



Intelligence

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ASSOCIATION OF GOVERNMENTAL RISK POOLS

Sexual abuse and molestation claims in the public sector

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Public entity pools that have managed sexual abuse and molestation claims say it's a matter of when, not if, other pools will experience similar claims.

All pools deal with tough claim scenarios on occasion, but a claim of sexual abuse and molestation (SAM) in the public sector can be particularly challenging. These claims present a multitude of important considerations and may be personally difficult for even seasoned pooling professionals.

In addition to specialized claim needs, SAM claims present unique questions about coverage, risk management, and advocacy efforts. The time is right for pools to help address this important issue.

Overview of public sector SAM claims

Common understanding and legal definitions overlap for sexual abuse, sexual assault, rape, and sexual harassment. All of these acts involve power being asserted through inappropriate means.

Although some commonalities may exist between sexual harassment and sexual abuse and molestation, the nature of SAM claims are distinctive. Sexual abuse and molestation is generally used to describe acts against children and highly vulnerable adults. In other words,

SAM victims are entirely unable or unequipped to protect themselves.

Sexual abuse and molestation claims in the public sector do not happen often. A recent study of K-12 school pools in California, representing more than 60 percent of California's average daily student attendance over the last ten years, found less than two percent of 14,000 claim occurrences were for sexual abuse or molestation.¹

However, one west coast school pool cites a 53 percent increase in reported SAM claims from 2014 to 2018, when compared to the prior four year period. Almost half of the increase is attributable to student-on-student touching, previously rarely reported.

Local governments, public transit and special districts probably have even lower incidence rates than schools. In an era of increased social awareness, though, it's reasonable for all public entities to expect changes in report rates of SAM claims.

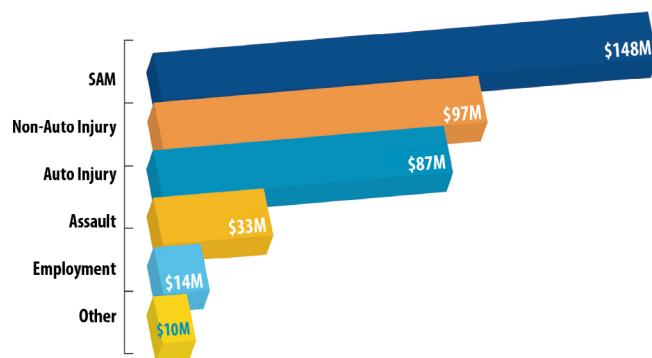
Though less than two percent of overall frequency in the California study, SAM occurrences accounted for almost 40 percent of claim costs in excess of \$1 million. Thirty-seven SAM occurrences included 96 individual claimants, with approximately \$1.5 million in total incurred value per claimant.

¹ California Schools Large Liability Analysis including data from 2007-2017, published 2018; shared by Mujtaba Dattoo, ACAS, MAAA, FCA, Actuarial Practice Leader and Craig Bowlus, ARM, National Practice Leader for Risk Pooling, Aon Risk Solutions.

California Schools Large Liability Analysis 2007-2017

	Occurrences	Frequency	Incurred Costs	Severity
Total in Study	14,000		\$778M	
In Excess of \$1M	114	.8 percent	\$389M	50 percent
SAM in Excess of \$1M	37	.3 percent	\$148M	19 percent

Breakdown of incurred loss costs in excess of \$1M



Severity as measured solely by incurred costs is of course insufficient to capture the totality of impact SAM claims have. A claim of sexual abuse or molestation perpetrated by a public or school official, or a claim the public entity failed to adequately identify and address a sexual abuse situation, is devastating and creates immediate disruption within every aspect of public sector work.

A SAM claim is a complicated web of protecting individual rights, weaving through organizational constraints, understanding difficult facts, and dealing with strong emotions. The circumstances of these claims in the public sector are troubling, to say the least:

- The victims may be children, vulnerable adults, or the elderly.
- K-12 victims are often involved in some kind of special education program.

- There may be several victims, abused over multiple years.
- Victims may have suppressed memories, so can be processing emotions concurrent with the investigation process.
- The offender, whether a public employee, official or volunteer, is often a trusted member of the community and admired by others.
- Victims, their families, and friends may attend the same school and community functions as the abuser.
- Broadened statutes of limitations for SAM victims may mean claims are being brought many years after the abuse took place.

Given the nature of SAM claims, frequency and severity considerations, it's appropriate that public entity pools evaluate SAM risks and response, coverage, and risk management opportunities for their members.

Providing SAM coverage

Coverage provided by a pool likely has exclusions for intentional acts by an alleged abuser. But exclusions may not apply for negligent hiring or supervision of an employee who commits sexual assault, or for claims made by an employee of the insured public entity. And, defense and indemnification may be required until the intentional act is proven.

In most cases, SAM coverage will exist as part of the pool's general liability policy, subject to the same limits as all other coverage. Some sexual abuse claims may fall under directors and officers, or elected officials coverage. This may be the case if the claim is for failure to adequately address known circumstances of abuse or molestation.

 **Because the nature of pooling is to find ways to provide needed coverage for public entities performing essential functions, some new coverage ideas are beginning to emerge.**

For instance, therapy coverage for the victim(s) and their family members might be made available immediately upon any allegation of sexual abuse or molestation. Even if the allegation is not proven, providing therapy demonstrates appropriate responsiveness, care and concern.

As you review coverage language and limits provided to pool members:

- Determine if notice provisions for SAM claims are extended by state statute to a certain number of years beyond the age of the victim's majority or based upon the victim's recollection of abuse.
- Consider whether limits of coverage applicable for SAM are reasonable to meet public entity needs given today's settlement and verdict values.
- Evaluate the use of sub-limits as a way to manage coverage for SAM claims and long-term loss expectations. A pool member with multiple SAM claims might need the dramatic wake-up call of how claim costs impact its experience rating and contribution requirements.
- Be sure coverage language is clear as to the stacking of limits if there are multiple victims, multiple instances of abuse, multiple locations, etc. SAM claims may span multiple policy years and include more than one victim, which can create questions about date of loss and number of occurrences.
- Review references to be sure terminology aligns with coverage intent. Referring to an abuser as the "adult" or "employee" may not address student-to-student abuse, which could also result in a SAM claim.

Even if it's not the norm for your pool, coverage for SAM claims is nuanced enough that you may want to utilize reservation of rights while investigating coverage details.

And, early coordination with reinsurance partners is important to assure policy alignment. Just as policy years and occurrence questions may exist between your pool and its member, there could be similar questions in the pool's reinsurance agreements.

The reinsurance market is watching shifts in SAM claim dynamics that could result in changing exposures and costs. While there is no clear consensus on how the reinsurance community will react within the public sector arena, there are increasing indications that higher premiums, higher retentions, and sub-limits for SAM claims could be in your pool's future.

At a minimum, it's reasonable to prepare for your reinsurance partners to ask specific questions about potential SAM exposures within your pool's membership, how you manage SAM claims, and what risk mitigation strategies your pool employs.

Managing a SAM claim

When it comes to managing a sexual abuse claim, key requirements are sensitivity, integrity, and empathy throughout the investigation and resolution.

Increasingly, there are plaintiff law firms specializing in SAM claims. These firms develop expertise on the subject and engage the best experts, which helps move a jury toward large awards. In some cases, plaintiff attorneys have also claimed Title IX violations, which allow filing in federal court and fee-shifting that can double the value of SAM claims.

These litigation trends put additional emphasis on the importance of managing a SAM claim mindfully, right from the start.

The nature of SAM claims may mean greater likelihood for settlement demands in excess of policy limits. Be sure you are notifying your member about demands in excess of the coverage limit and taking appropriate steps to address such demands on behalf of the pool and its member.

There will likely be both civil and criminal aspects to any SAM claim. Both the victim and the offender have

rights that must be protected, including what information may be shared with the pool member and its employees. Determining coverage, defense requirements, and appropriate information sharing are important to effectively manage covered aspects of the claim.

SAM claims are often complex and taxing, so it is beneficial for pools to use outside resources to fully investigate and manage them. There should be thorough investigation by a professional experienced in interviewing victims of sexual abuse, to determine whether there are additional victims and how long the sexual abuse went on. Again, there may be criminal investigations concurrent with claims investigations.

Substantial media coverage of a SAM claim against a public official should be expected. Even if the sexual abuse and molestation accusation is primarily a criminal matter, helping your pool member manage communications and media response is an important service. Reputational damage resulting from a SAM claim can be significant and may extend beyond the pool member directly affected.

When your pool receives a SAM claim, engage qualified and experienced investigators, defense attorneys, legal experts, sexual abuse counselors, compassion teams, crisis communication specialists, and other resources right away. If you wait to see how the claim develops, you may be too late to garner the full benefit of these outside experts.

Use of experts within litigation for sexual abuse and molestation is particularly important to balance the extreme emotion present in a claim. Identify all available expert resources in advance, including litigation firms with experience defending SAM claims.

Risk management strategies

Schools, early childhood programs, and daycares are obvious risk areas for possible claims of sexual abuse and molestation.

Parks and recreation programs, public beaches, pools or waterparks, community education activities, group

homes, public housing, nursing homes, senior care programs, disability services, law enforcement, jails and juvenile detention facilities, and transit services are also at risk.



Risk management reviews are warranted for any local government or school environment where children, vulnerable or elderly adults are participating in a program endorsed, run, or managed by the public entity.

Your pool's risk management review for members might include:

- Thorough review of facilities for open visibility to minimize opportunity for sexual offenders.
- Policies to ensure employees or volunteers are not in secluded one-on-one situations with children or vulnerable adults.
- Policies about when a public employee or caregiver may be alone with anyone under their care, including during transit between facilities.
- Background checks for all employees and volunteers whose role provides access to a vulnerable person of any age.
- Reporting protocols and expectations for any suspected sexual abuse or molestation.
- Whistleblower protections for anyone reporting suspected sexual abuse or molestation.
- Training and communication about appropriate boundaries for all public employees and officials, and age-appropriate training provided to program participants and their guardians.
- Training for all public employees and officials, including volunteers, to identify the warning signs of sexual abuse or molestation.
- Communication about sexual abuse warning signs and reporting. Check whether age-appropriate messaging is shared with the participants

of any program that involves children or vulnerable adults, and their guardians.

Pools are using other risk management tools and techniques to increase awareness and prevent claims. Pools commonly support member safety committees, and might now also encourage or help foster advisory committees on sexual abuse prevention. Whether structured in a single environment or across multiple pool members, a pool can set the right tone by engaging open conversation and promoting identified solutions.

Pools can also support and encourage the use of anonymous reporting tools. By using an anonymous reporting tool, anyone in an environment (like a school) can report behaviors that seem suspicious. This can be an important opportunity for early intervention into sexual abuse.

There may be some concern that an employment practices liability claim could be triggered by investigation into suspicious behavior. Encourage all pool members to take appropriate steps given any hint of a SAM claim. A SAM claim will be far more expensive, disruptive and emotional than an employment claim triggered by a viable check on suspicious behavior.

Public policy and advocacy efforts

Public entity pools that have managed SAM claims say it's a matter of when, not if, other pools will experience similar claims.

There is increasing public awareness of sexual misconduct, discourse about sexuality, hashtag movements, social media stimuli, scrutiny on public official behavior, and national news about high-end payoffs for inappropriate sexual behavior. These are just some of the factors contributing to the number and cost of SAM claims.

There will be some difficult reckonings of coverage, cost, risk management, and expectations within the public sector. These are challenges on the way to an environment in which sexual abuse and molestation is

Legislative activity


Earlier this year, the Michigan Legislature debated bills in response to a high profile sex abuse claim at a state university. Initial drafts of the bill were far reaching, including elimination of governmental immunity protections, extension of the statute of limitations to the victim's 48th birthday, and retroactive claim filing dating to 1997.

Although the eventual legislative solution was not as aggressive as initially proposed, there was still notable degradation of public entity protections.

Similar legislative debates have occurred in Arizona, California, Connecticut, Delaware, Georgia, Hawaii, Massachusetts, Minnesota, Oregon, Pennsylvania, and Utah.

not tolerated.

Direct advocacy efforts by public entity pools are uncommon. But absent proactive efforts within the public sector, lightning rod examples will define the issues and solutions.

 **Consider partnerships and proactive coordination of efforts with advocacy organizations. Explore together the risks presented by sexual abuse claims, and identify advocacy efforts that might be helpful for victims and public entities.**

Review tort caps and statutory immunity protections that could be called into question if a sexual abuse and molestation allegation against a public official made headlines. Think broadly about what your pool can do now to protect those tort caps and immunities long-term, for any claims.

Proactively cultivate and share data about the frequency and severity of SAM claims. When shared with empathy and an appreciation for the impact sexual abuse has, data can be a powerful method to bring measure into an emotional conversation.

Consider whether other active solutions, such as voluntary training standards, might be beneficial in advance of claims impacting the pool's membership. A statutory victim's fund might also be worth exploring, similar to what's been accomplished in some states for wrongful incarceration claims.

An advantage of this approach is assuring compensation directly for victims, not legal fees. And, a dedicat-

ed victim's fund might help head off more troubling solutions that could be identified after a high-profile allegation of sexual abuse.

Risk pools are perfectly positioned to help public entities identify and address SAM risks effectively, restoring much needed confidence and stability. By offering such effort and insight now, risk pools and their members will lead the way to a safer future for the public.

About the Authors

This issue of *Intelligence* is based upon collaboration by experts on the topic of sexual abuse and molestation in the public sector, with many inputs to assist the authors.



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Craig specializes in public sector risks, including municipalities, K-12, higher education, special districts and Native American governments. Craig has been involved with risk pooling since 1987, when he first acted as Claims Manager for Schools Excess Liability Fund, a pool which included more than 1,000 California school districts and universities. Craig has provided risk consulting services to the educational community since then.



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Deborah served as the Director of Claims and Litigation and then as the Deputy Executive Director before becoming Executive Director in 2015. She has been in the industry for 41 years, working for both private and public sector insurers, including more than 30 years for public schools. Deborah served as the national President for the Board of Trustees of the Society of Claim Law Associates, and is a Past President and current member of the Puget Sound Claim Managers Council.

Deborah has a Bachelor of Arts in Management from the University of Redlands, Calif.



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Ann has 25 years of direct public sector employment and experience in local government management, emergency services, risk management, primary and reinsurance claims, pooled insurance services and operations.

Ann is a recognized resource in strategic management and operations of public sector pools. She sits on several Boards of Directors, holds a Master's Degree in Public Administration, and is an attorney licensed in the State of Minnesota.

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