

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of a) NOTICE OF ADOPTION OF
Temporary Emergency Rule) TEMPORARY EMERGENCY RULE
pertaining to Locking Arrangements)
in Educational Occupancies)

TO: All Concerned Persons

1. The Department of Justice is adopting the following emergency rule because the department has learned that some Montana schools are securing classroom doors with unlisted devices that have not been evaluated to ensure they operate properly and do not impair door operation. The emergency rule is necessary to ensure that the locking devices used do not constitute an imminent peril to the public health, safety, and welfare, while at the same time allowing schools to respond to the threat of gun violence.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Justice no later than 5:00 p.m. on April 2, 2019, to advise us of the nature of the accommodation that you need. Please contact Pat Clinch, Department of Justice, 2225 11th Avenue, P.O. Box 201417, Helena, Montana, 59620-1417; telephone (406) 444-1919; fax (406) 444-2759; or e-mail pclinch@mt.gov.

3. The temporary emergency rule is effective March 5, 2019, when this rule notice is filed with the Secretary of State.

4. The text of the temporary emergency rule provides as follows:

NEW RULE I LOCKING ARRANGEMENTS IN EDUCATIONAL OCCUPANCIES In educational occupancies, egress doors from classrooms, offices, and other occupied rooms shall be permitted to be provided with locking arrangements designed to keep intruders from entering the room where all of the following conditions are met:

(1) The door shall be capable of being unlocked from outside the room with a key or other approved means.

(2) The door shall be openable from within the room without the use of a key or special knowledge or effort.

(3) The locking means shall be capable of being engaged without opening the door.

(4) The releasing mechanism for unlocking and unlatching shall be located at a height not less than 34 inches (865 mm) and not exceeding 48 inches (1220 mm) above the finished floor.

(5) Modifications shall not be made to existing listed panic hardware, fire door hardware, or door closers.

(6) Modifications to the fire door assemblies shall be in accordance with National Fire Protection Association 80.

AUTH: 2-4-303, 2-4-306, 50-3-102, 50-61-102, MCA

IMP: 50-3-103, 50-61-106, MCA

Reason: Active shooter incidents are a threat in modern society. Over the past two decades, the average number of acts of violence nationally has increased by nearly two-thirds. From 2000 to 2005, there was an average of 31 incidents a year. From 2013 to 2018 that number had risen to nearly 50 incidents per year, with the highest number of violent acts occurring in 2018. The number of people killed has also followed a similar trend. From 2000 to 2005, an average of nearly 14 people were killed each year. From 2013 to 2018, the number of people killed increased to roughly 24 people a year.

School violence and threats to schools and students have affected nearly every community, both rural and urban, in Montana. A sample of recent acts of violence and threats aimed towards Montana schools, students, and faculty highlights the indiscriminate and constant presence of violence. In 2018 alone, several instances of violence and threatened violence targeted Montana's students and schools. For example, a Darby high school student was arrested after allegedly threatening to shoot students. A Big Sky high school student was arrested after shots were fired in the school's parking lot. A Missoula high school student was issued a restraining order and prohibited from owning a gun after threatening to shoot students. Two teenagers were shot by another teenager in the Sentinel high school parking lot. The campus at UM Western in Dillon was evacuated following a bomb threat. These incidents have resulted in the need to quickly secure classrooms and other occupied areas to keep unwanted intruders from entering.

Protecting students and schools is critical. The department has learned, however, that some schools are securing classroom doors with unlisted devices that have not been evaluated to ensure they operate properly and do not impair door operation. Schools are using these devices in periodic lockdown drills. These unlisted devices allow students or unauthorized personnel to secure doors so rooms cannot be entered. This presents a major safety concern because the devices could be employed within the classroom to commit physical assault, sexual assault, or other violent acts. In addition, the devices could prevent students from quickly leaving the classroom during a lockdown, if, for example: an intruder sets a fire; an intruder detonates an explosive device; an intruder or accomplice attempts to enter or fire a weapon into the classroom through an exterior window; or an incendiary device, or other hazard, is thrown into the classroom through an exterior window. Additionally, if a teacher were to become incapacitated for any reason, children, especially younger ones, could be incapable of operating the devices. For all these reasons, the agency finds that the unlisted devices constitute an imminent peril to the public health, safety, and welfare.

Thus, emergency rulemaking is necessary to ensure that the locking devices used do not pose a fire hazard or endanger students while at the same time allowing

schools to respond to the threat of gun violence. Additionally, this rule will promote uniformity as Montana schools implement new safety devices.

This emergency rule allows key-actuated deadbolts or other locks to be provided on classroom doors, where the teacher can lock the door and provide shelter-in-place in the classroom. This rule also requires the door to be able to be unlocked from the opposite side so that school administrators or responders can enter without a forcible entry. This rule also requires free egress to allow students to quickly exit if needed.

No fiscal impact is associated.

5. A standard rulemaking procedure will be undertaken prior to the expiration of this temporary emergency rule.

6. Concerned persons are encouraged to submit their comments during the upcoming standard rulemaking process. If concerned persons wish to be personally notified of that rulemaking process, they should submit their names and addresses to Pat Clinch at the address listed in paragraph 2.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 2 above or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ Hannah Tokerud
Hannah Tokerud
Rule Reviewer

/s/ Timothy C. Fox
Timothy C. Fox
Attorney General
Department of Justice

Certified to the Secretary of State March 5, 2019.