

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 21-0017.02 Conrad Imel x2313

SENATE BILL 21-088

SENATE SPONSORSHIP

Danielson and Fields,

HOUSE SPONSORSHIP

Michaelson Jenet and Soper,

Senate Committees

Judiciary
Appropriations

House Committees

A BILL FOR AN ACT

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

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill creates a statutory cause of action for a victim of sexual misconduct when the victim was a minor against the actor who committed the sexual misconduct and against an organization that operates or manages a youth program if the sexual misconduct occurred while the victim was participating in a youth program.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

The victim may bring the claim against the organization if the organization knew or should have known of a risk of sexual misconduct against minors participating in the program and the organization did not take action to address the risks or warn participants of the risk. The victim may bring a claim against a public employee or public entity that operates a youth program, including an educational entity operating an educational program or a district preschool program.

The cause of action applies retroactively and is available to a victim of sexual misconduct that occurred before, on, or after January 1, 2022. A person may not waive the right to bring a civil action, and any purported waiver is void as against public policy.

A court or jury shall not allocate any damages awarded in the civil action in any proportion against the victim of the sexual misconduct. A victim may be awarded treble damages under certain circumstances.

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

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

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

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

16 (c) Child sexual abuse creates financial burdens for victims,
17 including costs associated with health care, child welfare, special

1 education, short- and long-term physical and mental health treatment,
2 violence and crime, suicide, productivity, and loss of future wages.

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

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

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

14 (3) The general assembly further finds and declares:

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

24 (b) When victims of child sexual abuse do report, a high
25 percentage of them delay disclosure well into adulthood, after the
26 expiration of the time permitted to file civil actions against those
27 responsible for the abuse; and

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

3 (4) Therefore, the general assembly determines that:

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

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

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

20 **SECTION 2.** In Colorado Revised Statutes, **add** part 12 to article
21 20 of title 13 as follows:

22 PART 12

23 ACTIONS FOR SEXUAL MISCONDUCT AGAINST MINORS

24 **13-20-1201. Definitions.** AS USED IN THIS PART 12, UNLESS THE
25 CONTEXT OTHERWISE REQUIRES:

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

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

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

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

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

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

16 (b) "MANAGING ORGANIZATION" INCLUDES AN EDUCATIONAL
17 ENTITY OPERATING AN EDUCATIONAL PROGRAM.

18 (4) "MINOR" MEANS A PERSON YOUNGER THAN EIGHTEEN YEARS
19 OF AGE.

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

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

25 (7) "SEXUAL MISCONDUCT" MEANS ANY CONDUCT THAT IS
26 ENGAGED IN FOR THE PURPOSE OF THE SEXUAL AROUSAL, GRATIFICATION,
27 OR ABUSE OF ANY PERSON, AND THAT CONSTITUTES ANY OF THE

1 FOLLOWING:

2 (a) AN OFFENSE DESCRIBED IN PART 3 OR 4 OF ARTICLE 3 OF TITLE
3 18 OR IN ARTICLE 6 OR 7 OF TITLE 18;

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

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

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

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

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

16 (8) "YOUTH-RELATED ACTIVITY OR PROGRAM" MEANS AN EVENT,
17 PROGRAM, SERVICE, OR ANY OTHER ENTERPRISE THAT INVOLVES
18 PARTICIPATION BY A MINOR, INCLUDING BUT NOT LIMITED TO YOUTH
19 PROGRAMS, EDUCATIONAL PROGRAMS, AND RELIGIOUS ACTIVITIES
20 OPERATED BY AN INDIVIDUAL OR ORGANIZATION THAT PROVIDES
21 ACTIVITIES, SERVICES, TRIPS, OR EVENTS FOR MINORS WITH ADULTS WHO
22 ARE PLACED IN POSITIONS OF RESPONSIBILITY, TRUST, OR SUPERVISION
23 OVER THE PARTICIPATING MINORS, REGARDLESS OF THE PARTICULAR
24 LOCATION, LENGTH, GOALS, OR FORMAT OF THE ACTIVITIES, SERVICES,
25 TRIPS, OR EVENTS. "YOUTH-RELATED ACTIVITY OR PROGRAM" INCLUDES
26 TRANSPORTATION, LODGING, AND UNSCHEDULED ACTIVITIES PROVIDED IN
27 RELATION TO ANY ACTIVITIES, SERVICES, TRIPS, OR EVENTS WHEN A

1 YOUTH-RELATED ACTIVITY OR PROGRAM EMPLOYEE OR VOLUNTEER IS
2 RESPONSIBLE FOR THE SUPERVISION OF THE PARTICIPATING MINORS.
3 "YOUTH-RELATED ACTIVITY OR PROGRAM" ALSO INCLUDES AN
4 EDUCATIONAL PROGRAM OPERATED BY AN EDUCATIONAL ENTITY FOR
5 STUDENTS IN KINDERGARTEN THROUGH TWELFTH GRADE, OR ANY PORTION
6 THEREOF; A DISTRICT PRESCHOOL PROGRAM, AS DESCRIBED IN SECTION
7 22-28-103, UNDER THE SUPERVISION OF THE EDUCATIONAL ENTITY OR ITS
8 EMPLOYEES OR AGENTS; OR BEFORE AND AFTER SCHOOL ACTIVITIES
9 CONDUCTED UNDER THE SUPERVISION OF THE EDUCATIONAL ENTITY, OR
10 ITS EMPLOYEES OR AGENTS.

11 **13-20-1202. Civil cause of action for sexual misconduct against**

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

- 15 (I) AN ACTOR WHO COMMITTED THE SEXUAL MISCONDUCT; AND
- 16 (II) A MANAGING ORGANIZATION THAT KNEW OR SHOULD HAVE
17 KNOWN THAT AN ACTOR OR YOUTH-RELATED ACTIVITY OR PROGRAM
18 POSED A RISK OF SEXUAL MISCONDUCT AGAINST A MINOR, AS DESCRIBED
19 IN SUBSECTION (2) OF THIS SECTION.

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

25 (2) A MANAGING ORGANIZATION IS LIABLE TO A VICTIM PURSUANT
26 TO THIS SECTION WHEN THE SEXUAL MISCONDUCT OCCURRED WHILE THE
27 VICTIM WAS PARTICIPATING IN THE YOUTH-RELATED ACTIVITY OR

1 PROGRAM OPERATED OR MANAGED BY THE ORGANIZATION AND:

2 (a) THE ORGANIZATION KNEW OR SHOULD HAVE KNOWN THAT A
3 SPECIFIC ACTOR WHO IS AN EMPLOYEE OR VOLUNTEER OF THE
4 ORGANIZATION POSED A RISK OF SEXUAL MISCONDUCT AGAINST MINORS
5 AND THE ORGANIZATION DID NOT TAKE ANY ACTION TO MONITOR OR
6 SUPERVISE THE ACTOR WHEN THE ACTOR WAS IN CONTACT WITH A MINOR
7 OR EXCLUDE THE ACTOR FROM CONTACT WITH MINORS; OR

8 (b) THE ORGANIZATION KNEW OR SHOULD HAVE KNOWN THAT A
9 YOUTH-RELATED ACTIVITY OR PROGRAM POSED A RISK OF SEXUAL
10 MISCONDUCT AGAINST A MINOR AND THE ORGANIZATION MADE NO EFFORT
11 TO CHANGE THE YOUTH-RELATED ACTIVITY OR PROGRAM TO REASONABLY
12 ADDRESS THE SPECIFIC RISK OR TO REASONABLY WARN PARTICIPANTS AND
13 THEIR FAMILIES OF THE RISK OF THE TYPES OF SEXUAL MISCONDUCT OR
14 SITUATIONS INVOLVING SEXUAL MISCONDUCT THAT HAVE OCCURRED IN
15 THE PROGRAM.

16 (3) (a) FOR THE PURPOSE OF SUBSECTION (2)(a) OF THIS SECTION,
17 A MANAGING ORGANIZATION KNEW OR SHOULD HAVE KNOWN THAT A
18 SPECIFIC ACTOR POSED A RISK OF SEXUAL MISCONDUCT AGAINST A MINOR
19 IF THE ORGANIZATION RECEIVED ANY PRIOR REPORTS OF THE ACTOR'S
20 SEXUAL MISCONDUCT TOWARD ANY PERSON OR THE ORGANIZATION WAS
21 AWARE OF, OR REASONABLY SHOULD HAVE BEEN AWARE OF, THE
22 PREVALENCE AND SIMILARITY OF CIRCUMSTANCES SURROUNDING PRIOR
23 INSTANCES OF THE ACTOR'S SEXUAL ACTIVITY WITH, OR EXPLOITATION OF,
24 A MINOR.

25 (b) FOR THE PURPOSE OF SUBSECTION (2)(b) OF THIS SECTION, A
26 MANAGING ORGANIZATION KNEW OR SHOULD HAVE KNOWN THAT A
27 YOUTH-RELATED ACTIVITY OR PROGRAM POSED A RISK OF SEXUAL

1 MISCONDUCT TO A MINOR IF:

2 (I) THE ORGANIZATION RECEIVED PRIOR REPORTS OF SEXUAL
3 MISCONDUCT AGAINST ANY MINOR BY, OR FACILITATED BY, AN ADULT
4 INVOLVED IN THE YOUTH-RELATED ACTIVITY OR PROGRAM AND THE PRIOR
5 SEXUAL MISCONDUCT OCCURRED UNDER CIRCUMSTANCES REASONABLY
6 SIMILAR TO THOSE OF THE MINOR BRINGING THE CLAIM; OR

7 (II) THE ORGANIZATION WAS AWARE OF A RISK OF SEXUAL
8 MISCONDUCT POSED BY THE YOUTH-RELATED ACTIVITY OR PROGRAM DUE
9 TO THE PREVALENCE AND SIMILARITY OF CIRCUMSTANCES SURROUNDING
10 PRIOR INSTANCES OF SEXUAL MISCONDUCT AGAINST A MINOR BY AN
11 ADULT WITHIN THE ACTIVITY OR PROGRAM. IF A MANAGING
12 ORGANIZATION OPERATES A YOUTH-RELATED ACTIVITY OR PROGRAM IN
13 ANOTHER STATE, THE CIRCUMSTANCES SURROUNDING SEXUAL
14 MISCONDUCT AGAINST A MINOR THAT OCCURRED IN AN OUT-OF-STATE
15 YOUTH-RELATED ACTIVITY OR PROGRAM IS A FACTOR IN DETERMINING
16 WHETHER THE ORGANIZATION REASONABLY SHOULD HAVE BEEN AWARE
17 OF A RISK OF SEXUAL MISCONDUCT POSED BY THE YOUTH-RELATED
18 ACTIVITY OR PROGRAM OPERATED IN COLORADO.

19 (4) IN CIRCUMSTANCES IN WHICH A MANAGING ORGANIZATION
20 TOOK ANY REMEDIAL ACTION, THE ORGANIZATION IS NOT LIABLE FOR
21 DAMAGES PURSUANT TO THIS PART 12 IF:

22 (a) THE ORGANIZATION'S ACTION WAS REASONABLY ADEQUATE TO
23 ADDRESS THE RISK OF SEXUAL MISCONDUCT AGAINST A MINOR;

24 (b) THE ORGANIZATION CONDUCTED AN EVALUATION TO
25 DETERMINE IF THE INITIAL REMEDIAL ACTION WAS EFFECTIVE IN
26 CURTAILING RISK FROM THE ACTOR OR YOUTH-RELATED ACTIVITY OR
27 PROGRAM; OR

1 (c) ANY WARNINGS GIVEN BY THE ORGANIZATION WERE
2 REASONABLY ADEQUATE TO APPRISE PARTICIPANTS AND THEIR FAMILIES
3 OF THE RISKS OF SEXUAL MISCONDUCT AGAINST A MINOR IN THE
4 YOUTH-RELATED ACTIVITY OR PROGRAM.

5 **13-20-1203. Retroactive application - no limitation on action.**

6 (1) A PERSON WHO WAS THE VICTIM OF SEXUAL MISCONDUCT THAT
7 OCCURRED WHEN THE VICTIM WAS A MINOR AND THAT OCCURRED BEFORE,
8 ON, OR AFTER JANUARY 1, 2022, MAY BRING AN ACTION PURSUANT TO
9 THIS PART 12.

10 (2) NOTWITHSTANDING ANY PROVISION OF LAW, AN ACTION
11 BROUGHT PURSUANT TO THIS PART 12 MAY BE BROUGHT AT ANY TIME
12 WITHOUT LIMITATION.

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

17 **13-20-1205. No contributory negligence - interest on damages.**

18 (1) NOTWITHSTANDING SECTIONS 13-21-111 AND 13-21-111.5, A COURT
19 OR JURY SHALL NOT ALLOCATE ANY DAMAGES AWARDED IN AN ACTION
20 BROUGHT PURSUANT TO THIS PART 12 IN ANY PROPORTION AGAINST A
21 VICTIM OF SEXUAL MISCONDUCT.

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

26 **13-20-1206. Attorney fees.** SECTION 13-17-201, WHICH REQUIRES
27 AN AWARD OF ATTORNEY FEES TO DEFENDANTS IN CERTAIN ACTIONS

1 DISMISSED PRIOR TO TRIAL, DOES NOT APPLY TO AN ACTION BROUGHT
2 PURSUANT TO THIS PART 12.

3 **13-20-1207. Applicability of part to public entities and public**
4 **employees - no duty to indemnify.** (1) (a) NOTWITHSTANDING SECTIONS
5 22-12-104, 24-10-105, 24-10-106, 24-10-108, AND 24-10-118, OR ANY
6 OTHER STATE LAW THAT PROHIBITS CIVIL ACTIONS AGAINST A PUBLIC
7 EMPLOYEE OR PUBLIC ENTITY, A PERSON MAY BRING A CLAIM ALLEGING
8 LIABILITY FOR INJURIES ARISING FROM SEXUAL MISCONDUCT PURSUANT TO
9 THIS PART 12 AGAINST A PUBLIC EMPLOYEE OR PUBLIC ENTITY.

10 (b) NOTWITHSTANDING SECTIONS 22-12-104 (3), 24-10-109 (1),
11 AND 24-10-118 (1)(a), REQUIRING THE FILING OF A WRITTEN NOTICE, A
12 PERSON WHO BRINGS AN ACTION PURSUANT TO THIS PART 12 IS NOT
13 REQUIRED TO FILE WRITTEN NOTICE AS A JURISDICTIONAL PREREQUISITE
14 TO THE ACTION.

15 (c) THE MAXIMUM AMOUNTS THAT MAY BE RECOVERED FROM
16 PUBLIC EMPLOYEES OR PUBLIC ENTITIES DESCRIBED IN SECTION 24-10-114
17 APPLY TO A CLAIM BROUGHT AGAINST A PUBLIC EMPLOYEE OR PUBLIC
18 ENTITY PURSUANT TO THIS PART 12.

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

25 **SECTION 3. Appropriation.** (1) For the 2021-22 state fiscal
26 year, \$1,198,355 is appropriated to the department of personnel. This
27 appropriation is from the general fund. To implement this act, the

1 department may use this appropriation as follows:

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

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

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

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

16 **SECTION 4. Safety clause.** The general assembly hereby finds,
17 determines, and declares that this act is necessary for the immediate
18 preservation of the public peace, health, or safety.