

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

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BILL 1

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Committee\16-0317.wpd*

LLS NO. 16-0317.01 Richard Sweetman x 4333

INTERIM COMMITTEE BILL

School Safety and Youth in Crisis Committee

BILL TOPIC: "School Safety and School District Liability"

A BILL FOR AN ACT

101 **CONCERNING THE "CLAIRE DAVIS SCHOOL SAFETY ACT".**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

School Safety and Youth in Crisis Committee. The bill states that, with regard to the meaning of the terms "reasonableness", "foreseeability", and "negligence", nothing in the "Claire Davis School Safety Act" of 2015 is intended to contradict or alter any jurisprudence of the Colorado courts or the applicability of any jury instruction used in Colorado courts.

*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

For the purpose of determining whether a school district or charter school or an employee thereof has fulfilled the duty to exercise reasonable care to protect all students, faculty, and staff, any determination of the reasonableness of the acts or omissions of a school district or charter school or an employee thereof must include consideration of the school district or charter school's available resources.

The bill relocates defined terms and makes conforming amendments.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 24-10-106.3, **amend**
3 **(3); repeal (2); and add (11)** as follows:

4 **24-10-106.3. Immunity and partial waiver - claims for serious**
5 **bodily injury or death on public school property or at**
6 **school-sponsored events resulting from incidents of school violence**
7 **- short title - repeal. (2) Definitions.** ~~For purposes of this section, unless~~
8 ~~the context otherwise requires:~~

9 (a) ~~"Charter school" means a charter school or an institute charter~~
10 ~~school established pursuant to article 30.5 of title 22, C.R.S.~~

11 (b) ~~"Crime of violence" means that the person committed;~~
12 ~~conspired to commit, or attempted to commit one of the following crimes:~~

13 (I) ~~Murder;~~

14 (II) ~~First degree assault; or~~

15 (III) ~~A felony sexual assault, as defined in section 18-3-402,~~
16 ~~C.R.S.~~

17 (c) ~~"Incident of school violence" means an occurrence at a public~~
18 ~~school or public school-sponsored activity in which a person:~~

19 (I) ~~Engaged in a crime of violence; and~~

20 (II) ~~The actions described in subparagraph (I) of this paragraph (c)~~
21 ~~by that person caused serious bodily injury or death to any other person.~~

1 ~~(d) "Public school" has the same meaning as provided in section~~
2 ~~22-1-101, C.R.S., and includes a charter school or institute charter school.~~

3 ~~(e) "School district" means a school district organized pursuant to~~
4 ~~article 30 of title 22, C.R.S., and the charter school institute established~~
5 ~~pursuant to section 22-30.5-503, C.R.S.~~

6 ~~(f) "Serious bodily injury" means bodily injury that, either at the~~
7 ~~time of the actual injury or a later time, involves a substantial risk of~~
8 ~~death, a substantial risk of serious permanent disfigurement, or a~~
9 ~~substantial risk of protracted loss or impairment of the function of any~~
10 ~~part or organ of the body.~~

11 **(3) Recognition of duty of care.** All school districts and charter
12 schools and their employees in this state, have a duty to exercise
13 reasonable care to protect all students, faculty, and staff from harm from
14 acts committed by another person when the harm is reasonably
15 foreseeable, while such students, faculty, and staff are within the school
16 facilities or are participating in school-sponsored activities. FOR THE
17 PURPOSES OF THIS SECTION, ANY DETERMINATION OF THE
18 REASONABLENESS OF THE ACTS OR OMISSIONS OF A SCHOOL DISTRICT OR
19 CHARTER SCHOOL OR OF AN EMPLOYEE THEREOF MUST INCLUDE
20 CONSIDERATION OF THE SCHOOL DISTRICT'S OR CHARTER SCHOOL'S
21 AVAILABLE RESOURCES.

22 (11) WITH REGARD TO THE MEANING OF THE TERMS
23 "REASONABLENESS", "FORSEEABILITY", AND "NEGLIGENCE", NOTHING IN
24 THIS SECTION IS INTENDED TO CONTRADICT OR ALTER ANY JURISPRUDENCE
25 OF THE COLORADO COURTS OR THE APPLICABILITY OF ANY JURY
26 INSTRUCTION USED IN COLORADO COURTS.

27 **SECTION 2.** In Colorado Revised Statutes, **amend** 24-10-103 as

1 follows:

2 **24-10-103. Definitions.** As used in this article, unless the context
3 otherwise requires:

4 (1) "CHARTER SCHOOL" MEANS A CHARTER SCHOOL OR AN
5 INSTITUTE CHARTER SCHOOL ESTABLISHED PURSUANT TO ARTICLE 30.5 OF
6 TITLE 22, C.R.S.

7 ~~(1)~~ (2) "Controlled agricultural burn" means a technique used in
8 farming to clear the land of any existing crop residue, kill weeds and
9 weed seeds, or to reduce fuel buildup and decrease the likelihood of a
10 future fire.

11 (3) "CRIME OF VIOLENCE" MEANS THAT THE PERSON COMMITTED,
12 CONSPIRED TO COMMIT, OR ATTEMPTED TO COMMIT ONE OF THE
13 FOLLOWING CRIMES:

14 (a) MURDER;

15 (b) FIRST DEGREE ASSAULT; OR

16 (c) A FELONY SEXUAL ASSAULT, AS DEFINED IN SECTION 18-3-402,
17 C.R.S.

18 ~~(1.3)~~ (4) "Dangerous condition" means either a physical condition
19 of a facility or the use thereof that constitutes an unreasonable risk to the
20 health or safety of the public, which is known to exist or which in the
21 exercise of reasonable care should have been known to exist and which
22 condition is proximately caused by the negligent act or omission of the
23 public entity or public employee in constructing or maintaining such
24 facility. For the purposes of this ~~subsection (1.3)~~ SUBSECTION (4), a
25 dangerous condition should have been known to exist if it is established
26 that the condition had existed for such a period and was of such a nature
27 that, in the exercise of reasonable care, such condition and its dangerous

1 character should have been discovered. A dangerous condition shall not
2 exist solely because the design of any facility is inadequate. The mere
3 existence of wind, water, snow, ice, or temperature shall not, by itself,
4 constitute a dangerous condition.

5 ~~(1.5)~~ (5) "Health care practitioner" means a physician, dentist,
6 clinical psychologist, or any other person acting at the direction or under
7 the supervision or control of any such persons.

8 (6) "INCIDENT OF SCHOOL VIOLENCE" MEANS AN OCCURRENCE AT
9 A PUBLIC SCHOOL OR PUBLIC SCHOOL-SPONSORED ACTIVITY IN WHICH A
10 PERSON:

11 (a) ENGAGED IN A CRIME OF VIOLENCE; AND

12 (b) THE ACTIONS DESCRIBED IN PARAGRAPH (a) OF THIS
13 SUBSECTION (6) BY THAT PERSON CAUSED SERIOUS BODILY INJURY OR
14 DEATH TO ANY OTHER PERSON.

15 ~~(2)~~ (7) "Injury" means death, injury to a person, damage to or loss
16 of property, of whatsoever kind, which, if inflicted by a private person,
17 would lie in tort or could lie in tort regardless of whether that may be the
18 type of action or the form of relief chosen by a claimant.

19 ~~(2.5)~~ (8) "Maintenance" means the act or omission of a public
20 entity or public employee in keeping a facility in the same general state
21 of repair or efficiency as initially constructed or in preserving a facility
22 from decline or failure. "Maintenance" does not include any duty to
23 upgrade, modernize, modify, or improve the design or construction of a
24 facility.

25 ~~(2.7)~~ (9) "Motor vehicle" means a motor vehicle as defined in
26 section 42-1-102, C.R.S., and a light rail car or engine owned or leased
27 by a public entity.

1 ~~(3)(a)~~ (10) (a) "Operation" means the act or omission of a public
2 entity or public employee in the exercise and performance of the powers,
3 duties, and functions vested in them by law with respect to the purposes
4 of any public hospital, jail, or public water, gas, sanitation, power, or
5 swimming facility. "Operation" does not include any duty to upgrade,
6 modernize, modify, or improve the design or construction of a facility.

7 (b) The term "operation" shall not be construed to include:

8 (I) A failure to exercise or perform any powers, duties, or
9 functions not vested by law in a public entity or employee with respect to
10 the purposes of any public facility set forth in paragraph (a) of this
11 ~~subsection (3)~~ SUBSECTION (10);

12 (II) A negligent or inadequate inspection or a failure to make an
13 inspection of any property, except property owned or leased by the public
14 entity, to determine whether such property constitutes a hazard to the
15 health or safety of the public.

16 ~~(3.5)~~ (11) "Prescribed fire" means the application of fire in
17 accordance with a written prescription for vegetative fuels and excludes
18 a controlled agricultural burn.

19 ~~(4)(a)~~ (12) (a) "Public employee" means an officer, employee,
20 servant, or authorized volunteer of the public entity, whether or not
21 compensated, elected, or appointed, but does not include an independent
22 contractor or any person who is sentenced to participate in any type of
23 useful public service. For the purposes of this ~~subsection (4)~~ SUBSECTION
24 (12), "authorized volunteer" means a person who performs an act for the
25 benefit of a public entity at the request of and subject to the control of
26 such public entity and includes a qualified volunteer as defined in section
27 24-33.5-802 (9).

1 (b) "Public employee" includes any of the following:

2 (I) Any health care practitioner employed by a public entity,
3 except for any health care practitioner who is employed on less than a
4 full-time basis by a public entity and who additionally has an independent
5 or other health care practice. Any such person employed on less than a
6 full-time basis by a county or a district public health agency and who
7 additionally has an independent or other health care practice shall
8 maintain the status of a public employee only when such person engages
9 in activities at or for the county or the district public health agency that
10 are within the course and scope of such person's responsibilities as an
11 employee of the county or the district public health agency. For purposes
12 of this subparagraph (I), work performed as an employee of another
13 public entity or of an entity of the United States government shall not be
14 considered to be an independent or other health care practice.

15 (II) Any health care practitioner employed part-time by and
16 holding a clinical faculty appointment at a public entity as to any injury
17 caused by a health care practitioner-in-training under such health care
18 practitioner's supervision. Any such person shall maintain the status of a
19 public employee when such person engages in supervisory and
20 educational activities over a health care practitioner-in-training at a
21 nonpublic entity if said activities are within the course and scope of such
22 person's responsibilities as an employee of a public entity.

23 (III) Any health care practitioner-in-training who is duly enrolled
24 and matriculated in an educational program of a public entity and who is
25 working at either a public entity or a nonpublic entity. Any such person
26 shall maintain the status of a public employee when such person engages
27 in professional or educational activities at a nonpublic entity if said

1 activities are within the course and scope of such person's responsibilities
2 as a student or employee of a public entity.

3 (IV) Any health care practitioner who is a nurse licensed under
4 article 38 of title 12, C.R.S., employed by a public entity. Any such
5 person shall maintain the status of a public employee only when such
6 person engages in activities at or for the public entity which are within the
7 course and scope of such person's responsibilities as an employee of the
8 public entity.

9 (V) Any health care practitioner who volunteers services at or on
10 behalf of a public entity, or who volunteers services as a participant in the
11 community maternity services program;

12 (VI) Any release hearing officer utilized by the department of
13 corrections and the state board of parole pursuant to section 17-2-217 (1),
14 C.R.S. A release hearing officer shall maintain the status of a public
15 employee only when the release hearing officer engages in activities that
16 are within the course and scope of his or her responsibilities as a release
17 hearing officer.

18 (VII) Any administrative hearing officer utilized by the
19 department of corrections and the state board of parole pursuant to section
20 17-2-201 (3) (c) (I), C.R.S. An administrative hearing officer shall
21 maintain the status of a public employee only when the administrative
22 hearing officer engages in activities that are within the course and scope
23 of his or her responsibilities as an administrative hearing officer.

24 ~~(5)~~ (13) "Public entity" means the state, the judicial department of
25 the state, any county, city and county, municipality, school district, special
26 improvement district, and every other kind of district, agency,
27 instrumentality, or political subdivision thereof organized pursuant to law

1 and any separate entity created by intergovernmental contract or
2 cooperation only between or among the state, county, city and county,
3 municipality, school district, special improvement district, and every other
4 kind of district, agency, instrumentality, or political subdivision thereof.

5 ~~(5.5)~~ (14) "Public sanitation facility" means structures and related
6 apparatus used in the collection, treatment, or disposition of sewage or
7 industrial wastes of a liquid nature that is operated and maintained by a
8 public entity. "Public sanitation facility" does not include: A public water
9 facility; a natural watercourse even if dammed, channelized, or containing
10 storm water runoff, discharge from a storm sewer, or discharge from a
11 sewage treatment plant outfall; a drainage, borrow, or irrigation ditch
12 even if the ditch contains storm water runoff or discharge from storm
13 sewers; a curb and gutter system; or other drainage, flood control, and
14 storm water facilities.

15 (15) "PUBLIC SCHOOL" HAS THE SAME MEANING AS PROVIDED IN
16 SECTION 22-1-101, C.R.S., AND INCLUDES A CHARTER SCHOOL OR
17 INSTITUTE CHARTER SCHOOL.

18 ~~(5.7)~~ (16) "Public water facility" means structures and related
19 apparatus used in the collection, treatment, or distribution of water for
20 domestic and other legal uses that is operated and maintained by a public
21 entity. "Public water facility" does not include: A public sanitation
22 facility; a natural watercourse even if dammed, channelized, or used for
23 transporting domestic water supplies; a drainage, borrow, or irrigation
24 ditch even if dammed, channelized, or containing storm water runoff or
25 discharge; or a curb and gutter system.

26 (17) "SCHOOL DISTRICT" MEANS A SCHOOL DISTRICT ORGANIZED
27 PURSUANT TO ARTICLE 30 OF TITLE 22, C.R.S., AND THE CHARTER SCHOOL

1 INSTITUTE ESTABLISHED PURSUANT TO SECTION 22-30.5-503, C.R.S.

2 (18) "SERIOUS BODILY INJURY" MEANS BODILY INJURY THAT,
3 EITHER AT THE TIME OF THE ACTUAL INJURY OR A LATER TIME, INVOLVES
4 A SUBSTANTIAL RISK OF DEATH, A SUBSTANTIAL RISK OF SERIOUS
5 PERMANENT DISFIGUREMENT, OR A SUBSTANTIAL RISK OF PROTRACTED
6 LOSS OR IMPAIRMENT OF THE FUNCTION OF ANY PART OR ORGAN OF THE
7 BODY.

8 ~~(6)~~ (19) "Sidewalk" means that portion of a public roadway
9 between the curb lines or the lateral lines of the traveled portion and the
10 adjacent property lines which is constructed, designed, maintained, and
11 intended for the use of pedestrians.

12 ~~(7)~~ (20) "State" means the government of the state; every
13 executive department, board, commission, committee, bureau, and office;
14 and every state institution of higher education, whether established by the
15 state constitution or by law, and every governing board thereof. "State"
16 does not include the judicial department, a county, municipality, city and
17 county, school district, special district, or any other kind of district,
18 instrumentality, political subdivision, or public corporation organized
19 pursuant to law.

20 **SECTION 3.** In Colorado Revised Statutes, 10-16-130, **amend**
21 (3) (b) as follows:

22 **10-16-130. Disclosure of rate increases to public entities -**
23 **legislative declaration - definitions.** (3) As used in this section, unless
24 the context otherwise requires:

25 (b) "Public entity" shall have the same meaning as that provided
26 in ~~section 24-10-103 (5), C.R.S.~~ SECTION 24-10-103 (13), C.R.S.

27 **SECTION 4.** In Colorado Revised Statutes, **amend** 13-17-203 as

1 follows:

2 **13-17-203. Limitation on attorney fees in class action litigation**
3 **against public entities.** If the plaintiffs prevail in any class action
4 litigation brought against any public entity, as defined in ~~section~~
5 ~~24-10-103 (5), C.R.S.~~ SECTION 24-10-103 (13), C.R.S., the amount of
6 attorney fees which the plaintiffs' attorney is entitled to receive out of any
7 award to the plaintiffs shall be determined by the court; except that such
8 amount shall not exceed two hundred fifty thousand dollars. Such
9 limitation shall apply where the public entity pays the attorney fees
10 directly to the plaintiffs' attorneys or where the public entity is required
11 to pay the attorney fees indirectly through any program it administers by
12 reducing the benefits or amounts due to the individual plaintiffs.

13 **SECTION 5.** In Colorado Revised Statutes, 17-1-103, **amend** (3)
14 (d) as follows:

15 **17-1-103. Duties of the executive director.** (3) (d) A member of
16 the panel of medical consultants, for all activities performed within the
17 course and scope of said member's responsibilities to the department,
18 shall be entitled to all of the protections of the "Colorado Governmental
19 Immunity Act", article 10 of title 24, C.R.S., as if the panel member were
20 a "public employee" as defined in ~~section 24-10-103 (4), C.R.S.~~ SECTION
21 24-10-103 (12), C.R.S. This provision shall not be construed to afford
22 independent contractors hired as panel members any of the protections of
23 the state personnel system, article 50 of title 24, C.R.S.

24 **SECTION 6.** In Colorado Revised Statutes, 24-10-105, **amend**
25 (2) (a) as follows:

26 **24-10-105. Prior waiver of immunity - effect - indirect claims**
27 **not separate.** (2) (a) A reference in this article to an injury, claim, or

1 action that "lies in tort or could lie in tort" shall be construed in all cases
2 to include, in addition to a direct claim or action, a claim or action
3 asserted by way of assignment or subrogation to recover from a public
4 entity or public employee the amount paid on a damages claim or the
5 amount that may become payable on a damages claim because of the
6 occurrence of an injury. ~~as defined in section 24-10-103 (2).~~

7 **SECTION 7.** In Colorado Revised Statutes, 27-90-102, **amend**
8 (4) (e) as follows:

9 **27-90-102. Duties of executive director - governor acquire**
10 **water rights - rules.** (4) (e) A member of the board of medical
11 consultants, for all activities performed within the course and scope of his
12 or her responsibilities to the department, is a "public employee" as
13 defined in ~~section 24-10-103 (4), C.R.S.~~ SECTION 24-10-103 (12), C.R.S.

14 **SECTION 8.** In Colorado Revised Statutes, 27-93-103, **amend**
15 (1) as follows:

16 **27-93-103. Employees - publications.** (1) The head of the
17 administrative division overseeing the Colorado mental health institute at
18 Pueblo shall appoint or employ, pursuant to section 13 of article XII of
19 the state constitution, such administrators, physicians, nurses, attendants,
20 and additional employees as may be necessary for the proper conduct of
21 said institute. The head of the administrative division may contract with
22 the board of regents of the university of Colorado health sciences center
23 or any other governing board of a state-supported institution of higher
24 education for the provision of services by physicians and other health care
25 practitioners when deemed necessary for the proper conduct of the
26 institute. During the performance of any duties by the physicians and
27 other health care practitioners for the department of human services, the

1 physicians and other health care practitioners are "public employees" as
2 defined in ~~section 24-10-103 (4), C.R.S.~~ SECTION 24-10-103 (12), C.R.S.,
3 and the limitation of section 24-30-1517 (2), C.R.S., shall not apply.

4 **SECTION 9.** In Colorado Revised Statutes, 27-94-103, **amend**
5 (1) as follows:

6 **27-94-103. Employees - publications.** (1) The head of the
7 administrative division overseeing the center shall appoint or employ,
8 pursuant to section 13 of article XII of the state constitution,
9 administrators, physicians, nurses, attendants, and additional employees
10 as necessary for the proper conduct of the center. The head of the
11 administrative division may contract with the board of regents of the
12 university of Colorado health sciences center for the provision of services
13 by physicians when deemed necessary for the proper conduct of the
14 center, and during the performance of any duties by the physicians for the
15 department of human services, the physicians are "public employees" as
16 defined in ~~section 24-10-103 (4), C.R.S.~~ SECTION 24-10-103 (12), C.R.S.,
17 and the limitation of section 24-30-1517 (2), C.R.S., shall not apply.

18 **SECTION 10.** In Colorado Revised Statutes, 33-41-102, **amend**
19 (4.5) as follows:

20 **33-41-102. Definitions.** As used in this article, unless the context
21 otherwise requires:

22 (4.5) "Public entity" means the same as defined in ~~section~~
23 ~~24-10-103 (5), C.R.S.~~ SECTION 24-10-103 (13), C.R.S.

24 **SECTION 11.** In Colorado Revised Statutes, **amend** 36-20-122
25 as follows:

26 **36-20-122. Governmental immunity.** The state and its agencies
27 counties, and municipalities; all other public entities, as defined in ~~section~~

1 ~~24-10-103 (5), C.R.S.~~ SECTION 24-10-103 (13), C.R.S., within the state;
2 and the officers and employees thereof are immune from liability
3 resulting from any weather modification operations approved or
4 conducted by them under the provisions and limitations of this article.
5 Nothing in this section shall be construed as providing any broader waiver
6 of immunity than is provided by article 10 of title 24, C.R.S.

7 **SECTION 12.** In Colorado Revised Statutes, 39-2-123, **amend**
8 (2) as follows:

9 **39-2-123. Board of assessment appeals created - members -**
10 **compensation.** (2) Effective July 1, 1991, the existing board of
11 assessment appeals is abolished, and the terms of members of the board
12 then serving are terminated. Effective July 1, 1991, the new board shall
13 be comprised of three members, who shall be appointed by the governor
14 with the consent of the senate. Appointments to the board shall be as
15 follows: One member shall be appointed for a term of two years, and two
16 members shall be appointed for terms of four years. Thereafter,
17 appointments to the board shall be for terms of four years each. In order
18 to allow for appeals to be heard timely, up to six additional members may
19 be appointed to the board by the governor with the consent of the senate.
20 Such additional members shall be appointed for terms of one state fiscal
21 year each. Members of the board shall be experienced in property
22 valuation and taxation and shall be public employees, as defined in
23 ~~section 24-10-103 (4) (a), C.R.S.~~ SECTION 24-10-103 (12) (a), C.R.S.,
24 who are not subject to the state personnel system laws. One of such
25 members shall be or shall have been, within the five years immediately
26 preceding the date of initial appointment, actively engaged in agriculture.
27 On and after June 1, 1993, members shall be licensed or certificated

1 pursuant to the provisions of part 7 of article 61 of title 12, C.R.S. Service
2 on the board shall be at the pleasure of the governor, who may appoint a
3 replacement to serve for the unexpired term of any member. Such
4 replacement shall be appointed with the consent of the senate. Any other
5 vacancies on the board shall be filled by appointment by the governor
6 with the consent of the senate for the unexpired term.

7 **SECTION 13. Act subject to petition - effective date.** This act
8 takes effect at 12:01 a.m. on the day following the expiration of the
9 ninety-day period after final adjournment of the general assembly (August
10 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a
11 referendum petition is filed pursuant to section 1 (3) of article V of the
12 state constitution against this act or an item, section, or part of this act
13 within such period, then the act, item, section, or part will not take effect
14 unless approved by the people at the general election to be held in
15 November 2016 and, in such case, will take effect on the date of the
16 official declaration of the vote thereon by the governor.