

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

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 21-0017.02 Conrad Imel x2313

SENATE BILL 21-088

SENATE SPONSORSHIP

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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.

HOUSE
Amended 2nd Reading
June 7, 2021

SENATE
3rd Reading Unamended
May 13, 2021

SENATE
Amended 2nd Reading
May 12, 2021

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

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

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

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

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

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

19
20 (5) "MINOR" MEANS A PERSON YOUNGER THAN EIGHTEEN YEARS
21 OF AGE.

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

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

27 (8) "SEXUAL MISCONDUCT" MEANS ANY CONDUCT THAT IS

1 ENGAGED IN FOR THE PURPOSE OF THE SEXUAL AROUSAL, GRATIFICATION,
2 OR ABUSE OF ANY PERSON, AND THAT CONSTITUTES ANY OF THE
3 FOLLOWING:

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

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

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

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

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

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

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

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

14 **13-20-1202. Civil cause of action for sexual misconduct against**

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

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

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

25 (2) THE CIVIL ACTION DESCRIBED IN THIS SECTION IS IN ADDITION
26 TO, AND DOES NOT LIMIT OR AFFECT, OTHER ACTIONS AVAILABLE BY
27 STATUTE OR COMMON LAW, BEFORE OR AFTER JANUARY 1, 2022, AND

1 MUST BE PLEADED AS A SEPARATE CLAIM FOR RELIEF IF A COMPLAINT ALSO
2 ASSERTS A COMMON LAW CLAIM FOR RELIEF.

3

4 **13-20-1203. Limitation on action - retroactive application.** (1)

5 NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A PERSON WHO WAS
6 THE VICTIM OF SEXUAL MISCONDUCT THAT OCCURRED WHEN THE VICTIM
7 WAS A MINOR AND THAT OCCURRED ON OR AFTER JANUARY 1, 2022, MAY
8 BRING AN ACTION PURSUANT TO THIS PART 12 AT ANY TIME WITHOUT
9 LIMITATION.

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

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

19 **13-20-1205. No contributory negligence - interest on damages**
20 **- limitation on damages.** (1) NOTWITHSTANDING SECTIONS 13-21-111
21 AND 13-21-111.5, A COURT OR JURY SHALL NOT ALLOCATE ANY DAMAGES
22 AWARDED IN AN ACTION BROUGHT PURSUANT TO THIS PART 12 IN ANY
23 PROPORTION AGAINST A VICTIM OF SEXUAL MISCONDUCT.

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

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

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

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

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

21 **13-20-1207. Applicability of part to public entities and public**
22 **employees - damages - no duty to indemnify.**

23 (1) (a) NOTWITHSTANDING SECTIONS 22-12-104, 24-10-105, 24-10-106,
24 24-10-108, AND 24-10-118, OR ANY OTHER STATE LAW THAT PROHIBITS
25 CIVIL ACTIONS AGAINST A PUBLIC EMPLOYEE OR PUBLIC ENTITY, A PERSON
26 MAY BRING A CLAIM ALLEGING LIABILITY FOR INJURIES ARISING FROM
27 SEXUAL MISCONDUCT PURSUANT TO THIS PART 12 AGAINST A PUBLIC

1 EMPLOYEE OR PUBLIC ENTITY.

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

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

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

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

19 **24-10-106. Immunity and partial waiver.** (1) A public entity
20 shall be immune from liability in all claims for injury which lie in tort or
21 could lie in tort regardless of whether that may be the type of action or the
22 form of relief chosen by the claimant except as provided otherwise in this
23 section. Sovereign immunity is waived by a public entity in an action for
24 injuries resulting from:

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

26 (j) AN ACTION BROUGHT PURSUANT TO PART 12 OF ARTICLE 20 OF
27 TITLE 13, WHETHER THE CONDUCT ALLEGED OCCURRED BEFORE, ON, OR

1 AFTER JANUARY 1, 2022.

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

4 24-10-109. Notice required - contents - to whom given -
5 limitations. (7) THE NOTICE REQUIRED PURSUANT TO THIS SECTION DOES
6 NOT APPLY TO CLAIMS MADE PURSUANT TO THE WAIVER OF
7 GOVERNMENTAL IMMUNITY DESCRIBED IN SECTION 24-10-106 (1)(j) AND
8 ANY ACTION BROUGHT PURSUANT TO PART 12 OF ARTICLE 20 OF TITLE 13
9 THERE TO IS NOT BARRED UNDER THIS SECTION.

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

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

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

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

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

1 **SECTION 6. Effective date.** This act takes effect January 1,
2 2022.

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