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65th Montana Legislature

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TO: Education Interim Committee Members
FROM: Laura Sankey Keip, Staff Attorney
DATE: March 12, 2018
RE: Overview of Laws Related to School Safety

In light of recent events around the country, staff has prepared this overview for the committee to highlight current laws in Montana that pertain to maintaining and improving school safety.

REQUIREMENT TO ADOPT A SCHOOL SAFETY PLAN: Under these sections of law, a school district's board of trustees is required to adopt a school safety plan that is certified to the Office of Public Instruction. Once certification is complete, the trustees may transfer funds to make school safety and security improvements. The plan must be reviewed and updated periodically. Schools must hold at least 8 disaster drills each year. School authorities are also required to periodically inspect building exits to ensure doors, stairways, etc. are in good working order.

20-1-401. Disaster drills to be conducted regularly — districts to identify disaster risks and adopt school safety plan. (1) As used in this part, "disaster" means the occurrence or imminent threat of damage, injury, or loss of life or property. Disaster drills must be conducted regularly in accordance with this part.

(2) A board of trustees shall identify the local hazards that exist within the boundaries of its school district and design and incorporate drills in its school safety plan or emergency operations plan to address those hazards.

(3) A board of trustees shall adopt a school safety plan or emergency operations plan that addresses issues of school safety relating to school buildings and facilities, communications systems, and school grounds with the input from the local community and that addresses coordination on issues of school safety, if any, with the county interdisciplinary child information and school safety team provided for in 52-2-211. The trustees shall certify to the office of public instruction that a school safety plan or emergency operations plan has been adopted. The trustees shall review the school safety plan or emergency operations plan periodically and update the plan as determined necessary by the trustees based on changing circumstances pertaining to school safety. Once the trustees have made the certification to the office of public instruction, the trustees may transfer funds pursuant to 20-9-236 to make improvements to school safety and security.

20-1-402. Number of disaster drills required — time of drills to vary. There must be at least eight disaster drills a year in a school. Drills must be held at different hours of the day or evening to avoid distinction between drills and actual disasters.

20-1-404. Drill to sound on disaster evacuation system — recall signal to be distinct — control of signal. (1) If a disaster drill is signaled, the signal must be sounded on the disaster alarm system and not on the signal system used to dismiss classes.

(2) The recall signal must be separate and distinct from any other signal. The recall signal may be given by distinctive colored flags or banners. If the recall signal is electrical, the push buttons or other controls must be kept under lock and the key kept in the possession of the principal or some other designated person in order to prevent a recall at a time when there is a disaster. Regardless of the method of recall, the means of giving the signal must be kept under lock.

20-1-407. Inspection of exits — cooperation with local authorities having jurisdiction in drills. It is the duty of the school authorities to inspect all exit facilities periodically in order to make sure that all stairways, doors, and other exits are in proper condition. School authorities shall cooperate with the local authorities having jurisdiction in conducting disaster drills.

SAFETY-RELATED SCHOOL IMPROVEMENTS: Since the 2013 session, school districts have had the ability to transfer funds into the building reserve fund for the purpose of planning for and installing school safety and security improvements, once the district has certified its school safety plan to the Office of Public Instruction. The statute provides specific types of installations and improvements that these funds can be used for.

20-9-236. Transfer of funds — improvements to school safety and security. (1) A school district may transfer state or local revenue from any budgeted or nonbudgeted fund, other than the debt service fund or retirement fund, to its building reserve fund in an amount not to exceed the school district's estimated costs of improvements to school safety and security as follows:

(a) planning for improvements to school safety, including but not limited to the cost of services provided by architects, engineers, and other consultants;

(b) installing or updating locking mechanisms and ingress and egress systems at public school access points, including but not limited to systems for exterior egress doors and interior passageways and rooms, using contemporary technologies;

(c) installing or updating bullet-resistant windows and barriers; and

(d) installing or updating emergency response systems using contemporary technologies.

(2) Any transfers made pursuant to subsection (1) are not considered expenditures to be applied against budget authority. Any revenue transfers that are not encumbered for expenditures in compliance with subsection (1) within 2 full school fiscal years after the funds are transferred must be transferred back to the originating fund from which the revenue was transferred.

(3) The intent of this section is to increase the flexibility and efficiency of school districts without an increase in local taxes. In furtherance of this intent, if transfers of funds are made from any school district fund supported by a nonvoted levy, the district may not increase its nonvoted levy for the purpose of restoring the transferred funds.

STATUTES RELATED TO REGULATING WEAPONS: These sections of law address the issue of allowing or prohibiting weapons at schools or in school buildings. Section 45-8-360 addresses the intersection of state law with the federal Gun-Free School Zones Act. Under section 45-8-361, each school board has the authority to grant advance permission to possess or store a weapon in a school building.

45-8-351. Restriction on local government regulation of firearms. (1) Except as provided in subsection (2), a county, city, town, consolidated local government, or other local government unit may not prohibit, register, tax, license, or regulate the purchase, sale or other transfer (including delay in purchase, sale, or other transfer), ownership, possession, transportation, use, or unconcealed carrying of any weapon, including a rifle, shotgun, handgun, or concealed handgun.

(2) (a) For public safety purposes, a city or town may regulate the discharge of rifles, shotguns, and handguns. A county, city, town, consolidated local government, or other local government unit has power to prevent and suppress the carrying of concealed or unconcealed weapons to a public assembly, publicly owned building, park under its jurisdiction, or school, and the possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors.

(b) Nothing contained in this section allows any government to prohibit the legitimate display of firearms at shows or other public occasions by collectors and others or to prohibit the legitimate transportation of firearms through any jurisdiction, whether in airports or otherwise.

(c) A local ordinance enacted pursuant to this section may not prohibit a legislative security officer who has been issued a concealed weapon permit from carrying a concealed weapon in the state capitol as provided in 45-8-317.

45-8-360. Establishment of individual licensure. In consideration that the right to keep and bear arms is protected and reserved to the people in Article II, section 12, of the Montana constitution, a person who has not been convicted of a violent, felony crime and who is lawfully able to own or to possess a firearm under the Montana constitution is considered to be individually licensed and verified by the state of Montana within the meaning of the provisions regarding individual licensure and verification in the federal Gun-Free School Zones Act.

45-8-361. Possession or allowing possession of weapon in school building — exceptions — penalties — seizure and forfeiture or return authorized — definitions. (1) A person commits the offense of possession of a weapon in a school building if the person purposely and knowingly possesses, carries, or stores a weapon in a school building.

(2) A parent or guardian of a minor commits the offense of allowing possession of a weapon in a school building if the parent or guardian purposely and knowingly permits the minor to possess, carry, or store a weapon in a school building.

(3) (a) Subsection (1) does not apply to law enforcement personnel.

(b) The trustees of a district may grant persons and entities advance permission to possess, carry, or store a weapon in a school building.

(4) (a) A person convicted under this section shall be fined an amount not to exceed \$500, imprisoned in the county jail for a term not to exceed 6 months, or both. The court shall consider alternatives to incarceration that are available in the community.

(b) (i) A weapon in violation of this section may be seized and, upon conviction of the person possessing or permitting possession of the weapon, may be forfeited to the state or returned to the lawful owner.

(ii) If a weapon seized under the provisions of this section is subsequently determined to have been stolen or otherwise taken from the owner's possession without permission, the weapon must be returned to the lawful owner.

(5) As used in this section:

(a) "school building" means all buildings owned or leased by a local school district that are used for instruction or for student activities. The term does not include a home school provided for in 20-5-109.

(b) "weapon" means any type of firearm, a knife with a blade 4 or more inches in length, a sword, a straight razor, a throwing star, nun-chucks, or brass or other metal knuckles. The term also includes any other article or instrument possessed with the purpose to commit a criminal offense.

CONSEQUENCES AND STUDENT DISCIPLINE: Title 20 provides for misdemeanor consequences, including fines, for any person who willfully disturbs a school. If a student is found to have brought a firearm to school, that student is immediately suspended for good cause, and must be expelled for at least 1 year, unless the trustees determine otherwise. A school district is allowed to provide instructional activities related to firearms, and may allow a firearm to be brought to school for district-sanctioned instructional activities.

20-1-206. Disturbance of school — penalty. Any person who shall willfully disturb any school or any school meeting shall be deemed guilty of a misdemeanor and, if convicted by a court of competent jurisdiction, shall be fined not less than \$10 or more than \$100.

20-5-202. Suspension and expulsion. (1) As provided in 20-4-302, 20-4-402, and 20-4-403, a pupil may be suspended by a teacher, superintendent, or principal. The trustees of the district shall adopt a policy defining the authority and procedure to be used by a teacher, superintendent, or principal in the suspension of a pupil and in defining the circumstances and procedures by which the trustees may expel a pupil. Expulsion is any removal of a pupil for more than 20 school days without the provision of educational services and is a disciplinary action available only to the trustees. A pupil may be suspended from school for an initial period not to exceed 10 school days.

Upon a finding by a school administrator that the immediate return to school by a pupil would be detrimental to the health, welfare, or safety of others or would be disruptive of the educational process, a pupil may be suspended for one additional period not to exceed 10 school days if the pupil is granted an informal hearing with the school administrator prior to the additional suspension and if the decision to impose the additional suspension does not violate the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

(2) (a) The trustees of a district shall adopt a policy for the expulsion of a student who is determined to have brought a firearm, as defined in 18 U.S.C. 921, to school and for referring the matter to the appropriate local law enforcement agency. A student who is determined to have brought a firearm to school under this subsection must be expelled from school for a period of not less than 1 year, except that the trustees may authorize the school administration to modify the requirement for expulsion of a student on a case-by-case basis. The trustees shall annually review the district's weapons policy and any policy adopted under this subsection (2)(a) and update the policies as determined necessary by the trustees based on changing circumstances pertaining to school safety.

(b) A decision to change the placement of a student with a disability who has been expelled pursuant to this section must be made in accordance with the Individuals With Disabilities Education Act.

(3) In accordance with 20-4-302, 20-4-402, 20-4-403, and subsection (1) of this section, a teacher, a superintendent, or a principal shall suspend immediately for good cause a student who is determined to have brought a firearm to school.

(4) Nothing in this section prevents a school district from:

(a) offering instructional activities related to firearms or allowing a firearm to be brought to school for instructional activities sanctioned by the district; or

(b) providing educational services in an alternative setting to a student who has been expelled from the student's regular school setting.

ACCESS TO AND SHARING OF INFORMATION: Section 41-5-215 provides access for school officials to youth court records under certain circumstances. Section 52-2-211 creates a county interdisciplinary child information and school safety team. Subsection (4) provides that the purpose of this team is to facilitate the exchange and sharing of information across professions, including information related to issues of school safety.

41-5-215. Youth court and department records — notification of school. (1) Formal youth court records, including reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, and orders and decrees on file with the clerk of court, are public records and are open to public inspection until the records are sealed under 41-5-216.

(2) Social, medical, and psychological records, youth assessment materials, predispositional studies, and supervision records of probationers are open only to the following:

(a) the youth court and its professional staff;

(b) representatives of any agency providing supervision and having legal custody of a youth;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;

(d) any court and its probation and other professional staff or the attorney for a convicted party who had been a party to proceedings in the youth court when considering the sentence to be imposed upon the party;

(e) the county attorney;

(f) the youth who is the subject of the report or record, after emancipation or reaching the age of majority;

(g) a member of a county interdisciplinary child information and school safety team formed under 52-2-211 who is not listed in this subsection (2);

(h) members of a local interagency staffing group provided for in 52-2-203;

(i) persons allowed access under 42-3-203; and

(j) persons conducting evaluations as required in 41-5-2003.

(3) (a) Notwithstanding the requirements of 20-5-321(1)(d) or (1)(e), subject to the provisions of subsection (3)(b) of this section, and according to the guidelines in subsection (3)(f) of this section, the chief probation officer or other designee from the district that has jurisdiction over the matter or the department of corrections for youth under the supervision of the department shall notify the school district that the youth presently attends or the school district that the youth has applied to attend of a youth's past or current drug use or criminal activity if after an investigation has been completed:

(i) a petition has been filed with the youth court or charges are filed in district court alleging a violation of any section in Title 45, chapter 5; or

(ii) the youth has admitted the allegation and the acts involve any offense in which another youth was an alleged victim and the admitted activity has a bearing on the safety of children.

(b) Notification under subsection (3)(a) may not be given for status offenses.

(c) Notification under subsection (3)(a) terminates upon the end of the youth court's supervision or the discharge of the youth by the department of corrections.

(d) A school district may not refuse to accept the student if refusal violates the federal Individuals With Disabilities Education Act or the federal Americans With Disabilities Act of 1990.

(e) The administrative officials of the school district may enforce school disciplinary procedures that existed at the time of the admission or adjudication. The information may not be further disclosed and may not be made part of the student's permanent records.

(f) Notification to the school district under subsection (3)(a) must be provided to:

(i) the school district superintendent or the superintendent's designee in districts that employ a superintendent;

(ii) the building principal or the principal's designee in school districts where the building principal is the only administrator; or

(iii) the county superintendent in school districts that do not employ an administrator.

(4) In all cases, a victim is entitled to all information concerning the identity and disposition of the youth, as provided in 41-5-1416.

(5) The school district may disclose, without consent, personally identifiable information from an education record of a pupil to the youth court and law enforcement authorities pertaining to violations of the Montana Youth Court Act or criminal laws by the pupil. The youth court or law enforcement authorities receiving the information shall certify in writing to the school district that the information will not be disclosed to any other party except as provided under state law without the prior consent of the parent or guardian of the pupil.

(6) Any part of records information secured from records listed in subsection (2), when presented to and used by the court in a proceeding under this chapter, must also be made available to the counsel for the parties to the proceedings.

52-2-211. County interdisciplinary child information and school safety team. (1) The following persons and agencies operating within a county shall by written agreement form a county interdisciplinary child information and school safety team:

- (a) the youth court;
- (b) the county attorney;
- (c) the department of public health and human services;
- (d) the county superintendent of schools;
- (e) the sheriff;
- (f) the chief of any police force;
- (g) the superintendents of public school districts; and
- (h) the department of corrections.

(2) The persons and agencies signing a written agreement under subsection (1) may by majority vote allow the following persons to sign the written agreement and join the team:

- (a) physicians, psychologists, psychiatrists, nurses, and other providers of medical and mental health care;
- (b) entities operating private elementary and secondary schools;
- (c) attorneys; and
- (d) a person or entity that has or may have a legitimate interest in one or more children that the team will serve.

(3) (a) The members of the team or their designees may form one or more auxiliary teams for the purpose of providing service to a single child, a group of children, or children with a particular type of problem or for any other purpose. Auxiliary teams are subject to the written agreement.

(b) A member of an auxiliary team must be a person who has personal knowledge of or experience with the child or children in the member's respective field.

(4) The purpose of the team and written agreement is to facilitate the exchange and sharing of information that one or more team members may be able to use in serving a child in the course of their professions and occupations, including but not limited to abused or neglected children, delinquent youth, and youth in need of intervention, and of information relating to issues of school safety. Information regarding a child that a team member supplies to other team

members or that is disseminated to a team member under 41-3-205 or 41-5-215(2) and (3) may not be disseminated beyond the organizations or departments that have an authorized member on the team under subsection (1) or (2).

(5) The terms of the written agreement must provide for the rules under which the team will operate, the method by which information will be shared, distributed, and managed, and any other matters necessary to the purpose and functions of the team.

(6) The terms of the written agreement must state how the team will coordinate its efforts with interdisciplinary child protective teams as provided in 41-3-108 and youth placement committees as provided for in 41-5-121.

(7) To the extent that the county interdisciplinary child information and school safety team is involved in a proceeding that is held prior to adjudication of a youth in youth court, the team satisfies the requirements of 20 U.S.C. 1232g(b)(1)(E)(ii)(I) of the Family Educational Rights and Privacy Act of 1974. Montana school districts may release education records to the team. The terms of the written agreement described in subsection (5) must include a requirement that the officials and authorities to whom the information is disclosed certify in writing to the school district that is releasing the education records that the education records or information from the education records will not be disclosed to any other party without the prior written consent of the parent or guardian of the student.

PROTECTING SAFETY- AND SECURITY-RELATED INFORMATION FROM PUBLIC ACCESS: Under the Montana Public Records Act, records related to the safety and security of public facilities, including public schools, is exempt from the requirement to be made public if releasing that information would jeopardize the safety of facility personnel, students, or the public.

2-6-1003. Access to public information — safety and security exceptions — Montana historical society exception. (1) Except as provided in subsections (2) and (3), every person has a right to examine and obtain a copy of any public information of this state.

(2) A public officer may withhold from public scrutiny information relating to individual or public safety or the security of public facilities, including public schools, jails, correctional facilities, private correctional facilities, and prisons, if release of the information jeopardizes the safety of facility personnel, the public, students in a public school, or inmates of a facility. A public officer may not withhold from public scrutiny any more information than is required to protect individual or public safety or the security of public facilities.

(3) The Montana historical society may honor restrictions imposed by private record donors as long as the restrictions do not apply to public information. All restrictions must expire no later than 50 years from the date the private record was received. Upon the expiration of the restriction, the private records must be made accessible to the public.