FAQ: 2021 Child Sexual Abuse Accountability Act – Overview of the Act and Related Issues of Governmental Immunity and Statute of Limitations
March 25, 2022

The SDA prepared this overview of Senate Bill 21-088, Child Sexual Abuse Accountability Act (SB21-088), and the related context of the Colorado Governmental Immunity Act (CGIA) and statute of limitations on related claims in order to provide information to SDA Members. Please note: this information is not substitute for legal advice. The SDA encourages its Members to work with their legal counsel on related questions or advice.

For additional information, or to reference the language of SB21-088, review the materials on the bill information page.

Question	Answer
What kind of entities are included in SB21-088?	The definition of "managing organization" is broad, and includes any public entities or organizations that operate "youth-related activit[ies] or program[s]." C.R.S. § 13-20-1201(4).
Is there a threshold or specific type of programming or work with kids that applies?	No, there is no threshold or specific types of programming for kids. The definition of "youth-related activity or program" is very broad: *"Youth-related activity or program" means an event, program, service, or any other enterprise that involves participation by a minor, including but not limited to youth programs, educational programs, and religious activities operated by an individual or organization that provides activities, services, trips, or events for minors with adults who are placed in positions of responsibility, trust, or supervision over the participating minors, regardless of the particular location, length, goals, or format of the activities, services, trips, or events. "Youth-related activity or program" includes transportation, lodging, and unscheduled activities provided in relation to any activities, services, trips, or events when a youth-related activity or program employee, agent, or volunteer is responsible for the supervision of the participating minors. "Youth-related activity or program" also includes an educational program operated by an educational entity for students in kindergarten through twelfth grade, or any portion thereof; a district preschool program, as described in section 22-28-103, under the supervision of the educational entity or its employees or agents; or before- and after-school activities conducted under the supervision of the educational entity or its employees or agents.* C.R.S. § 13-20-1201(9).
Does the CGIA limit liability?	Yes, but there may be liability for a claim against a public entity as a managing organization that provides youth-related activities. The CGIA (see below) does not prohibit the claim, and the claim may be filed long after the event(s); however, but the CGIA damages caps apply.
Are there best practices to implement SB21-088?	Yes. See below.

Overview: SB21-088, CGIA, Statute of Limitation

I. Provisions of SB21-088

A. Overview of SB21-088
- SB21-088 took effect on January 1, 2022, to address the damage that sexual abuse and misconduct has on children by creating a statutory tort allowing survivors to bring a civil action against the <u>actor</u> who committed the misconduct.
- However, if the misconduct occurred at a <u>managing organization</u> (including public entities, like special districts) operating youth-related activities or programs, the victim may also bring a civil claim against the managing organization of the youth program or activity.
- In SB21-088. civil tort liability is extended to an employer or institution defined as a "managing organization" <u>knew or should have known</u> that the actor, or associated youth-related activity or program, posed a risk of sexual misconduct.

B. Definitions in SB21-088
- "Managing organization" is a public or private entity that operates a youth-related activity or program which is operated by adults (employees or volunteers) that it hires, for whom it sets standards, or for whom the organization represents that screening has been done.
- "Youth-related activity or program" is an event, program, service, or any other enterprise that involves participation by a minor. *The definition continues and contemplates all manner and conditions of programming involving minors.*

C. Specific Provisions of SB21-088 of Note
- The new statutory tort in SB21-088 is incorporated as a very broad waiver of governmental immunity.
- No damages may be allocated against a victim of sexual misconduct (no contributory negligence).
- While the CGIA damage caps apply, the 182-day notice period does not.
- The new statutory tort applies retroactively and victims whose assault occurred between January 1, 1960 and January 1, 2022 may bring a cause of action before January 1, 2025.
- Please note on the retroactive effective date that enacted legislation is presumed to be constitutional; however, testimony was offered by the opponents during the legislative process on the constitutional limitation on retrospective laws impacting vested rights.

II. Governmental Immunity

A. Historical Context
- Common law: sovereign immunity protected the federal, state, and local governments, and their employees, from lawsuits, particularly suits based in *tort*.
- *Torts* are a kind of legal claim for injuries or damages stemming from another's wrongful actions – negligence, for example, is a well-known type of tort.
- 20th Century: statutory governmental immunity replaces common law sovereign immunity, allowing some types tort suits to proceed against the government.
- 1972: Colorado Governmental Immunity Act (CGIA) replaced sovereign immunity when the statutes became law. Under the CGIA, the default is that public entities have governmental immunity from tort liability. The CGIA is in Article 10 of Title 24 of the Colorado Revised Statutes (C.R.S.).

B. Waivers of Governmental Immunity, Allows Claims to Proceed in 7 Areas
The CGIA waives governmental immunity for injuries or damage resulting from wrongful actions in the following 7 contexts:

The operation of:
1. a publicly owned or leased motor vehicle, except emergency vehicles;
2. any public hospital, correctional facility or jail; or
3. any public water, gas, sanitation, electrical, power or swimming facility.

A dangerous condition of :
4. any public building;
5. a public highway, road, street or sidewalk; or
6. any public facility located in any park or recreation area or any public water, gas, sanitation, electrical, power, or swimming facility.

AND…

7. As of January 1, 2022, an action brought pursuant to the new Civil Action for Sexual Misconduct Against a Minor Law (SB21-088), whether the conduct alleged occurred before, on, or after January 1, 2022.

C. Other CGIA Limitations on Tort Claims
- Timely notice: a person claiming to have suffered an injury/damage by a public entity must file a written notice with the entity within 182 days after discovering it.
- Damage limits/caps: the CGIA also includes maximum liability limits for public entities:
    - $424,000 for injury to one person in any single occurrence, and
    - $1,195,000 for injury to multiple persons in a single occurrence, except that no one person shall recover in excess of $424,000.
    - These limits are adjusted for inflation every 4 years.

III. Statute of Limitation
- Many states have amended the statute of limitations for civil suits against perpetrators or institutions for damages from the sexual abuse of children because these time limits have prevented survivors from filing claims when they reach adulthood.
- Senate Bill 21-073 amended Colorado's Statute of Limitation for these claims, removing the 6-year limitation.

IV. General Concept: Liability of and Coverage for Employers and Institutions
- The extension of liability to an employer or institution for an individual's tortious or criminal actions is sometimes called vicarious liability.
- An employer or institution may also be liable for its own actions relating to an individual's tortious or criminal conduct.
- Coverage for sexual misconduct and molestation liability of an employer or institution may be contemplated in a general liability or stand-alone coverage policy. Coverage may be excluded or limited.

What does my District need to do to implement SB21-088?

General Observations on Implementation:
- The greater the number of employees or hiring activities, the more due diligence necessary to comply.
- Involves both hiring and current employment practices.
- Updates become part of regular business and operation cycles.
- Documentation/recordkeeping is key.
- Use the resources and assistance available to you to save time and effort.
- Call on your experts and colleagues for help.
- Updating policies and procedures is good housekeeping.
- Implementing best practices can be easier with planning.

1st Steps to Implement (Big Picture):
- Take a fresh look at your kids' activities or programs which you offer, using some critical perspective to assess whether changes in procedures, supervision, or training may be needed.
- Ensure that your policies and practices relating to working with children apply both to employees and volunteers.
- Be prepared to maintain documents and records.
- Check in with your human resources and legal services professionals.

2nd Steps to Implement (Escalating and Resolving Reports):
- Must confer with your professionals (legal counsel, human resources).
- Include in training.
- Include in employee and volunteer manuals.
- Document problems or reports and resolution thereof.
- For any specific case, be aware of overlapping legal issues – and confer with your professionals.

3rd Steps to Implement (Updating *Training*):
- Establish procedures first.
- Who and when to train?
- Document training materials, keep records of who and when trained.

4th Steps to Implement (Updating On-Boarding *Processes*):
- Schedule training on your policies and procedures as part of the early on-boarding process.
- Review and update your employment manual.
- Review and update volunteer manual.
- Gather acknowledgment by signature.
- Keep records and documentation of the above.