

*Colorado Legislative Council Staff Fiscal Note*

**FINAL  
FISCAL NOTE**

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<b>Drafting Number:</b> LLS 15-0861	<b>Date:</b> July 13, 2015
<b>Prime Sponsor(s):</b> Sen. Cadman; Scheffel Rep. Hullinghorst; Duran	<b>Bill Status:</b> Signed into Law
	<b>Fiscal Analyst:</b> Alex Schatz (303-866-4375)

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**BILL TOPIC:** WAIVE GOV IMMUNITY FOR ACTS OF SCHOOL VIOLENCE

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

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

**Summary of Legislation**

This bill 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, or an attempt or conspiracy to commit one of these crimes. 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 of 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 was signed into law by the Governor and took effect on June 3, 2015, and applies to claims resulting from an incident of school violence on or after this effective date.

**State and Local Government Contacts**

Judicial Department  
District Attorneys  
Municipalities  
Law

Education  
Local Affairs  
Sheriffs

School Districts  
Public Safety  
Counties