Childhood Sexual Assault: Fiscal Implications for California Public Agencies

January 31, 2025

FCMAT

FISCAL CRISIS & MANAGEMENT ASSISTANCE TEAM

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Executive Summary

Background

Assembly Bill 218 (Chapter 861, Statutes of 2019) eliminated many claim prerequisites and increased or effectively eliminated the statute of limitation periods for claims of childhood sexual assault against public entities, including local educational agencies and municipal governments. Assembly Bill (AB) 218, The Child Victims Act, renamed childhood sexual abuse to childhood sexual assault and expanded its definition. Further, it increased public agencies' liability exposure by doing the following:

1) Extending the statute of limitation periods for claims of childhood sexual assault.
2) Permanently eliminating the Government Tort Claims Act's presentation requirements for claims involving childhood sexual assault.
3) Reviving certain claims for which the statute of limitations period had otherwise expired, if brought by December 31, 2022.

The legislation retroactively increased the time limit for beginning an action to recover damages suffered as a result of childhood sexual assault to 22 years from the date the plaintiff attains the age of majority (i.e., 40 years of age) instead of the previous eight years (i.e., 26 years of age), or within five years of the date the plaintiff discovers or reasonably should have discovered that the psychological injury or illness occurring after the age of majority was caused by sexual assault, whichever is later.

Assembly Bill 452 (Chapter 655, Statutes of 2023) further changed the statute of limitations on childhood sexual assault. This legislation eliminated the statute of limitations for the recovery of civil damages suffered because of childhood sexual assault for claims that arise on or after January 1, 2024. Some of the financing solutions recommended in this report for AB 218 claims will also be applicable for future claims under AB 452.

Senate Bill 153 (Chapter 38, Statutes of 2024) authorizes this report. It requires the Fiscal Crisis and Management Assistance Team to provide recommendations to the appropriate fiscal and policy committees of the Legislature and the Department of Finance regarding new, existing, or strengthened funding and financing mechanisms to finance judgments or settlements arising from claims of childhood sexual assault against local agencies. Childhood sexual assault is a deeply sensitive and traumatic issue. The intent of the authors of this report is to respect and honor victims.

Findings and Assessment

A comprehensive analysis of claims is not available, but what can be concluded is that the impact is significant. The most recent statewide data was released in May 2023 and covered 80% of statewide average daily attendance. But even with claim data, the magnitude is not accurately known until each claim's outcome is decided. Many claims are in various stages of litigation; thus, it is impossible to project the extent of total liability, whether claimants will prevail, or what the dollar value of any final award of damages or settlement agreement may be.

Even with missing details, we can conclude that the fiscal impact is and will continue to be significant and will affect programs and services. The best estimate of the dollar value of claims brought to date because of AB 218 is $2-$3 billion for local educational agencies. Other local public agencies' costs will exceed that value by a multiplier, with one county government alone estimating their claim value at $3 billion. The dollar estimate increases further for total childhood

sexual assault claims when considering claims outside of the time frame covered by AB 218. The fiscal impact is not limited to local educational and public agencies with claims but affects all public agencies, because it includes increased insurance premiums and special assessments based on the joint and several liability of current and past members of public entity risk pools.

Most public agencies have liability coverage through risk pools, not commercial insurance, so insurance in the traditional sense is something of a misnomer. With few exceptions, most local public agencies access insurance protection through public entity risk pooling. These pools are a way to manage risk and are created when a group of public agencies join together to finance and administer various forms of insurance coverage. This is similar to the commercial market but with the cost shared among the pool's member agencies. Each member agency funds the public entity risk pool through premiums and fees for the coverage obtained. The contributed funds and any investment earnings on reserves finance the risk pool's obligations.

Childhood sexual assault and misconduct cases have significantly altered the liability insurance marketplace (which includes public entity risk pools) in California. The insurance industry is built on a promise and operates under the current rule of law. No one expected the retroactive removal of the statute of limitations on childhood sexual assault. Changes in law disrupt the marketplace and create opportunities for reinsurance companies to reevaluate their products and pricing. Commercial insurers are less willing to accept the risk, given the ongoing uncertainty surrounding childhood sexual assault losses, which includes unknowns that could extend for decades. As a result, fewer insurance providers are available to offer reinsurance products, and the price has increased dramatically.

The insurance market for public agencies is perilously unstable. In the worst case, the market could deteriorate to a point where there is not enough insurance available, and public agencies could end up competing with each other for the limited coverage still being offered.

With some limitations, local agencies have the authority to borrow funds to amortize the cost of a settlement or claim. Local agencies have the power to authorize and issue refunding notes and bonds to satisfy their financial obligations under involuntary tort judgments. These notes or bonds are typically referred to as judgment obligation notes or bonds. Obligations arising from settlements may be nuanced. With some exceptions and various constraints, local agencies are also authorized to make lease financing arrangements.

The state treasurer should be allowed and directed to help public agencies that face settlements and judgments from childhood sexual assault to access capital markets. There may be a variety of reasons to have an intermediary issue debt on behalf of public agencies.

Intensive interventions associated with a large emergency apportionment may not be appropriate for school districts requiring state loans solely due to AB 218 obligations. California's constitution and statutes protect school districts from insolvency through state emergency apportionments (also known as state emergency loans). These are commonly referred to as the receivership statutes. A less defined but similar receivership protection is extended to California's community colleges. This protection is designed to ensure that school districts continue to educate students. An administrator does, however, have the power to file a Chapter 9 bankruptcy petition for a school district, and a community college district is apparently authorized to file for Chapter 9 bankruptcy. This receivership process is not available to charter schools or other public agencies. However, the current structure and intensity of the intervention that accompanies a large emergency apportionment may not be appropriate for a school district that requires a state loan solely due to AB 218 obligations. It is unlikely that the circumstances

surrounding a childhood sexual assault offense from years earlier are related to deficiencies in an agency's current governance, policies, systems and practices. The exception may be personnel management practices.

Victims deserve a more compassionate and timely remedy than litigation. A frequent discussion item among public agencies affected by childhood sexual assault claims is the creation of a statewide victims' compensation fund. All victims alleging injury have a right to a trial, so this would be a voluntary alternative to the judicial process. The fund would work to resolve claims through a reasonable process that invites the victim to present their claim in an uncontested environment that focuses on care and compassion, and where remedies are offered, discussed and decided on.

The goal should be to completely eliminate childhood sexual assault in local public agencies. One of the frequent criticisms of AB 218 and AB 452 is that neither bill promoted a state policy priority of eliminating childhood sexual assault offenses, and neither addressed the topic of prevention. Preventive measures and mandates must be increased to protect children.

Recommendations

This report makes 22 recommendations for the Legislature's consideration. The recommendations have the following themes:

- Mandated childhood sexual assault claim reporting, statewide data repository and data classification.
- Amended timelines for public agencies to pay a judgment to facilitate public financing of all or part of the judgment.
- Enhanced provisions related to the public financing of obligations.
- Alternative statutory provisions for emergency apportionments for school districts.
- Study and establish a victims' compensation fund option.
- Consistent and expanded statutes focused on preventive measures.

These recommendations are provided throughout the report with their respective topics and are summarized in the last section for ease of reference.

Introduction

Assembly Bill 218 (Chapter 861, Statutes of 2019) eliminated many claim prerequisites and increased or effectively eliminated the statute of limitation periods for claims of childhood sexual assault against public entities, including local educational agencies and municipal governments. AB 218, The Child Victims Act, renamed childhood sexual abuse to childhood sexual assault and expanded its definition. Further, it increased public agencies' liability exposure by doing the following:

1) Extending the statute of limitation periods for claims of childhood sexual assault.
2) Permanently eliminating the Government Tort Claims Act's presentation requirements for claims involving childhood sexual assault.
3) Reviving certain claims for which the statute of limitations period had otherwise expired, if brought by December 31, 2022.

The legislation retroactively increased the time limit for beginning an action to recover damages suffered as a result of childhood sexual assault to 22 years from the date the plaintiff attains the age of majority (i.e., 40 years of age) instead of the previous eight years (i.e., 26 years of age), or within five years of the date the plaintiff discovers or reasonably should have discovered that the psychological injury or illness occurring after the age of majority was caused by sexual assault, whichever is later.

Commonly referred to as a revival statute, the legislation made it possible for victims of childhood sexual assault to seek recovery for damages after the previous statute of limitations had expired. The revival provisions allowed claims for damages to be commenced up to December 31, 2022, for victims over the age of 40. However, victims younger than age 40 before January 1, 2023, or those with repressed memory of the assault, may continue to commence claims up to age 40 or within five years of discovery, as provided. This essentially provides a 14-year window for claims to continue to be filed until victims turn 40 years old and sets no age limit for those who discover psychological injury or illness later.

Assembly Bill 218 amended three statutes. The main amendments were to the California Code of Civil Procedure (CCP) Section 340.1. This section has a 40-year history of legislative amendments, specifically to modify and extend the statute of limitations for childhood sexual abuse (now assault) and molestation claims. Subsequent amendments culminated in the elimination of the statute of limitations altogether for offenses on or after January 1, 2024 (AB 452, *Chapter 655, Statutes of 2023*).

Neither AB 218 nor AB 452 included any added prevention measures. And neither bill gave local public agencies financial resources to address the effects of the change in state policy.

Risks extend beyond traditional transitional kindergarten to grade 12 programs. Charter schools, community colleges, and other local agencies all have risk exposure from childhood sexual assault and from the AB 218 revival statute. Charter schools began in California in 1992, so their historical risk exposure is more limited. In addition, a significant percentage of charter school enrollment is in nonclassroom-based programs. However, the term nonclassroom is a misnomer: the reality is that many charter school students are on a campus or interacting in person with charter school personnel and other students, albeit less frequently than in a traditional school setting.

Community colleges have limited exposure to AB 218 claims but do have increasing exposure to risks associated with childhood sexual assault in the future. Historically, community colleges' main risk exposure is

in their campus childcare programs. But community college exposures are increasing with the introduction of on- and off-campus early childhood programs that are part of an instructional program, and dual enrollment programs that bring high school students on campus to attend classes.

Other local agencies, like cities and counties, have significant risk to AB 218 claims because they operate and govern the following:

- Recreational facilities and programs.
- Childcare facilities.
- Juvenile probation and detention facilities.
- Foster children programs.
- Short-term residential therapeutic programs, residential foster care, or congregate care (formerly group homes).

These local agencies also have risk related to law enforcement because of failure to investigate, failure of due diligence, and inadequate reporting; programs such as police and fire explorers; or other involvement related to childhood sexual assault. Based on published reports, the County of Los Angeles in 2023 projected costs of "between $1.6 to $3 billion to resolve roughly 3,000 claims of sexual abuse that allegedly took place in the county's foster homes, children shelters and probation camps and halls dating to the 1950s."[1]

The California Department of Education operates three state special schools — two for hearing impaired and one for visually impaired students. The exposure to childhood sexual assault claims extends to these programs as well.

Understanding the fiscal implications of childhood sexual assault claims for local educational and public agencies is essential. All local educational agencies are affected, whether they have claims or not. The same is true of other local government agencies such as cities, counties and certain special districts. The cost and decreasing availability of liability insurance or other risk sharing programs affects current educational and public services, because more of today's tax dollars are being used to pay for yesterday's offenses. The cost of claims diminishes programs and services for all community populations, including children and students, some of whom are those who were victimized.

The diminished market for liability insurance, especially inclusive of sexual assault coverage, hits third-party private partners hard. Foster families and agencies, community-based organizations, and sole and corporate providers of nonpublic agencies and nonpublic schools serving students with disabilities are required to have adequate insurance protection, sometimes equivalent to that of a public agency. When coverage isn't available, these essential partners are unable to provide services.

Fiscal implications can vary widely from one local educational or governmental agency to another. Claims of the same nature and judgments or settlements with the same value may have dramatically different impacts depending on the size of the agency, its coverage status and its revenue sources. For example, a childhood sexual assault claim from 1995 for $2 million against a school district with 850 students and no insurance coverage for 1995 has a different impact than a claim with the same parameters against a school district with 14,000 students. Court judgments, and often settlements, do not consider insurance, ability to pay, or the impact on local programs and services.

California's local governments, including school districts and community colleges, have access to protection under United States Bankruptcy statutes. Today's Chapter 9 of the United States Bankruptcy

[1] "Decades of failures leave L.A. County facing up to $3 billion in sex abuse claims," Los Angeles Times, May 1, 2023, by Rebecca Ellis

Code is the successor to statutes dating back to the Great Depression of the 1930s. Chapter 9 is designed exclusively for local governments to adjust or reduce their obligations when their resources are inadequate to cover those obligations. Filing for Chapter 9 is different from other forms of bankruptcy in two ways. First, the filing is fully at the discretion of the locality; creditors are not permitted to force a local government to file for relief. Second, the bankruptcy court may not directly compel a locality to sell its assets or increase tax rates to raise revenues to meet its obligations, nor may the court directly compel the locality to dissolve or reorganize its governance structure. However, if a municipality does not make appropriate efforts (potentially including increasing revenue or disposing of assets) to pay its debts through the bankruptcy process, the bankruptcy court can reject the municipality's plan of adjustment or dismiss the municipality's bankruptcy case. As a result, the bankruptcy court can indirectly affect the municipality's actions. In the last 25 years, there have been only a small number of Chapter 9 bankruptcies in California.

Unlike other local public agencies, school districts and community colleges have a state receivership process designed to reduce the need for bankruptcy protection. Nonetheless, an administrator for a school district has the power to file a Chapter 9 bankruptcy petition for a school district, and a community college district is apparently authorized to file for Chapter 9 bankruptcy. Today's receivership process was born out of the legislative remedy to civil rights litigation designed to protect all students and safeguard communities from a school shutdown due to insufficient funds. The California Supreme Court's opinion in *Butt v. State of California* ((1992) 4 Cal. 4th 668, 685 15 Cal. Rptr. 2d 480, 842 P.2d 1240) laid out an obligation for the state to protect the integrity and quality of our educational system for students. The process includes a provision for an emergency apportionment and for an administrator to take temporary charge of a district's operations. The emergency apportionment process is described in more detail later in this report.

California's charter schools are not protected by the constitutional protections reinforced in *Butt v. State of California*. As nonprofit organizations, charter schools that find themselves in dire financial condition because of a large uninsured or underinsured liability claim may find that their best or only option is to file for bankruptcy protection under Chapter 7 or 11 of the federal bankruptcy statutes. Under Chapter 7, the charter school ceases to operate, and its assets are sold to pay its creditors. Under Chapter 11, the charter school would attempt to reorganize its financial affairs.

Aggregation of liability is the only way to finance the overall burden and protect the stability of local public agencies. California's system of elementary and secondary public education and basic services through local public agencies will survive the challenge presented by the claims of childhood sexual assault. But individual school districts, charter schools and other agencies may not.

Local agencies are responsible for paying for the entire claim if they are uninsured, or a portion of the claim if they are insured or underinsured. In addition, liability coverage premiums have risen by more than 700% in the past decade, and coverage levels are eroding. Because public entity risk pools are owned by their member agencies, each local public agency is obligated to ensure that the risk pool is stable and has sufficient resources to meet its obligations. Those added resources come from the risk pool's member agencies through special assessments and other contributions. For local educational agencies, these costs place increasing pressure on their current local control funding formula dollars used to staff classrooms, pay for utilities and replace textbooks. The same is true for other local public agencies: these costs represent an increasing share of the funding sources used

to provide law enforcement, fire suppression and medical aid, park and recreation programs, and other municipal services.

Assembly Bill 452 (Chapter 655, Statutes of 2023) eliminates the statute of limitations for childhood sexual assault claims. This legislation eliminates the statute of limitations for the recovery of civil damages suffered because of childhood sexual assault for offenses on or after January 1, 2024. Some of the financing solutions recommended in this report for AB 218 claims will also be applicable for future claims under AB 452.

Senate Bill 153 (Chapter 38, Statutes of 2024) authorizes this report. It requires the Fiscal Crisis and Management Assistance Team to provide recommendations to the appropriate fiscal and policy committees of the Legislature and the Department of Finance on new, existing, or strengthened funding and financing mechanisms to finance judgments or settlements arising from claims of childhood sexual assault against local agencies (counties, cities, county offices of education, school districts, charter schools, joint powers authorities, and special districts).

Childhood sexual assault is a deeply sensitive and traumatic issue affecting the youth that educational and government programs are designed to serve and protect. The victims of assault are from all cultures and backgrounds. The profound physical, emotional and psychological impacts can last a lifetime, often shaping a survivor's sense of self, their relationships, and their ability to trust others. No one interviewed for this report condones the crimes that are alleged and were committed; all expressed concern for victims. Everyone believes victims are entitled to compensation for their loss and suffering. The intent of the authors of this report is to respect and honor victims.

In preparing this report, the Fiscal Crisis and Management Assistance Team consulted with subject matter experts, including experts in risk management, public entity risk pools, and public finance; labor organizations; management organizations; and the legal community. Interviews and research were designed to help the authors more thoroughly understand the magnitude of the fiscal impacts on schools and local governments, the intricacies of different approaches to public entity risk pooling, the litigation environment, and public financing structures and other financing mechanisms.

This report responds to the statutory requirement. The second section of the report looks at what we know about the claim data and the potential magnitude of the fiscal impacts on local educational agencies and other local public agencies, and provides a brief overview of how local educational agencies and municipalities are insured, including the current risk marketplace. The third section explores financing options available to amortize the fiscal impact of a settlement or judgment. The fourth section looks at the unique receivership protection available for school and community college districts. The fifth section discusses the concept of a statewide victims' compensation fund, and the sixth section explores preventive measures. The final section summarizes the recommendations.

Background

Data on Childhood Sexual Assault Claims

Assembly Bill 218 claims continue to be filed. Many believe that the window to file claims under AB 218's revival statute closed on December 31, 2022. However, the only claims subject to that deadline were for victims who had reached the age of 40 (22 years past the age of majority). Victims under 40 (estimated by some to be two-thirds of the claims activity) have part or all of 14 years to file their claims (the previous age limit of 26 was extended by AB 218 to age 40, creating a 14-year window). Additionally, victims may file claims within five years of the date they discover or reasonably should have discovered that the psychological injury or illness occurring after the age of majority was caused by sexual assault, whichever is later.

Understandably, there was a rapid increase in claims activity after AB 218 was enacted and before the three-year window for those over age 40 closed. But new information and environmental conditions also contribute to increases in both the number of claims and the estimated values assigned to those claims. Examples of these factors include information about a particular perpetrator, a specific set of circumstances, judicial verdicts, and media coverage of other childhood sexual assault offenses such as those in scouting or the Roman Catholic church. Between June 30, 2023 and June 30, 2024, one public entity risk pool reported that the number of claims increased by 23%.

There are many variables when analyzing claim data to determine magnitude. Claim data is essential to determine the potential magnitude of the fiscal impact on local educational and public agencies. However, a single source of unduplicated, reasonably categorized claim data is not available. Creating such a source seems like a simple concept, and there appears to be a great deal of consistency among public entity risk pools, self-insured agencies and insurers; however, there are many variables when considering aggregating claim data. These include the following:

- Overall lack of coordination and common definitions. One example of a universal classification system is discussed in more depth below. Another problem is the inconsistency of definitions, which leads to variations in attributing a claim to the revival provisions of AB 218.
- Duplicate counts. As discussed below in the insurance section, a great majority of public agencies obtain insurance-like coverage by becoming members of a public entity risk pool. Some risk pools serve as the primary coverage (e.g., up to $5 million), and other pools serve as the excess coverage (e.g., $5 million to $55 million). In some cases both risk pools report the same claim, though the value of the claim is likely different because each risk pool's policy limits vary.
- Claim counts vs. victim counts. Risk pools and self-insured public agencies account for victims inconsistently. Some equate one claim to one victim. Others may associate one claim with multiple victims if the offenses have the same perpetrator and similar circumstances and timing. For example, one risk pool reports 420 claims with 639 plaintiffs based on October 2024 data (counts are of new claims that did not exist when AB 218 was passed).

- Point in time. Any report reflects a specific point in time. Claims under AB 218's revival provisions continue to be filed, and dollar valuations will change over time as more information is known and actuaries update values. The most appropriate time period for reporting dollar valuation of claims is as of June 30 to correspond to annual financial reporting, or when the public agency prepares disclosures related to offering public debt.

In addition to the above variables that may affect public entity risk pool claim counts and valuations, the actual impact on local educational and public agencies varies based on the following:

- Self-insured retention. This is the amount of the claim for which the local agency is responsible, somewhat like an insurance deductible. Self-insured retention for local public agencies varies widely across the state based on a public entity risk pool's memorandum of coverage and a local agency's size and ability to bear risk. Common amounts are $25,000 – $250,000, with some at $1 million or more.
- Applicable memorandum of coverage terms. This is the amount of coverage the local agency has through its various public entity risk pools, taking into consideration dates of coverage and any limits, aggregates, or other restrictions or exclusions.
- Programs of self-insurance. Larger public agencies may be partially or fully self-insured. This may be for certain types of perils or for all liability claims. It is becoming increasingly common for coverage for sexual assault and molestation to be excluded from third-party coverages; thus, this one peril may be fully self-insured.
- Settlements and judgments in excess of policy limits. If a settlement or judgment exceeds the memorandum of coverage limits, the local agency is responsible for this excess amount. Maximum policy limits vary. In the past 10 years, a common limit for local educational

District Impact Story

Some school districts face catastrophic fiscal consequences as a result of uninsured AB 218 revival judgments. One elementary school district on the central coast with 350 students reports one uninsured AB 218 claim, with three victim allegations stemming from the late 1970s to early 1980s. The alleged abuser and many potential witnesses are deceased. At that time, the district had commercial liability insurance coverage with adequate policy limits. However, at some point in the five decades since, the district's insurance carrier went out of business. Consequently, the district faces full fiscal responsibility for all settlement and/or judgment costs, currently estimated at more than $20 million. In 2023-24, the district's unrestricted general fund budget totaled $16.7 million. Even a state emergency loan funded over the maximum 20-year period would not provide a realistic way to finance such a large liability. The annual debt service would be more than $1.5 million (including interest, costs of issuance, and expenses related to the conditions for state emergency apportionments). That is equivalent to approximately 9% of the district's current local control funding formula (LCFF) revenues. A neighboring unified school district with 1,900 students reports an almost identical story, with four uninsured AB 218 claims set to go to trial in the next year.

> agencies has been $55 million but can vary from the high $30 million range to newer limits in the $70 million range. Previously, the common limit was between $10 million and $20 million.

Given that AB 218 did not set any limits on the timing of the offense for which a claim has been filed, a local public agency may find that it had no third-party coverage when the offense occurred, whether from commercial insurance or a public entity risk pool. There are also cases where the primary coverage provider no longer exists, but the excess coverage provider does exist. Therefore, the impact on local educational and public agencies can vary widely based on availability and terms of insurance, leading to a mix of insured, uninsured and underinsured claims.

One local educational agency has a claim for childhood sexual assault that dates to the 1940s. More commonly, claims may be from the 1970s, 1980s and 1990s. As discussed below, public entity risk pools began in the 1970s, and most were established by the mid-1980s. Before then, insurance coverage was obtained through commercial policies. Local agencies usually procured high-quality insurance coverage at coverage limits suitable for the time. However, in many cases the companies that provided such coverage no longer exist, leaving local agencies with uninsured claims.

A comprehensive analysis of claims is not available. The most recent statewide data was released in May 2023 by insurance industry leader Aon. That data covered 80% of statewide average daily attendance. Several efforts are underway to produce complete data, and/or to extrapolate statistically significant subsets of data, to produce an informed statewide value and magnitude. However, these efforts are still underway at the time of this report. Data from one of these new efforts may be available following the release of this report but before legislative consideration of the report and its recommendations.

As noted above, not all risk pools classify claim data using the same definition. Additionally, it must be recognized that not all childhood sexual assault claims are the result of the passage of AB 218. Claims for damage resulting from more recent childhood sexual assault continue to occur and are not attributable to the revival statute. Many of these claims were filed within the applicable statute of limitations.

A statewide data repository of claims would be useful for developing policy and funding options.

Even with claim data, the magnitude is not accurately known until each claim's outcome is decided. The actual fiscal impact cannot be determined without the claim being decided, because estimated values assigned to claims for disclosure or actuarial purposes may differ from actual values upon settlement or judgment. Many claims are in various stages of litigation; thus, it is impossible to project the extent of total liability, whether claimants will prevail and, if so, what the dollar value of a final award of damages or settlement agreement may be. The full nature of a remedy is unknown at this time. When values are estimated, the basis is commonly determined by an independent actuary and may or may not align with a jury verdict.

Reasonable conclusions can be reached by reviewing the 2023 statewide report and interviewing leaders familiar with claims in their own risk pools. Despite limitations, available data is sufficient to make informed, reasonable conclusions about claims for childhood sexual assault, and to inform policy considerations. This data includes sexual assault and molestation claims allowed under AB 218's revival provisions and claims allowed irrespective of AB 218.

Interviews with public entity risk pool experts who are knowledgeable about their respective pools' claim data, settlement negotiations and trials as a subset of the total statewide exposure indicate the following:

- Between one-third and half of the claims received for childhood sexual assault since AB 218 was enacted have been settled or decided; the remaining claims are in some stage of analysis, review, settlement discussion, or litigation.
- Offenses in schools are somewhat bimodal, with the highest number by far at high schools and the next highest occurrence at elementary schools. However, data also suggests that the value of claims from high schools is the lowest, and the highest value claims originate from middle schools. The modus operandi of perpetrators differs by grade span; this informs prevention strategies, which are discussed later in this report.
- Sources familiar with statistically significant subsets of claim data estimate that claimants over 40 represent one-third of the case load. These claims were a direct result of AB 218.
- The nature of childhood sexual assault in schools varies and includes adult vs. student and student vs. student. Overall sexual assault claims also include adult vs. adult.
- The allegations vary and include negligent supervision of employees or students, negligent supervision of a third-party's use of public facilities, failure to investigate or appropriately report, and civil rights violations.

This data is derived from interviews with several local educational and public agencies, several primary risk pools and two large excess risk pools that serve local educational agencies, and one large risk pool that serves both local educational and other public agencies.

Observations made from the 2023 Aon report regarding claims in schools, with data contributions from 14 public entity risk pools or individual local educational agencies, include the following:

- Claims originated in 48 of California's 58 counties.
- Geographically, the epicenter of claims is in the five Southern California counties (Los Angeles, Orange, San Diego, Riverside and San Bernardino), which have 65% of the 2,079 total claims reported (14 of the state's 25 largest school districts are located in these counties).
- Children ages 13 to 17 are most at risk, with the highest frequency of victims being age 14.
- Offenses occur most often in classrooms (50%).
- The data includes 250 claims involving students with disabilities; in more than 60% of these cases the perpetrator was identified as another student.
- Teachers are the most common perpetrators, accounting for 38%. In generally decreasing order of frequency, perpetrators also include the following: students, teacher's aides, coaches, custodians/maintenance workers, coaches' assistants (including walk-on coaches), and unauthorized outsiders.

- Sixty-eight percent of the offenses occurred during general education, 14% during athletics, and 6% in before- or after-school programs.
- The types of offenses reported were touching on skin (30%), intercourse (19%), and touching through clothes (17%).

Not all data points were reported for every claim; therefore, the number of observations (or N-value) in each dataset was not consistent. The percentages shown were rounded to the nearest whole number. The source was a published report by a recognized industry leader. The data was not independently verified.

The fiscal impact is not limited to local educational and public agencies with claims; it affects all public agencies. Fiscal impact also includes premiums and special assessments that are based on the joint and several liability of current and past members of public entity risk pools (this is explained in the insurance section below).

Even with missing details, we can conclude that the magnitude of the fiscal impact is significant and will affect programs and services. The best estimate of the dollar value of claims brought to date because of AB 218 is $2–$3 billion for local educational agencies. Other local public agencies exceed that value by a multiplier, with one county government alone estimating their claim value at $3 billion. These amounts are the estimated aggregate claim value, not the amount that the local public agency may be responsible for after applicable insurance. However, several large agencies included in this amount are fully self-insured. Public agencies across the state have settled some claims pretrial, or have received adverse judgments following trial, and have yet to finalize most claims.

The magnitude of the financial burden now equals or exceeds all of the other types of liability for which public entity risk pools provide coverage. Local educational and governmental agencies have the underlying financial exposure to the claims.

There are also claims for other non-AB 218 childhood sexual assault claims or more recent offenses that are outside of the timeline for revival claims under AB 218. In its 2023 report, Aon estimated these claims for local educational agencies to be more than 2,000 in count, with a value of $1.3 billion. Because of the lax definition described above, some of these claims may be designated among the AB 218 revived claims and be counted in the numbers cited above.

Because AB 218 claims were not anticipated by local governmental agencies or their risk partners, few reserved funds for this risk exposure. Consequently, whether paying for the entire claim, a portion of the claim, coverage premiums, or special assessments, the source of funds is unrestricted funding used to pay for programs and services. For local educational agencies, this is their current local control funding formula money used to staff classrooms, pay for utilities and replace textbooks. For other local public agencies, it is one of several funding sources used to provide law enforcement, fire suppression and medical aid, park and recreation programs, and other municipal services.

A statewide data repository and a universal classification or coding system should be developed to track and report liability claims. It is recommended that the Legislature require the development and maintenance of a statewide data repository, including mandating cooperation and information sharing by public agencies. Recent efforts at data collection indicate that the responsiveness of risk pools and agencies may be declining from the level Aon was able to achieve in its 2023 report and is closer to 60% of statewide average daily attendance.

To support a statewide repository, a set of common definitions, classifications and coding taxonomy is required. This is similar to what was done in the past with the Workers’

Compensation Insurance Rating Bureau. Although the best approach may be for the risk pooling and insurance industry to establish such a classification system, it is recommended that the Legislature mandate a classification system to provide objective, actuarially-based information on childhood sexual assault claims.

Public Agency Insurance

Most public agencies have liability coverage through risk pools, not commercial insurance, so insurance in the traditional sense is something of a misnomer. With few exceptions, most local public agencies access insurance-like protection through public entity risk pooling. A lower percentage, but still a majority, of charter schools participate in risk pools. Starting in the 1970s, commercial insurance rate increases and limited availability forced many local public agencies to leave the commercial insurance market and create public entity risk pools to secure coverage by pooling funds. Public entity risk pools are a way to manage risk and are created when a group of public agencies join together to finance and administer various forms of insurance coverage. This is similar to the commercial market but with the cost shared among the pool's member agencies. Each member agency funds the public entity risk pool through premiums and fees for the coverage obtained. The contributed funds and any investment earnings on reserves finance the risk pool's obligations.

One example of a risk pool is the Schools Excess Liability Fund (SELF), which was founded in 1986 to provide local educational agencies with coverage for catastrophic liability claims, such as the death of a student, traumatic brain injury, or cases of childhood sexual assault and molestation. At one point or another in SELF's history, every school district in California except two has been a member. See the box later in this report for more details about the basic principles of public agency insurance coverage.

The Joint Exercise of Powers Act (Government Code 6500 and following) authorizes the creation of joint powers authorities. Joint powers authorities can be used only by public agencies and exist when two or more public agencies join together to exercise a common power or create a separate legal agency. To participate in a joint powers authority, the public agencies must enter into an agreement that specifies both the authority of the joint powers authority and how it will execute that authority. Joint powers authorities may perform many functions, including risk pooling for coverages such as workers' compensation, general liability, property, and employee health benefits.

Public entity risk pools are joint powers authorities and are structured in a variety of ways depending on their type of coverage and their members' experience and direction. California has the largest number of public entity risk pools in the country. Public entity risk pools are slightly isolated from the insurance marketplace. The risk pools offer public agencies a cost-effective alternative to commercial insurance, can be nimble during changing environments, bear risks that the risk pool can afford, and insure (or reinsure) others.

Public agencies are using today's dollars to pay for decades-old offenses revived by AB 218. Before the enactment of AB 218 in 2019, public entity risk pools (and the insurance industry in general) did not contemplate retroactive changes to the statute of limitations for childhood sexual assault claims. Risk pools hold funds in reserve based on actuarial forecasts of member agencies' liabilities under current law. Therefore, the funds to settle AB 218 claims were never collected during the applicable coverage periods. In addition, AB 218 claims are settled or adjudicated at current

dollar values, not the value of the dollar at the time of the offense (i.e., 1970s-1990s). Public agency insurance is not structured for this.

The concept of public entity risk pools owned and operated by their members was likely not fully understood when AB 218 was being considered. Membership can change, with public agencies making decisions about which risk pool to join from time to time. But once a member for a given year, a member agency assumes a lifetime obligation based on the year of membership and any claim exposure associated with that year. This concept of joint and several liability means that public agencies are obligated to cover the cost of claims for their respective membership term regardless of whether their membership continues today.

Consequently, risk pools have been forced to fund AB 218 settlement and judgment costs through special assessments, retroactive premium adjustments, or other mechanisms (e.g., increasing current premiums). These collections are necessary to maintain fiscal solvency and program stability. If a public entity risk pool becomes insolvent, the member agencies will be fully exposed to all remaining and associated risk. In the last four years, an excess liability risk pool serving local educational agencies has collected more than $300 million in special assessments from current and prior member agencies to account for claims attributed to years through 2016. It anticipates it may need to collect another $300 to $400 million in the coming years to address ongoing and new AB 218 claims. Another primary insurance pool serving local educational agencies with approximately 800,000 students has collected approximately $40 million in retroactive premium adjustments to date. Public entity risk pools have advised member agencies to plan for these costs in their annual budget development, in addition to continuing premium increases. Both of these factors are increasing pressure on local operating budgets.

Public entity risk pools have implemented different approaches to mitigate unsustainable claim costs. Over the past decade, members of one large excess coverage risk pool have seen premiums for liability coverage increase from $3.50 per average daily attendance to $25.50 per average daily attendance. A primary liability pool decreased its policy limits in 2019-20 from $50 million to $35 million, and in 2022-23 increased its self-insured retention amounts from $1 million to $2.5 million. On the other hand, another excess public entity risk pool for schools recently increased its policy limits from $50 million to $75 million.

Public entity risk pools have used various strategies to stabilize and maintain coverages as the cost of claims has risen. Risk pools have flexibility to adjust to market conditions to control losses, expand coverage, and provide optimal pricing for member agencies while ensuring the risk pool's financial solvency. One example has been to reinsure certain layers of liability with insurance companies (i.e., purchase insurance for the risk pool). By transferring risk, risk pools can protect their balance sheet and stabilize member premiums.

In another example, one risk pool serving local educational agencies reports that it is also evaluating a complete restructuring of how it calculates member premiums for liability coverage. Rather than its current rate per average daily attendance, the risk pool is considering differentiating premiums by grade span to recognize the higher risk for childhood sexual assault at the high school grades, and/or setting the premium based on a count of adults to reflect the higher risk associated with having more adults on a school campus.

Childhood sexual assault and misconduct cases have significantly altered the liability insurance marketplace in California. Allegations covered widely in the media involving the Boy Scouts of America, Roman Catholic Church, United States Gymnastics, and higher education institutions have

increased public awareness of the prevalence of and trauma caused by childhood sexual assault. This awareness is contributing to what risk pool managers and insurers have described as "social inflation," or rising costs of claims because of increased litigation, broader liability definitions, more plaintiff-friendly legal decisions, and larger jury awards. Social inflation is outpacing economic inflation.

Even before the enactment of AB 218, public agencies reported increasing insurance premiums, more restrictive coverage, changing policy limits, and increasing self-insured retention levels. But the revival statute further altered the insurance environment.

The insurance industry is built on a promise and operates under the current rule of law. Insurers and reinsurers did not expect the retroactive removal of the statute of limitations on childhood sexual assault. Changes in law disrupt the marketplace and create opportunities for reinsurance companies to reevaluate their products and pricing. Commercial insurers are less willing to accept the risk because of the ongoing uncertainty surrounding childhood sexual assault losses, which includes unknowns that could extend for decades. As a result, fewer insurance providers are available to offer reinsurance products, and the price has increased dramatically.

Assembly Bill 218 has adversely affected public entity risk pooling reinsurance options. More than 85% of the California market for reinsurance has disappeared. Companies are no longer willing to accept a risk that they may not know for decades how to measure, predict or price. Insurance pricing is based in part on actuarial science, which does not contemplate a retroactive change to known claim experience. Actuarial science uses known trends to predict the future, but the extent of childhood sexual assault offenses was not known leading up to the enactment of the change in statute. The evaluation of whether to offer insurance, and its pricing, are based on measurable elements and predictability.

When reinsurance is available, it is often obtained from foreign carriers at a higher cost and with more restrictions and lower limits. For example, in some cases, when a risk pool reinsures a portion of its risk, the commercial insurer may provide an aggregate policy limit rather than a per-occurrence limit. One current reinsurance industry trend is that the amount of risk each insurance partner is willing to bear is becoming smaller and smaller. As a result, one needs more and more reinsurance partners to reinsure a given risk. For example, seven years ago a risk pool had nine reinsurers to cover all of its reinsurance needs; now it has 21 reinsurers.

The revival statutes and these insurance industry changes have created an environment that is both unmeasurable and unpredictable. In interviews, public entity risk pool managers reported that these increases in costs are not sustainable.

The insurance market for public agencies in California is perilously unstable, and experts do not see this ending anytime soon. In the worst case the market could deteriorate to a point where there is not enough insurance available, and public agencies could end up competing with each other for the limited coverage still being offered, creating an unfortunate dynamic.

Standalone sexual assault and molestation policies are increasingly expensive and difficult to obtain. Many risk pools and reinsurance policies have begun to separate general liability coverage from sexual assault and molestation coverage. When sexual assault and molestation coverage is available, it may have additional conditions such as specific preventive actions by the public agency employer (e.g., ongoing employee training to increase awareness of risk factors associated with childhood sexual assault).

One of the largest school districts in the state is self-insured for sexual assault coverage. This district also does not participate in any insurance pools; rather, it purchases excess insurance from a commercial insurer for general liability up to a $35 million limit and maintains a $5 million self-insured retention.

Charter schools approach insurance in both similar and different manners. For the purpose of the Joint Exercise of Powers Act, charter schools are considered public agencies. Most charter schools are members of insurance pools; approximately 25% purchase traditional commercial insurance for liability coverage. Although AB 218 excludes childhood sexual assault from the requirement of the Government Tort Claims Act that a claim be first presented to the local agency to consider before litigating it, charter schools are neither subject to nor protected by the Government Tort Claims Act.

Charter school representatives indicate that insurance limit requirements vary widely depending on the charter school authorizer. Some authorizers require minimum coverage of $1 million to $2 million, while others require the charter school to match the authorizer's own limits (e.g., $35 million, $55 million, $75 million). Representatives said that although the lower limits cost far less in premiums, they leave the charter school with significant underinsured exposure. However, charter school governing boards are free to arrange for higher limits.

Public agencies are not the only organizations facing difficulties in securing affordable coverage. Increasing costs and shrinking availability of coverage is a crisis for the community partners that provide services to or in conjunction with public agencies. These include foster families and agencies, community-based organizations, and sole and corporate providers of nonpublic agencies and nonpublic schools serving students with disabilities. All are required to have adequate insurance protection, sometimes equivalent to that of the public agency. When coverage isn't available, these essential partners are unable to provide services.

District Impact Story

Some school districts have already paid very large jury award amounts. Late in 2023, a jury delivered a $135 million judgment against one of the 25 largest school districts in the state. The jury found that the district failed to protect the two plaintiffs, former students, from abuse in the 1990s by a teacher employed with the district for more than two decades. The jury required the district to pay 90% of the judgment and the abuser (who is in state prison for child molestation charges) to pay 10%. To finance the judgment, the district initially planned to declare hardship under Government Code 970.6 to extend the payment over 10 years, but the plaintiffs agreed to a reduced judgment of $45 million in exchange for immediate payment. The district, which was a member of a joint powers authority for excess liability insurance coverage, paid $31 million plus legal fees from its reserves, and the public entity risk pool paid $14 million. The district has four more pending claims from victims of this abuser and is concerned about the financial burden that future settlements or judgments may impose on its general fund. To date, the district has incurred more than $453,000 in legal expenses related to this case and has been billed more than $2 million in AB 218 special assessments by its joint powers authority for excess liability insurance.

Public Agency Insurance Basics

Although every public agency develops its own comprehensive risk management program to address its specific needs, certain principles apply to all public agency insurance programs. Public agencies have several types of coverage (e.g., general liability, property, workers' compensation), and they also purchase different layers of coverage. Layering insurance coverage is a common strategy for organizations with larger risk exposure, like public agencies. Likewise, layering works well in a public entity risk pool. By layering policy limits, public agencies and their risk pools are often able to lower total premium costs compared to the cost of a single, high limit policy. The combined layers of insurance limits are often referred to as a public agency's "tower" of insurance coverage. Layers further up the tower, and reinsurers that may insure those layers, have less exposure to overall risk.

Some agencies may participate in a single public entity risk pool to obtain all levels of coverage. Others may participate in one public entity risk pool for primary coverage and a second risk pool for excess insurance. Some primary insurance risk pools may participate as members in another risk pool for excess coverage purposes. A small number of larger public agencies may be fully self-insured. And a small number of public agencies and charter schools may not participate in any risk pool, opting to purchase traditional policies in the commercial market.

Layer 1 – Self-Insured Retention

Public agencies maintain an initial layer of risk known as self-insured retention. Self-insured retention is the amount the local agency agrees to be responsible for. It is similar to a deductible in the commercial insurance industry. This amount may vary based on the public entity risk pool they are members of, the agency's available unrestricted revenues and how it chooses to insure its overall risk in general.

Layer 2 – Primary Policy

The first amount of coverage after the agency's own self-insured retention payment is known as primary coverage. For local educational agencies, the primary limit covers from the self-insured retention amount up to a range of $1 million to $5 million depending on the structure of the risk pool. The public entity risk pool providing the primary policy is responsible for a covered action until the policy limit has been reached.

Layer 3 – Excess Policy

After the primary coverage is exhausted, the excess coverage is triggered and covers the next level of claim costs up to the policy limits. Interviews with various public entity risk pools indicated that excess policy limits range from $35 million to $75 million. Some public agencies may choose to have more than one excess policy layer. An excess liability risk pool covers a peril once the primary insurance policy has been exhausted, up to policy limits.

Per-Occurrence Versus Aggregate Claim Limits

Whether primary or excess, liability policy limits are designed to address claims in two ways: per-occurrence and/or in aggregate. A per-occurrence claim limits the amount paid by an insurer for each individual claim in a policy period. When one event results in injuries to multiple people (e.g., when a single perpetrator assaults multiple students over a certain period of time), policies will classify the injuries as a single occurrence. In addition, aggregate claim limits establish a maximum amount a risk pool or its reinsurance will pay for all covered claims during a policy

period. Some risk pools may establish a per-occurrence and/or aggregate limit for their member agencies in a policy year, or even on an individual layer-by-layer basis. In the past five years, these tools have been used in tandem.

Occurrence Versus Claims-Made Coverage

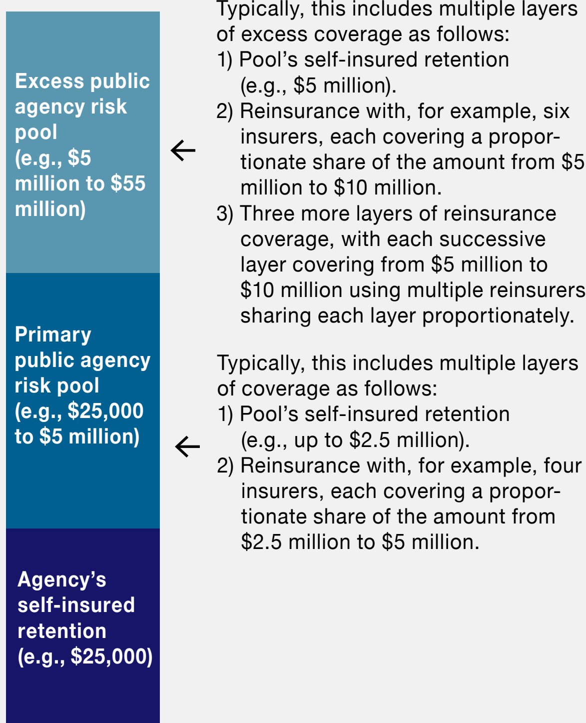
Liability insurance is also available to cover claims in one of two ways: either on an occurrence basis or on a claims-made basis. An occurrence policy covers claims arising from events that occur during the contracted policy period, regardless of when the claim is made. A claims-made policy covers only claims made during the policy period, regardless of when the offense that caused the injury occurred. Historically, public entity risk pools have offered occurrence-based policies; however, AB 218's revival provisions and subsequent statute of limitation changes have forced risk pools to evaluate the need to transition to claims-made policies.

Sample Public Agency Tower of Insurance Coverage

Figure 1 shows various levels of public agency insurance coverage that can create a tower of insurance. The first level is typically an agency's self-insured retention. The second level is the primary coverage of the risk pool to which an agency may belong, which itself includes several layers. The third level is excess coverage carried by the public entity risk pool, which also typically includes several layers.

Few public agencies have all of the layers depicted, and increasing costs and decreasing availability make a comprehensive tower of insurance difficult to achieve.

Figure 1:
Example Tower of Insurance Coverage for a Public Agency



Financing Considerations

The ability of local agencies to pay a settlement or judgment from current resources may be limited. Tort liabilities are generally payable in full upon the conclusion of litigation. For local agencies, this may mean paying for the entire claim if they are uninsured, or a portion of the claim if they are insured or underinsured. This may result in significant negative impacts on a local agency's budget resources and thus their ability to deliver services.

The fiscal impact and ability to pay can vary widely from one local educational or public agency to another. Claims of the same nature and value may have dramatically different impacts depending on the size of the agency, its coverage status, and its revenue sources. For example, a childhood sexual assault claim from 1995 for $2 million against a school district with 850 students and no insurance coverage for 1995 has a different impact than a claim with the same parameters against a school district with 14,000 students. Court judgments, and often settlements, do not take into consideration insurance, the amount of discretionary annual revenue, reserves available, ability to pay, or access to the municipal finance market to finance the liability over time.

Existing judicial procedures allow little flexibility in timing to pay a judgment. Under current judicial timing constraints, public agencies do not have enough time to arrange for borrowing under the complex and time-consuming public finance process. Verdicts are not effective until a judgment is entered by the court. Absent a filing for a new trial, or to vacate or correct the judgment, or to appeal, the public agency defendant has 30 days after the notice of entry of the award as a judgment to pay or request other consideration by the plaintiff and court.

If uninsured, few local agencies have the ability to pay claims or settlements from existing resources or reserves without amortizing the costs over time.

For claims that are insured or partially insured, risk pools usually pay promptly. However risk pools may also have cash flow deficiencies depending on payout activity. An example of this is a risk pool that provides liability and property coverage and is faced with a childhood sexual assault judgment and a wildfire that destroys multiple school facilities in the same time frame.

It takes time for a public agency to issue debt. Public agencies are limited in their ability to secure financing. Unlike for consumers and businesses, borrowing funds is an extensive process of approvals, disclosures and offering notes or bonds for sale. At a minimum, it takes 120–160 days to do the following:

- Assemble a financing team of attorneys, a municipal advisor, underwriters, and credit enhancers.
- Seek and obtain local governing board approval of a financing structure.
- Seek and obtain judicial validation (described below).
- Obtain credit ratings.
- Prepare, obtain approval for and issue preliminary official statements and official statements.
- Offer notes or bonds for sale to investors.
- Close the transaction and receive the funds.

Private placement financing can be accomplished in less time. The judicial validation process alone can take more than 120 days and varies widely depending on each county's court calendar.

School districts and community colleges have constitutional safeguards in the form of state loans, but those can take almost a year to obtain. As described earlier and in more detail below, the state Legislature has certain responsibilities to ensure that school districts and community colleges continue to operate and provide constitutionally guaranteed services to their communities. Other local public agencies and charter schools are not included in this state obligation. Commonly referred to as emergency appropriations or emergency state loans, the obligation involves advancing funds to local educational agencies, an obligation for repayment over time, and associated outside intervention. Historically, emergency state loans have been made at below market interest rates, or the interest rate has been subsidized by Proposition 98 appropriations.

The process for invoking an emergency appropriation is not quick. Several prerequisites exist, and the Legislature must ultimately act to approve an emergency appropriations bill. The Legislature is not in session every month of the year, so advance planning is essential. This is not possible when dealing with a judgment and the existing judicial timelines to pay that judgment.

Payments of Judgments Against Local Public Agencies

California law sets forth conditions for courts to consider that allow a local public agency to pay judgments over time, up to ten years. In the case of judgments that would create an unreasonable financial hardship that would result in reduction or elimination of public services, the Legislature has acknowledged the need to provide relief for public agencies by allowing them to fund payment over time. Government Code (GC) 970.6 and 984 address this topic.

Government Code 970.6 states:

(a) The court which enters the judgment shall order that the local public agency pay the judgment, with interest thereon, in not exceeding 10 equal annual installments if both of the following conditions are satisfied:

(1) The governing body of the local public entity has adopted an ordinance or resolution finding that an unreasonable hardship will result unless the judgment is paid in installments.

(2) The court, after hearing, has found that payment of the judgment in installments as ordered by the court is necessary to avoid an unreasonable hardship.

(b) Each installment payment shall be of an equal amount, consisting of a portion of the principal of the judgment and the unpaid interest on the judgment to the date of the payment. The local public entity, in its discretion, may prepay any one or more installments or any part of an installment.

Government Code 984 allows a public agency to make periodic payments on a judgment under several conditions, including if the parties agree to such installment payments or, under certain circumstances, if the public agency elects to do so. Those circumstances include 1) a judgment in excess of approximately $3 million (increased annually), and 2) after the public agency's immediate payment of the first half of the judgment. Similar to GC 970.6, the court may determine the length of time for the periodic payments, not to exceed 10 years or the length of the plaintiff's remaining life expectancy at the time the judgment is entered, whichever is less.

This provision excludes any commercial insurance coverage but includes the public agency's exposure through its self-insured retention or uninsured amount, and judgments in excess of policy limits. Government Code 984 also imposes a variety of conditions on any agency using this provision.

To meet the Legislature's intent to recognize a balance between a public agency's obligations under a judgment and its responsibilities to provide public services, section 984 provides that the Judicial Council shall adopt rules providing for a reasonable extension of the time for filing the notice of appeal from a judgment on the verdict to permit an election pursuant to these provisions.

The usefulness of Government Code 970.6 and 984 are severely limited. On the surface both sections look like helpful provisions to protect public agencies from financial insolvency. But as a practical matter, their usefulness is limited. First, these provisions are limited to judgments. The law is not helpful for pretrial good faith negotiations striving for a settlement. Second, the interest calculation in section 970.6 (capped at 7% – Civil Code 3287(c)) results in a rate that is well above market and what public agencies typically pay.

The "unreasonable hardship" provision in Government Code 970.6 is problematic. The adjective "unreasonable" is not defined and has the potential to be applied inconsistently. Currently, it is at the court's discretion whether to allow payment on judgments for up to 10 years. Further, neither hardship nor a standard for proving it are defined in statute and so may be vague. Is drawing down unrestricted reserves a hardship? Is reducing or eliminating certain programs and services a hardship?

Government Code 970.6 would be more practical if it provided a definition of these terms. It is recommended that the Legislature amend GC 970.6 to provide for the following:

1. Unreasonable hardship should be determined by the local governing body or tied to established standards. Public agencies are presumed to act in the public's best interest and in good faith. Allow the local governing body to pass by a three-fourths majority a resolution declaring unreasonable hardship that would satisfy the standard in GC 970.6. Require the resolution to identify the nature of the hardship, specifically its 1) impact on public services (e.g., instructional program, law enforcement staffing, parks and recreation services), and, for local educational agencies, 2) its impact on the agency's ability to meet the adopted state standards and criteria for fiscal solvency.
2. The court should defer to the local governing body's determination of unreasonable hardship as it would in any challenge to a legislative act, absent a clear abuse of discretion.

Government Code 970.6 should be further amended to provide payment terms more consistent with judgment amounts. It is recommended that the Legislature amend GC 970.6 to provide a sliding scale of time for repayment based on the judgment amount, plus interest thereon. For example, for judgments up to $10 million, provide for the existing 10 years (or 10 equal annual installments). For judgments that are $10 million up to $20 million, provide for 15 years (or 15 equal annual installments). For judgments that are in excess of $20 million, provide for 20 years (or 20 equal installments).

Paying a judgment before exercising certain public financing options could preclude a local public agency from issuing specific forms of debt. The Local Agency Refunding Law allows any local agency to issue bonds "for the purpose of refunding any revenue bonds of the local agency" (GC 53583). The term "revenue bonds" for these purposes means:

> bonds, warrants, notes, or other evidence of indebtedness of a local agency payable from funds other than the proceeds of ad valorem taxes or the proceeds of assessments levied without limitation as to rate or amount by the local agency upon property in the local agency.
>
> (GC 53570(b)).

In short, and as described below, a local agency may issue refunding bonds to refund *indebtedness*. This would prohibit 1) reimbursement financing (i.e., prohibit a local agency from issuing judgment obligation notes or bonds to refinance a judgment the local agency has previously paid, because no indebtedness exists to refund after it is paid), and 2) a local agency from issuing judgment obligation notes or bonds before a judgment is entered against the local agency.

Extending the statutory timelines would give local agencies enough time to make financing and payment arrangements. Extending the statutory timelines for public agencies to pay a judgment would provide short-term relief while the agency makes arrangements for longer-term financing. Other short-term financing options are not always practical and may eliminate a public agency's ability to finance the obligation (see the discussion of the Local Agency Refunding Law later in this report).

Absent any judicial ruling to the contrary, a plaintiff must generally be paid within 30 days of the date the judgment is entered by the court. It is recommended that the Legislature extend this payment due date to 150 days from the date the judgment is entered by the court for judgments that are greater than 50% of the local agency's unrestricted reserves. This longer duration for judgments would allow the public agency to secure funding by offering public debt. The Legislature could impose additional criteria on a local agency in exchange for the extended initial judgment payment date. These could include: 1) within 30 days of the date the judgment is entered by the court, the governing body of the local agency must declare its intention to finance the judgment by issuing public debt or other long-term financing option; and 2) within 90 days of the date the judgment is entered by the court, the governing body of the local agency must notify the court and provide appropriate evidence of substantial progress toward issuing such public debt.

Public Finance Considerations

Fiscal impacts on public agencies may be mitigated and managed by financing obligations over time. The policy decision for a local agency's governing board is whether to finance any monetary settlement or judgment over a term of years or to pay it from funds on hand in a single year, evaluating the impact that any sizable monetary judgment or judgments would have on current programs and services.

Financing options are available to local agencies that want to refund and amortize monetary judgments over time. Although financing options will help public agencies deal with the magnitude of the fiscal impact, ultimately there will still be a significant impact on the local educational or public agency's programs and on the affordability of servicing the obligation while both sustaining programs and maintaining fiscal solvency.

The California Constitution restricts the power of local government entities to incur certain debts without the approval of the electorate. Article XVI, section 18 of the California Constitution provides, in pertinent part, the following:

> [n]o county, city, town, township, board of education, or school district, shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the

District Impact Story

Some school districts are responding to the uncertainty about AB 218 claim outcomes by building reserves and increasing insurance requirements for community-based education partners. An urban unified school district with more than 16,000 students in Southern California reports having 11 AB 218 claims, three of which are uninsured and date back to the mid-1960s and early 1970s. The oldest of these cases originated from an outside organization that had access to students using district facilities. Although the district paid close to $2 million in special assessments to its previous excess liability pool, it has yet to access any of the applicable excess policy coverage. To protect its ongoing fiscal solvency and limit effects on current educational programs, the district reports it has started to set aside certain one-time money (e.g., unrestricted funds unspent at year end) in a special reserve fund to finance increasing insurance premiums, special assessments and self-insured retention limits, as well as future AB 218 settlements and judgments. Districts often partner with and rely on third-party organizations to provide essential educational services to students (e.g., nonpublic schools and agencies). Further, in recent years, the state has invested heavily in educational programs that encourage partnerships with community-based organizations (e.g., Expanded Learning Opportunities Program). To reduce the risk of future sexual assault and molestation claims, the district has increased its insurance requirements for all community vendors and service partners with access to students, which has limited the organizations that are able to provide services.

> qualified electors thereof, voting at an election to be held for that purpose.

In other words, the California Constitution prohibits these local agencies from incurring long-term debt obligations without a vote of the electors (special districts, including parks and recreation districts, are not subject to this prohibition).

The courts, however, have recognized several exceptions to the constitutional debt limitation. One such exception, applicable here, is that debt incurred to satisfy an obligation imposed by law does not violate Article XVI, section 18 of the California Constitution. In particular, the California Supreme Court has recognized that a local agency's liability for involuntary tort claims are obligations of the government imposed by law. Furthermore, the California Supreme Court has concluded that the issuance of bonds to refund obligations imposed by law does not create a liability that is new or different from an already-existing obligation imposed by law. The bonds are only an evidence of the indebtedness, and a mere change in the form of the evidence of indebtedness is not the creation of a new indebtedness within the meaning of the constitution. Accordingly, the issuance of bonds to refund an obligation imposed by law does not violate Article XVI, section 18 of the California Constitution.

Local agencies are authorized to issue refunding notes or bonds for the purpose of refunding any evidence of indebtedness of the local agency. Local agencies have the power to authorize and issue refunding notes and bonds to satisfy their financial obligations under involuntary tort judgments. These notes or bonds are typically referred to as judgment obligation notes or bonds. Obligations arising from settlements are more nuanced. Such obligations are likely eligible for refunding and judicial validation but come with additional legal consideration.

In certain circumstances, judicial validation is necessary to enable notes or bonds to be sold with the level of certainty the municipal finance market requires regarding their validity. CCP 860 and following provides a procedure for establishing the validity of notes and bonds and related financing contracts. Use of the CCP

860 procedure must be authorized by other statute, such as GC 53511, which authorizes a local agency to "bring an action to determine the validity of its bonds, warrants, contracts, obligations or evidences of indebtedness." A validation action is an *in rem* action, which conclusively determines the validity of the matter against all persons. If a local agency does not bring a validation action pursuant to CCP 863, an interested person may bring an action, otherwise known as a reverse validation action, to determine the validity of such matter. In general, reverse validation actions are brought by opponents to challenge the validity of a matter authorized by a local agency.

Given the potential large monetary amount of judgment obligations to be entered against local agencies, and the likely impacts to local agencies' programs and services if such judgment obligations were to be paid when entered against the local agency, many public agencies are likely to conclude it is desirable and prudent to issue judgment obligation notes or bonds to refund judgment obligations related to AB 218 and amortize such obligations over an extended period of time. Obtaining a validation judgment provides stronger and more immediate defenses against a subsequent legal challenge, and may provide comfort to lenders and reduce interest rates for a local agency's transaction.

Local agencies are authorized to make lease financing arrangements. Lease financing is a mechanism whereby a local agency leases property and, in consideration of the use of the property, makes periodic lease payments during the term of the lease. Lease financing enables local agencies to finance projects over a multiyear period. In effect, lease financing is a borrowing that is repaid over time from the local agency's general fund. Lease financing usually involves either a direct lease of property from a vendor, leasing company or bank, or a financing lease, undivided interests in which are evidenced by certificates of participation.

- Direct Leases. The direct lease (or lease-purchase) method is most often used to finance the acquisition of equipment or relocatable buildings. In the usual transaction, the local agency leases the property from the lender, which may be the vendor of the property, a leasing company or a bank. Under this financing lease, title to the property is transferred to the local agency at the end of the lease term. A portion of each lease payment made by the local agency is designated as interest, which may qualify as tax-exempt income to the vendor, leasing company or bank. The vendor, leasing company or bank may subsequently transfer its interest in the lease to another party.
- Certificates of Participation. In the certificates of participation method, the local agency, as lessee, leases the property from a third-party lessor, usually a nonprofit corporation created by or on behalf of the local agency. The lease payments made by the local agency to the third-party lessor are assigned to a commercial bank trustee. The trustee executes and delivers certificates of participation, which are sold to investors. Each certificate of participation owner is entitled to a proportionate amount of the lease payments made by the local agency under the lease; the certificates of participation represent this entitlement. In a typical certificates of participation financing, a portion of each lease payment is designated as interest and, consequently, the owners of the certificates of participation may receive tax-exempt interest

payments. Certificates of participation are sold to investors much as bonds are; the proceeds from the sale of the certificates of participation provide the money used to complete the local agency project.

Unlike bonds, certificates of participation have no independent legal existence or significance. They are simply receipts evidencing ownership of a share in the local agency lease; the lease itself is a local agency obligation, the payment of which gives rise to tax-exempt interest. Moreover, because certificates of participation are not created by statute, they are not subject to certain statutory requirements that may affect bonds, such as election restrictions and other statutory limitations.

Lease financing is an exception to the constitutional debt limit. As previously discussed, Article XVI, Section 18 of the California Constitution provides that certain local agencies may not incur any indebtedness payable beyond the fiscal year in which it is incurred without the voter approval. In a lease financing, however, the local agency's obligations under a lease are structured to avoid classification as indebtedness for purposes of this constitutional restriction. This is usually accomplished in one of two ways.

- Abatement or Offner-Dean Leases. The first and most common method uses a long-term lease containing a rental abatement provision. Under such a lease, each lease payment is contingent upon the local agency using and occupying the leased property during the period for which such lease payment is due. The local agency's obligation to make lease payments is abated, or reduced, during any period in which the local agency does not have full beneficial use and occupancy of the leased property. These leases are often referred to as "Offner-Dean" leases, after two leading California court cases holding that such leases do not constitute debt for California constitutional purposes.
- Annual Appropriation Leases. The second type of lease that avoids classification as debt is known as an "annual appropriation lease." Under such a lease, the local agency is obligated only for payments due in the then-current fiscal year. The local agency has the right, at least once during each fiscal year, to unilaterally terminate the lease by not appropriating the lease payments for the following year. Upon any such termination, the leased property is returned to the lessor.

Either an abatement lease or an annual appropriation lease may be used for lease financing. Because an Offner-Dean lease provides greater security, it is the type most often used in California. The use of lease financing has been frequently recognized by the courts as not implicating the constitutional debt limitation; therefore, the legal community and the municipal finance market accept such financings without the need for a validation proceeding.

Lease financing may be an alternative to judgment obligation notes or bonds for some local agencies. Some local agencies may want to pursue lease financing to finance their childhood sexual assault obligations. The structure avoids the delay of the CCP 860 validation proceeding and potential legal challenges to the financing that may result from such a proceeding. Moreover, the timing

issues under the Local Agency Refunding Law relating to refunding indebtedness do not apply to a lease financing, which may add flexibility to the financing. On the other hand, lease financing requires a lease asset. Using a lease option, therefore, ties up local agency assets that could otherwise be available for future capital financings. Or, in some cases, the only school site in a small school district may already be the security for an existing lease financing. Thus, each local agency would need to compare the advantages and disadvantages of lease financing when deciding to pursue financing for its childhood sexual assault obligations.

However, lease financing of childhood sexual assault obligations is currently not available to some local agencies. Education Code (EC) 17456 prohibits school districts from using the proceeds of lease financing for general operating purposes, which would prohibit school districts from lease financing their AB 218 obligations. Moreover, some city charters may similarly restrict use of lease financing.

Given the unique challenges brought about by AB 218, the Legislature should consider recommendations regarding common financing methods that would help local agencies more easily implement a financing option. Historically, judgment obligation bond validation actions, as described above, have involved underlying tort actions that have already reached judgment. Thus, a local agency typically would issue bonds to refund a single judgment or a handful of judgments on an as-needed basis following the completion of a CCP 860 validation proceeding. However, the sheer number of lawsuits and the large potential total liability some local agencies will have from claims as a result of AB 218 make this approach impracticable. Issuing bonds after judicial validation on a case-by-case, piecemeal basis would cost time and money, and significantly burden judicial resources. The solution is for a local agency to bring one CCP 860 validation proceeding relating to the refunding of all prospective judgments that could potentially be entered against the local agency.

It is recommended that the Legislature clarify that a CCP 860 validation proceeding may be brought by a public agency before tort action judgments are entered against the public agency. This would help enable the public agency to put in place a financing mechanism or program for the timely refunding of a large number of tort action judgments as and when such judgments are entered. It would also facilitate public agencies in efficiently and effectively managing the unprecedented number of actions stemming from the enactment of AB 218. It is also important not to narrow legislative action to just AB 218 obligations. Over time, AB 218 will cease to be a consideration, but claims resulting from future childhood sexual assaults and other extraordinary tort liability will impact public agencies in a similar fashion. As described above, AB 452 eliminated the statute of limitations for the recovery of civil damages suffered because of childhood sexual assault for claims that arise on or after January 1, 2024.

The Education Code prohibition against school districts using lease financing proceeds for general operating purposes was put into place to prevent school districts from financing working capital expenditures and furthering a school district's financial distress. However, in the present situation, it is recommended that the Legislature consider a limited exception to the prohibition in EC 17456 for situations where an otherwise financially stable school district is faced with an extraordinary liability such as one brought about by AB 218. The Legislature should provide such school districts with another financing option to amortize the liability and lessen the financial effects on programs and services. Such an exception could be narrowly tailored to apply to school districts only in extraordinary situations, only if they otherwise meet the state's standards and criteria for fiscal solvency, and only with

the approval of the county superintendent of schools or state superintendent of public instruction, as applicable.

The existing state and local payment intercept provisions should be extended to local agencies to increase the security and credit of public financings. EC 17199.4 provides both a mandatory and voluntary intercept mechanism for local educational agencies participating in public financings handled by the California School Finance Authority. The mechanism allows the state controller to intercept appropriate funds and amounts due to the local agency and redirect those funds to bondholders to pay debt service obligations. There is also an optional local process that county treasurers may agree to perform to intercept local property taxes and make payments to bondholders according to the terms established. These mechanisms increase the security and credit of the public debt. It is recommended that the Legislature extend these intercept mechanisms to apply to public financings for local agencies rather than limit the mechanism to the California School Finance Authority.

State Agencies' Financing Role

The state treasurer should help local agencies facing AB 218 settlements and judgments gain access to capital markets. Although federal and state statutes regarding public finance do not distinguish between local agencies that use the financial tools associated with public debt financings, the municipal finance market may be less receptive to certain financings by small agencies. Small agencies may pursue private placement arrangements for notes or bonds whereby the agency sells its debt to one or a small group of investors through a negotiated arrangement; however, there may be instances when a small agency requires an intermediary, such as the state treasurer, to issue debt on its behalf.

The advantage of the State Treasurer's Office is that its public finance services and products can be made available to all local public agencies. Furthermore, the state treasurer has the potential to enable local agencies to access the state's intercept payment mechanisms, has recognized experience as an intermediary issuer, and provides for the safety and security of an issuance by the State of California. These are all desirable features for small agency financings. Currently, the state treasurer administers intermediary issuer-like programs for affordable housing, schools and community colleges, earthquake insurance, victim compensation, and excess liability insurance, among others.

The California School Finance Authority is one example of the treasurer's intermediary financing programs. At the same time, the authority has challenges meeting the timing constraints of a settlement or judgment. The authority has certain blackout periods because of disclosure requirements related to the state budget.

The Legislature should consider expanding other state agencies' financing roles. The California Infrastructure and Economic Development Bank has broad authority to issue revenue bonds, provide financing to public agencies, provide credit improvements, and acquire or lease facilities. Historically, the bank has focused on infrastructure and economic development, but it has also been the intermediary financing authority for state emergency apportionments to school districts and community colleges under state receivership. The bank does offer public agency revenue bonds for qualified purposes and, as stated on its website, has "unique programs of specific state and local government agencies used for the furtherance of governmental and qualified purposes." The Legislature should expand or direct an appropriate role for the bank in financing childhood sexual assault settlements and judgments.

The Legislature could appropriate funds, or allow payment of obligations from more restrictive funds, to help local educational agencies. The Legislature always has the

option of appropriating specific funds to local agencies to support a change in state policy such as the retroactive nature of AB 218. The Legislature may also consider allowing the expenditure of funds from existing, more restricted appropriations to pay tort liabilities or to establish committed reserves for tort liabilities. Finally the Legislature may appropriate unrestricted funds through an augmented cost of living adjustment or other discretionary funds that local educational agencies may use for this and other purposes.

The Legislature could also consider providing an appropriation that establishes a revolving fund within the state treasury for public agencies to access to make timely payments on settlements and judgments. The revolving fund would be replenished by reimbursement from a local agency using proceeds from allowed public debt offerings. Such an approach would need to be structured to comply with statutory provisions regarding obligations imposed by law and not subject to the constitutional debt limit. There may also be complications to this approach that would require CCP 860 validation. Rules related to a revolving fund need to be established regarding eligible public agencies, ability to repay, limits on the dollar amount or number of times one agency can access the fund, repayment terms, reporting, interest rate and, for school districts and community colleges, the interaction with emergency apportionment loans.

Public Finance Market

An investment market exists for judgment obligation bonds or other forms of public debt used to finance a settlement or judgment. California public agencies have issued only a handful of judgment obligation bonds in the last twenty years. No school or community college districts are on record as issuing or placing judgment obligation bonds until last year. Higher education institutions, both public and private, have financed sexual assault settlements costing multiple hundreds of millions of dollars in part by issuing debt. Examples include taxable revenue bonds offered by the University of California.

The municipal finance market is usually indifferent to the reason for public debt. The market assumes that the reason for and decision to issue public debt was properly vetted by the local legislative body. However, the investment market may react to certain types of debt structures (e.g., leases with abatements) by imposing higher yield requirements. In addition, some investors may have investment policies with socially-conscious investing restrictions and thus avoid debt associated with judgments or settlements. Like any new public debt trend, if judgment obligation bonds or other forms of debt issued by California public agencies due to childhood sexual assault settlements and judgments were to emerge as a frequent offering, a specialized market may develop among an informed investment community. Smaller agencies may find higher yield penalties (higher interest) than larger issuers; however, this is likely driven more by credit analysis than by the purpose of the issuance.

The availability and terms of credit are based on affordability and structure of indebtedness. Interviews with analysts from one of the big three credit rating services indicated that judgment obligation bonds are generally seen as credit positive because they provide an effective way to amortize a judgment or settlement burden over time.

When credit raters assess a public agency's credit for existing or new debt, they do not consider credit impacts from pending claims or judgments; only final resolutions are considered in the analysis. However, local public agencies with financial trends and ratios above or below the median and facing litigation may experience credit weakening. Investors focus on credit and assurance of being paid back. Among the predictors of risk is affordability (i.e., the local agency's ability to manage annual debt service) and debt levels.

Some of the settlement and judgment amounts related to childhood sexual assault claims exceed reasonable affordability tests. For example, a $75 million debt issuance to cover a judgment against a school district with $15 million in annual revenue would require annual debt service of $5.4 million in principal and interest for 20 years. This would result in 36% of the district's revenue being pledged to this one debt obligation. Because school districts spend 85% of their revenue on personnel, most of whom directly serve students, only $2.3 million of the $15 million in annual revenue would be left for nonpersonnel expenses, including debt service. Thus the annual amount available would pay for only about half of the annual debt service. As a result, the district in this example would have to substantially reduce personnel and the associated programs and services for students.

Creditors are looking for stability and security. Avoiding hidden risks is an important component of their investment decisions. Therefore, a debt issuer's demonstrated commitment to better prevention of risks, including the risk of childhood sexual assault, should be presented in the context of credit (see the discussion of prevention measures later in this report).

California schools have long been considered good investments—stable or positive. However, recently, and for the first time, Moody's Investor Services assigned the kindergarten through grade 12 traditional school sector a negative outlook for 2025. This acknowledges the financial environment of greater constraint, driven in part by overall decline in enrollment and increasing fixed operating costs.

The most robust disclosure of pending claims is found in the issuance of debt, not in annual financial statements. Governmental agency financial statement disclosure of the liability associated with childhood sexual assault is generally viewed as weak. Governmental Accounting Standards Board Statement No. 10, Accounting and Financial Reporting for Risk Financing and Related Insurance Issues, requires public agencies to report an estimated loss from a claim as an expenditure and as a liability if both of the following conditions are met:

1. Information available before the financial statements are issued indicates that it is probable that an asset has been impaired or a liability had been incurred at the date of the financial statements. It is implicit in this condition that it must be probable that one or more future events will also occur, confirming the fact of the loss.
2. The amount of the loss can be reasonably estimated.

In a sample of school district annual financial statements, few included any disclosure or valuation of liability for pending claims of childhood sexual assault. However, school districts and other public agencies making offerings of municipal securities have increased their disclosures of such risks. This conforms to the intent of the disclosure regulations issued by the Securities and Exchange Commission and other federal and state antifraud provisions. Material facts include risk factors that investors and the municipal finance market rely on.

School and Community College District Emergency Apportionment

The state is constitutionally obligated to ensure that school districts continue to provide instructional services to students. California's constitution and statutes protect school districts from insolvency by using state emergency apportionments (also known as state emergency loans). These are commonly referred to as the receivership statutes (Articles 2 and 2.5 and 2.7 of Chapter 3 of Part 24 of the Education Code). A less defined but similar receivership protection is extended to California's community colleges. Since 1990, nine school districts and one community college district have required state loans. Upon accepting a state loan and depending on the loan's size, a district must comply with certain conditions until the loan is repaid. Charter schools and other local public agencies do not have the same protection. See the box below for more details regarding the requirements for emergency apportionments.

The receivership process includes a provision for an emergency apportionment and for the local county superintendent of schools, through an administrator, to take temporary control of a school district's governance and operations, or for a trustee to provide added oversight to the district's governing board. Whether the receivership process involves the more intense intervention of an administrator or the less intense oversight of a trustee is determined by the amount of the emergency apportionment required to ensure the district will meet its financial obligations. If the apportionment exceeds 200% of the district's required reserves, an administrator is required.

Until now, districts requiring state loans have exhibited ongoing and unmitigated systemic failures in all operational areas: fiscal management, pupil achievement, personnel management, facilities management, and governance and community relations. To date, the loan amounts required to correct these deficiencies have triggered the more intense intervention of an administrator.

State loan conditions are designed to remedy fiscal insolvencies caused by systemic failures in governance and management, not those caused by sudden or unexpected events. School districts encounter fiscal crises as a result of two things: governance and management failures over time, or a sudden event. Underinsured and uninsured settlements or judgments related to past childhood sexual assault fall into the latter category—a sudden event. It is anticipated that any emergency apportionment needed due to an AB 218 settlement or judgment would exceed 200% of a district's required reserve, and thus the more intense intervention with an administrator would be required under current law.

Intensive interventions associated with a large emergency apportionment may not be appropriate for school districts requiring state loans solely due to AB 218 obligations. The loss of local control, intense intervention with an administrator, and annual follow-up required in the case of a higher emergency loan amount appear unwarranted for districts that are otherwise governed well and meet the state standards and criteria for fiscal solvency.

Normally, receivership intervention has two major purposes. The first is to help the district overcome and correct its governance, student academic performance, human resources management, facilities management and fiscal challenges. The second is to ensure that the district can meet its annual obligations to repay the state or the bondholders that provided the emergency apportionment funds.

It is unlikely that the circumstances surrounding a childhood sexual assault offense from years earlier are related to deficiencies in an agency's current governance, policies, systems and practices. The exception may be personnel management practices.

The two major purposes of receivership intervention can be accomplished through an alternative statute. It is recommended that the Legislature adopt an alternative statute for school districts requesting emergency apportionments solely due to childhood sexual assault obligations. An alternative receivership statute should include the following provisions:

1. Specify the Legislature's intent that this statute be used only for districts that require an emergency appropriation solely due to settlements and judgments resulting from childhood sexual assault claims.
2. Continue to require the existing prerequisite conditions for receipt of any loan funds (e.g., EC 41320).
3. Create new professional and legal standards established by the State Board of Education, upon the recommendation of the Fiscal Crisis and Management Assistance Team, specific to preventing and eliminating childhood sexual assault. These include human resources policies, adherence to hiring standards, employee supervision, campus safety practices, employee and student awareness training on grooming and prevention measures, mandated reporting policies and practices, and district culture.
4. Require the Fiscal Crisis and Management Assistance Team to complete an initial assessment of the district's compliance with the new professional and legal standards.
5. Follow the trustee model to help the district as outlined in EC 41320.1.
6. Replicate current trustee responsibilities, with modifications to focus on the district's progress in correcting any deficiencies identified in the initial assessment.

As an alternative to enacting the new statutory provisions recommended above, the Legislature could consider including these provisions in each district-specific emergency apportionment legislation on a case-by-case basis (similar to how the state authorized the one community college emergency appropriation).

State law provides two methods for the state to finance emergency apportionments. EC 41329.52 provides the more common method, a two-part financing, which includes an initial interim loan from the state general fund to the school district. This is paid back in full, with interest, from the proceeds of a lease financing between the school district and the California Infrastructure and Economic Development Bank. The lease financing is then paid back by the school district over time.

The second method is an alternative to lease financing and subject to the availability of funds. EC 41329.53 allows a district to receive an emergency apportionment from the state general fund on a long-term basis.

To ensure the two methods are cost-neutral to the district, in the case of a state general fund loan, the bank is responsible for determining the interest rate based on an analysis of the interest rate, costs of issuance, and any credit enhancement costs that would have occurred with the alternative lease financing. Both methods require repayment within 20 years.

State loan terms may not be realistic for larger settlement or judgment values. As childhood sexual assault claims are settled and adjudicated across the state, an emergency apportionment may be the only financing alternative for some districts. School districts that are unable to reach reasonable settlements for uninsured and

underinsured claims will have to seek resolution in the courts. Some school districts may encounter jury awards that cannot be supported by their current resources or by the reasonable public financing alternatives outlined in this report, leaving the district with no option but to request an emergency apportionment.

Unlike the municipal finance market, state emergency loans do not consider the credit-worthiness of the district. But affordability is an important consideration, and the amount of the settlement or judgment of childhood sexual assault claims will influence the afford-ability calculation. Balancing affordability with the ability to maintain the integrity of instruction and student services poses a significant concern.

Education Code 41320(e) requires the county superintendent of schools to certify that the action taken to correct the district's financial problems is realistic. Current statute also requires loan repayment within 20 years, regardless of which of the two methods the state uses to fund the emergency loan. However, some districts' unrestricted resources, the main source for loan repayment, may not realistically be able to support the debt service payments needed for a 20-year loan.

Extend the repayment terms when the emergency apportionment amount is high. As noted above, both methods for funding an emergency apportionment (EC 41329.52 and 41329.53) require that repayment not exceed 20 years.

It is recommended that the Legislature provide for a longer repayment period to enable districts to maintain an appropriate balance between annual debt service and educational program and service needs. The decision about an appropriate repayment term could be part of the prerequisite process when seeking a state emergency loan (EC 41320), including the required public meetings. The Legislature should extend the maximum repayment term of 20 years for emergency apportionments when the loan amount is significantly higher than the school district's ability to pay within that time and based on an analysis performed and disclosed during the process leading to an emergency apportionment.

It should be noted that the 20-year limit is in statutes applicable to emergency appropria-tions. The state's Infrastructure and Economic Development Bank has internal policies that support repayment terms up to 50 years for certain financing structures.

The emergency apportionment option is not available to charter schools, county offices of education, or other local agencies. Statute does not provide for charter schools, county offices of education, or other local agencies to access the emergency apportionment process. The only option for these agencies will be to use other financing options outlined in this report to finance childhood sexual assault settlements and judgments. If unsuccessful at finding financing, these entities may seek protection though Chapter 9 (governmental agencies) or Chapter 7 or 11 (charter schools) of the United States Bankruptcy Code.

Emergency Apportionment Requirements for Local Educational Agencies

School Districts

Articles 2, 2.5, and 2.7 of Chapter 3 of Part 24 of the Education Code provide for emergency apportionments to school districts in fiscal crisis. Based on the apportionment amount, statute establishes two types of intervention upon receipt of an emergency apportionment. For simplicity, these two types of loans and their associated intervention methods are described as Type 1 and Type 2.

Type 1 Loans

Type 1 loans are emergency apportionment amounts up to and equal to 200% of a district's recommended reserve for economic uncertainties under the state standards and criteria for fiscal solvency. For Type 1 loans, the county superintendent of schools, state superintendent of public instruction, and the president of the State Board of Education appoint, by majority vote, a trustee to monitor and review the district's operations. The trustee may stay and rescind any action of the school district governing board that may affect the district's financial condition.

By October 31 annually, Type 1 loan districts must prepare a report on the district's financial condition for the county superintendent of schools, state superintendent of public instruction, the president of the State Board of Education and the state controller, until the loan, including any interest, is repaid.

Trustee's Role and Requirements

A trustee remains in place until the following conditions are met:

- The school district establishes adequate fiscal systems and controls.
- The state superintendent of public instruction determines that the district's future compliance with its fiscal recovery plan is likely.
- The county superintendent of schools, state superintendent of public instruction, and president of the State Board of Education terminate the trustee's appointment (no earlier than three years after the trustee's appointment).

The trustee serves under the direction and supervision of the county superintendent of schools.

Following the trustee's term and until the loan is repaid, the county superintendent of schools may stay or rescind any action of the school district governing board that may affect the district's financial condition.

Type 2 Loans

Type 2 loans are emergency apportionments that are more than 200% of a school district's recommended reserve for economic uncertainties, and consequently result in additional conditions affecting the district's local control. Before applying for a Type 2 loan, the school district governing board must discuss its need at a regular or special public meeting that allows for testimony from interested parties (e.g., parents, employees and the community). For Type 2 loans, the respective county superintendent of schools assumes temporary control of the district and, with concurrence of the state superintendent of public instruction and the president of the State Board of Education, appoints an administrator to resolve the district's challenges. The district's superintendent is released, and the school district governing board serves in an advisory role with no legal rights, powers, or duties.

To evaluate the progress of a district with a Type 2 loan in implementing its recovery plans, EC 41327.1 requires the Fiscal Crisis and Management Assistance Team to conduct an annual comprehensive assessment of five operational areas (financial management, pupil achievement, personnel management, facilities management, and community relations and governance) using professional and legal standards adopted by the State Board of Education that define a good educational program and fiscal and management practices. Statute authorizes the county superintendent of schools, with concurrence from the state superintendent of public instruction and the president of the State Board of Education, to return authority to the governing board for any of the five areas if performance under the recovery plan for that area has been demonstrated to the satisfaction of the county superintendent of schools.

Administrator's Role and Requirements

The administrator is tasked with implementing substantial changes in the school district's fiscal policies and practices, including, if necessary, filing a petition under Chapter 9 of the federal Bankruptcy Code for an adjustment of indebtedness. The administrator remains in place for at least one complete fiscal year following the loan's acceptance and until the county superintendent determines that the district's compliance with recovery plans is probable. At that point, with the concurrence of the county superintendent of schools, state superintendent of public instruction, and president of the State Board of Education, the governing board regains its governance authority, a superintendent is hired, the administrator's appointment is terminated, and a trustee is assigned in the same manner as for a district with a Type 1 loan.

As in the case of an appointed trustee, an administrator serves under the direction and supervision of the county superintendent of schools.

Prerequisites for Receiving Loan Funds

School districts must request an emergency apportionment. As a condition of receiving an emergency apportionment, the school district must submit the following to the county superintendent of schools: a report by an independent auditor on the school district's financial conditions and budgetary controls; a management review written by a qualified management consultant who is approved by the county superintendent of schools; and a fiscal plan adopted by the school district governing board to resolve the district's financial problems.

Upon their approval of these documents, the county superintendent submits them to the state superintendent of public instruction, the Joint Legislative Audit Committee, the Joint Legislative Budget Committee, the director of finance, the president of the State Board of Education, and the state controller. The county superintendent of schools, with the concurrence of the state superintendent of public instruction, must certify to the director of finance that the proposed action is realistic and will place the school district on a sound financial basis. Upon the state superintendent of public instruction's approval of the repayment schedule, and the trustee or administrator's appointment, the state controller disburses the emergency loan proceeds to the school district.

Community College Districts

Statutes specific to community college district emergency appropriations are less defined. In the case of the one community college district loan issued since 1990, the acceptance conditions in the authorizing legislation were established specifically for that district.

Victims' Compensation Fund

A victims' compensation fund should be established as an alternative means of providing remedies for victims. Victims deserve a more compassionate and timely remedy than litigation. A frequent point of discussion among public agencies affected by childhood sexual assault claims is the creation of a statewide victims' compensation fund. All victims alleging injury have a right to a trial, so use of a compensation fund would be a voluntary alternative to the judicial process. A victims' compensation fund would work to resolve claims through a reasonable process that invites the victim to present their claim in an uncontested environment that focuses on care and compassion, and where remedies are offered, discussed and decided on.

The fund could assemble specialists and experts in care and resolution of these types of claims. Additionally, and important for more recent victims, the fund could offer victims comprehensive services to help them succeed and advance through the trauma of the offense. Services the fund could arrange for and cover include counseling, therapy, other medical and behavioral health related assistance, and child welfare. Limited eligibility criteria should be established, including cooperation with law enforcement to support prosecution and possibly with the perpetrator's public agency employer to support employment actions. Victims should not need a lawyer to submit a claim, though legal representation should not disqualify a claimant.

Participation in the fund would likely need to be mandatory for all public agencies subject to childhood sexual assault claims, including public schools, charter schools, counties, and other municipalities. Without a mandatory support requirement, the fund would be subject to adverse selection. There are alternatives to this approach that may be considered. The fund could be financed through an assessment on liability insurance premiums paid by public agencies to public entity risk pools, commercial carriers, or self-insured agencies. The important principle is that costs be shared across a broad base. A well-structured fund is likely to be supported, including financially, by the liability insurance industry.

Although a victims' compensation fund may be of some help in resolving current claims filed because of AB 218 or otherwise, it is likely more useful on a prospective basis. A compensation fund may be most helpful to all involved when the offense is more recent and the claim is first presented to the public agency.

The organization administering the fund and its processes would also need to aggregate all data to inform future policymakers and help develop prevention strategies. This organization could house the statewide data repository recommended above.

There are limited victims' compensation funds in California. Some are managed by the state treasurer's office and others by nonprofit organizations. One example is the California Victim Compensation Board. However, what this recommendation envisions is more robust than any existing process and service for victims. The existing victim compensation board is the payer of last resort; however, the victim compensation fund recommended here would be the payer of first resort. A frequent example shared is the federally authorized September 11th Victim Compensation Fund for victims of the September 11, 2001, terrorist attacks in New York, Pennsylvania and at the Pentagon.

The Legislature should commission a study that identifies the structure and attributes of a victims' compensation fund for childhood sexual assaults involving a public agency. The study should be presented to the Legislature no later than January 1, 2026, and the Legislature should consider establishing a victims' compensation fund by July 1, 2026.

Prevention Considerations

The goal should be to completely eliminate childhood sexual assault in local public agencies. One of the frequent criticisms of AB 218 and AB 452 is that neither bill promoted a state policy priority of eliminating childhood sexual assault offenses, and neither addressed prevention. Preventive measures are essential to eliminating childhood sexual assault and must be increased to fully protect children. Generally, local educational and other public agencies interviewed for this report were supportive of increased prevention measures. Culture must change, and the tone is set at the top. Therefore, the Legislature should ensure that state policies set consistent standards to achieve zero tolerance for childhood sexual assault, and leaders and governing board members of schools and municipalities must do the same.

The recommendations below provide some ways the Legislature may strengthen preventive measures for local agencies.

Local policies and practices should be improved to foster a positive culture that focuses on safety. For schools, policies that set a tone of high expectations for student safety are paramount. But policies alone are not sufficient. Practices must reflect commitment to the policy. To this end, the Legislature should require comprehensive school safety plans (ECs 32280 – 32289.5) that include required policies and procedures designed to improve supervision and protection of children. Policies, procedures and safety plans should be communicated regularly and followed at all times.

The subject of training and appropriate supervision of employees and others on a school campus is raised routinely in settlement negotiations and trials. It is impossible for a principal at a school to supervise and monitor every adult interaction with a student. Classrooms, meeting spaces and interactions are subdivided and scattered across 10 to 50 acres on a typical school campus. Plaintiffs' attorneys also compare the training risk management organizations (including public entity risk pools) recommend to what an employer is actually offering.

Expand requirements regarding mandated reporting of child abuse and neglect. For local educational agencies and other public and private organizations, certain employees and volunteers are mandated reporters and are required to receive training on child abuse and neglect and the reporting of it pursuant to Penal Code (PC) 11165.7 and EC 44691. Specifically, PC 11165.7(a) provides a list of individuals who are considered mandated reporters based on occupation. Paragraphs 1-5, and 9 provide for certain public school employees to be mandated reporters, yet not all school employees who interact with children are included on the list (e.g., principals and assistant principals are not specified), and the list is inconsistent in which positions it specifies as mandated reporters at private schools. It is recommended that the Legislature amend paragraphs 1-5 and 9 of PC 11165.7(a) to simply include all employees, volunteers and governing board members of a public or private school, including charter schools.

Increase mandated training to build awareness of, and reporting options for, childhood sexual assault. As noted above, some risk management experts believe the risk of childhood sexual assault increases not with the number of students but with the number of adults with access to students. In recent years, schools have expanded services and employees to support social and emotional learning. These types of services are an essential component of whole child educational initiatives and are a large part of an expansion of services in response to the pandemic. Examples include 1) programs to lengthen the school day or year, such as the $4 billion investment in the Expanded Learning Opportunities Program,

which brings more adults on campus, in many cases employed by third-party community-based organizations; and 2) arts and music programs funded through Proposition 28 (2022), which increase the opportunities for students to engage with community volunteers and nontraditional instruction providers.

These programs encourage positive relationship building and improve adult-to-student ratios, but they also introduce an additional risk of childhood sexual assault. At the same time, an increase in adults can be a positive deterrent to predatory actions, particularly if adults are well trained and knowledgeable about professional boundaries, inappropriate behaviors (including grooming), and how to report concerns.

Expanded training should focus on increasing the quality of instruction. Some risk management professionals believe training is best accomplished in person and not through self-paced, minimally-interactive web-based programs. Training should be well-documented to avoid variances in implementation across an organization. For local educational agencies, the most daunting hurdle to quality training is time, especially for teachers who work a specific contract period, usually with minimal nonstudent days. More time means more expense. For twelve-month employees in other local agencies, time may be less of a hurdle.

It is recommended that the Legislature increase the quality and consistency of mandated training to prevent, build awareness of, and increase access to reporting options for, childhood sexual assault.

Improve training programs to increase knowledge about the varying contexts in which childhood sexual assault occurs. The grooming of victims by perpetrators is fundamentally different at the high school level than at the elementary level. At the early childhood and elementary grade levels, there are serious psychological issues and sometimes malice in the hearts of perpetrators who assault children. At the high school level, experience suggests that more often adult-to-student boundaries break down and what may have started as a well-meaning professional relationship changes to an inappropriate one. Often high school victims are at-risk students who seek additional adult-to-student relationships because of challenges at home.

The approach to prevention training programs must vary to properly prevent and eliminate childhood sexual assault in every context.

Train students to promote awareness and help provide 24-7 protection. Although there was debate in the past about whether it is a best practice, many risk management and child psychology experts now view the training of children as an important component of protection. Overall, students are a close second to teachers as the highest-frequency perpetrators. And in the case of students with disabilities, 61% of perpetrators are other students, with teachers constituting 17%.

Children are in school approximately six hours per day, 180 days per year. The rest of the time, they are involved in other life activities and social environments. Training for students should focus on building awareness and promoting reporting options, and should include parents and legal guardians, families, and the public. Specifically, the training should focus on principles of acceptable behavior, red flag indicators of certain behaviors in adults and children, and how to report concerns in a safe environment.

Recently a great deal of attention has been paid to training students on the subject of cyberbullying and the use, access, context and influences of social media platforms. The Legislature should mandate the same urgency and effort regarding the prevention of childhood sexual assault through training that builds awareness and reporting options.

Criticism of this idea has been that it shifts the burden from adults to children. But not all adults in a child's life are trained or

monitored. Building awareness that sexual assault and exploitation are wrong and promoting reporting are important steps in the defense of children. The Legislature should mandate training of students to promote awareness and help provide 24-7 protection.

Public and private school organizations and other governmental agencies should establish policies that promote common sense professional boundaries between adults and children. Several risk management experts interviewed for this report, who are familiar with claim allegations and details, identified the following suggestions for establishing and promoting professional boundaries, specifically in a school setting:

1. Electronic communication between adults and students is needed in the secondary grades. A good example is between a coach and players to advise of a last minute change in game time or transportation plans for an away game. Such communication should only be allowed at the secondary level if the parent or guardian is included. Electronic communication between adults and students includes social media interactions. Such communication is not appropriate for elementary-age students and should be limited to between school employees and parents.
2. Set policies in place to prohibit one-on-one adult-student presence and interactions in isolated areas. Private offices should have uncovered windows, and instructional spaces for one-to-one interaction (e.g., speech and language pathology services) should be clearly in view to those walking by and supervisors. Classrooms should also be visible, all while maintaining a balanced approach to safe school environments for all perils. Couches should not be allowed as classroom furniture.

District Impact Story

Some school districts are contracting with insurance archeology services to maximize recoveries for AB 218 claims, as well as strengthening preventive practices to guard against future events. A unified school district located on the central coast with approximately 9,000 students has hired an outside firm to uncover lost or unknown insurance policies for four AB 218 claims for events that occurred between 1969 and 1981. To date, the district has paid almost $15,000 for these insurance archeology services and estimates a total potential uninsured exposure of more than $10 million. Although the district has been able to identify liability coverage for these years, the underlying insurance carriers in all but one case are either insolvent or have not accepted ownership of the claim's coverage. The district also reports that it conducts annual sexual assault and molestation prevention evaluations, including reviews of its prevention policies, employee training, and use of technology. These evaluations also include physical inspections of schools, including classrooms, offices, athletic areas, theaters, gyms, locker rooms, labs, restrooms, common areas, and other areas where students may be present.

Public entity risk pools have developed solid guidelines in this regard. At a minimum, these guidelines should be instituted locally through policy, but state mandates may be warranted. These recommendations can be made more generic to be applicable to nonschool organizations. The Legislature should establish a statute that promotes professional boundaries between adults and children and strengthens the safety of learning environments.

Expand screening of applicants and volunteers to strengthen prevention. The hiring of applicants who are assigned to work around children, and the hiring of all public and private school employees, should include

more screening, background checks, and prior work history requirements. Temporary and substitute employees, walk-on coaches and assistants, and volunteers should be fully vetted the same as any other employee assigned to a school or to work around children.

Assembly Bill 2534 (Chapter 570, Statutes of 2024) is applicable to public school employers and was a start but falls short in its scope and practical application. Existing law limits the requirement that an applicant disclose their complete list of work history to 1) public school employers, and 2) to certificated personnel.

Further, existing law requires every public school employer to contact each previous public school employer the applicant discloses in their work history and inquire whether the applicant was the subject of any report to the Commission on Teacher Credentialing. The bill does not provide a reliable mechanism for the employer to verify a complete work history. The employer must depend on the applicant's truthfulness. The bill also does not require applicants to report, or public school employers to inquire of, out-of-state employers.

Education Code 44932 describes egregious misconduct by certificated employees. However, the definition and consequences for such behavior by classified employees is not consistently applied in the Education Code.

It is recommended that the Legislature expand the work history verification and inquiry mandate to include all public and private school employers and employees. Further, the Legislature should provide for an electronic database of school employee work history in California's public and private schools. This can be done by expanding the accessibility of the Commission on Teacher Credentialing database for certificated employees or those holding other Commission-issued authorizations; developing a new database and mandating reporting (likely required to capture classified employment information); or using a combination of data collection systems with aggregation and accessibility to public and private school employers. Many public employers already produce employment and compensation reports for a variety of public and private uses under the California Public Records Act. As such, reporting employment information is not a hardship. Lastly, it is recommended that the Legislature apply the definition of egregious misconduct to all public and private school employees and ensure that instances of egregious misconduct are reported to an appropriate state agency and included in available work history data accessible to school employers as described above.

The Penal Code's definition of sexual grooming lacks clarity. Grooming is the term often used to describe how a perpetrator builds a relationship with a child to abuse or exploit them. It involves a series of nonviolent, calculated activities that engender trust and affection to cross generally accepted relationship boundaries. The Legislature should provide a clearer, improved definition of grooming that specifically addresses grooming in school, childcare, educational, recreational, and incarceration or probation settings.

Consistent with a clearer definition of grooming, the existing reasons an individual is prohibited from being hired for a certificated position (e.g., EC 44830.1), existing reasons a certificated employee may be dismissed (e.g., EC 44932(a)), and the definition of sex offense (e.g., EC 44010) should be expanded to include the following:

- Violations of Penal Code 288.2, 288.3, 288.4 or 528.5 (note: PC 288.2 is already included in EC 44010).
- Once defined, grooming.

Further, consideration should be given to applying the prohibitions to private schools, and to expanding such prohibitions to all employees.

Summary of Recommendations

The following recommendations are summarized from the above sections of this report. The Legislature should:

- Require the development and maintenance of a statewide data repository, including mandating cooperation and information sharing by public agencies (page 13).
- Mandate a classification system to provide objective, actuarially based information on childhood sexual assault claims (page 14).
- Amend Government Code 970.6 to provide for the determination of unreasonable hardship by the local governing body tied to established standards (page 22).
- Amend Government Code 970.6 to provide a sliding scale of time for repayment based on the judgment amount, plus interest thereon (page 22).
- Extend the payment due date to 150 days from when a judgment is entered by the court for judgments that are greater than 50% of the local agency's unrestricted reserves (page 23).
- Clarify that a Code of Civil Procedure 860 validation proceeding may be brought by a public agency before tort action judgments are entered against the public agency (page 27).
- Consider a limited exception to the prohibition on the use of lease financing proceeds for general operating purposes in EC 17456 for situations where an otherwise financially stable school district is faced with an extraordinary liability. (page 27).
- Extend state and local payment intercept mechanisms to public financings by local public agencies rather than limit the mechanism to the California School Finance Authority (page 28).
- Expand or direct an appropriate role for the state's Infrastructure and Economic Development Bank in financing childhood sexual assault settlements and judgments (page 28).
- Adopt an alternative receivership statute for school districts requesting emergency apportionments solely due to childhood sexual assault obligations (page 32).
- Extend the maximum repayment term of 20 years for emergency apportionments when the loan amount is significantly higher than the school district's ability to pay and based on analysis performed and disclosed during the process leading to an emergency apportionment (page 33).
- Commission a study that identifies the structure and attributes of a victims' compensation fund for childhood sexual assaults involving a public agency. The study should be presented to the Legislature no later than January 1, 2026, and the Legislature should consider establishing a victims' compensation fund by July 1, 2026 (page 36).
- Ensure that state policies set consistent standards to achieve zero tolerance for childhood sexual assault (page 37).

- Require comprehensive school safety plans to include required policies and procedures designed to improve supervision and protection of children (page 37).
- Amend paragraphs 1-5 and 9 of Penal Code 11165.7(a) to simply include all employees, volunteers and governing board members of a public or private school, including charter schools (page 37).
- Increase the quality and consistency of mandated training to prevent, build awareness of, and increase access to reporting options for, childhood sexual assault (page 38).
- Mandate training of students to promote awareness and help provide 24-7 protection (page 39).
- Establish a statute that promotes professional boundaries between adults and children and strengthens the safety of learning environments (page 39).
- Expand the work history verification and inquiry mandate to include all public and private school employers and employees (page 40).
- Provide for an electronic database of school employee work history in California's public and private schools (page 40).
- Apply the definition of egregious misconduct to all public and private school employees, and ensure that instances of egregious misconduct are reported to an appropriate state agency and included in available work history data accessible to school employers (page 40).
- Provide a clearer, improved definition of grooming that specifically addresses grooming in school, childcare, educational, recreational, and incarceration or probation settings (page 40).

Upon request, the Fiscal Crisis and Management Assistance Team will be pleased to provide proposed statutory amendments for each of the recommendations listed above.

FCMAT's Role

This report was prepared by Erin Lillibridge, Michael Fine and John Lotze of FCMAT, with significant contributions from Donald Field, Esq., a public finance partner at Orrick, Herrington & Sutcliffe LLP.

The Fiscal Crisis and Management Assistance Team was created in 1991 by the California Legislature to help California's TK-14 LEAs avoid fiscal insolvency. Today, FCMAT helps LEAs identify, prevent and resolve financial, management, program, data, and oversight challenges; provides professional learning; produces and provides software, checklists, manuals and other tools; and offers other related school business and data services.