

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 12-0292.01 Richard Sweetman x4333

HOUSE BILL 12-1085

HOUSE SPONSORSHIP

Fields,

SENATE SPONSORSHIP

Carroll and Hudak,

House Committees
Judiciary

Senate Committees
Judiciary

A BILL FOR AN ACT

101 CONCERNING AN EXCEPTION TO THE HEARSAY RULE TO ALLOW
102 TESTIMONY FROM PERSONS WITH DEVELOPMENTAL
103 DISABILITIES.

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://www.leg.state.co.us/billsummaries>.)

The bill creates a statutory exception to the hearsay rule of evidence to admit an otherwise inadmissible out-of-court statement made by a person with a developmental disability in:

! Any criminal or delinquency proceeding in which the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
2nd Reading Unam ended
March 15, 2012

HOUSE
3rd Reading Unam ended
February 22, 2012

HOUSE
Am ended 2nd Reading
February 21, 2012

- ! person is alleged to have been a victim;
- ! Instances in which the person's statement describes all or part of any of certain sexual offenses performed with, by, on, or in the presence of the person in a criminal or civil proceeding in which a person is charged with committing a sexual assault, unlawful sexual contact, or sexual assault on a client by a psychotherapist;
- ! Instances in which the person's statement describes any act of child abuse in any criminal, delinquency, or civil proceeding in which a child is alleged to be a victim of child abuse or alleged to be neglected or dependent; and
- ! Instances in which the person's statement describes all or part of an offense involving homicide or a related offense or describing an act of domestic violence in any criminal, delinquency, or civil proceeding in which a child is alleged to be a victim of an offense involving homicide or a related offense or a victim of an act of domestic violence.

The new hearsay exception 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
- ! The person either testifies at the proceedings or is unavailable as a witness and there is corroborative evidence of the act that is the subject of the statement.

If such a statement is admitted, the court shall instruct the jury in the final written instructions that during the proceeding the jury heard evidence repeating an out-of-court statement by a person with a developmental disability, 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.

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

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

4 **13-25-129.5. Statements of persons with developmental**
 5 **disabilities - hearsay exception.** (1) AN OUT-OF-COURT STATEMENT
 6 MADE BY A PERSON WITH A DEVELOPMENTAL DISABILITY, AS DEFINED IN
 7 SECTION 27-10.5-102 (11) (a), C.R.S., NOT OTHERWISE ADMISSIBLE BY A

1 STATUTE OR COURT RULE THAT PROVIDES AN EXCEPTION TO THE
2 OBJECTION OF HEARSAY IS ADMISSIBLE IN ANY CRIMINAL OR DELINQUENCY
3 PROCEEDING IN WHICH THE PERSON IS ALLEGED TO HAVE BEEN A VICTIM
4 IF THE CONDITIONS OF SUBSECTION (5) OF THIS SECTION ARE SATISFIED.

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

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

18 (I) SEXUAL ASSAULT, AS DESCRIBED IN SECTION 18-3-402, C.R.S.;

19 (II) UNLAWFUL SEXUAL CONTACT, AS DESCRIBED IN SECTION
20 18-3-404, C.R.S.;

21 (III) SEXUAL ASSAULT ON A CHILD, AS DESCRIBED IN SECTION
22 18-3-405, C.R.S.;

23 (IV) SEXUAL ASSAULT ON A CHILD BY ONE IN A POSITION OF
24 TRUST, AS DESCRIBED IN SECTION 18-3-405.3, C.R.S.;

25 (V) INTERNET EXPLOITATION OF A CHILD, AS DESCRIBED IN
26 SECTION 18-3-405.4, C.R.S.;

27 (VI) SEXUAL ASSAULT ON A CLIENT BY A PSYCHOTHERAPIST, AS

1 DESCRIBED IN SECTION 18-3-405.5, C.R.S.;

2 (VII) INCEST, AS DESCRIBED IN SECTION 18-6-301, C.R.S.;

3 (VIII) AGGRAVATED INCEST, AS DESCRIBED IN SECTION 18-6-302,

4 C.R.S.;

5 (IX) TRAFFICKING IN CHILDREN, AS DESCRIBED IN SECTION

6 18-3-502, C.R.S.;

7 (X) SEXUAL EXPLOITATION OF A CHILD, AS DESCRIBED IN SECTION

8 18-6-403, C.R.S.;

9 (XI) INDECENT EXPOSURE, AS DESCRIBED IN SECTION 18-7-302,

10 C.R.S.; OR

11 (XII) CRIMINAL ATTEMPT TO COMMIT ANY OF THE ACTS SPECIFIED

12 IN THIS PARAGRAPH (b).

13 (3) AN OUT-OF-COURT STATEMENT BY A PERSON WITH A

14 DEVELOPMENTAL DISABILITY, AS DEFINED IN SECTION 27-10.5-102 (11)

15 (a), C.R.S., THAT DESCRIBES ANY ACT OF CHILD ABUSE, AS DEFINED IN

16 SECTION 18-6-401, C.R.S., TO WHICH THE DECLARANT WAS SUBJECTED OR

17 WHICH THE DECLARANT WITNESSED, AND THAT IS NOT OTHERWISE

18 ADMISSIBLE BY A STATUTE OR COURT RULE THAT PROVIDES AN EXCEPTION

19 TO THE OBJECTION OF HEARSAY, IS ADMISSIBLE IN EVIDENCE IN ANY

20 CRIMINAL, DELINQUENCY, OR CIVIL PROCEEDING IN WHICH A CHILD IS

21 ALLEGED TO BE A VICTIM OF CHILD ABUSE OR THE SUBJECT OF A

22 PROCEEDING ALLEGING THAT A CHILD IS NEGLECTED OR DEPENDENT

23 UNDER SECTION 19-1-104 (1) (b), C.R.S., IF THE CONDITIONS OF

24 SUBSECTION (5) OF THIS SECTION ARE SATISFIED.

25 (4) AN OUT-OF-COURT STATEMENT MADE BY A PERSON WITH A

26 DEVELOPMENTAL DISABILITY, AS DEFINED IN SECTION 27-10.5-102 (11)

27 (a), C.R.S., THAT DESCRIBES ALL OR PART OF AN OFFENSE CONTAINED IN

1 PART 1 OF ARTICLE 3 OF TITLE 18, C.R.S., OR THAT DESCRIBES AN ACT OF
2 DOMESTIC VIOLENCE AS DEFINED IN SECTION 18-6-800.3 (1), C.R.S., NOT
3 OTHERWISE ADMISSIBLE BY STATUTE OR COURT RULE THAT PROVIDES AN
4 EXCEPTION TO THE OBJECTION OF HEARSAY, IS ADMISSIBLE IN EVIDENCE
5 IN ANY CRIMINAL, DELINQUENCY, OR CIVIL PROCEEDING IF THE
6 CONDITIONS OF SUBSECTION (5) OF THIS SECTION ARE SATISFIED.

7 (5) THE EXCEPTIONS TO THE OBJECTION OF HEARSAY DESCRIBED
8 IN SUBSECTIONS (1), (2), (3), AND (4) OF THIS SECTION SHALL APPLY ONLY
9 IF THE COURT FINDS IN A HEARING CONDUCTED OUTSIDE THE PRESENCE OF
10 THE JURY THAT THE TIME, CONTENT, AND CIRCUMSTANCES OF THE
11 STATEMENT PROVIDE SUFFICIENT SAFEGUARDS OF RELIABILITY; AND
12 EITHER:

- 13 (a) THE STATEMENT IS A NONTESTIMONIAL STATEMENT; OR
14 (b) (I) THE DECLARANT TESTIFIES AT THE PROCEEDINGS; OR
15 (II) IF THE DECLARANT IS UNAVAILABLE TO TESTIFY, THE
16 DEFENDANT HAS HAD AN OPPORTUNITY TO CROSS-EXAMINE THE
17 DECLARANT IN A PREVIOUS PROCEEDING AND THERE IS CORROBORATIVE
18 EVIDENCE OF THE ACT WHICH IS THE SUBJECT OF THE STATEMENT.

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

27 (7) THE PROPONENT OF THE STATEMENT SHALL GIVE THE ADVERSE

1 PARTY REASONABLE NOTICE OF HIS OR HER INTENTION TO OFFER THE
2 STATEMENT AND THE PARTICULARS OF THE STATEMENT.

3 **SECTION 2. Act subject to petition - effective date.** This act
4 takes effect at 12:01 a.m. on the day following the expiration of the
5 ninety-day period after final adjournment of the general assembly (August
6 7, 2012, if adjournment sine die is on May 9, 2012); except that, if a
7 referendum petition is filed pursuant to section 1 (3) of article V of the
8 state constitution against this act or an item, section, or part of this act
9 within such period, then the act, item, section, or part will not take effect
10 unless approved by the people at the general election to be held in
11 November 2012 and, in such case, will take effect on the date of the
12 official declaration of the vote thereon by the governor.