



CHANGES TO THE STATUTES OF LIMITATIONS FOR SEX OFFENSES

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There is a growing trend in the United States of amending the statutes of limitations for sex offenses. Since 2001, 14 states have either extended or eliminated their statutes of limitations for sex crimes. Twenty-six states currently have no criminal statute of limitations for some or all sex crimes. The rationale for extending or eliminating statutes of limitations for sex offenses against children is that children may not be mentally or physically capable of confronting their attackers until much later in life. Additionally, new methods of testing evidence are continuously being discovered and standardized, helping investigators and prosecutors to accurately identify perpetrators of sex offenses.

This issue brief discusses statutes of limitations relating to sex offenses and the changes proposed and made to the current criminal and civil statutes during the 2006 legislative session.

Background

A statute of limitations, sometimes known as a limitation of actions in civil cases, is a time period imposed by a legislature, during which a criminal proceeding or a civil action may begin. It is intended to promote timely and efficient disposition of cases because memories fade over time and evidence may be lost or damaged. A criminal statute of limitations begins running with the commission of a crime and runs for some

fixed period of time, depending on the class of crime. A limitation of actions in a civil case is a time period during which a civil action may be asserted by a plaintiff against a defendant or defendants.

Criminal

Colorado law prior to the 2006 legislative session. If no time limit exists for a specific crime, prosecution may commence at any time. The crimes having no limit on commencing prosecution in Colorado are murder, kidnaping, treason, and forgery.¹ Prosecutions for attempt, conspiracy, or solicitation to commit any of the aforementioned crimes are also not subject to any time limits. Prosecution of sexual assault must commence within 10 years of the crime's commission or, if the victim is a minor at the time of the offense, within 10 years after the victim reaches the age of 18. There is no time limit for the prosecution of sexual assault if the identity of the suspect is determined by forensic DNA evidence. The time limit for most other felonies is three years after the commission of the crime.

Changes made in the 2006 legislative session. The criminal statute of limitations was amended by *House Bill 06-1088*. The bill adds felony sex offenses against a child to the list of

² Section 16-5-401 (1) (a), C.R.S.

crimes for which there is no time limit for commencing prosecution, along with the attempt, conspiracy, or solicitation to commit any felony sex offense against a child. The bill defines a sex offense against a child as any of the following felony offenses:

- enticement of a child;
- sexual assault when the victim is less than 15 years of age;
- felony unlawful sexual contact when the victim is less than 15 years of age;
- sexual assault on a child;
- sexual assault on a child by one in a position of trust;
- aggravated incest;
- trafficking in children;
- sexual exploitation of a child;
- felony indecent exposure;
- soliciting for child prostitution;
- pandering of a child;
- procurement of a child;
- keeping a place of child prostitution;
- pimping of a child;
- inducement of a child;
- patronizing a prostituted child;
- class 4 felony internet luring of a child; and
- internet sexual exploitation of a child.

The bill takes effect on July 1, 2006, and applies to offenses that were committed on or after July 1, 1996.

Civil

Current law. Similar to a criminal statute of limitations, a limit on the time to commence a civil action only exists if it is created by statute. Otherwise, a civil suit may be brought at any time. The general limitation of civil actions in Colorado for sexual assault or a sexual offense against a child is six years after a disability has been removed for a person under a disability or six years after a cause of action accrues, whichever

occurs later.² A "person under a disability" means a person who is:

- under 18 years of age;
- mentally incompetent;
- under another legal disability and who does not have a legal guardian;
- a victim of sexual assault and who is in a special relationship with the perpetrator of the assault; or
- living in a residential care facility and is psychologically or emotionally unable to acknowledge the assault.

Plaintiffs who bring civil suits for sexual assault 15 years or more after their 18th birthdays may only recover damages for medical and counseling treatment, as well as court costs and attorney fees. Also, a civil suit may not be brought against a defendant who is deceased or incapacitated to the extent that he or she cannot render a competent defense.

Changes proposed in the 2006 legislative session. Two bills were introduced in 2006 addressing the civil statute of limitations for actions arising from sexual offenses. Neither bill was adopted.

Senate Bill 06-143 would have created a two-year window in which to file a claim even if the applicable statute of limitations had expired. The bill also would have allowed victims of a sexual offense to file a claim against an individual who is deceased or incapacitated and allowed victims to recover additional damages.

House Bill 06-1090 would have expanded the statute of limitations for causes of action arising from the commission of a sexual offense against a child to 35 years after the incident occurs. It would also have created a one-year window in which to bring a claim for past sexual abuse, even if the applicable statute of limitations had expired.

³ Section 13-80-103.7 (1), C.R.S.