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Nonpartisan Services for Colorado's Legislature

Revised Fiscal Note

(replaces fiscal note dated March 24, 2021)

Drafting Number: LLS 21-0017 Date: April 16, 2021
Prime Sponsors: Sen. Danielson; Fields Bill Status: Senate Appropriations
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Bill Topic: CHILD SEXUAL ABUSE ACCOUNTABILITY ACT

- Summary of Fiscal Impact:
[X] State Revenue [] TABOR Refund
[X] State Expenditure [X] Local Government
[] State Transfer [] Statutory Public Entity

This bill allows a victim of sexual misconduct as a minor to bring civil claims against the actor and the organization managing the youth program or youth-related activity where the misconduct occurred, including against public entities. Beginning in FY 2021-22, it will increase state and local revenue and expenditures on an ongoing basis.

Appropriation Summary: In FY 2021-22, this bill requires an appropriation of \$3.9 million to the Department of Personnel and Administration.

Fiscal Note Status: This fiscal note reflects the introduced bill, as amended by the Senate Judiciary Committee. It has been revised to reflect new assumptions on the number of cases arising under the bill and the potential damage awards that would be paid by the state.

Table 1
State Fiscal Impacts Under SB 21-088

Table with 4 columns: Category, Budget Year FY 2021-22, Out Year FY 2022-23, and Out Year FY 2026-27. Rows include Revenue, Expenditures (General Fund, Reappropriated Funds, Centrally Appropriated, Total Expenditures, Total FTE), Transfers, and TABOR Refund.

1 Costs in FY 2026-27 are shown to reflect ongoing costs under the bill after the initial wave of cases for conduct in prior years has been adjudicated. The actual timing of cases and associated costs may differ from this estimate.

2 Out year costs will be paid using a mix of General Fund and cash funds reappropriated to the DPA from affected state agencies.

Summary of Legislation

This bill allows a person who is a victim of sexual misconduct that occurred when the victim was a minor to bring a civil action for damages against the actor who committed the misconduct. If the misconduct occurred at a youth organization or youth-related activity, the victim may also bring a civil claim against the managing organization of the youth program or activity. The victim may bring a claim against a public employee or agent or public entity that operates a youth program or activity, overriding the Colorado Governmental Immunity Act's (CGIA's) restrictions or any other state law prohibiting the claim in these situations. The cause of action applies retroactively and there are no limitations on when a victim can bring an action.

Assumptions

It is unknown how many cases of sexual misconduct involving youths participating in state programs have occurred in the past, how many of these incidents will result in legal action against the state, and what the outcome of any litigation may be. To form an estimate of the minimum number of cases that may arise under the new cause of action created by the bill, the fiscal note uses the data and assumptions listed below.

New cases. On average, approximately 2 to 3 complaints of sexual misconduct involving Division of Youth Services (DYS) facilities are substantiated every year.¹ In addition to the 4,500 youth served in DYS facilities, at least 60,000 youth are served in other Colorado state programs and activities conducted by institutions of higher education and History Colorado. Applying the DYS incident rate to the entire population results in 55 cases per year; however, it is assumed that these other programs have a much lower incidence of sexual misconduct compared to a residential correctional program. Therefore, the fiscal note assumes between 5 and 15 new cases of sexual misconduct per year involving youth in state programs may arise on an ongoing basis. The fiscal note uses the lower end of this estimate, 5 cases per year, to project the potential costs under the bill.

Past cases. Assuming that sexual misconduct prior to enactment of this bill has occurred at the same rate as discussed above, there may be between 100 and 300 complaints of sexual misconduct involving youth in state programs over the previous 20 years. To project the potential costs, the fiscal note assumes that these past cases will come forward under the bill over the next five years. Using the lower end of this range results in an additional 20 cases per year for the next five years.

Total cases. Based on the assumptions above, the fiscal note assumes a total of 25 cases per year for the first five years, and 5 cases per year thereafter.

Damage awards and settlements. Of the 5 new cases per year, the fiscal note assumes that 3 cases will result in a damage award or settlement, with 2 awards equal to the maximum allowed under the current CGIA liability cap (\$387,000) and 1 award equal to half of the cap (\$193,500). For the 20 cases per year over the first five years arising from past misconduct, it is assumed that 6 cases will receive an award, with 3 awards equal to the cap and 3 awards at half of the cap.

¹ Department of Human Services. 2019 Prison Rape Elimination Annual Report. p. 7:
<https://drive.google.com/file/d/1jFHsmbJDgGWGlqjChSMly8rkYC6GKzml/view>

Legal services. For both current cases and past cases arising under the bill, it is assumed that 75 percent of cases will be complex and the Department of Personnel and Administration will require 500 hours of legal services provided by the Department of Law. The remaining 25 percent of cases are assumed to require less work (e.g., case dropped, dismissed, settled quickly) and require 200 hours of legal services per case.

State Revenue

To the extent the bill increases civil case filings, state revenue will increase beginning in FY 2021-22. This fee revenue is subject to TABOR.

State Expenditures

This bill will increase state expenditures in the Department of Personnel and Administration (DPA) by at least \$3.9 million per year from FY 2021-22 to FY 2025-26. In FY 2026-27 and in future years, it is assumed that costs will be at least \$1.2 million per year to handle ongoing cases arising after the initial wave of case filings from past years subsides. For the first year, it is assumed that these costs will be appropriated from the General Fund. In future years, funds will be reappropriated to the DPA from other state agencies based on the number of claims incurred, and costs will be paid using a mix of General Fund and cash funds from affected agencies. The bill will also increase workload in the Judicial Department. Costs are displayed in Table 2 and described below.

Table 2
Expenditures Under SB 21-088

	FY 2021-22	FY 2022-23	FY 2026-27
Department of Personnel and Administration			
Personal Services	\$52,967	\$57,782	\$57,782
Operating Expenses	\$1,350	\$1,350	\$1,350
Capital Outlay Costs	\$6,200	-	-
Damage Payments	\$2,709,000	\$2,709,000	\$967,500
Legal Services	\$1,137,838	\$1,137,838	\$233,948
Centrally Appropriated Costs ¹	\$13,792	\$15,228	\$15,228
FTE – Personal Services	0.9 FTE	1.0 FTE	1.0 FTE
FTE – Legal Services	5.9 FTE	5.9 FTE	1.2 FTE
Total Cost	\$3,927,398	\$3,921,198	\$1,275,808
Total FTE	6.8 FTE	6.9 FTE	2.2 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

Department of Personnel and Administration. This bill allows sexual misconduct victims to hold public entities, employees, and agents liable for damages, which will increase expenditures in the state's risk management program in the Department of Personnel and Administration. The state's actual costs will depend on a number of factors, including the number and complexity of cases, case outcomes, and the timing of cases and judgments. Potential costs include damage payments and legal services to defend the state in these cases, as outlined below.

- **Damage payments.** In the first five years, it is estimated that damage payments will be made in at least 9 cases and total at least \$2.7 million annually. After five years, ongoing damage awards are estimated to be about \$1.0 million per year for 3 cases. Damage payments are estimated to be paid out at the current CGIA liability cap of \$387,000, as described in the Assumptions section above. Annual adjustments to the cap may increase potential award amounts, but have not been estimated here. Plaintiff's attorney fees are included in the assumed damages payments.
- **Legal services.** The Department of Law will represent the state in these cases. Based on the assumed number of legal service hours per cases described in the Assumptions section, the DPA will have costs of \$1.1 million per year over the next five years, which will be reappropriated to the Department of Law. The Department of Law requires 5.9 FTE for this work. In future years after the initial influx of cases, legal services costs are expected to decrease to about \$234,000 per year.
- **Personal services.** Due to the large number of anticipated claims, DPA requires 1.0 FTE Administrator to manage and track claims, and facilitate related training matters. Standard capital outlay and operating expenses for this staff are shown in Table 2 above. First-year costs are prorated for the General Fund pay date shift.
- **Self-insured retention costs.** In addition, the DPA is expected to see an increase in its self-insured retention costs, additional limits on claims of this type, and potential increases in premium costs. These costs will be addressed through the annual budget process and borne by all state agencies participating in the risk liability program.
- **Other factors.** Depending on the number of cases annually, costs may vary from year to year or be spread out over a number of years. In addition, since this bill applies retroactively, this fiscal note is projecting an initial spike in claims in the first five years and costs are expected to decrease over time; however, the exact timing of cases arising from past misconduct may be different than this estimate. To the extent that greater liability encourages agencies to take additional steps to prevent instances of sexual misconduct by employees and others who interact with children in state-run programs, costs may also decrease relative to this estimate over time. It is assumed that ongoing costs will be addressed through the annual budget process once more information on cases, costs, and damage awards is known.

Higher cost scenario. As discussed in the Assumptions section above, the fiscal note estimates a potential range of cases that may arise under the bill, and the cost estimate above is based on the low-end of that range. For informational purposes, a cost estimate for the high-end of the projected cases range is provided here. If 15 cases occur per year on an ongoing basis, and past cases over the previous 20 years occurred at the same rate (300 total past cases, which are assumed to result in an additional 60 cases per year over five years), and holding all other assumptions constant, 75 current

and past cases would result in costs of approximately \$11.0 million in the initial years, including damage awards of \$7.5 million and legal service costs of \$3.4 million. Should such costs occur, it is assumed that additional funding for the Risk Management Program in DPA and the Department of Law would be requested through the annual budget process.

Judicial Department. To the extent that more civil cases are filed, workload for the trial courts will increase. This workload increase can be accomplished within existing resources.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be \$13,792 in FY 2021-22 and \$15,228 per year thereafter.

TABOR refunds. The bill may increase state revenue subject to TABOR. For FY 2022-23, the March 2021 LCS forecast projects revenue to fall short of the TABOR limit by \$28.6 million, or 0.2 percent of the limit. If actual revenue exceeds the limit, the bill will increase the amount required to be refunded to taxpayers from the General Fund in FY 2023-24.

Local Government

Similar to the state, to the extent that there is an increase in the number of claims of sexual misconduct relating to local government employees, agents, and entities, costs and workload may increase for local governments. Considering the large amount of youth programs and activities run by local government entities, costs for local governments may be greater than those for the state. Actual costs for a particular local government will vary based on the number of cases filed within that jurisdiction.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

For FY 2021-22, this bill requires a General Fund appropriation of \$3,907,355 and 0.9 FTE to the Department of Personnel and Administration, of which \$1,137,838 and 5.9 FTE is reappropriated to the Department of Law.

Departmental Difference

The DPA assumes it will require an appropriation of \$13.7 million per year beginning in FY 2021-22 to pay litigation and settlement costs for an estimated 55 cases per year in the first 5 years. This amount applies the Division of Youth Services incident rate to the total youth population served by the state. The fiscal note assumes that other state youth programs have a lower incidence of sexual misconduct compared to a residential correctional program and, therefore, reflects the lower range of cases, with 5 new cases and 20 past cases of sexual misconduct per year in the next 5 years.

State and Local Government Contacts

Counties
Higher Education
Law
Personnel

District Attorneys
Information Technology
Municipalities

Education
Judicial
Natural Resources