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2001



HOUSE BILL 01-1187

BY REPRESENTATIVE(S) Hefley, Boyd, Coleman, Grossman, Romanoff, Schultheis, and Stafford;
also SENATOR(S) Linkhart, Chlouber, and Evans.

CONCERNING PROCEDURAL CHANGES FOR THE STRENGTHENING OF CRIMINAL LAWS.

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

SECTION 1. 18-6-801.5 (2), Colorado Revised Statutes, is amended to read:

18-6-801.5. Domestic violence - evidence of similar transactions.

(2) In criminal prosecutions involving domestic violence in which the defendant and the victim named in the information have engaged in an intimate relationship as of the time alleged in the information, evidence of any other acts of domestic violence between the defendant and the victim NAMED IN THE INFORMATION, AND BETWEEN THE DEFENDANT AND OTHER PERSONS, constitute other acts or transactions for the purposes of this section, and the court may authorize the admission of evidence as provided in subsection (3) of this section.

SECTION 2. 16-5-401, Colorado Revised Statutes, is amended to

Capital letters indicate new material added to existing statute; dashes through the words indicate deletions from existing statutes and such material not part of act.

read:

16-5-401. Limitation for commencing criminal proceedings and juvenile delinquency proceedings. (1) (a) Except as otherwise provided by statute applicable to specific offenses, DELINQUENT ACTS, or circumstances, no ADULT person OR JUVENILE shall be prosecuted, tried, or punished for any offense OR DELINQUENT ACT unless the indictment, information, or complaint, OR PETITION IN DELINQUENCY is filed in a court of competent jurisdiction or a summons and complaint or penalty assessment notice is served upon the defendant OR JUVENILE within the period of time after the commission of the offense OR DELINQUENT ACT as specified below:

Murder, kidnaping, treason, and any forgery regardless

of the penalty provided: No limit

Attempt, conspiracy, or solicitation to commit murder;

attempt, conspiracy, or solicitation to commit kidnaping;

attempt, conspiracy, or solicitation to commit treason; and

attempt, conspiracy, or solicitation to commit any forgery

regardless of the penalty provided: No limit

Other felonies: Three years

Misdemeanors: Eighteen months

Class 1 and 2 misdemeanor traffic offenses: One year

Petty offenses: Six months

(b) Repealed.

(c) FOR PURPOSES OF THIS SECTION:

(I) "DELINQUENT ACT" HAS THE SAME MEANING AS DEFINED IN SECTION 19-1-103 (36), C.R.S.

(II) "JUVENILE" MEANS A CHILD AS DEFINED IN SECTION 19-1-103 (18), C.R.S.

(III) "PETITION IN DELINQUENCY" MEANS ANY PETITION FILED BY A DISTRICT ATTORNEY PURSUANT TO SECTION 19-2-512, C.R.S.

(2) The time limitations imposed by this section shall be tolled if the ADULT offender OR JUVENILE is absent from the state of Colorado, and the duration of such absence, not to exceed five years, shall be excluded from the computation of the time within which any complaint, information, ~~or~~ indictment, OR PETITION IN DELINQUENCY must otherwise be filed or returned.

(3) The period within which a prosecution must be commenced does not include any period in which a prosecution is pending against the ADULT defendant OR JUVENILE for the same conduct, even if the indictment, information, ~~or~~ complaint, OR PETITION IN DELINQUENCY which commences the prosecution is quashed or the proceedings thereon are set aside or are reversed on appeal.

(4) When an offense OR DELINQUENT ACT is based on a series of acts performed at different times, the period of limitation prescribed by this code starts at the time when the last act IN THE SERIES OF ACTS is committed.

(4.5) The period within which a prosecution must be commenced shall begin to run upon discovery of the criminal act OR THE DELINQUENT ACT for:

(a) Offenses relating to the "Uniform Commercial Code", pursuant to part 5 of article 5 of title 18, C.R.S.;

(b) Computer crime, pursuant to article 5.5 of title 18, C.R.S.;

(c) Theft, pursuant to section 18-4-401, C.R.S.;

(d) Theft of trade secrets, pursuant to section 18-4-408, C.R.S.;

(e) Defacing or destruction of written instruments, pursuant to section 18-4-507, C.R.S.;

(f) Criminal simulation, pursuant to section 18-5-110, C.R.S.;

(g) Obtaining signature by deception, pursuant to section 18-5-112, C.R.S.;

(h) Criminal impersonation, pursuant to section 18-5-113, C.R.S.;

(i) Offering a false instrument for recording, pursuant to section 18-5-114, C.R.S.;

(j) Dual contracts to induce loan, pursuant to section 18-5-208, C.R.S.;

(k) Issuing a false financial statement or obtaining a financial transaction device by false statements, pursuant to section 18-5-209, C.R.S.;

(l) Unlawful activity concerning the selling of land, pursuant to section 18-5-302, C.R.S.;

(m) Offenses relating to equity skimming, pursuant to part 8 of article 5 of title 18, C.R.S.;

(n) Offenses relating to bribery and corrupt influences, pursuant to part 3 of article 8 of title 18, C.R.S.;

(o) Offenses relating to abuse of public office, pursuant to part 4 of article 8 of title 18, C.R.S.;

(p) Offenses relating to perjury, pursuant to part 5 of article 8 of title 18, C.R.S.;

(q) Offenses relating to the "Colorado Organized Crime Control Act", pursuant to article 17 of title 18, C.R.S.;

(r) Unlawful concealment of transactions, pursuant to section 11-11-105, C.R.S.;

(s) Embezzlement or misapplication of funds, pursuant to section 11-11-107, C.R.S.;

(t) Unlawful acts or omissions relating to financial institutions, pursuant to section 11-11-108, C.R.S.;

(u) Criminal offenses relating to industrial banks, pursuant to section 11-22-114 (3), C.R.S.; and

(v) Criminal offenses relating to savings and loan associations, pursuant to section 11-41-127, C.R.S.

(5) The period of time during which a AN ADULT person OR JUVENILE may be prosecuted shall be extended for an additional three years as to any offense OR DELINQUENT ACT charged under sections 18-8-302, 18-8-303, 18-8-306, 18-8-307, 18-8-402, 18-8-406, 18-8-407, 39-21-118, and 39-22-621 (3), C.R.S.

(6) The period of time during which a AN ADULT person OR JUVENILE may be prosecuted shall be extended for an additional seven years as to any offense OR DELINQUENT ACT charged under section 18-3-402, C.R.S., or section 18-3-403, C.R.S., as it existed prior to July 1, 2000, when the victim at the time of the commission of the act is a child under fifteen years of age, or under section 18-3-405, 18-3-405.3, 18-6-302, 18-6-402, 18-6-403, 18-6-404, 18-7-402, 18-7-403, 18-7-403.5, 18-7-404, 18-7-405, 18-7-405.5, or 18-7-406, C.R.S., or charged as criminal attempt, conspiracy, or solicitation to commit any of the acts specified in any of said sections.

(7) When the victim at the time of the commission of the offense OR DELINQUENT ACT is a child under fifteen years of age, the period of time during which a AN ADULT person OR JUVENILE may be prosecuted shall be extended for an additional seven years as to a felony charged under section 18-3-404, C.R.S., or criminal attempt, conspiracy, or solicitation to commit such a felony, and such period shall be extended for an additional three years and six months as to a misdemeanor charged under section 18-3-404, C.R.S., or criminal attempt, conspiracy, or solicitation to commit such a misdemeanor.

(8) (a) Notwithstanding the provisions of paragraph (a) of subsection (1) of this section, the period of time during which a AN ADULT person OR JUVENILE may be prosecuted shall be ten years after the commission of the offense OR DELINQUENT ACT as to any offense OR DELINQUENT ACT:

(I) Charged under section 18-3-402, 18-3-403, as it existed prior to July 1, 2000, 18-3-405, 18-3-405.3, 18-6-302, 18-6-402, 18-6-403,

18-6-404, 18-7-402, 18-7-403, 18-7-403.5, 18-7-404, 18-7-405, 18-7-405.5, or 18-7-406, C.R.S.;

(II) Charged as a felony under section 18-3-404, C.R.S.; or

(III) Charged as criminal attempt, conspiracy, or solicitation to commit any of the offenses specified in subparagraphs (I) and (II) of this paragraph (a).

(b) This subsection (8) shall apply to offenses AND DELINQUENT ACTS committed on or after July 1, 1984.

(9) Notwithstanding the provisions of paragraph (a) of subsection (1) of this section, the period of time during which a AN ADULT person OR JUVENILE may be prosecuted shall be five years after the commission of the offense OR DELINQUENT ACT as to a misdemeanor charged under section 18-3-404, C.R.S., or criminal attempt, conspiracy, or solicitation to commit such a misdemeanor. This subsection (9) shall apply to offenses AND DELINQUENT ACTS committed on or after January 1, 1986.

(10) Notwithstanding the provisions of paragraph (a) of subsection (1) of this section, the period of time during which a AN ADULT person OR JUVENILE may be prosecuted shall be three years after the date of the affected election as to a charge of any violation of any provision of the "Fair Campaign Practices Act", article 45 of title 1, C.R.S., or any criminal attempt, conspiracy, or solicitation to violate any provision of the "Fair Campaign Practices Act". This subsection (10) shall apply to offenses AND DELINQUENT ACTS committed on or after July 1, 1991.

(11) Notwithstanding the provisions of paragraph (a) of subsection (1) of this section, the period of time during which a AN ADULT person OR JUVENILE may be prosecuted shall be three years after the discovery of the offense OR DELINQUENT ACT as to any offense OR DELINQUENT ACT charged under section 18-4-408, C.R.S. This subsection (11) shall apply to offenses AND DELINQUENT ACTS committed on or after July 1, 1998.

(12) The applicable period of limitations specified in subsection (1) of this section shall not apply to charges OF OFFENSES OR DELINQUENT ACTS brought to facilitate the disposition of a case, or to lesser included or non-included charges OF OFFENSES OR DELINQUENT ACTS given to the court or a jury at a trial on the merits, by the accused.

SECTION 3. 16-5-401.1 (1), Colorado Revised Statutes, is amended to read:

16-5-401.1. Legislative intent in enacting section 16-5-401 (6) and (7). (1) The intent of the general assembly in enacting section 16-5-401 (6) and (7) in 1982 was to create a ten-year statute of limitations as to offenses AND DELINQUENT ACTS specified in said subsections committed on or after July 1, 1979.

SECTION 4. 16-5-402, Colorado Revised Statutes, is amended to read:

16-5-402. Limitation for collateral attack upon trial judgment. (1) Except as otherwise provided in subsection (2) of this section, no person who has been convicted AS AN ADULT OR WHO HAS BEEN ADJUDICATED AS A JUVENILE under a criminal statute of this or any other state of the United States shall collaterally attack the validity of that conviction OR ADJUDICATION unless such attack is commenced within the applicable time period, as provided in this subsection (1), following the date of said conviction, OR FOR PURPOSES OF JUVENILE ADJUDICATION THE APPLICABLE TIME PERIOD WILL BEGIN AT THE TIME OF THE JUVENILE'S EIGHTEENTH BIRTHDAY:

| | |
|-----------------------|-----------------|
| All class 1 felonies: | No limit |
| All other felonies: | Three years |
| Misdemeanors: | Eighteen months |
| Petty offenses: | Six months |

(1.5) If an appellate court can determine on the face of the motion, files, and record in a case that a collateral attack is outside the time limits specified in subsection (1) of this section, the appellate court may deny relief on that basis, regardless of whether the issue of timeliness was raised in the trial court.

(2) In recognition of the difficulties attending the litigation of stale claims and the potential for frustrating various statutory provisions directed at repeat offenders, former offenders, and habitual offenders, the only

exceptions to the time limitations specified in subsection (1) of this section shall be:

(a) A case in which the court entering judgment of conviction OR ENTERING ADJUDICATION did not have jurisdiction over the subject matter of the alleged offense;

(b) A case in which the court entering judgment of conviction OR ENTERING ADJUDICATION did not have jurisdiction over the person of the defendant OR JUVENILE;

(c) Where the court hearing the collateral attack finds by a preponderance of the evidence that the failure to seek relief within the applicable time period was caused by an adjudication of incompetence or by commitment of the defendant OR JUVENILE to an institution for treatment as a mentally ill person; or

(d) Where the court hearing the collateral attack finds that the failure to seek relief within the applicable time period was the result of circumstances amounting to justifiable excuse or excusable neglect.

(3) If the judgment of conviction OR ADJUDICATION to which any collateral attack is directed was sustained upon review by a court of appellate jurisdiction in the state where the judgment OR ADJUDICATION was entered, no collateral attack on such judgment OR ADJUDICATION shall be permitted whether commenced within or outside the time limitations set forth in subsection (1) of this section, unless said collateral attack is based upon an opinion of the court of last resort subsequently announced in the state where the judgment OR ADJUDICATION was entered, which opinion is given retroactive effect in a manner invalidating the conviction OR ADJUDICATION.

(4) FOR PURPOSES OF THIS SECTION:

(a) "ADJUDICATION", EXCEPT AS USED IN PARAGRAPH (c) OF SUBSECTION (2) OF THIS SECTION, INCLUDES "ADJUDICATED" AND HAS THE SAME MEANING AS DEFINED IN SECTION 19-1-103 (2), C.R.S.

(b) "JUVENILE" MEANS A CHILD AS DEFINED IN SECTION 19-1-103 (8), C.R.S.

SECTION 5. 30-10-606 (6), Colorado Revised Statutes, is amended to read:

30-10-606. Coroner - inquiry, grounds - postmortem - jury - certificate of death. (6) (a) Notwithstanding the provisions of sections 12-43-218 and 13-90-107 (1) (d) or (1) (g), C.R.S., the coroner holding an inquest or investigation pursuant to this section has the authority to request and receive a copy of:

(I) Any autopsy report or medical information from any pathologist, physician, dentist, hospital, or health care provider or institution IF SUCH REPORT OR INFORMATION IS RELEVANT TO THE INQUEST OR INVESTIGATION;
~~or~~ AND

(II) Any information, record, or report related to treatment, consultation, counseling, or therapy services from any licensed psychologist, professional counselor, marriage and family therapist, social worker, alcohol and drug abuse counselor, or unlicensed psychotherapist if such report, record, or information is relevant to the inquest or investigation.

(b) THE CORONER SHALL, AT THE REQUEST OF THE DISTRICT ATTORNEY OR ATTORNEY GENERAL, RELEASE TO THE DISTRICT ATTORNEY OR ATTORNEY GENERAL ANY AUTOPSY REPORT OR MEDICAL INFORMATION DESCRIBED IN SUBPARAGRAPH (I) OF PARAGRAPH (a) OF THIS SUBSECTION (6) THAT THE CORONER OBTAINS PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (6).

(c) The coroner shall not release TO ANY PARTY any INFORMATION, record, or report DESCRIBED IN SUBPARAGRAPH (II) OF PARAGRAPH (a) OF THIS SUBSECTION (6) THAT THE CORONER ~~obtained~~ OBTAINS pursuant to PARAGRAPH (a) OF this subsection (6). ~~to any third party.~~

(d) Any person who complies with a request from a coroner pursuant to PARAGRAPH (a) OF this subsection (6) shall be immune from any civil or criminal liability that might otherwise be incurred or imposed with respect to the disclosure of confidential patient or client information.

SECTION 6. 18-4-412 (2) (c) (IV), Colorado Revised Statutes, is amended to read:

18-4-412. Theft of medical records or medical information - penalty. (2) As used in this section:

(c) "Proper authorization" means:

(IV) Authorized possession pursuant to section 18-7-201.5, 18-7-205.5, or 18-3-415.5, OR SECTION 30-10-606 (6), C.R.S.

SECTION 7. Effective date. This act shall take effect July 1, 2001.

SECTION 8. 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.

Doug Dean
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Stan Matsunaka
PRESIDENT OF
THE SENATE

Judith Rodrigue
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

APPROVED _____

Bill Owens
GOVERNOR OF THE STATE OF COLORADO