

Colorado Legislative Council Staff Fiscal Note

**STATE and LOCAL
REVISED FISCAL IMPACT**

(replaces fiscal note dated April 30, 2015)

Drafting Number: LLS 15-0861	Date: May 1, 2015
Prime Sponsor(s): Sen. Cadman; Scheffel Rep. Hullinghorst; Duran	Bill Status: House Third Reading
	Fiscal Analyst: Alex Schatz (303-866-4375)

BILL TOPIC: WAIVE GOV IMMUNITY FOR ACTS OF SCHOOL VIOLENCE

Fiscal Impact Summary*	FY 2014-2015 <i>current year</i>	FY 2015-2016	FY 2016-2017
State Revenue			
State Expenditures	Increased workload and potential costs. See State Expenditures section.		
FTE Position Change			
Appropriation Required: None.			

* This summary shows changes from current law under the bill for each fiscal year.

Summary of Legislation

This **reengrossed** bill, **as amended by the House Judiciary Committee**, allows school districts and charter schools to be held liable if they fail to exercise reasonable care in protecting students, faculty, or staff from reasonably foreseeable acts of violence while at the school or engaged in school activities. The bill applies only to incidents of school violence that include certain crimes, consisting of murder, first degree assault, and sexual assault. While school districts and charter schools may be held liable under the bill, individual teachers, administrators, and other employees may be held liable only if their acts or omissions are willful and wanton.

The bill provides an exception to the Colorado Governmental Immunity Act (CGIA) when a school district or charter school is negligent in this duty. In such a case of negligence, a court may award up to \$350,000 for attorney fees and costs associated with the case, in addition to damages as allowed by the CGIA. However, expulsion or suspension on a student does not by itself support a finding of negligence.

A plaintiff is able to compel the judicial discovery process, including disclosure of relevant school records, even if the school district or charter school does not answer the legal complaint in a way that would normally trigger the discovery process.

The bill concerns incidents of school violence that occurred on or after the effective date of the bill. For incidents that occur before July 1, 2017, the bill allows discovery, but prohibits declaratory judgment or the award of damages.

Background

Scope of the CGIA. Under current law, the Colorado Governmental Immunity Act (CGIA) waives the sovereign immunity of the state, its agencies, local governments, and certain other public entities, including school districts, for certain types of claims. For claims of negligence that do not fit within the waiver provisions of the CGIA, the doctrine of sovereign immunity generally bars these claims. However, a school district or other public entity may resolve to waive its defense under the CGIA.

Under the CGIA, a party may seek monetary damages in a legal action if injured due the negligence of the school district or other government entity where certain dangerous conditions have arisen. The CGIA caps damage recoveries at \$350,000 for the claim of an individual party, and a total recovery of \$990,000 for any single occurrence.

School district liability insurance. The CGIA requires school districts to maintain an insurance reserve fund for liability purposes. As authorized by state law, many school districts and charter schools in the state obtain insurance through the Colorado School Districts Self Insurance Pool (CDSIP). Other districts participate in smaller insurance pools or independently maintain the required insurance reserve.

State Expenditures

Upon taking effect in the current fiscal year (FY 2014-15), the bill increases the workload of state trial courts.

Assumptions. Operational costs of public schools are budgeted by the applicable school board and are not obligations of the state. Liability for school violence under the bill does not affect the School Finance Act, the Colorado Department of Education (CDE) or the Charter School Institute. Defendants in cases brought under the bill are local school districts, charter schools, and their employees.

Judicial Department. State trial courts will experience an increase in workload when claims are filed under the bill. The bill permits negligence claims that currently result in dismissal under the CGIA to proceed against school districts, charter schools, and school employees. In addition, each new case is likely to involve significant procedural workload, including the discovery process without regard to potential pretrial resolution of the case.

The overall, cumulative increase in state court workload resulting from the bill cannot be estimated. However, given the limited applicability of the bill to incidents of school violence involving serious violent crime, the fiscal note concludes that state trial courts will process a relatively small number of new cases. No new appropriations are required to implement the bill.

School District Impact

The bill increases school district and charter school costs for liability and risk management, and increases administrative costs to implement policies and practices related to threats of school violence.

School district and charter school premiums (or similar risk pool payments) for liability insurance, as provided by CDSIP and other insurance pools, are expected to increase by up to 10 to 15 percent. Based on the delayed availability of damages (until after July 1, 2017), significant cost increases associated with liability may also be delayed to some degree. However, liability insurance is intended to cover the total cost of legal defense, including attorney fees and court costs, in addition to damages. Also, in addition to increased premiums, school districts may also experience increased costs for deductibles or other costs not covered by insurance.

Administrative changes may be appropriate to mitigate potential school liability, with associated costs and workload impacts. For example, costs may increase to train staff, assess threats, and hire security or mental health professionals. All such risk management strategies are likely to require an initial period of administrative and legal examination, and FY 2015-16 and FY 2016-17 administrative efforts are assumed to create a net cost for school districts and charter schools.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature, and applies to claims resulting from an incident of school violence on or after the effective date.

State and Local Government Contacts

Judicial Department
District Attorneys
Municipalities
Law

Education
Local Affairs
Sheriffs

School Districts
Public Safety
Counties