

**UPDATED SUMMARY
SENATE BILL 15-213**

First Regular Session - Seventieth Colorado General Assembly

This summary applies to the reengrossed version of this bill as introduced in the second house. It does not reflect any amendments that may be subsequently adopted. This summary reflects only the main points of the legislation.

The bill amends the "Colorado Governmental Immunity Act" (CGIA) to recognize that a duty of reasonable care exists with respect to public school districts, charter schools, and their employees to exercise reasonable care to protect students, faculty, staff, and others from harm that is reasonably foreseeable while such students, faculty, staff, and others are within the school facilities or are participating in school-sponsored activities.

The bill also amends the CGIA to waive sovereign immunity in connection with claims against public school districts and charter schools in an action for serious bodily injury or death resulting from an incident of school violence that occurs on property of a school or during school-sponsored activities on or after ~~January 1, 2013~~ *the effective date of the bill.*

This new statute establishing the duty of reasonable care upon public schools and charter schools and waiving governmental immunity for claims involving an incident of school violence is named the "Claire Davis School Safety Act".

For purposes of the bill, "serious bodily injury" means a bodily injury that, either at the time of the actual injury or at a later time, involves a substantial risk of death, a substantial risk of serious permanent disfigurement, or a substantial risk of protracted loss or impairment of the function of any part or organ of the body. *"Incident of school violence" means the person engaged in a crime of violence (committed, conspired, or attempted to commit murder, first degree assault, or sexual assault) and that action caused serious bodily injury or death to another person.*

An employee of a public school, school district, or a charter school is not subject to suit under the bill in his or her own individual capacity unless the employee's actions or omissions are willful and wanton. The bill clarifies that the provisions of the "Teacher and School Administrator Protection Act" do not apply to claims brought against a school district or charter school.

A public school, school district, or charter school shall not be found negligent under this bill solely as a result of not expelling or suspending any student.

The maximum amount of damages that may be recovered from a school district or charter school in an action brought under the CGIA in a single occurrence is subject to the limits on damages under the CGIA (\$350,000 to one person in any single occurrence and \$900,000 for injuries to multiple persons in any single occurrence; except that no person may recover more than \$350,000); *except that no compensatory damages shall be awarded for an incident of school violence that occurs on or after the effective date of this section and on or before July 1, 2017. No damages are needed for the court to issue a declaratory judgment regarding the negligence of the public school, school district, or charter school.*

In such an action, the plaintiff is entitled to full discovery regarding the incident of school violence. ~~In addition, if there is an award of damages on behalf of plaintiffs, the court may also award to the plaintiff attorney fees and costs in an amount not to exceed \$350,000.~~

The bill specifies that it shall not be construed to constitute a waiver of sovereign immunity if the injury arises from any act, or failure to act, of an employee of a school district or a charter school if the act is the type of act for which the public employee would be or heretofore has been personally immune from liability.

The bill specifies that a public school district or charter school shall also have the same immunity as a public employee for any act or failure to act for which a public employee would be or heretofore has been personally immune from liability.

In order to promote vigorous discovery of events leading to an incident of violence in schools, the bill states that *an offer of judgment by a defendant may not make an offer of judgment prior to the completion of discovery is not deemed rejected if not accepted until 14 days after the completion of discovery, and the plaintiff is not liable for costs due to not accepting such an offer of judgment until 14 days after discovery has been completed.* The bill further states that if any defendant refuses to answer any complaint, if a default judgment is entered for failure to answer a complaint, or if a defendant confesses liability in an action brought against a public school district, the court shall allow full discovery upon request of the plaintiff.

The bill also precludes any rule of law imposing absolute or strict liability from being applied in any action against a public school employee for serious bodily injury or death suffered as a result of the breach of the duty of care established by the bill. No liability is to be imposed in any such action unless negligence is proven.

The bill makes conforming amendments. The bill *takes effect upon passage and applies to claims asserted against a school district or charter school resulting from an incident of school violence occurring on or after January 1, 2013 the effective date of the bill.*