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An Act

SENATE BILL 21-088

BY SENATOR(S) Danielson and Fields, Bridges, Buckner, Coleman, Fenberg, Ginal, Gonzales, Hansen, Jaquez Lewis, Kolker, Lee, Moreno, Pettersen, Rodriguez, Story, Winter;
also REPRESENTATIVE(S) Michaelson Jenet and Soper, Bernett, Boesenecker, Caraveo, Cutter, Duran, Esgar, Froelich, Herod, Hooton, Jackson, Jodeh, Lontine, Ricks, Sirota, Weissman, Young.

CONCERNING ESTABLISHING A CIVIL CAUSE OF ACTION FOR SEXUAL MISCONDUCT AGAINST A MINOR, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. Legislative declaration. (1) The general assembly finds and declares that:

(a) Child sexual abuse differs from adult sexual abuse. Child sexual abuse frequently occurs as repeated episodes that become more invasive over time. Perpetrators, referred to in this act as actors, are typically known and trusted caregivers with unsupervised access to children who engage child victims in a gradual process of sexualizing the relationship, known as "grooming".

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(b) Child sexual abuse is a significant public health problem in Colorado with long-term effects on the physical and mental health of children, including trauma, increased risk for unintended pregnancy, sexually transmitted infections, low academic performance, truancy, dropping out of school, eating disorders, substance abuse, self-harm, and other harmful behaviors; and

(c) Child sexual abuse creates financial burdens for victims, including costs associated with health care, child welfare, special education, short- and long-term physical and mental health treatment, violence and crime, suicide, productivity, and loss of future wages.

(2) The general assembly further finds and declares that:

(a) Members, employees, agents, and volunteers of an organization can and do commit child sexual abuse and, while organizations are often in the best position to identify perpetrators of child sexual abuse, organizations may cover up instances of child sexual abuse perpetrated by members, employees, agents, and volunteers of the organization;

(b) When institutions choose to protect their power and profit by concealing the truth, the cover-up is a distinctly different harm than the child sexual abuse being concealed and, therefore, victims must have access to recourse against the organization.

(3) The general assembly further finds and declares:

(a) The vast majority of child sexual abuse goes unreported because children often lack the knowledge needed to recognize sexual abuse or lack the ability to articulate that they've been abused; do not have an adult they can disclose their abuse to; do not have opportunities to disclose abuse; often are not believed when they try to disclose; or, when the sexual abuse is committed by an esteemed trusted adult, for example a faith leader, coach, adult volunteer, youth group leader, or teacher, it may be hard for the child to view the perpetrator in a negative light and, therefore, identify what has been done to them as abuse;

(b) When victims of child sexual abuse do report, a high percentage of them delay disclosure well into adulthood, after the expiration of the time

permitted to file civil actions against those responsible for the abuse; and

(c) Because of the delay in disclosure, statutes of limitations are often used to deny and defeat claims of childhood sexual abuse.

(4) Therefore, the general assembly determines that:

(a) This act does not revive any common law cause of action that is barred and instead creates a new right for relief for any person sexually abused in Colorado while the person was participating in a youth-related activity or program as a child;

(b) Creating a new civil cause of action that allows all victims of child sexual abuse, including those who delayed reporting the abuse well into adulthood after the statute of limitations on an action has expired, to hold the abusers and organizations accountable is in the best interest of the state's public health and safety and is needed to address the long history of child sexual abuse that occurred within organizations that are culpable and complicit in the abuse; and

(c) Establishing a civil cause of action that allows for victims of child sexual abuse to bring a claim against perpetrators of abuse, referred to in this act as actors, and responsible organizations is related to a legitimate governmental interest of allowing victims of child sexual abuse to hold the abusers and enablers accountable.

SECTION 2. In Colorado Revised Statutes, **add** part 12 to article 20 of title 13 as follows:

PART 12

ACTIONS FOR SEXUAL MISCONDUCT AGAINST MINORS

13-20-1201. Definitions. AS USED IN THIS PART 12, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ACTOR" MEANS A PERSON ACCUSED OF COMMITTING SEXUAL MISCONDUCT.

(2) "AGENT" MEANS A PERSON WHO, SUBJECT TO THE CONTROL OF ANOTHER PERSON OR ORGANIZATION, ACTS FOR, OR ON BEHALF OF, THE

OTHER PERSON OR ORGANIZATION.

(3) "EDUCATIONAL ENTITY" HAS THE SAME MEANING SET FORTH IN SECTION 22-12-103.

(4) "MANAGING ORGANIZATION" MEANS A PUBLIC ENTITY OR AN ENTITY, AS DEFINED IN SECTION 7-90-102, THAT OPERATES OR MANAGES A YOUTH-RELATED ACTIVITY OR PROGRAM, AND AS PART OF OPERATING OR MANAGING THE YOUTH-RELATED ACTIVITY OR PROGRAM:

(a) HIRES ADULTS AS EMPLOYEES OR AGENTS OR RETAINS ADULTS AS VOLUNTEERS OF THE YOUTH-RELATED ACTIVITY OR PROGRAM;

(b) SETS STANDARDS FOR ADULT EMPLOYEE, AGENT, AND VOLUNTEER PARTICIPATION IN THE YOUTH-RELATED ACTIVITY OR PROGRAM AND CONTROLS THE CONDUCT OF THE EMPLOYEES, AGENTS, AND VOLUNTEERS; OR

(c) REPRESENTS THAT THE ADULTS INVOLVED IN THE YOUTH-RELATED ACTIVITY OR PROGRAM ARE SCREENED BY THE MANAGING ORGANIZATION.

(5) "MINOR" MEANS A PERSON YOUNGER THAN EIGHTEEN YEARS OF AGE.

(6) "PUBLIC EMPLOYEE" HAS THE SAME MEANING SET FORTH IN SECTION 24-10-103 (4) AND INCLUDES AN EMPLOYEE AS DEFINED IN SECTION 22-12-103.

(7) "PUBLIC ENTITY" HAS THE SAME MEANING SET FORTH IN SECTION 24-10-103 (5) AND INCLUDES AN EDUCATIONAL ENTITY.

(8) "SEXUAL MISCONDUCT" MEANS ANY CONDUCT THAT IS ENGAGED IN FOR THE PURPOSE OF THE SEXUAL AROUSAL, GRATIFICATION, OR ABUSE OF ANY PERSON, AND THAT CONSTITUTES ANY OF THE FOLLOWING:

(a) A FIRST DEGREE MISDEMEANOR OR A FELONY OFFENSE DESCRIBED IN PART 3 OR 4 OF ARTICLE 3 OF TITLE 18 OR A FELONY OFFENSE DESCRIBED IN ARTICLE 6 OR 7 OF TITLE 18;

(b) HUMAN TRAFFICKING FOR SEXUAL SERVITUDE, AS DESCRIBED IN SECTION 18-3-504;

(c) A FEDERAL SEX OFFENSE AS DEFINED IN THE FEDERAL "SEX OFFENDER REGISTRATION AND NOTIFICATION ACT", 34 U.S.C. SEC. 20911 (5)(A)(iii);

(d) OBSCENE VISUAL REPRESENTATIONS OF THE SEXUAL ABUSE OF CHILDREN, AS DESCRIBED IN 18 U.S.C. SEC. 1466A;

(e) TRANSFER OF OBSCENE MATERIAL TO MINORS, AS DESCRIBED IN 18 U.S.C. SEC. 1470; OR

(f) ATTEMPT OR CONSPIRACY TO COMMIT SEX TRAFFICKING OF CHILDREN OR BY FORCE, FRAUD, OR COERCION, AS DESCRIBED IN 18 U.S.C. SEC. 1594.

(9) "YOUTH-RELATED ACTIVITY OR PROGRAM" MEANS AN EVENT, PROGRAM, SERVICE, OR ANY OTHER ENTERPRISE THAT INVOLVES PARTICIPATION BY A MINOR, INCLUDING BUT NOT LIMITED TO YOUTH PROGRAMS, EDUCATIONAL PROGRAMS, AND RELIGIOUS ACTIVITIES OPERATED BY AN INDIVIDUAL OR ORGANIZATION THAT PROVIDES ACTIVITIES, SERVICES, TRIPS, OR EVENTS FOR MINORS WITH ADULTS WHO ARE PLACED IN POSITIONS OF RESPONSIBILITY, TRUST, OR SUPERVISION OVER THE PARTICIPATING MINORS, REGARDLESS OF THE PARTICULAR LOCATION, LENGTH, GOALS, OR FORMAT OF THE ACTIVITIES, SERVICES, TRIPS, OR EVENTS. "YOUTH-RELATED ACTIVITY OR PROGRAM" INCLUDES TRANSPORTATION, LODGING, AND UNSCHEDULED ACTIVITIES PROVIDED IN RELATION TO ANY ACTIVITIES, SERVICES, TRIPS, OR EVENTS WHEN A YOUTH-RELATED ACTIVITY OR PROGRAM EMPLOYEE, AGENT, OR VOLUNTEER IS RESPONSIBLE FOR THE SUPERVISION OF THE PARTICIPATING MINORS. "YOUTH-RELATED ACTIVITY OR PROGRAM" ALSO INCLUDES AN EDUCATIONAL PROGRAM OPERATED BY AN EDUCATIONAL ENTITY FOR STUDENTS IN KINDERGARTEN THROUGH TWELFTH GRADE, OR ANY PORTION THEREOF; A DISTRICT PRESCHOOL PROGRAM, AS DESCRIBED IN SECTION 22-28-103, UNDER THE SUPERVISION OF THE EDUCATIONAL ENTITY OR ITS EMPLOYEES OR AGENTS; OR BEFORE AND AFTER SCHOOL ACTIVITIES CONDUCTED UNDER THE SUPERVISION OF THE EDUCATIONAL ENTITY, OR ITS EMPLOYEES OR AGENTS.

13-20-1202. Civil cause of action for sexual misconduct against

a minor - exceptions. (1) A PERSON WHO IS A VICTIM OF SEXUAL MISCONDUCT THAT OCCURRED WHEN THE VICTIM WAS A MINOR MAY BRING A CIVIL ACTION FOR DAMAGES AGAINST:

(a) AN ACTOR WHO COMMITTED THE SEXUAL MISCONDUCT; AND

(b) A MANAGING ORGANIZATION THAT KNEW OR SHOULD HAVE KNOWN THAT AN ACTOR OR YOUTH-RELATED ACTIVITY OR PROGRAM POSED A RISK OF SEXUAL MISCONDUCT AGAINST A MINOR AND THE SEXUAL MISCONDUCT OCCURRED WHILE THE VICTIM WAS PARTICIPATING IN THE YOUTH-RELATED ACTIVITY OR PROGRAM OPERATED OR MANAGED BY THE ORGANIZATION.

(2) THE CIVIL ACTION DESCRIBED IN THIS SECTION IS IN ADDITION TO, AND DOES NOT LIMIT OR AFFECT, OTHER ACTIONS AVAILABLE BY STATUTE OR COMMON LAW, BEFORE OR AFTER JANUARY 1, 2022, AND MUST BE PLEADED AS A SEPARATE CLAIM FOR RELIEF IF A COMPLAINT ALSO ASSERTS A COMMON LAW CLAIM FOR RELIEF.

13-20-1203. Limitation on action - retroactive application. (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A PERSON WHO WAS THE VICTIM OF SEXUAL MISCONDUCT THAT OCCURRED WHEN THE VICTIM WAS A MINOR AND THAT OCCURRED ON OR AFTER JANUARY 1, 2022, MAY BRING AN ACTION PURSUANT TO THIS PART 12 AT ANY TIME WITHOUT LIMITATION.

(2) A PERSON WHO WAS THE VICTIM OF SEXUAL MISCONDUCT THAT OCCURRED WHEN THE VICTIM WAS A MINOR AND THAT OCCURRED ON OR AFTER JANUARY 1, 1960, BUT BEFORE JANUARY 1, 2022, MAY BRING AN ACTION PURSUANT TO THIS PART 12. AN ACTION DESCRIBED IN THIS SUBSECTION (2) MUST BE COMMENCED BEFORE JANUARY 1, 2025.

13-20-1204. Waiver of liability void. ANY PRE-INCIDENT WAIVER, EITHER FOR CONSIDERATION OR GRATUITOUSLY, OF A PERSON'S RIGHT TO BRING AN ACTION PURSUANT TO THIS PART 12 IS VOID AS AGAINST PUBLIC POLICY.

13-20-1205. No contributory negligence - interest on damages - limitation on damages. (1) NOTWITHSTANDING SECTIONS 13-21-111 AND 13-21-111.5, A COURT OR JURY SHALL NOT ALLOCATE ANY DAMAGES AWARDED IN AN ACTION BROUGHT PURSUANT TO THIS PART 12 IN ANY

PROPORTION AGAINST A VICTIM OF SEXUAL MISCONDUCT.

(2) NOTWITHSTANDING SECTION 13-21-101, PREJUDGMENT INTEREST ON A CLAIM BROUGHT PURSUANT TO THIS PART 12 DOES NOT BEGIN TO ACCRUE UNTIL THE PLAINTIFF FILES THE CLAIM PURSUANT TO SECTION 13-20-1202.

(3) THE MAXIMUM AMOUNT THAT MAY BE RECOVERED IN A CLAIM BROUGHT PURSUANT TO THIS PART 12 IS:

(a) FOR A CLAIM BROUGHT AGAINST A PUBLIC EMPLOYEE OR PUBLIC ENTITY, AS PROVIDED IN SECTION 13-20-1207; AND

(b) FOR ANY OTHER CLAIM, FIVE HUNDRED THOUSAND DOLLARS; EXCEPT THAT IF THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE THAT THE DEFENDANT FAILED TO TAKE REMEDIAL ACTION AGAINST A PERSON OR PERSONS THE DEFENDANT KNEW OR SHOULD HAVE KNOWN, BASED ON INFORMATION THAT, AT THE TIME OF THE INCIDENT, WAS IN THE DEFENDANT'S POSSESSION OR WAS PUBLICLY OR READILY AVAILABLE THROUGH COMMONLY USED PRACTICES, POSED A RISK OF SEXUAL MISCONDUCT TO A MINOR AND THAT THE APPLICATION OF SUCH LIMITATION WOULD BE UNFAIR, THE COURT MAY AWARD IN EXCESS OF THE LIMITATION UP TO THE AMOUNT OF DAMAGES AWARDED BY THE JURY. IN NO CASE SHALL THE TOTAL AMOUNT AWARDED TO A PLAINTIFF EXCEED ONE MILLION DOLLARS.

13-20-1206. Attorney fees. SECTION 13-17-201, WHICH REQUIRES AN AWARD OF ATTORNEY FEES TO DEFENDANTS IN CERTAIN ACTIONS DISMISSED PRIOR TO TRIAL, DOES NOT APPLY TO AN ACTION BROUGHT PURSUANT TO THIS PART 12.

13-20-1207. Applicability of part to public entities and public employees - damages - no duty to indemnify. (1) (a) NOTWITHSTANDING SECTIONS 22-12-104, 24-10-105, 24-10-106, 24-10-108, AND 24-10-118, OR ANY OTHER STATE LAW THAT PROHIBITS CIVIL ACTIONS AGAINST A PUBLIC EMPLOYEE OR PUBLIC ENTITY, A PERSON MAY BRING A CLAIM ALLEGING LIABILITY FOR INJURIES ARISING FROM SEXUAL MISCONDUCT PURSUANT TO THIS PART 12 AGAINST A PUBLIC EMPLOYEE OR PUBLIC ENTITY.

(b) NOTWITHSTANDING SECTIONS 22-12-104(3), 24-10-109(1), AND

24-10-118 (1)(a), REQUIRING THE FILING OF A WRITTEN NOTICE, A PERSON WHO BRINGS AN ACTION PURSUANT TO THIS PART 12 IS NOT REQUIRED TO FILE WRITTEN NOTICE AS A JURISDICTIONAL PREREQUISITE TO THE ACTION.

(c) THE MAXIMUM AMOUNT THAT MAY BE RECOVERED FROM A PUBLIC EMPLOYEE OR PUBLIC ENTITY AS SET FORTH IN SECTION 24-10-114 APPLIES TO A CLAIM BROUGHT AGAINST A PUBLIC EMPLOYEE OR PUBLIC ENTITY PURSUANT TO THIS PART 12.

(2) NOTWITHSTANDING ANY PROVISION OF THIS PART 12 OR ANY OTHER PROVISION OF LAW, THE STATE, AS DEFINED IN SECTION 24-10-103 (7), AND A PUBLIC ENTITY DO NOT HAVE A DUTY TO DEFEND OR INDEMNIFY A PUBLIC EMPLOYEE FOR A CLAIM ALLEGING SEXUAL MISCONDUCT PURSUANT TO THIS PART 12, IF THE EMPLOYEE'S CONDUCT IS WILLFUL OR WANTON.

SECTION 3. In Colorado Revised Statutes, 24-10-106, **amend** (1)(i); and **add** (1)(j) as follows:

24-10-106. Immunity and partial waiver. (1) A public entity shall be immune from liability in all claims for injury which lie in tort or could lie in tort regardless of whether that may be the type of action or the form of relief chosen by the claimant except as provided otherwise in this section. Sovereign immunity is waived by a public entity in an action for injuries resulting from:

(i) An action brought pursuant to section 13-21-128; ~~C.R.S.~~ OR

(j) AN ACTION BROUGHT PURSUANT TO PART 12 OF ARTICLE 20 OF TITLE 13, WHETHER THE CONDUCT ALLEGED OCCURRED BEFORE, ON, OR AFTER JANUARY 1, 2022.

SECTION 4. In Colorado Revised Statutes, 24-10-109, **add** (7) as follows:

24-10-109. Notice required - contents - to whom given - limitations. (7) THE NOTICE REQUIRED PURSUANT TO THIS SECTION DOES NOT APPLY TO CLAIMS MADE PURSUANT TO THE WAIVER OF GOVERNMENTAL IMMUNITY DESCRIBED IN SECTION 24-10-106 (1)(j) AND ANY ACTION BROUGHT PURSUANT TO PART 12 OF ARTICLE 20 OF TITLE 13 THERETO IS NOT

BARRED UNDER THIS SECTION.

SECTION 5. Appropriation. (1) For the 2021-22 state fiscal year, \$1,198,355 is appropriated to the department of personnel. This appropriation is from the general fund. To implement this act, the department may use this appropriation as follows:

(a) \$52,967 for use by risk management services for personal services, which amount is based on an assumption that risk management services will require an additional 0.9 FTE;

(b) \$7,550 for use by risk management services for operating expenses; and

(c) \$1,137,838 for use by risk management services for the purchase of liability legal services.

(2) For the 2021-22 state fiscal year, \$1,137,838 is appropriated to the department of law. This appropriation is from reappropriated funds received from the department of personnel under subsection (1)(c) of this section and is based on an assumption that the department of law will require an additional 5.9 FTE. To implement this act, the department of law may use this appropriation to provide legal services for the department of personnel.

SECTION 6. Effective date. This act takes effect January 1, 2022.

SECTION 7. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Leroy M. Garcia
PRESIDENT OF
THE SENATE

Alec Garnett
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO