

HANDLE WITH CARE PROGRAMS

LEGISLATOR NOTICE

The Legislative Services Division is required to offer a brief history on the subject matter of a bill draft request prior to drafting. (5-4-105, MCA; [Chapter 309, Laws of 2017](#)) The history must include related legislation introduced over the last five sessions and hyperlinks to the bill, hearing information, and fiscal notes. The links below open to the page showing the status and history of bills introduced on this topic in the past. The bill text and any related fiscal notes can be accessed through the link at the top of that page.

Legislation can be complex and this history is not intended to be exhaustive. Please contact the drafter of the requested bill for more information.

Background Materials and Research

Topic Summary: In recent years, some cities and states have implemented what are known as "Handle with Care" programs, in which law enforcement officers provide schools with the names of children who were present at the scene of a traumatic incident to which law enforcement had responded. In these programs, law enforcement agencies must notify schools within a short time frame that the child should be "handled with care." Both law enforcement and school personnel are trained in providing a trauma-informed response. Some programs require that the schools have a mental health professional available to provide counseling, if parents give permission.

The programs have been implemented in various ways. Some communities have undertaken the program voluntarily. Some states have started pilot programs and, in some instances, expanded those pilots. Nevada in 2019 mandated that the program be implemented statewide and that the state provide training related to the program to law enforcement agencies, school boards, and school personnel. The Nevada law also provides immunity to trained school personnel in carrying out duties related to the Handle with Care program.

Implementing Handle with Care in Montana: Potential Statutory Changes

Some Montana communities have instituted Handle with Care programs or taken similar approaches to the topic on their own. Others have declined to do so because of potential concerns that current law needs to be changed.

Legislation for a Handle with Care program would likely focus on two areas:

- showing that the state has a compelling interest in allowing the notifications; and
- amending or enacting laws related to confidential criminal justice information and confidentiality of school records.

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Any legislation also could consider whether the program should be mandatory or permissive at the local level and whether it should include involvement by a state agency.

Establishing the State's Interest

Article II, Section 10, of the Montana Constitution states:

"The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest."

The Montana Supreme Court has consistently upheld this right of privacy and has established a balancing test that protects an individual's privacy right unless the individual's privacy interests are outweighed by the public's right to know.

It's possible that a Handle with Care effort could be challenged as a violation of the child's right of privacy or of the privacy rights of other individuals involved in the incident. If so, the state would have to demonstrate that it has a compelling state interest in providing schools with notification that a child was at the scene of a traumatic event that occurred in the child's home or another place outside of the school setting. To that end, a bill for a Handle with Care program should include a purpose section that spells out the compelling state interest in allowing the notification.

Federal and State Confidentiality Laws

Title 44, Chapter 5, MCA, establishes the types of criminal justice information that can be released to the public. Public criminal justice information is specifically defined as:

- information made public by law;
- information and court records involving prosecutions, court proceedings, convictions, appeals, and sentences;
- information a law enforcement agency considers necessary to obtain help from the public in apprehending a suspect;
- information originated by a law enforcement agency, such as initial arrest and offense records; and
- statistical information.

All other information related to a criminal investigation is confidential by law and may be disseminated only to other criminal justice agencies, to entities authorized by a court to receive the information, and to anyone authorized by law to receive it. A court order authorizing disclosure must include "a written finding that the demands of individual privacy do not clearly exceed the merits of public disclosure."

Further, the Family Educational Rights and Privacy Act places limits on disclosure of student information.

To allow for clear compliance with both state and federal law, legislation for a Handle with Care program could:

- allow law enforcement to release a child's name to a school; and
- ensure not only that schools limit the dissemination of the Handle with Care notifications to employees who need to know the information but also that employees who receive the information maintain its confidentiality.

Approach and Potential Appropriation

Handle with Care legislation could either:

- allow -- but not require -- communities to institute a program; or
- require that law enforcement agencies and schools provide the notification and undertake trauma-informed training;

Legislation also could require some involvement by a state agency to coordinate the local programs and the training efforts.

If a bill requires that the program be carried out statewide or requires state involvement, it could either contain an appropriation to cover the costs of the state and local efforts or would receive a fiscal note estimating the costs. Under Title 1, Chapter 2, legislation requiring local governments and schools to carry out new activities must provide a means of financing the activity unless the cost is not substantial. The costs would depend on the amount and type of training required for law enforcement and school personnel, as well as the type of notification system used by the community.

Nevada already had a state office handling other notifications to schools; the fiscal note for Senate Bill 80 (2019) said most of the costs of the bill could be absorbed within the existing program. However, it did estimate that enhancing the state's reporting hotline would have a one-time cost of \$25,000.

Immunity and the Montana Constitution

If legislation for a Handle with Care program were to provide immunity to school or law enforcement employees for actions they take under the program, the bill would need a two-thirds vote of each legislative chamber to pass. Article II, Section 18, of the Montana Constitution explicitly states that state and local government entities have no immunity from suit unless immunity is specifically provided by a law approved by a two-thirds vote of each house.

Other Materials:

[Senate Bill 80](#): Nevada, 2019

[House Bill 74](#): Delaware, 2019

[S. 2754](#): 115th Congress, 2017-2018

[Handle with Care Website](#): West Virginia (many other programs use this site as a template)

[Handle with Care Form](#): Polson (MT) School District

["Power Schools Introduce Handle with Care Program"](#): News Report, Oct. 2, 2019

Introduced Legislation

No legislation has been introduced on this topic.

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