

HOUSE COMMITTEE OF REFERENCE REPORT

\_\_\_\_\_  
Chairman of Committee

February 14, 2006  
Date

Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

HB06-1090 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

1 Amend printed bill, page 6, line 2, after "C.R.S.", insert "WHEN THE  
2 VICTIM AT THE TIME OF COMMISSION OF THE ACT IS A JUVENILE,";

3 strike line 5 and substitute the following:

4 "YEARS OF AGE, OR SECTION 18-6-301, C.R.S., WHEN THE VICTIM AT THE  
5 TIME OF COMMISSION OF THE ACT IS A JUVENILE, OR UNDER SECTION  
6 18-3-405, 18-3-405.3,".

7 Page 7, after line 18, insert the following:

8 "(a.1) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (a) OF  
9 SUBSECTION (1) OF THIS SECTION, AND EXCEPT AS OTHERWISE PROVIDED  
10 IN PARAGRAPH (a.5) OF THIS SUBSECTION (8), THE PERIOD OF TIME DURING  
11 WHICH AN ADULT MAY BE PROSECUTED SHALL BE TEN YEARS AFTER THE  
12 COMMISSION OF THE OFFENSE AS TO ANY OFFENSE:

13 (I) COMMITTED AGAINST A PERSON WHO IS AT LEAST EIGHTEEN  
14 YEARS OF AGE; AND

15 (II) CHARGED UNDER SECTION 18-3-402 OR 18-6-301, C.R.S., OR  
16 SECTION 18-3-403, C.R.S., AS IT EXISTED PRIOR TO JULY 1, 2000, OR  
17 CHARGED AS A FELONY UNDER SECTION 18-3-404, C.R.S.";

18 line 19, strike "an offense or" and substitute "~~an offense or~~ A";

1 line 22, strike "offense" and substitute "~~offense or~~";

2 line 23, strike "or".

3 Page 8, line 19, after "(9)", insert "(a)";

4 line 22, strike "offense or" and substitute "~~offense or~~";

5 strike lines 24 and 25 and substitute the following:

6 "commit such a misdemeanor. ~~This subsection (9) shall apply to offenses~~  
7 ~~and delinquent acts committed on or after January 1, 1986.~~

8 (b) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (a) OF  
9 SUBSECTION (1) OF THIS SECTION, THE PERIOD OF TIME DURING WHICH AN  
10 ADULT MAY BE PROSECUTED SHALL BE FIVE YEARS AFTER THE  
11 COMMISSION OF THE OFFENSE AS TO A MISDEMEANOR COMMITTED  
12 AGAINST A PERSON EIGHTEEN YEARS OF AGE OR OLDER AND CHARGED  
13 UNDER SECTION 18-3-404, C.R.S., OR CRIMINAL ATTEMPT, CONSPIRACY,  
14 OR SOLICITATION TO COMMIT SUCH A MISDEMEANOR AGAINST SUCH A  
15 VICTIM.

16 (c) THIS SUBSECTION (9) SHALL APPLY TO OFFENSES AND  
17 DELINQUENT ACTS COMMITTED ON OR AFTER JULY 1, 2006, AND TO ANY  
18 OFFENSES AND DELINQUENT ACTS COMMITTED PRIOR TO JULY 1, 2006, FOR  
19 WHICH THE STATUTE OF LIMITATIONS HAS NOT RUN ON JULY 1, 2006."

20 Page 10, strike lines 26 and 27 and substitute the following:

21 "any civil action based on a sexual assault ~~or a sexual offense against a~~  
22 ~~child~~ shall be commenced".

23 Page 11, line 9, strike "A SEXUAL ASSAULT OR";

24 line 10, strike "THAT IS ALLEGEDLY COMMITTED BY AN ADULT";

25 line 14, after the first "TO", insert "EXTEND THE STATUTE OF LIMITATIONS  
26 AS TO CIVIL ACTIONS DESCRIBED IN THIS PARAGRAPH (b) ACCRUING ON OR  
27 AFTER JULY 1, 2006, AND TO".

28 Page 12, strike lines 2 and 3 and substitute the following:

1 "a sexual assault when the victim is in a special relationship with the  
2 perpetrator of the assault or is a victim of a sexual offense against a  
3 child";

4 strike lines 9 through 18 and substitute the following:

5 "For the purpose of this subsection (3.5), "special relationship" means a  
6 relationship between the victim and the perpetrator of the sexual assault  
7 which is a confidential, trust-based relationship, such as attorney-client,  
8 doctor-patient, psychotherapist-patient, minister-parishioner,  
9 teacher-student, or familial relationship. It is the intent of the general  
10 assembly to leave in place the six-year limitation for adults subjected to  
11 a sexual assault except in the situations described in this paragraph (a) in  
12 which the victim is in a special relationship with the perpetrator of the  
13 assault. In the circumstances in which a victim is in a special relationship  
14 with the perpetrator of the assault or is a victim of".

15 Page 14, strike lines 5 through 7 and substitute the following:

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 Page 15, after line 5, insert the following:

20 **"SECTION 8.** Part 1 of article 21 of title 13, Colorado Revised  
21 Statutes, is amended BY THE ADDITION OF A NEW SECTION to  
22 read:

23 **13-21-125. Damages against public institutions and employees**  
24 **- sexual offense against a child.** (1) AS USED IN THIS SECTION, UNLESS  
25 THE CONTEXT OTHERWISE REQUIRES:

26 (a) "PUBLIC EMPLOYEE" SHALL HAVE THE SAME MEANING AS  
27 PROVIDED FOR SAID TERM IN SECTION 24-10-103 (4), C.R.S., AND SHALL  
28 INCLUDE AN "EMPLOYEE", AS DEFINED IN SECTION 22-12-103 (2), C.R.S.

29 (b) "PUBLIC ENTITY" SHALL HAVE THE SAME MEANING AS  
30 PROVIDED FOR SAID TERM IN SECTION 24-10-103 (5), C.R.S., AND SHALL  
31 INCLUDE AN "EDUCATIONAL ENTITY", AS DEFINED IN SECTION 22-12-103  
32 (1), C.R.S.

1 (c) "SEXUAL OFFENSE AGAINST A CHILD" SHALL HAVE THE SAME  
2 MEANING AS PROVIDED FOR THE TERM "UNLAWFUL SEXUAL OFFENSE" IN  
3 SECTION 18-3-411 (1), C.R.S.

4 (2) NOTWITHSTANDING THE PROVISIONS OF THE "COLORADO  
5 GOVERNMENTAL IMMUNITY ACT", ARTICLE 10 OF TITLE 24, C.R.S., OR  
6 THE PROVISIONS OF THE "TEACHER AND SCHOOL ADMINISTRATOR  
7 PROTECTION ACT", ARTICLE 12 OF TITLE 22, C.R.S., OR ANY OTHER  
8 STATUTORY PROVISION THAT LIMITS OR PROHIBITS CIVIL ACTIONS AGAINST  
9 PUBLIC ENTITIES AND PUBLIC EMPLOYEES, A PERSON MAY BRING A CIVIL  
10 ACTION BASED ON COMMISSION OF A SEXUAL OFFENSE AGAINST A CHILD  
11 AGAINST A PUBLIC ENTITY AND AGAINST A PUBLIC EMPLOYEE IN THE SAME  
12 MANNER THAT A PERSON MAY BRING SUCH AN ACTION AGAINST A PRIVATE  
13 ENTITY OR PERSON.

14 (3) (a) THE PROVISIONS OF THIS SECTION SHALL APPLY TO A CAUSE  
15 OF ACTION BASED ON VICARIOUS LIABILITY THAT IS BROUGHT AGAINST A  
16 PUBLIC ENTITY OR PUBLIC EMPLOYEE THAT IS NOT THE PERPETRATOR OF  
17 THE SEXUAL OFFENSE AGAINST A CHILD ON WHICH THE CAUSE OF ACTION  
18 IS BASED IF:

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

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

31 (b) FOR PURPOSES OF THIS SUBSECTION (3), MERELY PROVIDING OR  
32 REQUIRING COUNSELING SHALL BE DEEMED INSUFFICIENT TO CONSTITUTE  
33 A REASONABLE STEP OR REASONABLE SAFEGUARD TO AVOID PROSPECTIVE  
34 ACTS OF UNLAWFUL SEXUAL CONDUCT.

35 (4) THE STATUTE OF LIMITATIONS SPECIFIED IN SECTION  
36 13-80-103.7 SHALL APPLY TO ANY CIVIL ACTION BROUGHT AGAINST A

1 PUBLIC ENTITY OR A PUBLIC EMPLOYEE PURSUANT TO THIS SECTION.

2 (5) A PERSON WHO BRINGS AN ACTION AGAINST A PUBLIC ENTITY  
3 OR A PUBLIC EMPLOYEE PURSUANT TO THIS SECTION MAY RECOVER  
4 ACTUAL DAMAGES, DAMAGES FOR NONECONOMIC LOSS OR INJURY, AND  
5 EXEMPLARY DAMAGES AS PROVIDED IN THIS ARTICLE, IN ADDITION TO  
6 SUCH COSTS AND ATTORNEY FEES AS THE COURT MAY AWARD."

7 Renumber succeeding sections accordingly.

\*\* \*\* \*\* \*\* \*\*