

FILED IN THE
SUPREME COURT,

<p>SUPREME COURT OF COLORADO 101 West Colfax Avenue, Suite 800 Denver, Colorado 80203</p>	<p>MAY - 2 2012</p> <p>OF THE STATE OF COLORADO Christopher T. Ryan, Clerk</p> <p>▪ COURT USE ONLY ▪</p>
<p>Original Proceeding Under C.R.S. § 1-40-107(2) Appeal from the Ballot Title Board</p>	<p>Case No. <u>12 SA136</u></p>
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2011-2012 No. 91 ("Sexual Abuse Statute of Limitations")</p> <p>Petitioner: Thomas W. Coble;</p> <p>v.</p> <p>Respondents: Frances Koncilja and Adam Mordecai;</p> <p>and</p> <p>Title Board: Suzanne Staiert, Dan Domenico, and Jason Gelandner.</p>	<p>PETITION FOR REVIEW OF FINAL ACTION OF TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2011-2012 NO. 91 ("SEXUAL ABUSE STATUTE OF LIMITATIONS")</p>

Petitioner Thomas W. Coble, a registered elector of the State of Colorado,
through his counsel Rothgerber Johnson & Lyons LLP and pursuant to C.R.S. § 1-

40-107(2), respectfully petitions this Court to review the actions of the Ballot Title Setting Board with respect to the setting of the title, ballot title, and submission clause for Proposed Initiative 2011-2012 No. 91 ("Sexual Abuse Statute of Limitations"), and states:

STATEMENT OF THE CASE

I. Procedural History of Proposed Initiative No. 84

On April 6, 2012, after Frances Koncilja and Adam Mordecai ("Proponents") proposed Initiative 2011-2012 No. 91 ("Initiative"), the Office of Legislative Council and Legislative Legal Services conducted a statutorily mandated review and comment hearing. Later that same day, Proponents submitted the original, amended, and final versions of the Initiative to the Secretary of State for title setting. At an April 18, 2012 hearing, the Title Board set the Initiative's title. On April 25, 2012, Petitioner filed a Motion for Rehearing and stated, in part, that the Initiative violates the single subject requirement and that the title is inaccurate because it contains a material omission. The rehearing was held on April 27, 2012, at which the Title Board denied Petitioner's Motion for Rehearing except to the extent that the Board amended the title.

II. Jurisdiction

Petitioner is entitled to Colorado Supreme Court review of the Title Board's actions in setting the Initiative's title. C.R.S. § 1-40-107(1). Petitioner filed a timely Motion for Rehearing, *see* C.R.S. § 1-40-107(1), and subsequently filed this timely Petition for Review within five days from the date of the rehearing, *see* C.R.S. § 1-40-107(2). Pursuant to C.R.S. § 1-40-107(2), attached to the instant Petition for Review are certified copies of: 1) the title and submission clause as set by the Title Board; 2) the Title Board's order denying Petitioner's Motion for Rehearing; 3) Petitioner's Motion for Rehearing; 4) Proponents' final draft of the Initiative; 5) Proponents' amended draft of the Initiative; and 6) Proponents' original draft of the Initiative. Petitioner objects to the Title Board's denial of his Motion for Rehearing. For these reasons, this matter is properly before the Colorado Supreme Court.

GROUND FOR APPEAL

As grounds for appeal, Petitioner states:

1. The Title Board erred when it found that the Initiative complied with the single subject requirement. Colo. Const. art. V § 1(5.5); C.R.S. § 1-40-106.5. The Initiative makes at least seven changes to both substantive and procedural law such that it impermissibly encompasses multiple subjects.

2. Alternatively, the Title Board set a misleading title which does not sufficiently advise voters of all of the material substantive and procedural changes the Initiative would make to current law.

PRAYER FOR RELIEF

Petitioner respectfully requests that this Court determine that:

1. The Initiative embraces multiple subjects, therefore depriving the Title Board of jurisdiction to set a title; or, alternatively
2. The title does not fairly and accurately represent the totality, scope, and magnitude of the changes the Initiative would make to current law; and
3. For these reasons, the Title Board's actions are invalid and Proponents cannot proceed until these jurisdictional and title defects are cured.

DATED: May 2, 2012



Thomas M. Rogers III
Nathaniel S. Barker
ROTHGERBER JOHNSON &
LYONS LLP
1200 Seventeenth Street, Suite 3000
Denver, CO 80202
Phone: 303.623.9000
Fax: 303.623.9222
Email: trogers@rothgerber.com
nbarker@rothgerber.com
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2012, a true and correct copy of the foregoing **PETITION FOR REVIEW OF FINAL ACTION OF TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2011-2012 NO. 91 ("SEXUAL ABUSE STATUTE OF LIMITATIONS")** was served via U.S. mail on the following:

Mark Grueskin, Esq.
HEIZER PAUL GRUESKIN LLP
2401 15th Street, Suite 300
Denver, CO 80202
Attorney for Proponents

Maurice G. Knaizer, Esq.
Office of the Colorado Attorney General
1525 Sherman Street, 7th Floor
Denver, CO 80203
Attorney for the Title Board



Nancy Stewart



STATE OF COLORADO

**DEPARTMENT OF
STATE**

CERTIFICATE

I, **SCOTT GESSLER**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, motion for rehearing, titles, and the rulings thereon of the Title Board on Proposed Initiative "2011-2012 #91 'Sexual Abuse Statute of Limitations'".....

..... **IN TESTIMONY WHEREOF** I have unto set my hand
and affixed the Great Seal of the State of Colorado, at the
City of Denver this 30th day of April, 2012.

A handwritten signature in cursive script, appearing to read "Scott Gessler", is written over a horizontal line.

SECRETARY OF STATE

Ballot Title Setting Board

Proposed Initiative 2011-2012 #91¹

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado Revised Statutes concerning the statute of limitations for civil claims based on sexual abuse, and, in connection therewith, extending the existing six-year statute of limitations for such claims to claims against a supervisor of the abuser who failed to take reasonable actions to prevent the abuse; extending that statute of limitations for any period during which a fact finder determines that a sexual abuse victim is psychologically or emotionally unable to acknowledge the abuse, the resulting harm, or the connection between the abuse and the harm; repealing the prohibition on a plaintiff filing a claim against a deceased or incapacitated defendant; repealing limits on the damages a plaintiff may recover for a claim brought after the plaintiff has reached 33 years of age; and creating a two-year period, beginning January 1, 2013, during which a plaintiff may file a claim concerning sexual abuse for which the statute of limitations has already run.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado Revised Statutes concerning the statute of limitations for civil claims based on sexual abuse, and, in connection therewith, extending the existing six-year statute of limitations for such claims to claims against a supervisor of the abuser who failed to take reasonable actions to prevent the abuse; extending that statute of limitations for any period during which a fact finder determines that a sexual abuse victim is psychologically or emotionally unable to acknowledge the abuse, the resulting harm, or the connection between the abuse and the harm; repealing the prohibition on a plaintiff filing a claim against a deceased or incapacitated defendant; repealing limits on the damages a plaintiff may recover for a claim brought after the plaintiff has reached 33 years of age; and creating a two-year period, beginning January 1, 2013, during which a plaintiff may file a claim concerning sexual abuse for which the statute of limitations has already run?

¹ Unofficially captioned “**Sexual Abuse Statute of Limitations**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

Hearing April 18, 2012:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 4:50 p.m.

Rehearing April 27, 2012:

Motion for rehearing denied except to the extent that the Board made changes to the title.

Hearing adjourned 12:00 p.m.

RECEIVED

By Steven Ward at 4:58 pm, Apr 25, 2012

BEFORE THE COLORADO STATE TITLE SETTING BOARD

In re Ballot Title and Submission Clause for 2011-2012 Initiative No. 91 ("Sexual Abuse Statute of Limitations")

THOMAS W. COBLE, Objector.

MOTION FOR REHEARING

Pursuant to C.R.S. § 1-40-107, Objector, Thomas W. Coble, a registered elector of the State of Colorado, by and through his legal counsel, Rothgerber Johnson & Lyons, LLP, hereby submits this Motion for Rehearing of the Title Board's April 18, 2012 decision to set the title of 2011-2012 Initiative No. 91 ("Initiative"), and states:

I. The Initiative does not fall within a single subject because it will make both procedural and substantive changes to multiple areas of law.

By including no less than two, and as many as seven, distinct subjects, the initiative violates the single subject requirement. *See* Colo. Const., art. V § 1(5.5).

1. Six different provisions make distinct *substantive* changes which respectively affect the rights of plaintiffs or defendants, or both, in lawsuits arising out of sexual abuse of a child. The Initiative's subject—the "statute of limitations for civil claims based on the sexual abuse of a child"—does not sufficiently connect these six provisions. Additionally, the subject does not sufficiently describe the entirety of the measure, which touches on subjects widely ranging from the types of recoverable damages to revival of time barred claims. *See generally* Proposed Ballot Initiative 2011-2012 No. 91, § 2. Thus, the Initiative is not a single subject because it potentially misleads voters in violation of the single subject requirement. *See, e.g., in re Proposed Initiative 1996-4*, 916 P.2d 528, 532-33 (Colo. 1996).

2. Further, a separate provision of the Initiative delegates to the "fact finder" the *procedural* determination of whether a person is "under disability" for the purposes of tolling. *See* Ballot Initiative 2011-2012 No. 91, proposed amendment to C.R.S. § 13-80-103.7(3.5)(a). Thus, even if the six distinct substantive changes in law are considered one subject, the Initiative violates the single subject requirement because it contains both procedural and substantive changes in law. *See in re Proposed Initiatives for 1997-98 Nos. 84 & 85*, 961 P.2d 456, 460-61 (Colo. 1997).

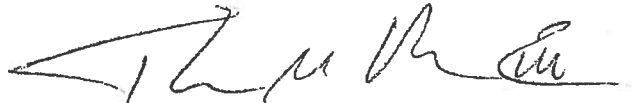
II. The title is not fair or accurate because it contains a material omission.

A ballot title must fairly express the true intent and meaning of the amendment, with no material omissions. C.R.S. 1-40-106(3)(b); *In re Ballot Title for 1997-98 No. 62*, 961 P.2d 1077,

1082 (Colo. 1998). The current title impermissibly omits the provision delegating to the fact-finder the determination of whether a person is "under disability" for tolling purposes. *See, e.g., in re Ballot Titles 2001-2002 Nos. 21 & 22*, 44 P.3d 213, 219-22 (Colo. 2002).

WHEREFORE, Objectors respectfully request that the Title Board set Initiative 91 for rehearing pursuant to C.R.S. 1-40-107(1).

DATED: April 25, 2012.



/s/ Thomas M. Rogers III

ROTHGERBER JOHNSON & LYONS, LLP

1200 Seventeenth St., Suite 3000

Denver, CO 80202

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Email: trogers@rothgerber.com

Address of objector:
Thomas W. Coble
2805 S. Pierce St.
Denver, CO 80227

CERTIFICATE OF SERVICE

I hereby certify that on April 25, 2012, a true and correct copy of this **MOTION FOR REHEARING** was served on proponents via email as follows:

Mark G. Grueskin
HEIZER PAUL GRUESKIN, LLP
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Phone: 303.595.4747
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Attorney for Proponents



Nathaniel S. Barker

2011-2012 #91

RECEIVED

FINAL

APR 06 2012

SWARD

ELECTIONS/LICENSING
SECRETARY OF STATE

2:30 P.M.

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

SECTION 1. Declaration of intent. (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. In Colorado Revised Statutes, 13-80-103.7, amend (1) and (3.5)(a); repeal (3.5)(c) and (3.7), and add (6) and (7) as follows:

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 THIS SECTION, 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 JANUARY 1, 2013. 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.

2011-2012#91 - Amended

RECEIVED

APR 06 2012

ELECTIONS/LICENSING
SECRETARY OF STATE

S. WARD
2:30 P.M.

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

~~SECTION 1. LEGISLATIVE DECLARATION~~ Declaration of Intent. (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. In Colorado Revised Statutes, 13-80-103.7, amend (1), and (3.5)(a); repeal (3.5)(c), and (3.7), and add (6) and (7) as follows: 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:~~

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

(1) (a) ~~Notwithstanding~~ **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) (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.~~

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~~(3.7) (3.7) an 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.~~

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(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 (8b) OF THIS SUBSECTION (7), THE PROVISIONS OF ~~13-80-103.7~~ THIS SECTION, 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 (Bb) 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.

Sexual Abuse Statute of Limitations
RECEIVED

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

APR 06 2012

SWARD

2:30 P.M.

ELECTIONS/LICENSING
SECRETARY OF STATE

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.

