



Legislative Council Staff

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Memorandum

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TO: Members of the School Safety Committee
FROM: Jessika Shipley, Principal Analyst, 303-866-3528
SUBJECT: Legislation on School Safety Passed Since Columbine

Summary

In preparation for the work of the School Safety Committee, this memorandum provides information on current state and federal law regarding:

- school safety and emergency response;
- reporting on school-based incidents;
- school safety resources;
- a partial waiver of sovereign immunity for schools that experience incidents of violence;
- at-risk youth and mental health treatment for youth; and
- federal student privacy and confidentiality laws.

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School Safety and Emergency Response Plans

Safe school plans.¹ Every school district board of education (BOE) or institute charter school board in Colorado is required to develop, adopt, and implement a safe school plan. At a minimum, the plan must include a conduct and discipline code, safe school reporting requirements, and an internet safety plan. Additionally, BOEs are required to cooperate and develop written agreements with law enforcement officials, the juvenile justice system, and social services agencies to keep school environments safe. Further, BOEs must establish a school response framework that conforms with the National Incident Management System (NIMS) developed by the federal Emergency Management Agency (FEMA).

School conduct and discipline codes. The conduct and discipline code must include, at a minimum, general policies on:

¹Section 22-32-109.1 (2), C.R.S.

- student conduct, safety, and welfare;
- handling students who cause disruptions on school grounds, in a school vehicle, or at a school activity or sanctioned event;
- initiation of suspension or expulsion;
- acts of reasonable and appropriate physical intervention or force;
- gang-related activities;
- written prohibition against bringing, possessing, or using a dangerous weapon, controlled substances, or tobacco products to school, in a school vehicle, or to a school activity or sanctioned event;
- searches of students and student lockers;
- bullying prevention and education; and
- information concerning the district's policies for the use of restraint and seclusion on students.

Emergency response. Public schools and charter schools are required to develop and implement emergency response plans that align with NIMS. The plans must include:

- the incident command system taught by FEMA;
- a school safety, readiness, and incident management plan that coordinates with any statewide or local emergency operation plans that, at a minimum, identifies:
 - safety teams and backups who are responsible for interacting with community partners and assuming key incident command positions; and
 - potential locations for various types of operation areas and support functions or facilities;
- where possible, memoranda of understanding with community partners specifying responsibilities for responding to incidents; and
- an all-hazard exercise program based on NIMS that includes all relevant individuals and organizations to practice and assess preparedness and communications interoperability with community partners.

Each school is required to conduct a written evaluation following any exercises to identify and address lessons learned and corrective actions needed. In addition, emergency equipment must be inventoried and communications interoperability tested every academic term. Finally, each school district is required to adopt written procedures for taking action and communicating with relevant parties.

School safety personnel. Generally, schools use a combination of one of two types of school safety personnel. A *school safety officer* is a security guard contracted with or hired by a school to provide physical security on school property. These officers are permitted by law to carry concealed weapons while on school property if they are properly permitted.² A *school resource officer (SRO)* is a certified peace officer who is employed by a law enforcement agency and detailed to a school for the purpose of providing all law enforcement services and may ticket or arrest students at their discretion. SROs are given specialized training in dealing with students.

²Section 18-12-214 (3), C.R.S.

Reporting on School-based Incidents

Safe school reporting requirements.³ Schools are required to annually submit to their BOEs a written report that include specific data about:

- the enrollment rate;
- attendance rates;
- dropout rates for grades seven through 12, if those grades are taught at the school;
- the number of conduct and discipline violations;
- average class size;
- the school's policy concerning bullying prevention and education; and
- the number of acts of sexual violence on school grounds, in a school vehicle, or at a school activity or sanctioned event.⁴

The reports must be compiled by the BOEs and provided to the Department of Education for access by the public.

Reporting of school-based criminal activity.⁵ Annually on August 1 or before, district attorneys and law enforcement entities acting in an official capacity (including SROs) on school grounds, in a school vehicle, or at a school activity or sanctioned event are required to report to the Division of Criminal Justice in the Department of Public Safety on all student filings, tickets, summons, or arrests that occurred for the previous academic year, including incidents that occurred during the previous summer months, at a public school, in a school vehicle, or at a school activity or sanctioned event. The report must include the following information:

- student's full name;
- student's date of birth;
- student's race, ethnicity, and gender;
- name of the school where the incident occurred or the name of the school that operated the vehicle or held the activity or event;
- date of the arrest or taking of a student into custody;
- date of the issuance of the summons or ticket;
- arrest or incident report number as recorded by the law enforcement agency;
- single most serious offense for which a student is arrested, issued a summons, or issued a ticket;
- type of weapon involved, if any, for offenses classified as group A offenses under the National Incident-based Reporting System; and
- law enforcement agency's originating reporting identifier.

SROs who arrest a student are required to report this information to the school principal within 24 hours of the incident. If the SRO issues a ticket, this fact must be reported to the school principal within ten days of the offense.

³Section 22-32-109.1 (2)(b), C.R.S.

⁴Any information provided about acts of sexual violence must be reported in the aggregate and must not include any personal identifiable information.

⁵Section 22-32-146 (5), C.R.S.

School Safety Resources

School Safety Resource Center.⁶ In 2008, the General Assembly determined that the most appropriate way to prevent and prepare for acts of violence and other emergencies on school campuses is to foster a cooperative effort by schools, SROs, law enforcement agencies, emergency responders, behavioral health experts, parents, and community members to identify, gather, and apply the necessary resources. It also found that emergency response and crisis management measures should be implemented in all communities in the state to protect students and school personnel. To this end, the School Safety Resource Center (SSRC) and its advisory board were established within the Department of Public Safety.

The SSRC is required, among other things, to:

- assist schools in developing and implementing safety and preparedness plans;
- assist schools in establishing practices and strategies for use in responding to an emergency or crisis;
- assist schools in developing and establishing prevention and intervention efforts to ensure safe and secure learning environments;
- conduct regular research and assessment projects to determine the efficacy of statewide and local policies and programming;
- provide information and resources relating to school safety, school emergency response planning and training, and interoperable communications in schools to the Division of Fire Prevention and Control to be distributed to school districts and schools;
- consult with various groups and submit evidence-based practices for bullying prevention to the Department of Education; and
- provide information and training for SROs.

The advisory board is set to repeal on September 1, 2022.

Bullying prevention and education. The Department of Education and the SSRC maintain a website (<https://www.cde.state.co.us/mtss/bullying>) that provides evidence-based practices for bullying prevention.⁷ Additionally the department operates a grant program that allocates funding to public schools, facility schools, or collaborative groups of public schools or facility schools for efforts to reduce the frequency of bullying incidents.⁸

Safe2Tell.⁹ In 2014, the General Assembly created the Safe2Tell program within the Department of Public Safety. The program provides students and the community with the means to anonymously report unsafe, potentially harmful, dangerous, violent, or criminal activities in schools or the threat of those activities. Further, the program is required to promptly forward information received to the appropriate law enforcement or public safety agency or school officials. The program must also train law enforcement dispatch centers, school districts, individual schools, and other entities determined by the Attorney General on appropriate awareness and response to Safe2Tell tips. The program makes

⁶Section 24-33.5-1801 *et seq.*, C.R.S.

⁷Section 22-93-106, C.R.S.

⁸Section 22-93-102, C.R.S.

⁹Section 24-31-606, C.R.S.

available training and other educational materials about Safe2Tell for the use of schools and community partners.

Enhance School Safety Incident Response Grant Program.¹⁰ The Department of Public Safety administers a grant program to provide grants to nonprofit organizations that provide training for school safety incident response for the purpose of research, program development, and training to improve school safety incident response. Through Senate Bill 19-179, the program received an appropriation of \$1.2 million for FY 2019-20. The program funds may be used to:

- develop and provide training programs, curriculums, and seminars;
- develop best practices and protocols;
- conduct research and development; and
- upgrade technology and infrastructure used to provide training.

School Security Disbursement Program.¹¹ The program provides funding to local education provider or group of local education providers to improve security in public school facilities and vehicles and to support training for school personnel. The program was appropriated \$29.5 million in FY 2018-19 to fund it through the repeal date of July 1, 2021. The funds may be used for the following purposes:

- capital construction that improves the security of public schools and public school vehicles;
- training in student threat assessment;
- training for on-site SROs employed by the local education provider; and
- school emergency response training for all school building staff.

School Access for Emergency Response (SAFER) Grant Program.¹² The SAFER program provides funding for interoperable communication hardware, software, equipment maintenance, and training to allow for uninterrupted communications between existing school communications systems and first responder communications systems. The program receives \$5.0 million per year through the repeal date of July 1, 2024.

Crisis and Suicide Prevention Grant Program.¹³ The purpose of the grant program is to fund comprehensive crisis and suicide prevention training annually for all teachers and staff at public schools and school districts in Colorado who work directly or indirectly with students. The program is appropriated \$400,000 each year.

Claire Davis School Safety Act

The Claire Davis School Safety Act, enacted by the Colorado General Assembly in 2015, imposes a limited waiver of sovereign immunity for schools if a school fails to exercise “reasonable care” to protect all students, faculty and staff from “reasonably foreseeable” acts of violence that occur in a

¹⁰ Section 24-33.5-2203, C.R.S.

¹¹ Section 24-33.5-1810, C.R.S.

¹² Section 24-33.5-2104, C.R.S.

¹³ Section 25-1.5-113 (2), C.R.S.

public school, in a school vehicle, or at a school activity or sanctioned event. An employee of a school or school district is not subject to suit under the act in his or her individual capacity unless the employee's actions or omissions are willful and wanton. A school or school district, cannot be found negligent solely as a result of not expelling or suspending any student.¹⁴

At-risk Youth and Mental Health Treatment

Transitioning at-risk youth.¹⁵ State law requires a state-licensed day treatment facility, facility school, or hospital to notify the appropriate child welfare education liaison when a student transfers from one of those facilities to a public school and is considered a risk himself, herself, or the community. The Department of Human Services and the Department of Education have entered into memorandum of understanding regarding transitioning students, which addresses consistency in notifications and data sharing.

Mental health referrals and psychotropic drugs in schools.¹⁶ State law requires each school district BOE to adopt a policy to prohibit school personnel from recommending or requiring the use of a psychotropic drug for any student. School personnel are prohibited from testing or requiring a test for a student's behavior without prior written permission from the parents or guardians of the student and prior written disclosure as to the disposition of the results or the testing. School personnel are encouraged to discuss concerns about a student's behavior with the parent or legal guardian and such discussions may include a suggestion by school personnel that the parent or legal guardian speak with an appropriate mental health professional.

Mental health treatment for youth.¹⁷ Minors who are age 12 and over may seek outpatient services of a mental health treatment professional with or without parental consent. A minor who is age 15 years or older may receive inpatient or outpatient mental health treatment with or without parental consent. If the minor indicates that he or she is experiencing suicidal ideation, the mental health treatment professional is required to notify the minor's parent or guardian, regardless of the consent of the minor.

In cases where a minor communicates an imminent intent or threat to himself, herself, or others, the mental health professional is legally obligated to notify the threatened person or persons, or the person or persons responsible for a specific location or entity that is threatened, as well as to notify an appropriate law enforcement agency or to take other appropriate action, including but not limited to hospitalizing the patient. In a crisis or emergency situation, any of the following may order a 72-hour mental health hold:

- a certified peace officer;
- an individual licensed to practice medicine in Colorado;
- a psychologist;
- a registered professional nurse;

¹⁴ Section 24-10-106.3, C.R.S.

¹⁵ Sections 22-2-139, 22-2-409, and 22-32-138, CR.S.

¹⁶ Section 22-32-109 (1)(ee), C.R.S.

¹⁷ Sections 12-43-202.5, 12-245-203.5, 27-65-103, and 27-65-105, C.R.S

- a licensed marriage and family therapist;
- a licensed professional or addiction counselor; or
- a licensed clinical social worker.

Federal Student Privacy and Confidentiality Laws

Family Educational Rights and Privacy Act (FERPA). Among its many provisions and with respect to student behavior issues, FERPA prevents, with certain exceptions, school employees from releasing information about a student without the written permission of the student or his or her parent or guardian.

Health Insurance Portability and Accountability Act (HIPPA). The Privacy Rule of HIPPA regulates the use and disclosure of protected health information. Generally, a person's written permission is required in order to release information about the person's medical records. Exceptions are provided facilitate treatment and for law enforcement purposes, such as court orders and subpoenas.