the defendant is incapable of rendering a defense to the action. An action as described in subsection (6) of this section may be brought against a person or entity that is not the perpetrator of the sexual offense against a child on which the cause of action is based regardless of whether the perpetrator is deceased or incapacitated.

(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.

(6) (a) The provisions of paragraph (b) of subsection (1) 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 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 THE PERSON'S OR ENTITY'S EMPLOYEE, VOLUNTEER, REPRESENTATIVE, OR AGENT; 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 SAFEGUARD TO AVOID PROSPECTIVE ACTS OF UNLAWFUL SEXUAL CONDUCT.

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.