



APRI

American
Prosecutors
Research Institute

School Crime and School Resource Officers

*A Desk Reference
for Prosecutors*

American Prosecutors Research Institute

99 Canal Center Plaza, Suite 510
Alexandria, VA 22314
www.ndaa-apri.org

Newman Flanagan

President

Steven D. Dillingham

Chief Administrator

Debra Whitcomb

Director, Grant Programs and Development

George Ross

Director, Grants Management

This information is offered for educational purposes only and is not legal advice. This project was supported by Award No. 2002-MU-MU-0003, from the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice. Points of view or opinions expressed in this document are those of the authors and do not necessarily represent the official position of the United States Department of Justice, the Office of Juvenile Justice and Delinquency Prevention, the National District Attorneys Association or the American Prosecutors Research Institute.

The American Prosecutors Research Institute is the nonprofit research, training and technical assistance affiliate of the National District Attorneys Association.

School Crime and School Resource Officers

A Desk Reference
for Prosecutors

December 2003

C. Kevin Morrison
Senior Attorney
National Juvenile Justice Prosecution Center
American Prosecutors Research Institute

PREFACE

The legal and law enforcement issues arising out of the school environment are among the most important for juvenile prosecutors to master. While recent statistics indicate that most serious violent crime against juveniles occurs away from school campuses, most other crimes occur as frequently or more frequently at schools, where children and adolescents still spend a substantial portion of their day.¹ Overall crime rates in schools have declined over the past decade by 50 percent.² Nevertheless, crime and violent or threatening behavior remains a significant problem for American schools:

- In 2000, almost 2,000,000 crimes were committed at school, and 128,000 students reported being victims of the “serious violent crimes” of rape, sexual assault, robbery, or aggravated assault. From 1992 through 1999 there were 358 school-associated violent deaths, the vast majority of which were homicides.³
- From 1993 to 2001, approximately 7 to 9 percent of high-school age students reported being threatened with a weapon at school. In 2001, 13 percent of high-school age students indicated they had been in a fight at school, and 8 percent of all students reported being bullied at school, with the prevalence higher for younger students than older (14 percent in grade 6 versus 2 percent in grade 12).⁴
- Over the five-year period from 1996 to 2000, teachers were the victims of 1.6 million non-fatal crimes at school, nearly 600,000 of those vio-

¹ In 2000, the “serious violent crimes” of rape, sexual assault, robbery and aggravated assault occurred more than twice as often outside school than at school. Jill F. DeVoe, *et al.*, INDICATORS OF SCHOOL CRIME AND SAFETY 2002, p. 6 (U.S. Dep’t of Justice, U.S. Dep’t of Education 2002) (hereinafter “2002 INDICATORS”). Overall crime rates, however, including theft and non-serious violent crime, were virtually identical at school and away from school during the same period, and theft was more likely to occur at school than away. *Id.* at pp. 6–10.

² The total rate for “nonfatal victimization” (*i.e.* crimes of violence and theft) in American schools declined from 144 per 1,000 students to 72 per 1,000 students from 1992 to 2000. 2002 INDICATORS, p. v.

³ 2002 INDICATORS, pp. 2, 6–10. There was no significant difference in the rates for serious violent crimes among urban, suburban, or rural school districts. Likewise, the serious violent crime victimization rates were the same for younger students as for older ones.

⁴ 2002 INDICATORS, pp. 11–15.

lent crimes. The rate of victimization in urban schools was higher than in suburban and rural schools.⁵

- In 2001, 17 percent of high-school age students reported carrying a weapon to school during the previous 30 days. In the same year, 12 percent of students age 12 through 18 reported being called a hate-related word and 36 percent saw hate-related graffiti at school.⁶

These statistics demonstrate the difficulty schools often experience in trying to create an environment conducive to learning for America's school-age children. They also demonstrate why juvenile prosecutors can expect a significant portion of their caseload to arise from the school setting, and a majority of that will originate with School Resource Officers as the primary law enforcement officer involved.

School Resource Officers ("SROs") are unique among the law enforcement officers a juvenile court prosecutor will encounter. They often fulfill traditional policing roles by establishing a strong law enforcement presence in schools. But they also provide much more than straight law enforcement to the schools in which they work. Indeed many SROs spend a majority of their time engaged in non-law enforcement activities. As a result of this unique role, it is not surprising that the legal rules applicable to SROs' activities are sometimes unique as well, often changing depending on the precise function they are fulfilling.

In addition, school settings often present unique legal situations to the juvenile prosecutor. Some general rules of constitutional law, such as those arising from the Fourth and Fifth Amendments, are quite different in schools than in other settings. Still other issues, such as confidentiality rules, truancy laws, and many bullying and harassment situations, are unique to schools and unlikely to arise anywhere else. It is essential, therefore, for juvenile prosecutors to understand those unique issues that arise out of public schools.⁷

⁵ 2002 INDICATORS, p. 24.

⁶ 2002 INDICATORS, pp. 30–36.

⁷ While private schools face many of the same situations that public schools face, the rules are not always the same. For example, the Fourth Amendment applies in public schools because teachers and administrators there are "state actors." *New Jersey v. T.L.O.*, 469 U.S. 325 (1985). That would not be the case for private schools, so the rules would be much different. Since the vast majority of American children attend public schools, and an even greater portion of the juvenile prosecutor's caseload will come from public schools, this work will focus on public school issues.

This Desk Reference is designed to assist juvenile prosecutors in navigating those many unique and varied issues that arise from schools and the work of School Resource Officers. It is divided into three parts. Part One will address the three participants in this setting—the school itself, the School Resource Officer, and the juvenile prosecutor—and the roles of each in the safe and proper functioning of public schools. Part Two will address the differing legal standards confronting SROs and juvenile prosecutors under the Fourth and Fifth Amendments in cases arising from the school setting. Part Two will also review some of the unique legal issues arising from the confidentiality protections afforded to students in schools and respondents in juvenile court. Finally, Part Three will discuss some of the legal and practical issues arising from students’ behavior that adversely affect safety and performance in school, including bullying and harassment; bomb threats and threats of violence, both serious and false; drug and weapon possession on campus; truancy; and the behaviors of “special needs” students. Finally, an appendix will provide information for juvenile prosecutors, and for SROs or other school personnel, on research and programs that have been successful in reducing youth crime in schools.

TABLE OF CONTENTS

Part One

- 1** ***School Administration***
- 3** ***School Resource Officers***
- 9** ***Juvenile Court Prosecutors***

Part Two

- 13** ***School Interviews***
- 21** ***School Searches and Seizures***
- 39** ***Confidentiality of Juvenile and School Records***

Part Three

- 45** ***Bullying, Harassment, and Hate Crimes***
- 55** ***Bombs, Hoaxes, and Threatening and Offensive Speech***
- 65** ***Weapons and Drugs in Schools***
- 69** ***Truancy***
- 75** ***Special Needs Students***

- 81** ***Appendix***

PART ONE: SCHOOL ADMINISTRATION

The Balancing Act

School administration is one of the most challenging professions involved with the juvenile justice system. Schools must constantly balance children's education rights with the school's need to maintain a safe learning environment. Schools are asked to participate in the juvenile justice system, yet are constrained by state and federal confidentiality laws and federal laws limiting or prescribing disciplinary procedures. Schools are encouraged to report to law enforcement all acts of violent or potentially violent behavior. They are among the first under attack for failing to perceive "red flag" behavior when something catastrophic happens on campus, yet they are also criticized for their unwillingness to accept responsibility for minor discipline problems (zero tolerance policies). Schools may face civil rights litigation for suspending potentially dangerous kids with alleged disabilities, but tort litigation when innocent students are injured. Schools also face financial pressures surrounding school attendance. School funding is predicated in large part on average daily attendance numbers. Suspensions, expulsions and reports of truant kids can affect future funding levels.

Schools As Partners

Yet schools are central to the operation of the juvenile justice system. Teachers, counselors, School Resource Officers, and other school personnel spend more time with juveniles than any other stakeholder in the system. Their watchful eyes and supportive interventions with kids can mean the difference between success and failure of juvenile court goals.

One of the most important things juvenile court prosecutors can do is establish a good working relationship with the schools in their jurisdictions. Effective partnerships with schools can open up a variety of resources to the justice system and possibly help schools avert potential disasters. Prosecutors are encouraged to learn about schools' policies and procedures and the constraints under which school administrators often

SCHOOL CRIME AND SCHOOL RESOURCE OFFICERS

must operate. Mutual understanding of the sometimes conflicting goals of educators and prosecutors can lead to greater collaboration, access and information-sharing.

SCHOOL RESOURCE OFFICERS

School Resource Officers may be the law enforcement officers a juvenile prosecutor is most likely to encounter. School Resource Officers, or “SROs,” are now employed by thousands of law enforcement agencies and school systems,¹ and, since they spend their entire workday among school-age children, their work is far more likely to come to the attention of the juvenile prosecutor than that of most other officers. As a result, it is essential for prosecutors and SROs to understand the unique issues and legal standards which they will encounter in their work so they can more effectively deal with criminal and disciplinary problems as they arise in the school setting, and more successfully prosecute those matters when they reach the prosecutor’s desk.

The Growth of the Use of SROs

Most SROs are employed by local police departments or sheriffs and assigned to the school district or specific schools, while a few large school districts employ their own police forces. The concept of a school-based police presence was pioneered in the 1950s in Flint, Michigan. By the early 1960s the idea had spread to Miami, Florida, where the term “School Resource Officer” is said to have been coined,² and to Tucson, Arizona, where a large SRO force still exists today.³ The SRO movement continued through the 1970s and 1980s, principally in Florida and the southeastern United States. In the 1990s nationwide concern about the rise in school violence generated renewed interest in school-based policing, and prompted an increase in the employment of SROs. Support organizations, such as the National Association of School Resource Officers (“NASRO”) and the Center for the Prevention of School

¹ SROs are known by various other names, such as “school liaison officers,” in some jurisdictions. This manual will use the term “SRO” to refer to all such officers, whatever their local name.

² P. Griffin, *Pennsylvania’s School Resource Officers*, Pennsylvania Progress: Juvenile Justice Achievements in Pennsylvania, vol. 7, no. 1, p. 3 (Juvenile Advisory Committee, Pennsylvania Commission on Crime and Delinquency, Winter 2000).

³ Tucson has 23 SROs serving 110 schools and 75,000 students. See Tucson Police Department’s website at http://www.ci.tucson.az.us/police/Organization/SSB_MEN/Support_Services_/Community_Relations_Section/SRO/sro.html.

Violence, were formed to promote the employment and training of SROs across the country.⁴

The rash of well-publicized, mass fatality school violence incidents in the latter 1990s in places like Littleton, Colorado, Jonesboro, Arkansas, and Paducah, Kentucky, prompted calls from the public and state legislators for measures to increase safety and security in schools. In response, the U.S. Department of Justice promoted community-based policing techniques, including SROs, culminating in 2000 when the Department began issuing more than \$60 million in grants to local police forces to hire and train hundreds of new SROs.⁵ Today it is estimated that there are over 15,000 SROs employed across the country, and the NASRO claims more than 10,000 members.⁶

The Job Description of an “SRO”

A precise definition of “SRO” varies from place to place, but the primary focus of most SRO programs is the placement of police officers in public schools full time to provide law enforcement and law-related education and counseling to students, faculty, and administrators. The Center for the Prevention of School Violence defines “SRO” as follows:

a certified law enforcement officer who is permanently assigned to provide coverage to a school or a set of schools. The SRO is specifically trained to perform three roles: law enforcement officer; law-related counselor; and law-related education teacher. The SRO is not necessarily a DARE officer (although many have received such training), security guard, or officer who has been placed temporarily in a school in response to a crisis situation but rather acts as a comprehensive resource for his/her school.⁷

⁴ J. McDaniel, *School Resource Officers: What We Know, What We Think We Know, What We Need to Know* (Center for the Prevention of School Violence 2001) (available at <http://www.juvjus.state.nc.us/cpsv/Acrobatfiles/whatweknowsp01.pdf>).

⁵ C. Girouard, *School Resource Officer Training Program*, OJJDP Fact Sheet (Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, March 2001); M. Kennedy, *Security: Teachers with a Badge*, AMERICAN SCHOOL & UNIVERSITY, Feb. 1, 2001 (available at www.asumag.com).

⁶ See <http://www.nasro.org/membership.asp>.

⁷ Center for the Prevention of School Violence, <http://www.juvjus.state.nc.us/cpsv/sro.htm>.

NASRO describes its ideal SRO program as “a collaborative effort by certified law enforcement officers, educators, students, parents, and the community to offer law related educational programs in the schools in an effort to reduce crime, drug abuse, violence, and provide a safe school environment.”⁸ Federal law has defined an SRO as follows:

The term “school resource officer” means a career law enforcement officer, with sworn authority, deployed in community oriented policing, and assigned by the employing police department to a local educational agency to work in collaboration with schools and community based organizations to—

- (A) educate students in crime and illegal drug use prevention and safety;
- (B) develop or expand community justice initiatives for students;
- (C) train students in conflict resolution, restorative justice, and crime and illegal drug use awareness.⁹

While SROs generally are sworn law enforcement officers and the vast majority wear a full uniform and carry standard police-issue weapons,¹⁰ they are much more than ordinary police officers to the schools in which they work. The vast majority have specialized training in the various unique matters they will face by spending their days in a school setting. A recent survey of SROs shows that they spend less than half of their time engaged in law enforcement activities, and actually spend more time in mentoring and other educational and counseling tasks.¹¹ SROs provide law enforcement within the schools they serve, and are the primary investigator for most juvenile crime committed on the school campus or at school events; they serve as a liaison between the school and the

⁸ NASRO Mission Statement (available at <http://www.nasro.org/mission.asp>).

⁹ *Safe and Drug-Free Schools and Communities Act*, 20 U.S.C. § 7161(11) (2002). NASRO refers to these three aspects of the SRO’s job as the “TRIAD concept (Law Enforcement Officer - Teacher - Counselor).” See http://www.nasro.org/about_nasro.asp

¹⁰ 2002 NASRO School Resource Officer Survey (National Association of School Resource Officers 2000) fig. 37 (95% of SROs carry a firearm while on duty) (hereinafter 2002 NASRO Survey) (available at <http://www.nasro.org/2002NASROsurvey.pdf>).

¹¹ SROs spend 41% of their time as a law-enforcement officer, 46% of their time as a counselor or mentor, and 13% of their time as an instructor or teacher. 2002 NASRO Survey, fig. 54. In 1997 that time division was 50% on law enforcement, 30% on counseling, and 20% on education. *The School as “The Beat”*: *Law Enforcement Officers in Schools*, CENTER.LINK RESEARCH BULLETIN, vol. 1, no. 3 (Center for the Prevention of School Violence, February, 1998).

remainder of the police department; they provide actual classroom instruction on law-related subjects; and they counsel students and teachers on a variety of subjects relating to their police duties.¹²

In a typical day, an SRO may be required to counsel a group of students on their life and career goals (and the effect delinquent behavior might have on their ability to achieve those goals); teach a class on drug awareness or on the Fourth Amendment; break up fights or other aggressive behavior in the hallways; counsel a student about how to cope with the physical or emotional abuse she is enduring at home; investigate leads about possible criminal activity, including searching and interviewing students (or teachers) who may have drugs or weapons on campus; and make arrests when he or she finds sufficient evidence to establish probable cause that a crime has occurred.¹³

The Standards Applicable to an SRO's Work

The wide-ranging tasks and the unique function performed by SROs has naturally led to the question of the constitutional standards that will apply to their work, a question which the courts, unfortunately, have largely left unanswered.¹⁴ Essentially this inquiry asks whether the SRO is acting more as a police officer or more as a school administrator or teacher in taking a specific action. As we will see in the chapter on search and seizure, the Fourth Amendment standard applicable to a search conducted by the principal in the school is different from the standard applicable to a search conducted by a police officer on a city street.¹⁵

¹² *School-Based Policing and SROs*, Fact Sheet No. 8 (National Resource Center for Safe Schools, Fall 2000) (available at http://www.safetyzone.org/pdfs/factsheets/factsheet_8.pdf).

¹³ See P. Griffin, *Pennsylvania's School Resource Officers*, *supra* note 2, for a "day-in-the-life" narrative of a typical SRO's day.

¹⁴ See A. G. Bough, *Searches and Seizures in Schools: Should Reasonable Suspicion or Probable Cause Apply to School Resource/Liaison Officers?* 67 U. MO. K. C. L. REV. 543 (1999).

¹⁵ See page 21, *infra*. No cases have been found expressly applying different standards to the work of SROs employed by school districts from the work of SROs employed by law enforcement agencies. One case may have distinguished between "school police officers" and "outside police officers." *State v. D.S.*, 685 So.2d 41 (Fla. Dist. Ct. App. 1996). Later cases from another division of the same court, however, held that an SRO who was a deputy sheriff was held to the same standard as a school administrator. *J.A.R. v. State*, 689 So.2d 1242 (Fla. Dist. Ct. App. 1997).

Not surprisingly, the answer to the inquiry often depends on the nature of the SRO's activity. For example, a school principal who suspects that a student is carrying a concealed weapon might search the student for that weapon herself, or, for her safety, she might call upon the expertise and training of the SRO and ask him to conduct the search for her. When the principal asks the SRO to conduct the search for her (which is a proper function for an SRO), is the legality of the search determined by the standard applicable to a principal, or by the standard applicable to a police officer? At least one Florida case has found that the answer to that question is obvious:

It would be foolhardy and dangerous to hold that a teacher or school administrator, who often is untrained in firearms, can search a child reasonably suspected of carrying a gun or other dangerous weapon at school only if the teacher or administrator does not involve the school's trained resource officer or some other police officer.¹⁶

A leading case on the answer to that question is the Illinois Supreme Court case, *State v. Dilworth*.¹⁷ That court found that SRO conduct basically falls into three categories: cases where the conduct is initiated or requested by the school officials, cases where the SROs act on their own in fulfilling their varied duties, and cases where SROs act at the request of other officers in support of law enforcement activity originating outside the school. The conclusion in *Dilworth*, and in most other cases considering the question, is that in the first two kinds of activity, SROs function primarily as a school official, and their conduct should be governed by the standards applicable to school officials, while in the third category, they are acting as a police officer, and should conduct themselves as such.¹⁸ Some of the cases seem to suggest (though none have expressly said) that an SRO is more likely to be held to the lesser standard in connection with a search for weapons, due to school safety concerns, than for other contraband, like drugs.¹⁹

¹⁶ *J.A.R. v. State*, 689 So.2d 1242, 1244 (Fla. Dist. Ct. App. 1997).

¹⁷ 169 Ill.2d 195, 661 N.E.2d 310 (1996).

¹⁸ *Dilworth*, 661 N.E.2d at 206–07. Specific cases considering this question are discussed later at pages 28–29.

¹⁹ E.g., *J.A.R. v. State*, 689 So.2d 1242, 1244 (Fla. Dist. Ct. App. 1997) (“At least when it comes to guns and other dangerous weapons, we do not wish to draw fine lines between police officers who are ‘school resource officers’ and those who are not”).

The Success of SRO Programs

While there have been a few voices critical of the exponential growth in the use of SROs to protect schools and educate students,²⁰ the vast majority of the public, students, teachers, and the SROs themselves believe the programs are effective in keeping schools safe and diverting students from delinquent behavior. In one survey, 66% of students who felt unsafe the year before SROs began working in the school, felt safe after the first year with SROs.²¹ In another survey of high school principals and administrators, 87% rated their SRO program a “one” or a “two” on a scale of effectiveness of one through seven, with “one” being most effective.²² Similar results have been reached in numerous other studies of SRO programs.²³

Resources: Where to Go for More Information

Center For The Prevention Of School Violence
1803 Mail Service Center
Raleigh, North Carolina 27699-1803
800-299-6054
<http://www.juvjus.state.nc.us/cpsv/>

National Association of School Resource Officers
1601 NE 100th St
Anthony, FL 32617
1-888-31-NASRO
www.nasro.org

²⁰ D. Keiger, *An Unnecessary Force?* 55 Johns Hopkins Magazine (Sept., 2000) (available at <http://www.jhu.edu/~jhumag/0902web/police.html>).

²¹ *School Resource Officer Evaluation*, Justiceworks (University of New Hampshire) (available at http://www.justiceworks.unh.edu/Research/SRO_Eval/sro_eval.html).

²² *The Effectiveness of School Resource Officers*, CENTER.LINK (Center for the Prevention of School Violence, June 2001). No respondents rated their program a six or seven, and less than 1% rated their program a four or five.

²³ E.g., A. Foster, L. H. Vizzard, *School Resource Officer Partnership Evaluation*, Fall 2000, presented to Poudre School District, Larimer County, Colorado (available at <http://www.colostate.edu/depts/r-dcenter/sroevaluation2000.pdf>); I. M. Johnson, *The Effectiveness of a School Resource Officer Program in a Southern City*, 27 *Journal of Criminal Justice* 173 (1999).

JUVENILE COURT PROSECUTORS

Although juvenile court is often considered a training ground for new prosecutors, the complexities of juvenile offender cases and the difficulties of a successful juvenile court practice make it important that experienced and well-trained prosecutors be assigned to juvenile court. Juvenile prosecutors must seek justice¹ through balanced consideration of community safety, offender accountability and competency development in offenders,² and they must achieve these goals in a highly multidisciplinary arena, most often with limited resources.

The multidisciplinary nature of juvenile court sets it apart from other types of courtroom practice. In juvenile court, a legion of agencies are at the table throughout the process. Input from victims, juvenile probation officers, law enforcement, defense attorneys, school officials, court appointed special advocates (CASA), mental health professionals, social service workers, treatment providers and offenders' families is standard in juvenile court pre-adjudication and post-adjudication hearings.

Practicing law in this arena is a formidable task under the best circumstances, but juvenile court prosecutors do not operate under ideal circumstances. Instead, they struggle with heavy caseloads combining an incongruous mix of first-time, non-violent offenders and serious habitual juvenile offenders. They labor under limited resources, inadequate programming, and serious understaffing. Compounding the problem is the fact that the support agencies often have different theories about juvenile justice, punishment and rehabilitation, so achieving consensus among the key players can be quite difficult.

Further distinguishing them from their counterparts in other divisions of the office, juvenile court prosecutors are expected to take a leadership role in their communities, to marshal community assets and resources, and to develop innovative partnerships with support agencies in order to

¹ *National Prosecution Standards—Juvenile Justice*, 2d Ed. ¶ 92.2 (NDAA 1991).

² CAREN HARR, BRINGING BALANCE TO JUVENILE JUSTICE (APRI November 2002).

prevent juvenile crime and intervene early in the path to delinquency. Prosecutors have been at the forefront of many innovative prevention efforts to avoid juvenile crime to start with. They have also created diversion programs to keep non-violent and first time offenders out of the juvenile justice system while still holding them accountable for their actions and restoring victims and communities for the harm caused by juvenile crime, including juvenile school crime.

Nowhere is a prosecutor's leadership more important than at the intersection of the juvenile court and the school systems within the prosecutor's jurisdiction. From issues unique to the school setting like truancy, to instances in which larger crime problems such as interpersonal violence and drug use come into school settings, juvenile court prosecutors are well served to develop partnerships and cooperative relationships with the schools they serve. Many prosecutors' offices have achieved great successes by becoming actively involved with the schools in their jurisdiction to develop programs to address common issues they share with the schools, like crime and truancy.³

A crucial part of the partnership with schools is the prosecutor's relationship with the SROs working in those schools. Where SROs are used, they will be involved in a substantial number of the school crime cases making their way to juvenile court. Maintaining that relationship between prosecutor and SRO will make the job of each easier, and more importantly, create safer school environments more conducive to the learning process they are designed for. Further, SROs will naturally look to the juvenile court prosecutors with whom they work for training on the myriad of legal issues they will face, whether through formal training programs, or more frequently, through informal cooperative working relationships with juvenile prosecutors.

Now more than ever, juvenile courts need experienced, well-trained prosecutors who are dedicated to solving the unique problems that arise

³There are too many such successful partnerships to list them all here, but see, for example, the programs in Hennepin County, Minnesota, at <http://www.hennepinattorney.org/juvenile.htm>. A compendium of programs is also available on APRI's Web site, http://www.ndaa-apri.org/apri/programs/juvenile/jj_home.html.

when children commit crimes, and who are willing to expand their traditional role. The juvenile justice system must have dedicated prosecutors with comprehensive knowledge of many disciplines and specialized training if it is to make a positive, long-lasting impact on delinquency.

PART TWO: SCHOOL INTERVIEWS

One of the SRO's primary tasks will be to interact with the members of the school community, including students, teachers, parents, and "guests" (both welcome and unwelcome). As a result, most of the information gathered by an SRO, and most of the evidence that might end up in a juvenile prosecutor's file, will be the result of interviews by the SRO. Hence it is crucial that SROs conduct those contacts with witnesses, suspects, and victims effectively to obtain the most information possible, and to make sure the information collected is admissible in court in the event of prosecution. That statement is true, of course, for any law enforcement officer, but the SRO faces special challenges in the school setting that other officers do not. Interviews with juveniles are not like interviews with adults; a completely different dynamic is at work and a different set of rules applies to questioning, custodial and non-custodial, which must be observed for statements taken from juveniles to be admissible in court.

In many ways interviewing a juvenile suspect is like interviewing an adult in both purpose and technique. As a result, the rules of *Miranda* apply to frame, and sometimes to limit, the questioning just as they do when interrogating adults. The requirements of *Miranda* are well known. In general, *Miranda* applies when the suspect is in custody, an interrogation takes place, and law enforcement conducts the interrogation.¹ In that circumstance, no statement is admissible in court unless, prior to questioning, the suspect is warned of his right to remain silent, his right to an attorney prior to or during questioning (including the right to have an attorney appointed if he cannot afford one), and of the consequences of waiving those rights (*i.e.* that any statement may be used against him in court).²

¹ *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

² *Id.*

There are some significant differences, however, between questioning adults and questioning juveniles that must be observed to preserve the admissibility of any statement obtained in the interview. Principally those differences include the issue of what constitutes “in custody” in a school setting, and under what circumstances a juvenile can “knowingly and intelligently” waive the rights explained in the *Miranda* warnings. A further issue arises in some states, depending on statutes or court decisions, of whether a parent or an attorney has to be present or informed of the interview for a juvenile’s statement to be admissible.

“Custodial Interrogation”

Under ordinary circumstances, with an adult suspect (or, perhaps, a juvenile suspect in a setting other than a school), a person is in custody for purposes of *Miranda* when he has been “deprived of his freedom in any significant way,”³ or “is led to believe, as a reasonable person, that he is so deprived.”⁴ A person is not in custody unless “he has been formally arrested, or there exists a restraint on freedom of movement of the degree associated with a formal arrest.”⁵ “An individual is ‘in custody’ for *Miranda* purposes when, under the totality of the circumstances, the suspect’s freedom of action is curtailed to a ‘degree associated with formal arrest.’”⁶ Whether a person is in custody for purposes of *Miranda* depends upon “how a reasonable man in the suspect’s shoes would have understood his situation.”⁷ “The initial determination of custody depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned.”⁸ The determination of custody is a fact-intensive analysis considering two questions: (1) the circumstances surrounding the interview, and (2) whether a reasonable person in those circumstances would have felt free to terminate the interview and leave.⁹ In the case of a juve-

³ *Id.*

⁴ *People v. Arnold*, 66 Cal.2d 438, 448 (1967).

⁵ *Oregon v. Mathiason*, 429 U.S. 492, 495-97 (1977), quoted in *California v. Beheler*, 463 U.S. 1121, 1125 (1983).

⁶ *Berkemeyer v. McCarty*, 468 U.S. 420, 442 (1984).

⁷ *Id.*

⁸ *Stansbury v. California*, 511 U.S. 318, 323 (1994).

⁹ *Thompson v. Keohane*, 516 U.S.C. 99, 112 (1995).

nile suspect the “objective circumstances” normally would include the suspect’s age, experience, access to parents or other adults, and other maturity-related criteria; *i.e.* “reasonable person” may mean “reasonable juvenile.”¹⁰

The “objective circumstances” change significantly when the interview occurs in a school setting. The basic test of whether a suspect is in custody—whether the suspect is “free to leave” at any time—is not particularly informative in a school setting. The nature of school is that attendance by all students is compulsory, therefore none are “free to leave” when they wish.¹¹ “Given that the school setting is more constraining than other environments, it is especially important that police interviews with children, when carried out in that setting, are conducted with due appreciation of the age and sophistication of the particular child.”¹²

Thus, the test applied to determine whether an interview is “custodial” in a school setting uses the two-part test used in other situations, plus the added overlay of consideration of the immaturity of the subject and the “more constraining” school setting.¹³ In cases involving interviews at schools by SROs, the inquiry usually turns on the facts of the case. For example, in *In re G.S.P.*, 610 N.W.2d 651 (Minn. App. 2000), the court suppressed a statement given by a 12-year-old who was questioned by the assistant principal and SRO in the principal’s office, holding:

The location of the interview and the questioner’s titles are not determinative considerations. The fact that the questioning here occurred in school does not lessen the importance of Fifth Amendment safeguards. Further, the presence of a police officer

¹⁰ *Alvarado v. Hickman*, 316 F.3d 841 (9th Cir. 2002, as amended 2/11/2003), *cert. granted* _ U.S. _ (Sept. 30 2003).

¹¹ *State v. V.C.*, 600 So.2d 1280 (Fla. Dist. Ct. App. 1992) (“Although [students] were not free to leave, that restriction stemmed from their status as students and not from their status as suspects”).

¹² *State ex rel. Juvenile Dep’t v. Loreda* 125 Ore. App. 390, 865 P.2d 1312 (1993).

¹³ *E.g. In re John Doe*, 130 Idaho 811, 948 P.2d 166, 172 (1997) (“It is thus apparent that in evaluating the voluntariness of a juvenile’s confession, consideration must be given to the child’s age, maturity, intelligence, education, experience with police and access to a parent or other supportive adult”). *See also Alvarado v. Hickman*, 316 F.3d 841 (9th Cir. 2002, as amended 2/11/2003), *cert. granted* _ U.S. _ (Sept. 30 2003). (the court must consider juvenile’s age and maturity, and the presence or absence of parents or other adults, in determining whether the juvenile reasonably considered himself “in custody”).

alone does not transform a discussion into a custodial interrogation. But where, as here, a uniformed officer summons a juvenile from the classroom to the office and actively participates in the questioning, the circumstances suggest the coercive influence associated with a formal arrest.¹⁴

Two cases from the Washington appellate courts that reached opposite conclusions from each other demonstrate the fact-intensive nature of the inquiry. In *State v. D.R.*, 84 Wash. App. 832, 930 P.2d 350 (1997), the juvenile was a 14-year-old accused of incest. He was called to the principal's office and told by the SRO that his sister had already told the officer about the incident, was asked leading accusatory questions, and was not told he was free to leave though he was told he did not have to answer questions. The appellate court found the interrogation "naturally coercive" and therefore *Miranda* warnings should have been given. In another case, however, the facts went the other way. In *State v. R.B.*, 1998 Wash. App. LEXIS 1482, the 17-year-old was questioned in an empty office in the school about possible rape charges, was asked open-ended "what happened next" questions, and the interview lasted only six or seven minutes. Under those circumstances, the court held the interview was not custodial and *Miranda* warnings were not required.

Thus, it is impossible to draw a bright line between situations where *Miranda* warnings must be given and ones where they need not be. Where possible, informing the subject that he or she is free to refuse to answer questions and to leave or simply giving the *Miranda* warnings would be the best assurance of admissibility.

Waiver of *Miranda*

The Supreme Court held in *Fare v. Michael C.* that the question of whether a juvenile suspect has waived his or her rights under *Miranda* is answered in the same manner as with adult suspects:

Thus, the determination whether statements obtained during

¹⁴ 610 N.W.2d at 658 (citations omitted). The court also placed significance on the fact that the juvenile had never been in trouble or called to the principal's office before, the interview was tape-recorded, the tone of the officer and the principal was accusatory, and perhaps most importantly, the assistant principal told G.S.P. that he had to answer the questions.

custodial interrogation are admissible against the accused is to be made upon an inquiry into the totality of the circumstances surrounding the interrogation, to ascertain whether the accused in fact knowingly and voluntarily decided to forgo his rights to remain silent and to have the assistance of counsel... We discern no persuasive reasons why any other approach is required where the question is whether a juvenile has waived his rights, as opposed to whether an adult has done so. The totality approach permits—indeed, it mandates—inquiry into all the circumstances surrounding the interrogation. This includes evaluation of the juvenile’s age, experience, education, background, and intelligence, and into whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights.¹⁵

Thus, while the standard for waiver is the same for juveniles as for adults, an important part of the application of that standard in any given case is the facts pertaining to the juvenile involved, including the juvenile’s age and maturity, and whether a parent or other adult was present or available to the juvenile during the interview.¹⁶

Following are some recent cases considering the question of juvenile waiver of Fifth Amendment rights:

- The federal court upheld a state court finding that a statement by a 14-year-old was voluntary in which he confessed to murder after being held in custody 16 hours, but only questioned four times for a few minutes each time; his parent was given an opportunity to be present, but chose not to; the juvenile was confronted with inconsistencies between his statements and other witness statements, but not in an unduly coercive manner; he had 19 prior arrests, some for violent crimes, and seven prior juvenile court appearances; the juvenile restated

¹⁵ 442 U.S. 707, 724–25 (1979).

¹⁶ See National District Attorneys Association, *Resource Manual and Policy Positions on Juvenile Crime Issues*, pp. 16–17 (available at http://www.ndaa-apri.org/pdf/resource_manual_juvenile_crime_july_14_2002.pdf (2002) (“There should not be procedural differences between the taking of statements from a juvenile and an adult. Admissibility of such statements in court should be based on the totality of the circumstances”).

the *Miranda* rights and appeared to understand. *Hardaway v. Young*, 302 F.3d 757 (7th Cir. 2002).

- The federal court upheld a state court finding that a confession by a 15-year-old was voluntary where the juvenile agreed to go to the sheriff's office for questioning after consulting with his grandmother; his adult half-brother was present throughout the questioning;¹⁷ he was questioned three times for up to 32 minutes over a three-hour period; the questioning was "non-oppressive" and "with kid gloves"; and he was repeatedly reminded of his *Miranda* rights. *Gachot v. Stadler*, 298 F.3d 414 (5th Cir. 2002).
- The federal court upheld a state court finding that a confession was voluntary where the juvenile was 17 years old with an IQ of 88 (which an expert testified was "bright enough" for the juvenile to do well in school); the interview lasted about two hours before the juvenile agreed to give a videotaped statement; the interview was not "improperly coercive" even though the detectives raised their voice, "moved within a foot" of juvenile's face, misrepresented that an accomplice was confessing, and suggested that a truthful statement might result in leniency; and the juvenile had read and signed a rights waiver form. *Simmons v. Bowersox*, 235 F.3d 1124 (8th Cir. 2001).
- In a federal carjacking prosecution, the court affirmed a determination that *Miranda* waivers by a 16-year-old were voluntary. Questioning was suspended when the juvenile requested an attorney, and resumed again 90 minutes later only on the juvenile's request; the juvenile had extensive judicial experience, including seven arrests and several juvenile adjudications, two of which were based on confessions; and there was no evidence that the detectives attempted to take advantage or coerce the juvenile. *U.S. v. Wilderness*, 160 F.3d 1173 (7th Cir. 1998).
- In *Branaccio v. State*, 773 So.2d 582 (Fla. Dist. Ct. App. 2000) the court found a confession voluntary even though the court found that the police had lied to the child about his parents being notified of his arrest, since he "did not actually ask for his parents to be present and that he voluntarily confessed anyway."

¹⁷ A question was raised about whether the half-brother was truly interested in the juvenile's welfare since he was a sheriff's deputy and the murder victims were the brothers' parents. But the Court found that "if [the half-brother] harbored ill will toward Gachot after the shootings, there is no manifestation of it in the evidence, which suggests that he fulfilled the role of 'interested adult.'" 298 F.3d at 421.

- In *People v. McDaniel*, 326 Ill. App. 3d 771, 762 N.E.2d 1086 (2001), the court reversed a conviction after finding that a juvenile's confession was not voluntary because the police had denied the parent's request to see the child during the interview. Even though the juvenile never asked to speak to his parent, the court held that it is "well established that police conduct that frustrates a parent's attempts to confer with his or her child prior to or during questioning is a significant factor in determining whether the child's confession was voluntary." The court in *People v. Cunningham*, 332 Ill. App. 3d 233, 773 N.E.2d 682 (2002) reached the opposite result where the juvenile and his father went to the police station only to view a lineup, the subsequent interview lasted only about 30 minutes, and neither the father nor the juvenile asked for the father to be present.
- In *State v. Davis*, 268 Kan. 661, 998 P.2d 1127 (2000) the court looked at the "totality of circumstances" to find a juvenile's statement voluntary when the evidence indicated the 17-year-old subject lived independently on his own, he was not questioned continuously during the 4–6 hours he was in custody, he was allowed access to his older sister and was given food and drink, and he had considerable experience with law enforcement.
- In *State v. Gilliam*, 748 So.2d 622 (La. Ct. App. 1999), the court held a *Miranda* waiver invalid when the 14-year-old juvenile requested an attorney, but then a few minutes later he and his mother asked to resume questioning after being told that no attorney was available at the police station. The court found that "the clear inference from the facts is that had counsel been available, defendant would have continued to request that counsel be present for the statement."¹⁸
- The court found the statements of a 17½-year-old juvenile admissible in *State v. Martinez*, 127 N.M. 207, 979 P.2d 718 (1999). In that case the court applied New Mexico's statutory list of eight considerations in assessing the voluntariness of a juvenile's statement (which generally correspond to the *Michael C.* criteria), and found the statement voluntary and not coerced, despite the police misleading the juvenile's mother so that she would not be present during the interview.

¹⁸ Later in the opinion the court in *Gilliam* found the improper admission of the confession to be harmless error.

Specific State Laws

Some have argued, based on work by social science researchers,¹⁹ that younger juveniles do not possess the capacity to knowingly and voluntarily waive any rights, including those encompassed in *Miranda*. As a result, the argument contends that any *Miranda* waiver by a juvenile without a parent or other adult competent to act for or advise the juvenile is invalid.²⁰ Some courts have accepted this proposition in whole or in part, and several states have enacted statutes which require that a parent be informed of a juvenile's arrest,²¹ or require that a parent, attorney, or other adult be consulted or be present during any interview,²² or require that an attorney be provided for any juvenile without regard to whether the juvenile waives *Miranda*,²³ or require that juveniles in custody be presented to a judge or magistrate to be informed of their rights.²⁴ Most of the statutes apply during "custodial interrogations," so, presumably, the same standards on what creates "custody" under *Miranda* would apply.²⁵ The listing of statutes and cases in the footnotes is by way of example and is not an exhaustive list. Each juvenile prosecutor and SRO should become familiar with the law applicable in their jurisdiction to make sure that any statement obtained will be admissible in court.

¹⁹ E.g., Dr. T. Grisso, *Juveniles' Capacities to Waive Miranda Rights: An Empirical Analysis*, 68 Cal. L. Rev. 1134 (1980).

²⁰ E.g., *In re B.M.B.* 264 Kan. 417, 955 P.2d 1302 (1998).

²¹ E.g., Tex. Fam. Code § 52.02; *Hampton v. State*, 86 S.W.3d 603 (Tex. Crim. App. 2002) (statute requires parent be informed of the legal grounds for arrest, not necessarily all charges being investigated).

²² E.g., Colo. Rev. Stat. 19-2-511 (2001) (parent, guardian, or custodian must be present); 10 Okla. Stat. § 7303-3.1 (parent or attorney must be present for questioning of child under 16); Ind. Code Ann. § 31-32-5-1 (parent or attorney consulted before valid waiver by minor); *Commonwealth v. A Juvenile*, 449 N.E.2d 654 (Mass. 1983) (minor usually must consult parent); *In re E.T.C.*, 449 A.2d 937 (Vt. 1982) (consultation with disinterested adult required for waiver); Conn. Gen. Stat. Ann. §46b-137 (parent must be present during interrogation); *In re B.M.B.* 955 P.2d 1302 (Kan. 1998) (minor under 14 must consult with parent or lawyer); N.D. Cent. Code 27-20-26 (parent, guardian, or counsel must represent juvenile during questioning).

²³ 705 Ill. Comp. Stat. 405/5-160.

²⁴ W.Va. Code § 49-5-8(d) (any juvenile taken into custody must be presented to a magistrate, referee, or judge, and failure to do so renders any subsequent statement by the juvenile invalid); Tex. Fam. Code § 51.095 (statement by child admissible only after written waiver signed before a magistrate complying with conditions of the statute).

²⁵ *But see Alvarado v. Hickman*, 316 F.3d 841 (9th Cir. 2002, as amended 2/11/2003), *cert. granted*, ___ U.S. ___ (2003) (courts must take into consideration subject's "juvenile status" in determining whether he would have believed he was in custody).

SCHOOL SEARCHES AND SEIZURES¹

The Fourth Amendment of the United States Constitution protects individuals against “unreasonable searches and seizures” during criminal investigations.² Evidence obtained through police searches that violate the Fourth Amendment normally is excluded.³ Not every criminal defendant, however, may successfully invoke Fourth Amendment protection against evidence obtained through a search that may have been unreasonable. The extent to which the Fourth Amendment protects people may depend upon precisely *where* and *who* those people are.⁴

Specifically, Fourth Amendment protections may not be as readily available to juveniles on the grounds of public schools due to what the U.S. Supreme Court regards as the “substantial need of teachers and administrators for freedom to maintain order in the schools.”⁵ Accordingly, while juvenile prosecutors and SROs must always consider Fourth Amendment issues when dealing with juveniles, the scope of those protections is different in school settings than in other situations law enforcement officers may encounter.

School Searches

The landmark decision in the area of searches at schools is *New Jersey v. T.L.O.*⁶ The facts of *T.L.O.* are typical of the kind of situations SROs or other school officials might encounter on any given day:

On March 7, 1980, a teacher at Piscataway High School in Middlesex County, N.J., discovered two girls smoking in a lavatory. One of the two girls was the respondent T.L.O., who at that time was a 14-year-old high school freshman. Because smoking in

¹ Based on previous work by Robb Scott, Juvenile Justice Consultant and Former Assistant County Attorney, Supervisor Juvenile Division, Anoka, Minnesota.

² *Minnesota v. Carter*, 525 U.S. 83 (1998).

³ *Rakas v. Illinois*, 439 U.S. 128, 132 (1978).

⁴ *Carter*, *supra* note 2.

⁵ *New Jersey v. T.L.O.*, 469 U.S. 325, 341 (1985).

⁶ 469 U.S. 325 (1985).

the lavatory was a violation of a school rule, the teacher took the two girls to the Principal's office, where they met with Assistant Vice Principal Theodore Choplick. In response to questioning by Mr. Choplick, T.L.O.'s companion admitted that she had violated the rule. T.L.O., however, denied that she had been smoking in the lavatory and claimed that she did not smoke at all.

Mr. Choplick asked T.L.O. to come into his private office and demanded to see her purse. Opening the purse, he found a pack of cigarettes, which he removed from the purse and held before T.L.O. as he accused her of having lied to him. As he reached into the purse for the cigarettes, Mr. Choplick also noticed a package of cigarette rolling papers. In his experience, possession of rolling papers by high school students was closely associated with the use of marihuana. Suspecting that a closer examination of the purse might yield further evidence of drug use, Mr. Choplick proceeded to search the purse thoroughly. The search revealed a small amount of marihuana, a pipe, a number of empty plastic bags, a substantial quantity of money in one-dollar bills, an index card that appeared to be a list of students who owed T.L.O. money, and two letters that implicated T.L.O. in marihuana dealing.⁷

The New Jersey Supreme Court held that, while the initial detention of T.L.O. was reasonable, the search of her purse was not, and found that the evidence seized in that search was inadmissible. The U.S. Supreme Court reversed and found the search was legal, and in the process held that at least two of the standards of Fourth Amendment analysis are different in school settings from other searches.

First, the U.S. Supreme Court found that the Fourth Amendment's warrant requirement "is unsuited to the school environment" and held categorically that *school officials* (such as teachers and principals) need not obtain a warrant to search a student at school.⁸ Second, the Court held that the standard of "probable cause" which is normally required to justify any search, with or without a warrant, does not apply to school searches.

⁷ 469 U.S. at 328.

⁸ 469 U.S. at 340. The question of whether an SRO is a "school official" for purpose of this analysis is discussed later in this chapter.

... the accommodation of the privacy interests of schoolchildren with the substantial need of teachers and administrators for freedom to maintain order in the schools does not require strict adherence to the requirement that searches be based on probable cause to believe that the subject of the search has violated or is violating the law. Rather, the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search. Determining the reasonableness of any search involves a twofold inquiry: first, one must consider “whether the . . . action was justified at its inception,” second, one must determine whether the search as actually conducted “was reasonably related in scope to the circumstances which justified the interference in the first place.” Under ordinary circumstances, a search of a student by a teacher or other school official will be “justified at its inception” when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school.⁹

Thus, the Fourth Amendment standards applicable to searches in schools are significantly more relaxed than in other settings, normally requiring “reasonable suspicion” rather than “probable cause” for searches by school officials.

Reasonable Suspicion

“Reasonable suspicion” is a lower burden than probable cause to justify a search of a student and his or her clothing, backpacks, etc. A standard of proof less than probable cause is not unique in the law; the Court has approved other searches on reasonable suspicion rather than probable cause.¹⁰ Like probable cause, however, it is a factual inquiry depending on the circumstances of each given case and requires “specific and articulable facts” that, when taken together with reasonable inferences from those facts, reasonably warrant the intrusion. The analysis will also depend on the jurisdiction conducting the inquiry as each state high court and each

⁹ 469 U.S. at 341–42 (citations and footnotes omitted).

¹⁰ In *T.L.O.* the Court referred to four of those cases: *Terry v. Ohio*, 392 U.S. 1 (1968); *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975); *Delaware v. Prouse*, 440 U.S. 648 (1979); *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976).

federal circuit has decided similar cases in different ways. Some of those differences are small, others are significant, but they all dictate that prosecutors and SROs become familiar with the body of precedents in the relevant jurisdiction, and guide their work accordingly.

Cases in which reasonable suspicion was found include the following:

- A student was required by the principal to empty his pockets based on a telephone call stating that the student was carrying drugs to school that day, and the principal was already suspicious of the student being involved in drugs. *State v. Drake*, 139 N.H. 662, 662 A.2d 265 (1995).
- A tip from another student that a juvenile had “something” in his book bag, and the juvenile’s obviously false initial denial of ownership of the bag constituted reasonable suspicion to search. *In re Murray*, 136 N.C. App. 648, 525 S.E.2d (1999).
- A search of a student from another school who was on campus without permission or apparent purpose, along with rumors known to the principal that a fight with outside students would occur, was reasonable. *In re D.D.*, 146 N.C. App. 309, 554 S.E.2d 346 (2001).
- A search of a student’s bag based on another student’s statement that the stolen book was in the first student’s book bag was reasonable. *S.A. v. State*, 654 N.E.2d 791 (Ind. App. 1995).
- A student told a reliable faculty member who, in turn, told the principal that a student had marijuana in his book bag. *Commonwealth v. Snyder*, 597 N.E.2d 1363, 1368 (Mass. 1992).
- A student who had been in trouble in the past was found in the hallway without a pass and the principal asked the student to open his bag. After the request, the student fled, adding to the suspicion, but reasonable suspicion existed for the initial request. *Coffman v. State*, 782 S.W.2d 249 (Tex. App. 1989).
- A confidential informant said a student was distributing drugs. The vice principal told the student to empty his pockets, and also searched the student’s pens. *State v. Biancamano*, 666 A.2d 199 (N.J. App. 1995).
- An unnamed student told the principal that another student sold drugs at school, which was sufficient to make a search of the other student reasonable. *In re M.H.*, 401 N.W.2d 28 (Wis. App. 1990).
- An anonymous source stating that a student had passed cigarettes to another at the school cafeteria justified a search of the student’s pockets.

King v. State, 1997 WL 235475 (Tex. App. 1997).

- A student found with drugs implicated an “accomplice” who was searched. *In re Devon T.*, 584 A.2d 1287, (Md. Spec. App. 1991).
- At a high school dance, a student appeared to be under the influence of alcohol. A school official required two other students, who were with the first student at a party before the dance, to exhale in the face of the school official. *Martinez v. School Dist. No. 60*, 852 P.2d 1275 (Colo. App 1992).
- The dean heard an unusual metal thud when a bag was tossed onto a metal cabinet, which made it reasonable for him to touch the outside of the bag, which disclosed presence of an object that felt like a gun. A search inside the bag was justified. *In re Gregory M.*, 627 N.E.2d 500 (N.Y. 1993).
- Information was learned Wednesday that on the previous Friday Joseph had a pistol at the high school football game. A search was not made until the next day. *In re Joseph G.*, 38 Cal. Rptr.2d 902 (Cal. App. 1995).
- A school official observed a student to be under influence of an intoxicant probably taken during the lunch hour, which provided reasonable suspicion to search the student’s car. *Shamber v. State*, 762 P.2d 488 (Alaska Ct. App. 1988).
- An assistant principal smelling marijuana on a student, and the student admitting “some gentleman” smoked marijuana in his car after helping change a flat, was sufficient reasonable suspicion to search the car and trunk to verify the story. *F.S.E. v. State*, 1999 OK CR 51, 993 P.2d 771.

Cases in which reasonable suspicion was not found include the following:

- A school official saw a group of students where A.S. had money in one hand and was fiddling in his pocket with his other hand. A.S. had a “bad attitude,” and the drug problem at the school was growing. A search of A.S.’s backpack and wallet was unreasonable, but a search of his pocket was reasonable. *A.S. v. State*, 693 So.2d 1095 (Fla. Dist. Ct. App. 1997).
- A student was seen hiding in the school parking lot and gave a false name to a security guard. There was insufficient reasonable suspicion to justify a search of the student’s person and purse for drugs. *Cales v. Howell Public Schools*, 635 F. Supp. 454 (E.D. Mich. 1985).

- Seeing a student getting a cigarette pack from a locker did not justify a suspicion that there would be more cigarettes in the locker. *In re Dumas*, 357 Pa. Super. 294, 515 A.2d 984 (1986).
- An assistant principal stopped a student suspected of being tardy and who had a calculator case with “an odd-looking bulge.” *In re William G.*, 709 P.2d 1287 (Cal. 1985).
- An assistant principal searched a jacket for a weapon because the jacket seemed heavier than it should have been. *State ex rel Juvenile Dept. of Lincoln County v. Finch*, 925 P.2d 913 (Or. App. 1996).

Individualized Suspicion

A subsidiary issue that arises frequently in the area of school searches is whether the reasonable suspicion required by *T.L.O.* means the suspicion must be individualized to the subject or subjects being searched.

Normally the Fourth Amendment requires individualized suspicion that the suspect is engaged in illegal activity; exceptions generally are appropriate only where the privacy interests implicated by the search are minimal and “other safeguards” are available “to assure that the individual’s reasonable expectation of privacy is not ‘subject to the discretion of the official in the field.’”¹¹ In school searches, however, the more recent cases generally do not require the inspecting official to articulate individualized suspicion.¹²

- A school administrative search by metal detectors at the school’s entrances does not require individualized suspicion because the goal is not to apprehend one specific offender but to preserve safety. *In re F.B.*, 442 Pa. Super. 216, 658 A.2d 1378 (1995).
- School officials patted down all students’ outer clothing as students arrived at school on Halloween morning to prevent a recurrence of egg throwing that occurred on three previous Halloweens. The search was

¹¹ *Delaware v. Prouse*, 440 U.S. 648, 655 (1979) (quoting *Camara v. Municipal Court*, 387 U.S. 523 (1967)).

¹² A few cases have required individualized suspicion: *Burnham v. West*, 681 F. Supp. 1160 (E.D.Va. 1987); *In re Pima County Juvenile Action*, 733 P.2d 316 (Ariz. App. 1987); *Jones v. Latexo Independent School Dist.* 499 F. Supp. 223 (E.D. Tex. 1989); *DesRoches v. Caprio*, 156 F.3d 571 (4th Cir. 1998). This issue may also be controlled by statute (see, School Security Act, Tenn. Code Ann. Sec. 49-6-4205) or regulation (see, Department of Hawaii Education regulations, Chapter 19, Subchapter 4, sec. 8-19-16 (1986)).

reasonable when it found a gun on a juvenile's person. *In the Matter of Haseen N.*, 674 N.Y.S.2d 700, 251 A.2d 505 (N.Y. App. Div. 1998).

- A principal was informed that one or more weapons had been brought to school that morning but “had no basis for suspecting any particular student.” The “risk to student safety and school discipline” justified a generalized but minimally intrusive search requiring all male students to empty their pockets and be checked by metal detectors. *Thompson v. Carthage School Dist.*, 87 F.3d 979 (8th Cir. 1996).
- The focus of suspicion was on a group that had some members smoking. A search of all members was upheld. *Smith v. McGlothlin*, 119 F.3d 786 (9th Cir. 1997).
- School officials need not articulate suspicion of a specific crime having been committed to stop an outsider on campus “for the limited purpose of determining the fundamental factors justifying [his] presence on a school campus, such as who he is, why he is on campus, and whether he has registered [at the school office].” *In re Joseph E.*, 85 Cal. App. 4th 975, 102 Cal. Rptr.2d 641 (Cal. Dist. Ct. App. 2000).

Law Enforcement Involvement in School Searches

The Court made clear in *T.L.O.* that its analysis was applicable to searches conducted by school officials, and it was not considering the effect of involving law enforcement officers in the search.¹³ Most recent decisions involving SROs or other law enforcement officers working in conjunction with school officials have held that the reasonable suspicion standard for school officials is appropriate. A few courts, however, have found that the probable cause standard is necessary when a law officer conducts the search on school premises. In *State v. Dilworth*,¹⁴ the Illinois Supreme Court surveyed the cases from other jurisdictions involving searches by SROs and concluded that the cases fall into three categories: (1) cases where school officials initiate the search or police involvement is mini-

¹³ “We here consider only searches carried out by school authorities acting alone and on their own authority. This case does not present the question of the appropriate standard of assessing the legality of searches conducted by school officials in conjunction with or at the behest of law enforcement agencies, and we express no opinion on that question.” *New Jersey v. T.L.O.*, 469 U.S. 325, 342 n. 9 (1985).

¹⁴ 169 Ill.2d 195, 661 N.E.2d 310 (1996).

mal, (2) cases where SROs act on their own authority and initiative, and (3) cases where outside police officers initiate the search. In *Dilworth* the Court concluded that in the first two categories, most cases applied the *T.L.O.* reasonable suspicion standard, and only in the third category was probable cause required.¹⁵

Most states considering the issue have followed the *Dilworth* analysis upholding searches by school officials or SROs acting on their own. Nevertheless, prosecutors must familiarize themselves with the law in their jurisdiction to answer these questions.

The following cases upheld searches on a reasonable suspicion standard when school officials act with law enforcement officers (including SROs):

- A search by a police officer was permissible with reasonable suspicion. *In re D.B.*, 564 N.W.2d 682 (Wis. 1997).
- A school official may utilize law enforcement assistance in an investigation and search if the school official has reasonable suspicion of the student being searched. *F.S.E. v. State*, 1999 OK CR 51, 993 P.2d 771.
- *T.L.O.*'s reasonable suspicion standard applied to a search by an SRO and outside officers "in conjunction with" the assistant principal. *In re D.D.*, 146 N.C. App. 309, 554 S.E.2d 346 (2001).
- A search by an SRO in a drug investigation initiated by the assistant principal was upheld under the reasonable suspicion standard. *Florida v. N.G.B.*, 806 So.2d 567 (Fla. Dist. Ct. App. 2002).
- An SRO assisted in a search by the assistant principal by grabbing a book bag away from the student for the assistant principal to search. *In re Murray*, 136 N.C. App. 648, 525 S.E.2d (1999).
- An SRO search at the request of an assistant principal who was concerned about safety when a student refused to take his hand out of his pocket was upheld on reasonable suspicion. *In re Josue T.*, 128 N.M. 56, 989 P.2d 431 (1999).
- A search by an SRO with the assistant principal was upheld on reasonable suspicion based on information supplied by a student to the assistant principal. *J.A.R. v. State*, 689 So.2d 1242 (Fla. Dist. Ct. App. 1977).
- A police officer employed by the school district and a "paraprofessional" assistant were considered school officials in the application of the

¹⁵ 661 N.E.2d at 206–07.

- reasonable suspicion standard to uphold their search. *S.A. v. State*, 654 N.E.2d 791 (Ind. Ct. App. 1995).
- A search by the school liaison police officer who used a metal detector was held to the same standard as searches by school officials. *Illinois v. Pruitt*, 662 N.E.2d 540 (Ill. App. Ct 1996).
 - A search by a school liaison officer in an investigation initiated by the assistant principal was permissible with reasonable suspicion. *In re D.B.*, 211 Wis.2d 140, 564 N.W.2d 682 (1997).
 - A search by a school official with assistance from a school liaison officer was upheld. *Cason v. Cook*, 810 F.2d 188 (8th Cir. 1987).

Cases holding that the probable cause standard for police officers is necessary when school officials work with law enforcement include:

- *Coronado v. State*, 806 S.W.2d 302 (Tex. App. 1991), *rev'd on other grounds*, 835 S.W.2d 636 (Tex. Cr. App. 1992).
- *People in Interest of P.E.A.*, 754 P.2d 382 (Colo. 1988).

Other Specific Searches

Since *T.L.O.* a significant number of cases have considered various specific kinds of searches, such as searches of lockers and of cars in school parking lots, and the use of metal detectors and drug dogs.

Locker Searches

The early cases considering searches of student lockers at schools went both ways on whether students had a reasonable expectation of privacy in their lockers sufficient to require Fourth Amendment analysis. Most recent cases, however, have concluded that it is not reasonable for students to expect their school lockers to be private, or that the expectation is lessened. In addition, many school systems are adopting express policies that they publicize to their students declaring that school lockers remain the property of the school and that students should not expect them to be private. In those cases, the courts have generally upheld locker searches without requiring any suspicion at all.

Cases finding no expectation of privacy include the following:

- Students have no expectation of privacy because lockers are property of

- the schools. *S.A. v. State*, 654 N.E.2d 791 (Ind. Ct. App. 1995).
- The school had joint control of a locker with the student, therefore it could be searched. *Zamora v. Pomerov*, 639 F.2d 662 (10th Cir. 1981).
 - School officials have the authority to consent to a search of lockers. *People v. Overton*, 24 N.Y.2d 522, 249 N.E.2d 366, 301 N.Y.S.2d 479 (1969).
 - Students have a reasonable expectation of privacy in their locker from other students, but not from school officials. *State v. Stein*, 203 Kan. 638, 456 P.2d 1 (1969).
 - Students have no expectation of privacy if the school put students on notice that the school retains ownership and control of lockers. *In re Isaiah B.*, 176 Wis.2d 639, 500 N.W.2d 637 (Wis. 1993).
 - A school policy stating that students' rights in their lockers did not include the right to exclude school officials allowed lockers to be searched for contraband. *Singleton v. Bd. of Educ.*, 894 F. Supp. 386 (D. Kan. 1995).

Cases holding that students do have an expectation of privacy include the following:

- “For the four years of high school, the school is a home away from home.” *State v. Engerlund*, 94 N.J. 331, 463 A.2d 934 (1983).
- The state conceded a student has an expectation of privacy in a gym locker. *State v. Michael G.*, 748 P.2d 17, (N.M. App. 1987).
- Students have a limited expectation of privacy in a locker which is balanced against school's need to maintain order and discipline. *In re Dumas*, 357 Pa. Super. 294, 515 A.2d 984 (1986).
- A search violated the student handbook, but did not invalidate the search. *State v. Joseph T.*, 336 S.E.2d 728 (W.Va. 1985).
- Students have a minimal expectation of privacy. *In re L.J.*, 468 N.W.2d 211 (Wis. App. 1991).
- An Ohio statute allowing searches of lockers at any time after students are warned of potential searches by a posted sign violates the Fourth Amendment. *In re Adam*, 697 N.E.2d 1100 (Ohio 1997).

Metal Detectors

In the wake of several well-publicized incidents of school violence in the 1990s, the use of metal detectors in schools has become more common. The use of metal detectors to “search” people at entries of airports, court-

houses, and other public buildings has long been held not to violate the Fourth Amendment.¹⁶ Similarly, the use of metal detectors at the entrances of schools, and in other situations, has been upheld in several cases.

- The use of a magnetometer creates an administrative search that is permissible even if monitored by special police officers. *New York v. Dukes*, 580 N.Y.S.2d 850 (Crim Ct. 1996); *People v. Pruitt*, 278 Ill. App. 3d 194 (1996).
- Random use of a hand-held magnetometer was upheld where an open campus made use of metal detectors at the entrances impossible. *In re Latasha W.*, 60 Cal. App. 4th 1524 (1998); *State v. J.A.*, 679 So.2d 316 (Fla. App. 1996).
- A combination of scanning students with a handheld magnetometer and patting down was upheld as reasonable. *In re F.B.*, 555 Pa. 661 (1999).

Dog Searches

Another type of search that has increased in recent years is the use of canine units to detect the odor of drugs, explosives, and other contraband, and they are frequently being used on school campuses. The leading United States Supreme Court case on the use of dog searches is *U.S. v. Place*, 462 U.S. 696, 103 S. Ct. 2637 (1983), which held that the low intrusiveness of a dog sniff of luggage in a public place, such as an airport, does not amount to a search within the meaning of the Fourth Amendment.¹⁷

Before and after *Place* and *T.L.O.*, most courts have held that the use of “dog sniffs” to search school lockers and other property is permissible, though not all have agreed. Some courts have required more individualized suspicion for dog searches, especially where the dog is sniffing the children themselves.

- “The dog’s sniffing of student lockers in public hallways and automobiles parked in public parking lots...[does] not constitute a search.”

¹⁶ E.g. *People v. Kuhn*, 33 N.Y.2d 203 (1979); *United States v. Davis*, 482 F.2d 893 (9th Cir. 1973); *United States v. Epperson*, 454 F.2d 769 (4th Cir. 1972); *McMorris v. Alioto*, 567 F.2d 897 (9th Cir. 1978); *Downing v. Kunzig* 454 F.2d 1230 (6th Cir. 1972); *United States v. Cyzewski*, 484 F.2d 509 (5th Cir. 1973).

¹⁷ A similar issue involves the “people sniff.” A teacher sniffing a student’s hands to check for the odor of marijuana is not a search for Fourth Amendment purposes. *Burnham v. West*, 681 F. Supp. 1160 (E.D.Va. 1987). School children have no reasonable expectation of privacy in air surrounding their persons, and school officials may sample this air for the purpose of maintaining proper learning environment to same extent as they would be justified in conducting purely visual inspection.

Horton v. Goose Creek Ind. School Dist., 690 F.2d 470 (5th Cir. 1982).
See also, *United States v. Venema*, 563 F.2d 1003 (10th Cir. 1977).

- Use of a dog in the school parking lot did not violate the rights of a student when the dog alerted to the student's car. *Jennings v. Joshua Ind. School Dist.* 877 F.2d 313 (5th Cir. 1989).
- Using dogs to sniff individual students was a search within the meaning of the Fourth Amendment. *Horton v. Goose Creek Ind. School Dist.*, 690 F.2d 470 (5th Cir. 1982).
- Individualized suspicion of the person is required. *Jones v. Latexo Ind. School Dist.*, 449 F. Supp. 223 (1980).
- No individualized suspicion of the person is required. *Doe v. Renfrow*, 631 F.2d 91 (7th Cir. 1980); *United States v. Beale*, 731 F.2d 590 (9th Cir. 1983).
- A dog's alert, without more, gives probable cause. *U.S. v. Ludwig*, 10 F.3d 1523 (10th Cir. 1993).
- After a dog alerts to something sniffed, officers can search the area toward which the dog alerts, which may be a locker and adjacent lockers. *Commonwealth v. Cass*, 709 A.2d 350 (Pa. 1998).

Student Vehicles

As more students drive their own vehicles to school, the legality of vehicle searches on school property has become an important issue for prosecutors, law enforcement officers, and school officials. The following cases highlight some court decisions addressing this issue.

- School officials searched a student's person and locker based on reasonable suspicion without finding suspected drugs. School officials then searched the passenger compartment and trunk of the student's car in the school parking lot, and found drugs. The search was held valid under the reasonable suspicion standard. *People in Interest of P.E.A.*, 754 P.2d 382 (Colo. 1988).
- A search of a student's car was reasonable after a school official observed that the student was intoxicated or drugged, appeared to have ingested drugs and alcohol during the preceding forty-minute lunch period, and was evasive in response to questions about his car, which was improperly parked. *Shamberg v. State*, 762 P.2d 488 (Alaska Ct. App. 1988).
- A school official had reasonable suspicion that a student was involved in drug selling after a search of his person revealed \$230 in small bills and

a piece of paper with a telephone pager number on it. Therefore, the search of a vehicle was reasonable. *State v. Slattery*, 56 Wash. App. 820, 787 P.2d 932 (1990).

Drug Testing

Drug testing, through urinalysis or other means, has become fairly common in schools (and other places) throughout the country. Until recently the constitutionality of that testing has been uncertain, but two recent U.S. Supreme Court cases have largely resolved the issue. In *Vernonia School District v. Acton*, 515 U.S. 646 (1995), the Court found that mandatory random urinalysis drug testing of student athletes is reasonable. In finding the searches reasonable, the Court reviewed the reasons for the program, the process for taking the sample, the type of testing conducted, the limited disclosure of the test results, and the further limitation of the use of the results for only internal discipline affecting the student's athletic privileges. The Court concluded that “[t]aking into account all the factors we have considered above—the decreased expectation of privacy, the relative unobtrusiveness of the search, and the severity of the need met by the search—we conclude Vernonia’s policy is reasonable and hence constitutional.”¹⁸

The Court extended that holding to a case where the school system required random drug testing of all students involved in extracurricular activities in *Board of Educ. v. Earls*, 536 U.S. 822 (2002). In that case there was no history of drug involvement by the affected students to justify the need for the search as there was in *Vernonia*, but the Court found the policy reasonable anyway. The Court held that the students have a diminished expectation of privacy because of their participation in extracurricular activities, that the urine testing was “minimally intrusive,” and that the general evidence of drug use in the school system was sufficient to show the need for the testing.

Scope of Search

The scope of the search is always an important factor in determining the reasonableness of the search. The Court in *T.L.O.* held that the test of reasonableness was a two-part inquiry: first, whether the school official

¹⁸ 515 U.S. at 664–65.

had “reasonable suspicion,” and second, “whether the search as actually conducted ‘was reasonably related in scope to the circumstances which justified the interference in the first place.’”¹⁹ Hence, *T.L.O.* held that the measures adopted for the search must be “reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.”²⁰

The following cases consider the reasonableness of the scope of the search, though it must be remembered that the issue of “reasonableness” is always fact-intensive and will vary from case to case:

- A random search for weapons conducted by private security personnel hired by the school board was reasonable because “public school students are subject to a greater degree of control and administrative supervision than is permitted over a free adult.” Courts should consider in assessing reasonableness the fact that “incidences of violence in our schools have reached alarming proportions.” *State v. J.A.*, 679 So.2d 316 (Fla. Dist. Ct. App. 1996).
- School officials searched a student’s car based on reasonable suspicion and found a pager and a notebook with names and dollar amounts written next to names. It was then reasonable for school officials to enter the trunk and a locked briefcase, where they found drugs. *State v. Slattery*, 56 Wash. App. 820, 787 P.2d 932 (1990).
- School officials had reasonable suspicion a 16-year-old male was “crotching” drugs. He was ordered to take off his clothes and put on a gym uniform while his clothes were searched. The search was found reasonable. *Cornfield v. School Dist.* 230, 991 F.2d 1316 (7th Cir. 1993).
- School officials had reasonable suspicion that a 14-year-old student had money missing from a teacher’s purse, but making the student lower his pants and pull his underwear open in front and back was excessively intrusive since no exigent circumstances, such as the presence of weapons or drugs, necessitated an immediate search to ensure the safety of students. *State ex rel. Galford v. Mark Anthony B.*, 433 S.E.2d 41 (Va. 1993).
- A strip search of two 8-year-olds because of the theft of \$7 was held too intrusive and unreasonable. *Jenkins by Hall v. Talladega City Board of Education*, 95 F.3d 1036 (11th Cir. 1996).

¹⁹ 469 U.S. at 341.

²⁰ *Id.* at 342.

- Strip searches of students searching for a missing diamond ring were held unreasonable. *Kennedy v. Dexter Consolidated Schools*, 124 N.M. 764 (1998).
- Requiring a male student to remove shirt, shoes, socks, and hat before a female teacher (who was a certified drug counselor) was a reasonable “medical assessment” when the teacher observed the student being talkative, having flushed complexion and glassy eyes, behaving erratically, and appearing “high” and “out of it.” *Bridgman v. New Trier High School Dist. No. 203*, 128 F.3d 1146 (7th Cir. 1997).
- The court held it was reasonable to require a student to pull his pants tight around his crotch area when the student smelled of marijuana, his pupils were dilated, and he appeared sluggish, and a search of his coat and pants pockets revealed no marijuana. *Widener v. Fry*, 809 F. Supp. 35 (S.D. Ohio 1992), *aff’d mem.* 12 F.3d 215 (6th Cir. 1993).
- A search by a female administrator requiring a female student to remove her shirt and lower her pants, and where the administrator pulled on the elastic in the underwear to see if anything would fall out, was found reasonable based on substantial factors indicating that the juvenile may have cocaine and a search of her purse and locker turned up nothing. *Williams v. Ellington*, 936 F.2d 881 (6th Cir. 1993).
- Opening a small zippered compartment inside a purse during a search based on information the student had a knife at school was not reasonable. *T.J. v. State*, 538 So.2d 1320 (Fla. Dist. Ct. App. 1989).

Additional State Standards

Some jurisdictions have adopted search and seizure standards more restrictive than or in addition to those required by *T.L.O.*, based on interpretations of state law. Prosecutors should check their state constitution, state statutes, regulations, and court rulings before deciding the validity of a search. Some examples are as follows:

- The Washington Supreme Court adopted a “reasonable grounds” standard for school searches but included factors to consider, including the following: the child’s age, history, and school record, the prevalence and seriousness of the problem in the school to which the search was directed, the exigency to make the search without delay, and the probative

- value and reliability of the information used as a justification for the search. *State v. Slattery*, 56 Wash. App. 820, 787 P.2d 932 (1990).
- Minn. Stat. § 121A.72, subd. 1 provides: “School lockers are the property of the school district. At no time does the school district relinquish its exclusive control of the lockers provided for the convenience of students. Inspection of the interior of lockers may be conducted by school authorities for any reason, at any time, without notice, without student consent, and without a search warrant. The personal possessions of students within a school locker may be searched only when school authorities have a reasonable suspicion that the search will uncover evidence of a violation of law or school rules. As soon as practicable after the search of student’s personal possessions, the school authorities must provide notice of the search to students whose lockers were searched unless disclosure would impede an ongoing investigation by police or school officials.”
 - Hawaii requires a violation of school rule that is a “threat to health or safety” before searching. Department of Education Regulations, chapter 19, subchapter 4, sec. 8-19-16.

Seizure

Seizure of property is defined as government action that substantially interferes with a possessory interest in the property.²¹ It is having dominion or control over an item. Seizure of the person is usually defined by the “free to leave” test—a person is seized within the meaning of the Fourth Amendment when, by show of authority or use of physical force, the person’s freedom of movement is restrained.²² That principle does not necessarily apply, however, in the school setting where students’ movements and liberty are substantially restrained as part of the normal, everyday business of a school. The California Supreme Court recently explained why the difference matters, for purposes of the Fourth Amendment, in *In re Randy G.*:

[W]hen a school official stops a student to ask a question, it would appear that the student’s liberty has not been restrained over and above the limitations he or she already experiences by

²¹ *United States v. Jacobsen*, 466 U.S. 109 (1984).

²² *United States v. Mendenhall*, 446 U.S. 544 (1980).

attending school. Accordingly, the conduct of school officials in moving students about the classroom or from one classroom to another, sending students to the office, or taking them into the hallway to ask a question would not seem to qualify as a detention as defined by the Fourth Amendment.²³

The following are cases addressing the issue of whether a “seizure” has occurred in a school setting:

- An emotionally disturbed ninth grader was considered seized when he was put in a time-out room. The child went in on his own accord but had seen others thrown in. *Rasmus v. State*, 939 F. Supp. 709 (D. Ariz. 1996).
- A student being removed from a classroom by an SRO who observed “nervous” behavior by the student was not a seizure and a knife found in the search was admissible. *In re Randy G.*, 26 Cal. 4th 556, 563–64, 110 Cal. Rptr. 516, 28 P.3d 239 (2001).
- Seizure of a non-student on campus by an SRO was permissible on reasonable suspicion where the non-student drove onto campus in a car without a school parking permit, lied about the reason for being on campus (picking up a person the SRO knew was not a student at the school), and had an open beer container in the vehicle. *State v. Faulk*, 2000 Tenn. Crim. App. LEXIS 677 (2000).
- A 9-year-old student was taken to the principal’s office to be questioned by a social service caseworker about sexual abuse committed by the child. The Court held that, even assuming a seizure occurred, it was justified and the extent of restraint was insignificant. *Doe v. Bagcen*, 41 F.3d 571 (10th Cir. 1994).
- A seizure was found illegal where a 16-year-old student came to a high school entrance, saw metal detectors, turned, and started walking away. Police required the youth to pass through the metal detector. The Court found there was no reasonable suspicion for the seizure. *People v. Parker*, 672 N.E.2d 813 (Ill. App. 1996).
- The principal from one school went to another school in the same school district and took a student from the second school to a closed office where he interrogated the student for 20 minutes about a bomb

²³ 26 Cal. 4th 556, 563–64, 110 Cal. Rptr. 516, 28 P.3d 239 (2001).

threat at the principal's school. Two other students had implicated the student who was questioned. The court assumed without deciding that the student had been seized but that the seizure was reasonable. *Edwards v. Rees*, 883 F.2d 882 (10th Cir. 1989).

CONFIDENTIALITY OF JUVENILE AND SCHOOL RECORDS¹

As in any prosecutor/law enforcement relationship, and perhaps even more than others, the relationship between juvenile prosecutors and SROs is dependent on the free flow of information back and forth. All sorts of information known to SROs may be valuable to the juvenile prosecutor's decision making, from the charging decision to disposition issues after adjudication. Likewise, it is useful to SROs to know which of the students they encounter every day are subject to juvenile delinquency actions. Under state and federal law, however, there are significant barriers to that free flow of information.

For decades, public access to juvenile criminal proceedings was viewed as detrimental to the rehabilitation of a juvenile, and a juvenile's legal and scholastic records were considered private to the juvenile's family. Courts, therefore, have generally been closed to the public and the press when juvenile proceedings were involved. Likewise, federal law has long forbidden disclosure of a juvenile's school records to anyone, including prosecutors and juvenile courts. Those restrictions have prevented access to important information by law enforcement officers, prosecutors, and even treatment agencies.

Fortunately, courts, state legislatures, and the U.S. Congress are beginning to recognize the value of having all the participants in a child's life act on complete knowledge rather than ignorance, and today, many of those barriers to the passage of information are being modified. In addition, the media's attention to juvenile crime has caused a re-evaluation of the confidentiality of juvenile arrest and court records. The success of serious habitual offender programs has demonstrated that the sharing of information about the background, conduct and record of a juvenile provides a "positive" tool for decision makers. Finally, Congress has recognized the importance of schools, law enforcement, prosecutors, and the courts knowing more about the juveniles they have in common so that a comprehensive solution to the problems of crime and disruption in the

¹ Adapted from materials by Gus Sandstrom, District Attorney, Pueblo, Colorado.

schools, as well as the completeness of the juvenile offender's rehabilitation, can be addressed by all concerned with complete information.² There are still, however, many restrictions on the flow of information between schools and juvenile authorities which are important for prosecutors and SROs to understand.

Juvenile Court Proceedings

All states have statutes governing the confidentiality of juvenile court and associated records, and those statutes vary from state to state. All of those statutes require that juvenile proceedings remain confidential to some degree, but from there each varies substantially from the others. For example, many state statutes permit law enforcement officers and agencies to view juvenile records when attempting to execute an arrest or search warrant, or when conducting an on-going investigation.³ In most states, officers of public institutions or agencies to whom a child is committed are also permitted to inspect a juvenile's records. These officers include principals, school superintendents, and guidance counselors.⁴ Other state statutes specifically allow prosecutors access to juvenile records as well.⁵ Some states have even gone so far as to allow schools largely unrestricted access to juvenile court records,⁶ although those statutes are the exception rather than the rule. The statutes governing juvenile proceedings in federal court also prohibit disclosure of information pertaining to those proceedings, with certain exceptions which allow disclosure of information "to the extent necessary" in response to inquiries from "another court of law," from "law enforcement agencies," from treatment facilities to which the juvenile has been committed, and from the victim or the victim's family.⁷

² See National District Attorneys Association, *Resource Manual and Policy Positions on Juvenile Crime Issues*, pp. 19–21 (2002) ("Legislation should be implemented mandating inter-agency sharing of relevant information pertaining to juveniles. ... To properly perform their prosecutorial duties, prosecutors should have complete access to, and use in court of, information and records from other agencies") (available at http://www.ndaa-apri.org/pdf/resource_manual_juvenile_crime_july_14_2002.pdf).

³ See, e.g., § 705 ILL. COMP. STAT. 405/1-8 (1999).

⁴ See, e.g., GA. CODE ANN. §15-11-59 (1999).

⁵ *Id.*

⁶ See, e.g., 10 Okla. Stat. §§ 7307-1.2(M), 7307-1.3 (Supp. 2002).

⁷ 18 U.S.C. § 5038.

It is essential for juvenile prosecutors to become well versed in the confidentiality statutes applicable in their jurisdiction before sharing information about a juvenile proceeding with an SRO. Chances are those statutes allow much freer communication than they did even a few years ago, but it is far better to know the limits than to violate those statutes and potentially jeopardize a prosecution.

Federal Educational Rights And Privacy Act (FERPA)

Most of the rules governing the flow of information from schools to juvenile justice agencies, including prosecutors, are found in the Family Educational Rights and Privacy Act (“FERPA”).⁸ Generally, FERPA forbids schools from releasing “educational records” without the consent of the student’s parents, or, if the student is over 18, without the consent of the student.⁹ The term “educational records” is defined as (1) records directly related to a student and (2) maintained by an educational agency or institute or by a party acting for the agency or institution.¹⁰ Significantly, “educational records” does not include: (1) records maintained individually by teachers and administrators in their sole possession which are not accessible or revealed to any other person except a temporary substitute for the maker of the record; or (2) records of the law enforcement unit of an educational agency or institution (*i.e.* SROs) if the records are maintained separately from education records and were created solely for law enforcement purposes.¹¹

Thus, FERPA imposes no limitations on SROs providing “law enforcement” information contained in their records to prosecutors or other law enforcement personnel. Nor does it limit teachers, administrators, SROs, or other school personnel from providing information to prosecutors based on their own observations and records. FERPA probably does not permit an individual teacher or SRO to place a protected educational record in a personal file, and then claim it is not protected. This excep-

⁸ 20 U.S.C. §1232g.

⁹ 20 U.S.C. §1232g (b)(1). FERPA applies only to school systems which receive federal education funding, but that includes virtually all public schools in the United States.

¹⁰ 20 U.S.C. § 1232g(a)(4); 34 C.F.R. § 99.3.

¹¹ 20 U.S.C. § 1232g(a)(5); 34 C.F.R. § 99.3.

tion is generally considered to be limited to teachers' own observations and their notations for their own records of those observations, and to the police reports, interview notes, recorded statements, and other documentation normally contained in a law enforcement file.

FERPA provides three exceptions to the rule of non-disclosure of educational records that may be important to juvenile prosecutors. First, FERPA permits schools to disclose what is referred to as "directory information" without parental consent.¹² Directory information includes name, address, date and place of birth, dates of attendance, previous education institution, and a photograph of the student. FERPA also permits disclosure of otherwise confidential educational records "in connection with an emergency" when the disclosure is necessary "to protect the health or safety of the student or other persons...."¹³ Department of Education regulations help define "emergency" and the U.S. Department of Justice, in its guide to FERPA, *Sharing Information*, has given the following example of what, in DOJ's view, would constitute an emergency:

The principal receives information from a student that members of Five Crew [gang] are planning an assault at [another] high school in retaliation for [a] previous shooting. Under the emergency exception, the principal can provide information from each student's education record to the appropriate school officials and law enforcement agencies.¹⁴

The third, and perhaps most important, of the FERPA exceptions relevant to juvenile prosecutors allows disclosure of educational records to "state and local officials or authorities" if the disclosure "concerns the juvenile justice system and such system's ability to effectively serve the student, *prior to adjudication*, whose records are released."¹⁵ This exception is applicable only if the state legislature has enacted a statute specifically

¹² FERPA requires schools to give a general notice of the types of directory information they intend to make available for disclosure, and gives parents the right to object to disclosure of their child's directory information. 20 U.S.C. § 1232g(a)(5)(B); 34 C.F.R. §§ 99.3, 99.37.

¹³ 20 U.S.C. § 1232g(b)(1)(I).

¹⁴ U.S. Dep't of Justice, Office of Juvenile Justice and Delinquency Prevention, *Sharing Information: A Guide to the Family Educational Rights and Privacy Act and Participation in Juvenile Justice Programs*, p. 8, (1997) (available at <http://www.ncjrs.org/pdffiles/163705.pdf>).

¹⁵ 20 U.S.C. § 1232g(b)(1)(E) (emphasis added).

authorizing the disclosure, and if the “official or authority” receiving the information certifies that he or she will not further disclose the information, except as authorized by state law, without the consent of the child’s parent. The most prominent proviso in that statute, of course, is that the purpose of the disclosure must be to aid the juvenile justice system in serving the juvenile “prior to adjudication.” That does not necessarily mean, however, that the disclosure cannot be made if a juvenile has already been adjudicated on a charge.

The Secretary of Education believes that each school, working in conjunction with State and local authorities, can best determine whether a release of personally identifiable information from an education record “concerns the juvenile justice system’s ability to effectively serve a student prior to adjudication.” Thus, FERPA gives schools flexibility in determining whether an education record of a juvenile may be released without the prior written consent of the parent.¹⁶

Thus, there may be an argument under the “flexibility” allowed by federal authorities that even if a juvenile has been adjudicated on a delinquency charge, there is a significant need by the juvenile justice system (and, presumably, the school) in providing services “prior to adjudication” for future offenses, and that interest satisfies the need for sharing information.

Resources: Where To Go For More Information

The U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, has published a comprehensive guide to FERPA regulations as they apply to juvenile justice programs called *Sharing Information: A Guide to the Family Educational Rights and Privacy Act and Participation in Juvenile Justice Programs* (1997). It is available for download and printing at <http://www.ncjrs.org/pdffiles/163705.pdf>, or by mail by calling 800-851-3420.

¹⁶ *Sharing Information*, *supra* note 14 at p. 9.

PART THREE: BULLYING, HARASSMENT, AND HATE CRIMES

Bullying has been a schoolyard problem since there have been schoolyards. In the past, many treated bullying with a “kids will be kids” attitude—Ward Cleaver’s response to bullying at school probably would have been to teach Beaver and Wally self-defense, not to complain to the school or to file a lawsuit. Recent experience with high-profile incidents of school violence, however, has demonstrated that bullying is a significant problem for modern schools:

Today, bullying is rightfully being recognized for what it is: an abusive behavior that often leads to greater and prolonged violent behavior.... Schoolyard bullying which occurs in kindergarten through 12th grade, spans many different behaviors—from what some may call minor offenses to the more serious criminal acts. Name calling, fistfights, purposeful ostracism, extortion, character assassination, libel, repeated physical attacks, and sexual harassment all are bullying tactics.¹

The level of violence to which schoolchildren are exposed in society has escalated the level of violence in schoolyard bullying, making it far more problematic than it once was. Recently released research shows that student reports of bullying have increased more than 60 percent in the last few years.² Furthermore, modern bullying often presents itself in more virulent forms as sexual harassment and hate crimes. The juvenile prosecutor and the SRO must be more cognizant of the problems created by bullying, sexual harassment, and hate crimes in the schools. An understanding of who commits those behaviors and why is important to understanding how to control them in the schools and to prosecute them when appropriate.

¹ J. L. Arnette, M. C. Walsleben, “Combating Fear and Restoring Safety in Schools,” JUVENILE JUSTICE BULLETIN, at p. 3 (OJJDP April 1998).

² INDICATORS OF SCHOOL CRIME AND SAFETY 2002, p. 15 (U.S. Dep’t of Education, November 2002) (in 2001 8 % of students reported they had been bullied, while in 1999 bullying was reported by 5 %) (available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/iscs02.pdf>).

Bullying

Recent research shows that bullying in schools is a far more serious problem than was once thought. A 1996 survey found that nearly half of public school students believed that violence is a problem in their school, and almost a quarter reported that they had been victims of violence in school.³ In a 1993 survey 43 percent of students who responded said that they avoid restrooms, 20 percent avoid the hallways, and 45 percent avoid the school grounds, all because of a fear of violence at their school.⁴ A more recent study published in the *Journal of the American Medical Association* shows that 30 percent of American students in grades 6 through 10 experienced moderate to frequent involvement with bullying.⁵ The study indicated “long-term negative outcomes” for the children involved in bullying behavior in schools.

Social scientists have established that child victims of bullying experience more physical and psychological problems later in life than other children.⁶ It is now well understood that bullying at schools creates a pervasive level of fear, not only in the direct victims of the abuse but also in the many other students who witness it or know of its occurrence, which has a significant negative impact on the students’ ability to learn in school. Further, experience has taught that victims of bullying sometimes take vengeance in violent ways. In many of the well-publicized school violence incidents of the past decade, the perpetrators reportedly were victims of bullying and harassment at school and were motivated, at least in part, by a desire for revenge.⁷

³ *Id.* at page 2.

⁴ *Id.*

⁵ T. Nansel, M. Overpeck, R. Pilla, J. Ruan, B. Simmons-Morton, P. Scheidt, *Bullying Behaviors Among U.S. Youth: Prevalence and Association with Psychosocial Adjustment*, 285 *JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION* 2094 (April 25, 2001).

⁶ S. Limber and M. Nation, *Bullying Among Children and Youth*, *JUVENILE JUSTICE BULLETIN* at pp. 4–5 (OJJDP April 1998).

⁷ See, e.g., B. Vossekuil, *et al.*, *THE FINAL REPORT AND FINDINGS OF THE SAFE SCHOOL INITIATIVE*, (U.S. Secret Service, U.S. Dep’t of Educ. 2002) (available at <http://www.ed.gov/offices/OSDFS/preventingattacksreport.pdf>); “Preventing School Shootings,” *NIJ Journal* No. 248 (National Institute of Justice, 2002) (available at <http://www.ncjrs.org/pdffiles1/jr000248c.pdf>); “Boy Charged in Taber Shooting Gets Three Years,” *CBC News* (Canadian Broadcasting Corp., posted Nov. 18, 2000) (available at http://cbc.ca/cgi-bin/templates/NWview.cgi?news/2000/11/17/taber_shooting001117); “The Columbine Tapes” *TIME MAGAZINE*, Dec. 20, 1999.

The victims of bullying are not the only concerns for prosecutors and SROs, as the same research indicates that bullying behavior by a child is a “critical risk factor” in the development of future bad behavior by the bully. Bullies are substantially more likely than other children to be involved in an array of antisocial behaviors, including vandalism, truancy, thefts, and alcohol abuse. Studies have found that aggressive behavior by a child at age 8 is a “powerful predictor” of criminal and violent behavior by age 30.⁸

Being bullied is not just an unpleasant rite of passage through childhood, it’s a public health problem that merits attention. People who were bullied as children are more likely to suffer from depression and low self esteem, well into adulthood, and the bullies themselves are more likely to engage in criminal behavior later in life.⁹

Clearly the problem of bullying in schools is a pervasive problem that deserves the attention of juvenile prosecutors and SROs. Juvenile prosecutors must avoid taking a “boys will be boys” attitude toward bullying:

Under the euphemism of “bullying,” we see a much broader, more serious affair. We see instances of assault and battery, gang activity, threat of bodily harm, weapons possession, extortion, civil rights violations, attempted murder and murder.

Everybody knows these are *crimes*. The fact that they were committed by minors upon minors does not make them less than crimes. The fact that they were committed on school grounds by students does not make them less than crimes.¹⁰

The precise offenses that may be charged in a delinquency petition will, of course, vary from state to state. In some jurisdictions, “Child in Need

⁸ *Id.*

⁹ Duane Alexander, M.D., director of the National Institute of Child Health and Human Development, quoted in *Bullying Widespread In U.S. Schools, Survey Finds*, THE NATIONAL CLEARINGHOUSE FOR ALCOHOL AND DRUG INFORMATION (available at <http://www.health.org/newsroom/releases/2001/april01/10.htm>).

¹⁰ S. Greenbaum, B. Turner, R. D. Stephens, *SET STRAIGHT ON BULLIES*, pp. 11–12 (Pepperdine University Press 1989).

of Services” cases may be an appropriate vehicle for dealing with bullying behavior. In addition, even when bullying conduct is not criminal such that it may lead to a juvenile prosecution, it nevertheless may warrant school discipline and/or the intervention of the SRO to protect the victim and to influence the behavior of the perpetrator.

Even before prosecution, however, juvenile prosecutors and SROs should encourage schools to implement prevention programs to reduce the number of bullying incidents. Many effective bullying prevention programs are available, such as the following:

- The ninth volume of the Blueprints for Violence Prevention contains a detailed description of the research-proved Bullying Prevention Program based on 25 years of research on the subject by Dr. Dan Olweus.¹¹
- The National School Safety Center, in operation since 1984, has extensive resources, model codes of conduct, films and publications, and expert training and technical assistance available to schools, law enforcement officers, prosecutors, and others interested in reducing school violence.¹²
- The National Resource Center for School Safety not only offers publications and training opportunities, but also has information available to schools to obtain funding for bullying and violence prevention programs.¹³
- Many local organizations, both private and government, are available to assist in the implementation of bullying and violence prevention programs.¹⁴

Sexual Harassment

The character of bullying changes significantly when a sexual element is added to create a range of behaviors referred to as “sexual harassment.”

¹¹ D. Olweus, S. Limber, S. Mihalic, BLUEPRINTS FOR VIOLENCE PREVENTION, BOOK NINE: BULLYING PREVENTION PROGRAM, Delbert Elliott ed. (Center for the Study and Prevention of Violence, Univ. of Colorado 2000).

¹² See, <http://nssc1.org>

¹³ See <http://www.safetyzone.org>.

¹⁴ See, e.g., The Virginia Center for School Safety, <http://www.vaschoolsafety.com>; National School Safety and Security Services, <http://www.schoolsecurity.org/school-safety-experts/company.html>; Center for the Prevention of School Violence, <http://www.ncsu.edu/cpsv/sro.htm>.

Sexual harassment has been defined broadly as any “unwelcome conduct of a sexual nature.”¹⁵ Conduct of a sexual nature can take many forms, from verbal or written requests for sexual favors, to sexual intercourse, and virtually everything in between. The conduct could come from a teacher who makes inappropriate sexual remarks in school, which is probably not a crime, or a staff member who has sexual contact with a student, which might be a crime depending on the student’s age. In neither of those instances would a juvenile prosecutor likely become involved, but an SRO might well have certain responsibilities. For example, with the latter type of sexual conduct, an SRO might be obliged to conduct a criminal investigation or to make a child abuse report.

More frequently, however, sexual harassment will involve student-to-student conduct. Unfortunately, determining whether conduct between children, especially teenagers, is sexual harassment is sometimes difficult. Junior and senior high school students engage in a great deal of conduct of a sexual nature, but it is usually “welcomed” by both participants. Only when one of them does not welcome the conduct (or no longer welcomes it) does it become a possible school policy issue or a criminal act. The U.S. Department of Education has provided school officials with some guidance in interpreting the term “unwelcome”:

Conduct is unwelcome if the student did not request or invite it and “regarded the conduct as undesirable or offensive.”

Acquiescence in the conduct or the failure to complain does not always mean that the conduct was welcome. For example, a student may decide not to resist sexual advances of another student or may not file a complaint out of fear. In addition, a student may not object to a pattern of demeaning comments directed at him or her by a group of students out of a concern that objections might cause the harassers to make more comments. The fact that a student may have accepted the conduct does not mean that he or she welcomed it. Also, the fact that a student willingly participated in conduct on one occasion does not prevent him or her from indicating that the same conduct has become unwel-

¹⁵ *Revised Sexual Harassment Guidance: Harassment Of Students By School Employees, Other Students, Or Third Parties*, 66 Fed. Reg. 5512 (Dep’t of Education 2001) (Notice of availability). The full text is available electronically at: <http://www.ed.gov/offices/OCR/shguide/index.html#II>.

come on a subsequent occasion. On the other hand, if a student actively participates in sexual banter and discussions and gives no indication that he or she objects, then the evidence generally will not support a conclusion that the conduct was unwelcome.¹⁶

It is significant to note further when defining what might constitute “sexual conduct” that one court has found, or at least implied, that sexual taunts and attacks against a homosexual male student because of his sexual orientation can constitute sexual harassment.¹⁷

Sexual harassment in the school setting is a growing problem for schools and prosecutors. School Resource Officers should be concerned about sexual harassment, as the federal courts have given its victims the right to sue when the school knows about the harassment but is “deliberately indifferent” to the conduct, thereby allowing it to continue and harm the victim.¹⁸ Courts have even allowed juries to hold individual school officials liable when the officials knew about the harassment and failed to act to prevent it.¹⁹

More importantly, some of the conduct that makes up sexual harassment can rise to the level of a crime in many instances. The laws applicable to unwanted sexual contact and lewd comments vary from state to state, but all states have criminal provisions against some sexually harassing behavior. For example, in *Vance v. Spencer County Public School Dist.*,²⁰ one of the harassing incidents consisted of two boys holding the plaintiff’s arms and pulling on her shirt while a third boy stated he was going to have sex with her and dropped his pants, all occurring in a classroom with other students present. That conduct may have constituted a prosecutable offense in some states. In that circumstance, particularly in light of the fact that other students witnessed the incident, a juvenile prosecution of the perpetrators would have gone a long way toward defusing an atmos-

¹⁶ *Id.*

¹⁷ *Henkle v. Gregory*, 150 F. Supp. 2d 1067 (D. Nev. 2001).

¹⁸ *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629 (1999); *Vance v. Spencer County Public School Dist.*, 231 F.3d 253 (6th Cir. 2000); *Henkle v. Gregory*, 150 F. Supp. 2d 1067 (D. Nev. 2001).

¹⁹ *Baynard v. Malone*, 268 F.3d 228 (4th Cir. 2001) (judgment against principal affirmed).

²⁰ 231 F.3d 253 (6th Cir. 2000).

phere of fear and violence in that school. In *Vance*, however, the boys were not even disciplined by the school, much less prosecuted, a fact that went a long way toward a jury verdict against the school, which the appellate court affirmed.²¹

Hate Crimes²²

Today, more than forty state legislatures have declared that it is the right of every person, regardless of race, color, ancestry, religion, or national origin²³ to be secure and protected from fear, intimidation, harassment, and physical harm caused by the activities of individuals and groups. Most of the states' attempts to distinguish bias-motivated offenses have taken the form of sentence enhancement statutes. However, in juvenile court, sentence enhancers often will not apply.

Identifying Hate Crimes

Many times victims' fears, as well as language and culture barriers, prevent an SRO from recognizing a hate crime situation. The training and education of law enforcement officers, including SROs, is critical in collecting appropriate evidence that a crime is bias motivated. Prosecutors and SROs should become aware of local hate crime statutes so that they can recognize a hate crime situation. Many factors may help identify a suspected hate or bias offense, such as the following:

- Whether the victim and the offender are from different racial, religious, ethnic, or sexual orientation groups;
- Whether the victim perceived that the offender's actions were bias motivated;
- Whether the offender made any remarks concerning the victim's race, religion, ethnicity, disability, or sexual orientation;
- Whether offending symbols, objects, or graffiti were left at the scene;
- Whether the offense occurred in connection with a holiday or other day of significance to the victim's or offender's group;

²¹ See also, e.g., *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629 (1999) (one of the acts leading to finding of sexual harassment resulted in delinquency finding against perpetrator).

²² Based on previous work by Stuart A. VanMeveren, District Attorney, Eighth Judicial District, Fort Collins, Colorado.

²³ Some states' statutes include gender and sexual orientation.

- Whether the victim was in an area where the predominant population is dissimilar to the victim's group; or
- Whether similar offenses occurred in the area to people sharing the victim's characteristics or traits by offenders who are unlike the victim.

Working with the Victims of Hate Crimes

In some cases it may be helpful for SROs, victim witness advocates, and prosecutors to obtain the assistance of an individual whom the victim trusts, such as a friend, neighbor, clergy member, teacher, or representative of a human interest organization or relevant victim advocates group. Early and frequent contact with the victim of any bias motivated crime, or the victim's family, is critical. Frequently, the victims of these crimes will have suffered extraordinary emotional and psychological trauma as well as physical trauma. Special care and increased attention should be given to these crime victims. They must be advised of counseling and other services which are available.

A thorough and sensitive investigation is critical in all hate crimes cases. Many victims feel anxiety about filing complaints due to fear of discovery and eventual retaliation. These cases present special challenges for law enforcement officers. A prosecutor should realize that not only may these victims be reluctant, they may also fear humiliating publicity or indifference from law enforcement officials. The juvenile prosecutor is challenged to overcome this reluctance by working closely with the victim, expressing appropriate concern, and providing assurance that the criminal justice system can serve the victim's interests. Prosecutors may also turn to community groups as a resource to help reluctant witnesses through the justice system.

Resources: Where To Go For More Information

A list of organizations, programs, and publications on handling bullying behavior can be found on the website of the National Crime Prevention Council at <http://www.ncpc.org>.

Southern Poverty Law Center
400 Washington Avenue
Montgomery, Alabama 36104
<http://www.splcenter.org>

Criminal Justice Information Services (CJIS) Division
U.S. Department of Justice
Federal Bureau of Investigation
Uniform Crime Reports
<http://www.fbi.gov>

Not In Our Town
PBS special featuring Americans responding to hate crimes
<http://www.pbs.org/niot/>

Hate Crimes Prevention Center
<http://www.civilrights.org/issues/hate/>

BOMBS, HOAXES, AND THREATENING AND OFFENSIVE SPEECH

School-age children are often prone to speak in hyperbole, making outrageous statements that could be construed as threats of violence. Sometimes those threats are quite real, but anyone who has spent much time around teenagers or pre-teens knows that most of the time when they say things like “I’m going to kill you” or “I’d like to blow up this school,” they do not intend to make good on those threats. The difficulty for the SRO and for the juvenile prosecutor is determining which threats pose a serious risk of danger to students and teachers. Several highly publicized school violence incidents in the last decade have made many school systems more cognizant and less tolerant of threatening behavior by students.

Whether students who make threats to schools really mean to do harm to the school, teachers, or fellow students, or they simply call in a fake bomb threat in the hope that school will be disrupted or canceled for the day, the threats are troublesome to schools and must be addressed. The nature of the crime committed, if any, by a phoned-in bomb threat or threatening language or conduct in the school hallway, varies from jurisdiction to jurisdiction. Juvenile prosecutors should become familiar with their local law and educate SROs and other school personnel about it. There are, however, some over-arching principles at work in all of these cases, predominantly arising out of the clash between the student’s First Amendment rights and the school’s need for order and discipline.

Free Speech and School Threats

Any verbal statement—whether written or oral, benign or threatening—is “speech” which might be subject to First Amendment protection. But the Supreme Court has held many times that the First Amendment is not absolute; certain types of speech may be forbidden or even prosecuted.

There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which has never been

thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or “fighting” words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace.¹

Thus, the Constitution does not prohibit a school system’s reasonable attempts to control lewd, obscene, or profane language in the school setting. Criminal prosecution of that language may be more problematic in some cases, and certainly evolving community standards about what constitutes lewdness, vulgarity, and profanity sometimes make precise definitions of those terms difficult. Since those questions vary from community to community, the prosecutor and SRO should become aware of the local standards in each jurisdiction.

As offensive as profanity and vulgarity may be to some, of greater concern to the prosecutor and SRO are the types of threats and language that might lead to violence in the school. The Supreme Court has held that language which seems as though it may be directed toward violence or advocating violent behavior may nevertheless be protected speech. For example, in *Brandenburg v. Ohio*, the Court reversed a Ku Klux Klan advocate’s conviction based on “the principle that the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.”² The cases which have considered the sort of speech which might be prohibited under that standard generally fall into two streams of analysis—the “fighting words” and the “true threat” exceptions to the First Amendment’s protections.

Fighting Words

In *Chaplinsky v. New Hampshire*, the Court defined “fighting words” as “words plainly likely to cause a breach of the peace by the addressee, words whose speaking constitute a breach of the peace by the speak-

¹ *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571–72 (1942).

² 395 U.S. 444, 447 (1969).

er...”³ Thus, the sort of offensive language which might be regulated or prosecuted under the “fighting words” doctrine is language, usually spoken to the target of the speech, which has a significant likelihood of inducing someone else to engage in violent conduct, either against the speaker or against a third person or group.⁴

The Court has not given much explanation since *Chaplinsky* about what would constitute prosecutable “fighting words.” It did strike down a juvenile prosecution for cross burning in *R.A. V. v. City of St. Paul*.⁵ In that case, the Court appeared to assume that cross burning might constitute “fighting words,” but struck down St. Paul’s hate crime ordinance on the ground that it was impermissible content-based regulation, *i.e.* it did not forbid all fighting words, only those which targeted a particular group. The Court made clear that the fighting words doctrine is limited to attempts to regulate the non-content aspects of inflammatory speech:

In other words, the exclusion of “fighting words” from the scope of the First Amendment simply means that, for purposes of that Amendment, the unprotected features of the words are, despite their verbal character, essentially a “nonspeech” element of communications. Fighting words are thus analogous to a noisy sound truck: ... the government may not regulate use based on hostility—or favoritism—towards the underlying message expressed.⁶

More recently, the Supreme Court clarified the doctrine upholding Virginia’s cross-burning statute in *Virginia v. Black*.⁷ The statute at issue in *Black* outlawed all cross burnings that were intended to intimidate any other person, not just a particular class of persons. The Court held that a state could ban all forms of intimidation, or it could limit its ban to the

³ 315 U.S. 568, 573 (1942).

⁴ There are few statutes which by their language criminalize “fighting words”; more often such language is prosecuted under breach of peace or disorderly conduct statutes, and occasionally as an incitement to riot. See, e.g., *In re A.S.*, 234 Wis. 527, 611 N.W.2d 471 (2001) (“abusive statements” may be prosecuted as disorderly conduct if “under the circumstances they tended to provoke retaliatory conduct on the part of the person to whom the statements were addressed”).

⁵ 505 U.S. 377 (1992).

⁶ 505 U.S. at 386.

⁷ 538 U.S. ___ (2003). The Court ultimately held that a portion of the statute which created a presumption of intent to intimidate was unconstitutionally overbroad, but upheld the principle that a state could criminalize cross burning if it did so in a content-neutral manner.

most serious forms, such as cross burning, so long as it did so in a content-neutral manner. Hence the *R.A.V.* statute was unconstitutional because it distinguished between banned and acceptable speech based on its content, while the statute in *Black* banned speech based on its effect on the recipient without regard to its content.

This distinction may be difficult to apply in many school settings. What differentiates prosecutable “fighting words” in a school setting from protected speech probably turns on its content neutrality. For example, a statute or school rule banning loud speech which threatens any other person would likely be acceptable, while a statute or rule which bans only loud speech which offends a certain racial or ethnic group may be unconstitutional. The appropriate inquiry appears to be whether the delinquency petition alleges that the juvenile’s behavior constituted an offense because of what he said, or whether it is a crime because of how and where and when (and, maybe, to whom) he said it. The latter may be prosecutable, but the former may not be.

True Threats

More relevant to many school systems is the “true threat” line of cases. In *Watts v. United States*, the Supreme Court held that Congress (and presumably the States) is free to criminalize what the Court called “true threats,” but that it must do so “with the commands of the First Amendment clearly in mind.”⁸ Unfortunately, in *Watts* the Court did not give much guidance on what would constitute a “true threat” other than to hold that the defendant’s statement at a draft protest that, “If they ever make me carry a rifle the first man I want to get in my sights is L.B.J.” was “political hyperbole,” not a true threat. The lower courts generally have defined “true threats” by an objective standard, finding that a “true threat” is “a statement that a speaker would reasonably foresee that a listener would reasonably interpret as a serious expression of a purpose to inflict harm, as distinguished from hyperbole, jest, innocuous talk, expressions of political views or other similarly protected speech.”⁹ Other courts have defined a “true threat” as one which “on its face and in the circumstances in which

⁸ 394 U.S. 705, 707–08 (1969).

⁹ *State v. Perkins*, 2001 WI 46 ¶29, 237 Wis.2d 313, 614 N.W.2d 25.

it is made is so unequivocal, unconditional, immediate and specific...as to convey a gravity of purpose and imminent prospect of execution....”¹⁰

Following are cases applying the true threat principles in school settings:

- In *Lovell v. Poway Unified School Dist.*,¹¹ the Ninth Circuit upheld disciplinary action against a student who, frustrated by the runaround she was getting from the school during enrollment, said to her guidance counselor either “If you don’t give me this schedule change, I’m going to shoot you,” or “I’m so angry, I could just shoot someone,” depending on whose testimony is believed. The Court found that—“[g]iven the level of violence pervasive in public schools today,”—either version of the student’s statement was a “true threat” under the standard “whether a reasonable person would foresee that the statement would be interpreted by those to whom the maker communicates the statement as a serious expression of intent to harm or assault.”¹²
- In *In re A.S.*,¹³ the Court affirmed a delinquency adjudication for disorderly conduct after the juvenile made extensive threats of conduct similar to the school attacks at Columbine and Jonesboro. The Court held that the juvenile’s seriousness when he made the threats, the absence of any indication that he was joking, and the fearful response of the persons to whom the threats were communicated, all combined to make his statements “true threats [which] A.S. had no more right to make...than, in the words of Holmes, does a man have the right to cry ‘fire’ in a crowded theater.”¹⁴
- The Court in *J.S. v. Bethlehem Area School Dist.*¹⁵ held that a student’s postings to an Internet website called “Teacher Sux” were not true threats. The website contained an abundance of obscene and profane material, and a list of reasons “Why Should [a specific teacher] die,” and solicitation of “\$20 to help pay for the hitman [sic].” The Court found that, even though the teacher became upset when she

¹⁰ *United States v. Kelner*, 534 F.2d 1020 (2d Cir.), cert. denied, 429 U.S. 1022 (1976).

¹¹ 90 F.3d 367 (9th Cir. 1996).

¹² *Id.*

¹³ 2001 WI 48, 234 Wis.2d 527, 611 N.W.2d 471.

¹⁴ *Id.*, 2001 WI 48 at ¶24.

¹⁵ 807 A.2d 847 (Pa. 2002).

heard of the website and missed several days of school as a result, the evidence indicated that J.S. never intended for her or any other school official to know of the website, and that its overall intent was a “misguided attempt at humor or parody,” not a true threat.¹⁶

- In *In re George T.*,¹⁷ the Court upheld a delinquency adjudication based on California’s criminal threat statute when the juvenile handed two other students some poems described as “dark poetry.” In the poems the juvenile described himself as “Dark, Destructive, & Dangerous,” and “evil,” and stated “I can be the next kid to bring guns to kill students at school.” After reviewing the extensive evidence about the circumstances under which the juvenile conveyed the poems, and other evidence such as the juvenile’s surreptitiously gaining access to weapons, the Court found the poems to constitute true threats.

Non-Threatening Speech in the School Setting

Even in cases that do not involve threats of violence or other abusive language, the Supreme Court has recognized that school settings are different from other locations, and thus the First Amendment may have less reach than in other settings. But there often is no bright line differentiating between the kinds of cases arising under the “true threat” analysis in which a prosecutor should be involved, and those concerned with disruption in the school, which is primarily a matter for school officials. Very often the cases will have to be evaluated on a sort of “sliding scale”: a case that rises to one level may warrant only disciplinary action by the school, while the next case may rise further and warrant both school discipline and a juvenile court prosecution.

The line of cases defining the boundaries of students’ First Amendment rights began with *Tinker v. Des Moines School District*, where the Court wrote its now famous line about students not “shedding” their First Amendment rights at the “schoolhouse gate.”¹⁸ More importantly, the Court went on to recognize the difference in character between controlling behavior in the school setting and exercising free speech elsewhere:

¹⁶ The Court did, however, uphold school discipline against J.S., as discussed later in this chapter.

¹⁷ 126 Cal. Rptr. 2d 364 (Cal. Ct. App. 2002).

¹⁸ 393 U.S. 503, 506 (1969) (“It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate”).

[T]he Court has repeatedly emphasized the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools.¹⁹

In *Tinker* the Court held that the school's need to "prescribe and control conduct" of its students did not justify disciplining students who wore black armbands to school to protest the Vietnam War. The Court expressly noted that the students' conduct did not involve "aggressive, disruptive action or even group demonstrations," and that "there were no threats or acts of violence on school premises."²⁰ Although the Court did not say that those factors were decisive on the question of whether the speech would be protected, later cases in the lower courts have utilized them in that fashion.

The Supreme Court has upheld the schools' need to control students' conduct and speech, as shown in the following cases:

- In *Bethel School Dist. No. 403 v. Fraser*, the Court upheld the school's right to discipline a student who gave a speech at a school assembly in favor of a student government election candidate that the Court described as "offensively lewd and indecent."²¹ The Court held that "the constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings.... Nothing in the Constitution prohibits the states from insisting that certain modes of expression are inappropriate and subject to sanctions."²²
- In *Hazelwood School Dist. v. Kuhlmeier*, the Supreme Court upheld a school's right to control the content of speech in school-sponsored forums

¹⁹ *Id.* at 507.

²⁰ *Id.* at 507–08.

²¹ 478 U.S. 675, 685 (1986). By modern standards the speech probably would not be considered so offensive; in fact Justice Brennan was less offended than the majority and quoted the speech in its entirety in his concurring opinion ("I know a man who is firm—he's firm in his pants, he's firm in his shirt, his character is firm—but most of all, his belief in you, the students of Bethel is firm. Jeff Kuhlman is a man who takes his point and pounds it in. If necessary, he'll take an issue and nail it to the wall. He doesn't attack things in spurts—he drives hard, pushing and pushing until finally—he succeeds. Jeff is a man who will go to the very end—even the climax, for each and every one of you. So vote for Jeff for ASB vice-president—he'll never come between you and the best our high school can be.")

²² *Id.* at 682–83.

such as newspapers, yearbooks, plays, and other similar settings—“These activities may fairly be characterized as part of the school curriculum, whether or not they occur in a traditional classroom setting, so long as they are supervised by faculty members and designated to impart particular knowledge or skills to student participants and audiences.”²³

The kind of conduct at issue in *Tinker*, *Fraser*, and *Hazelwood* is generally the sort of conduct that will be more important to the SRO than to the juvenile prosecutor (though the conduct in *Fraser*, if taken to a greater extreme of lewdness, could rise to a criminal level). For example, in *J.S. v. Bethlehem Area School Dist.*, the Pennsylvania Supreme Court ultimately found that J.S.’s website did not constitute a criminal true threat, but nevertheless concluded that the student’s conduct “caused actual and substantial disruption of the work of the school,” and therefore warranted the school’s disciplinary action against J.S. That case was a close enough call that a juvenile prosecutor certainly would have been justified in bringing a delinquency action against J.S. as well if the charging assessment indicated it would be appropriate, either as a threat against the teacher, or as disorderly conduct for the disruption wrought at the school.

“False” Threats

Just as disruptive as true threats are the “false threats.” As the level of fear and apprehension rises in schools as a result of recent episodes of serious school violence, and as acts of terrorism elsewhere raise the general level of anxiety, the phony threat will have a much more disruptive impact. Incidents that would have been quickly dismissed as a hoax ten years ago will be given attention today. Consequently, schools and other institutions have become more cognizant of the false bomb threat, and many states have enacted new statutes or strengthened existing statutes criminalizing false threats.

Since the question of whether the facts of a given case fit a particular criminal statute will vary from state to state, it is difficult to generalize about the kind of conduct that will be subject to prosecution.²⁴ For exam-

²³ 484 U.S. 260, 271 (1988).

²⁴ See E. M. Wirth, Annotation, *Imposition of State or Local Penalties for Threatening to Use Explosive Devices at Schools or Other Buildings*, 79 A.L.R.5th 1 (2000).

ple, in *Harbison v. State*, 667 A.2d 1319 (Del. 1995), where one brother dialed their school on the telephone and the other stated a bomb threat into the phone, the court held the evidence sufficient to convict the second brother, but not the first. On the other hand, in *In re Foster*, 128 Ohio App. 3d 566, 716 N.E.2d 223 (4th Dist. 1998), the court upheld the delinquency adjudication of two boys, one of whom phoned in a bomb threat from a pay phone and the other who supplied the quarter. Some factors common to most jurisdictions, however, are as follows:

- Some actual conduct that aided and abetted the commission of the threat is required. *E.g.*, *Duggan v. Mahannah*, 9 Ill. App.3d 58, 291 N.E.2d 303 (4th Dist. 1972) (standing outside phone booth insufficient).
- Most statutes pertaining to false bomb threats require an intent to deceive, which is not proven where the evidence does not indicate that the statements reasonably could have been perceived as sincere threats or where no one actually believed the statements might be true. *State ex rel. R. T.*, 748 So.2d 1256 (La. Ct. App. 2d Cir. 1999).
- The actual ability or intent to carry out a bomb threat usually is not an element of the offense; hence it is not necessary to prove the subjective intent of the defendant. *State v. Berberian*, 459 A.2d 928 (R.I. 1983) (not a juvenile prosecution).

WEAPONS AND DRUGS IN SCHOOLS

One of the most serious problems confronting schools in America is the prevalence of students carrying and using weapons and drugs on campus. In 2001, 17 percent of high-school aged students reported that they had carried a weapon on campus in the preceding 30 days, and 9 percent of students reported that they had been threatened with a weapon at school.¹ The frequency of drug and alcohol use is even greater: 47 percent of high-school age students report alcohol use, and 24 percent report marijuana use, in the preceding 30 days;² 29 percent of those students reported that someone had offered, sold, or given drugs to them in the previous year.³ The rates of both weapon possession and drug and alcohol use were significantly higher for boys than for girls. Obviously the presence of weapons and drugs at schools will have a serious negative impact on students' safety and their ability to learn. Hence interdiction of drugs and weapons is often an emphasis for SROs and explains why a significant number of juvenile delinquency cases arising at schools involve drugs and weapons.⁴

In all states, of course, possession of certain drugs is illegal for anyone, and in most situations possession of alcohol is illegal for juveniles. Many states also have statutes generally criminalizing some forms of weapons possession (such as concealed weapons), and some specifically prohibit minors from possessing weapons. In each such jurisdiction those general drug and weapons possession statutes will normally be just as applicable to drugs or weapons found in schools as those found elsewhere. Juvenile prosecutors must familiarize themselves with the specific statutes in their states. In addition, a majority of states have more specific statutes creating new offenses or enhancing penalties for general offenses when the pos-

¹ J. F. DeVoe, *et al.*, INDICATORS OF SCHOOL CRIME AND SAFETY 2002, pp. 11, 30 (U.S. Dep't of Justice, U.S. Dep't of Education 2002) (hereinafter "2002 INDICATORS").

² 2002 INDICATORS pp. 40–42. Only 5 percent reported that they actually used alcohol or marijuana on school grounds.

³ 2002 INDICATORS p. 44.

⁴ The Federal "Gun-Free Schools Act of 1994" requires states, as a condition of receiving federal funds for their schools, to enact laws requiring school districts to expel students for at least a year for bringing weapons onto school property. 20 U.S.C. § 8921.

session of weapons⁵ or drugs occurs on or near a school campus.⁶ Juvenile prosecutors and SROs will need to become familiar with the specific laws applicable in the relevant jurisdiction.

Aside from establishing the elements of the offense charged, the most important legal issue juvenile prosecutors are likely to face in any school weapon or drug case will be the search and seizure issues which so frequently arise in “possession” offenses. A substantial majority of the cases analyzed in the search and seizure section of this work involved searches for weapons or drugs, and the reader is referred to that section for detailed analysis of the Fourth Amendment issues likely to be encountered in any weapon or drug possession case.⁷

Notwithstanding the decline in the actual rate of school violence, public and media attention to the problem has brought about numerous resources for schools and juvenile prosecutors and courts to address the problem. Federal legislation, such as the Safe and Drug Free Schools and

⁵ E.g., ALA. CODE § 13A-11-72; ALASKA STAT. § 11.61.210; ARIZ. REV. STAT. § 13-3102; ARK. CODE ANN. § 5-73-119; CAL. PENAL CODE § 626.9; COLO. REV. STAT. § 18-12-105; CONN. GEN. STAT. § 51a-217b; 11 DEL. CODE ANN. § 1457; FLA. STAT. ANN. § 790.115; GA. CODE ANN. § 16-11-127.1; IDAHO CODE § 18-3302D; 720 ILL. COMP. STAT. 5/24-3.3; IND. CODE § 35-47-9-2; IOWA CODE § 724.4B; KY. REV. STAT. ANN. § 527.070; LA. REV. STAT. ANN. 14:95.2; MD. ANN. CODE ART. 27, § 36A; MASS. GEN. LAWS ch. 269, § 10; MICH. COMP. LAWS § 750.234d; MINN. STAT. § 609.66; MISS. CODE ANN. § 97-37-17; MO. REV. STAT. § 571.030; MONT. CODE ANN. § 45-8-361; NEB. REV. STAT. § 28-1204.04; NEV. REV. STAT. § 202.265; N.J. STAT. ANN. § 2C:39-5; N.M. STAT. ANN. § 30-7-2.1; N.Y. PENAL LAW § 265.06; N.C. GEN. STAT. § 14-269.2; OHIO REV. CODE ANN. § 2923.122; 21 OKLA. STAT. § 1280.1; OR. REV. STAT. § 166.370; 18 PA. CONS. STAT. § 912; R.I. GEN. LAWS §§ 11-47-60, 11-47-60.2; S.C. CODE ANN. § 16-23-430; S.D. CODIFIED LAWS § 27-7A-12.1; TENN. CODE ANN. § 39-17-1309; TEX. PENAL CODE ANN. § 46.03; UTAH CODE ANN. § 76-10-505.5; VT. STAT. ANN. § 4004; VA. CODE ANN. § 18.2-308.1; WASH. REV. CODE § 9A.1.280; W.VA. CODE § 61-7-11a; WIS. STAT. §§ 948.605, 948.61. This list of statutes is a sample and is not comprehensive. The states identified may have additional relevant statutes and states not listed might have statutes pertaining to weapon possession on school campuses. Prosecutors should check the statutes in their jurisdiction.

⁶ E.g., ALA. CODE § 13A-12-250; ARIZ. REV. STAT. § 12-3411; CAL. HEALTH & SAFETY CODE § 11353.6; 16 DEL. CODE ANN. § 4767; FLA. STAT. ch. 921.0012; IND. CODE § 35-48-4-1; KAN. STAT. ANN. §§ 65-4161, 65-4163; MD. CODE ANN., CRIMINAL LAW § 5-627; N.H. REV. STAT. ANN. § 193-B:2; N.Y. PENAL LAW § 220.44; OHIO REV. CODE ANN. § 2925.03; S.C. CODE ANN. 44-53-445; S.D. CODIFIED LAWS § 22-42-19; TENN. CODE ANN. § 39-17-432; W.VA. CODE § 60A-4-401. This list of statutes is a sample and is not comprehensive. The states identified may have additional relevant statutes and states not listed might have statutes pertaining to drug possession on school campuses. Prosecutors should check the statutes in their jurisdiction.

⁷ See page 21 *et seq.*, *supra*.

Communities Act⁸ and the Safe Schools Act of 1994,⁹ has made funding and other resources available to local and state agencies to develop programs directed at school violence and drugs. Project Safe Neighborhoods is a national program announced by President Bush in May 2001, aimed at reducing gun violence in America through enhanced partnerships among all members of the state and federal law enforcement community. These partners give additional emphasis to the prosecution of crimes involving the illegal possession and use of guns, resulting in increased sentences for gun crimes. Other programs, such as those funded through Juvenile Accountability Incentive Block Grants,¹⁰ juvenile drug courts and gun courts,¹¹ and numerous other initiatives, are making progress in addressing the problem of drugs and guns in schools (and other settings) in a juvenile court context.¹² Juvenile prosecutors, in conjunction with SROs and school administrators, should consider implementing one or more of these programs to reduce the number of drug and weapons cases arising from local schools.

⁸ 20 U.S.C. § 7101, *et seq.*, Pub. L. 103-382, 108 Stat. 3672 (1994).

⁹ 20 U.S.C. § 5961, *et seq.*, Pub. L. 103-227, 108 Stat. 204 (1994).

¹⁰ See, e.g., Scott Decker, *Increasing School Safety Through Juvenile Accountability Programs*, JAIBG BULLETIN (U.S. Dep't of Justice, Office of Justice Programs, December, 2000) (available at <http://www.ncjrs.org/pdffiles1/ojjdp/179283.pdf>).

¹¹ C. Cooper, *Juvenile Drug Court Programs*, JAIBG BULLETIN (U.S. Dep't of Justice, Office of Justice Programs, May 2001) (available at <http://www.ncjrs.org/pdffiles1/ojjdp/184744.pdf>); D. Sheppard and P. Kelly, *Juvenile Gun Courts: Promoting Accountability and Providing Treatment*, JAIBG BULLETIN (U.S. Dep't of Justice, Office of Justice Programs, May 2002) (available at <http://www.ncjrs.org/pdffiles1/ojjdp/187078.pdf>). "Juvenile Gun Courts" are specialized courts, similar to drug courts, in which a few cases receive intensive consideration by the judge, prosecutor, and treatment team to assist weapons offenders whose offenses have not resulted in serious injury. The intent is to provide greater accountability and therapeutic intervention.

¹² DOJ's Office of Juvenile Justice and Delinquency Prevention has published a compendium of programs and other information in PROMISING STRATEGIES TO REDUCE GUN VIOLENCE (U.S. Dep't of Justice, February 1999) (available at http://www.ojjdp.ncjrs.org/pubs/gun_violence/173950.pdf).

TRUANCY¹

It has long been known that one of the most consistent predictors of future delinquent behavior is truancy. Most states, counties, and even individual municipalities have passed laws prohibiting truancy, most of which are enforceable against both truant students and their parents. For example, Los Angeles County defines a truant as “any minor under the age of 18 years, who is subject to compulsory education or to compulsory continuation education, [who is] absent from school and found in a public place.”² Most states and other entities have codified exceptions to truancy laws, including provisions allowing minors to be absent from school for “emergency errands” or “medical appointments” and even for traveling to and from a “place of employment.”³ Similarly, many states have codified provisions allowing minors to be absent from school for religious observances.⁴ Since truancy laws often impose strict liability upon offenders, most jurisdictions declare truancy to be a violation for which only a citation may be issued.⁵ In some jurisdictions enforcement of truancy laws is the responsibility of the local prosecutor with juvenile court responsibility, while in other jurisdictions the prosecutor is not involved in those cases.

Different jurisdictions have varying definitions of, and approaches to, truancy. This lack of uniformity makes it impossible to discuss the substantive elements of a truancy violation here. It also makes it even more crucial that prosecutors and SROs work together to create a coordinated approach to truancy, both in their training on the local laws governing truancy and on the approach to enforcement in their jurisdiction. Whether or not a juvenile prosecutor is given responsibility for enforcement of truancy laws, it is important for prosecutors to stay aware of these issues as the truants of today stand a high probability of being the delinquents of tomorrow (if they are not already in juvenile court).

¹ This chapter by Hope Fields, Staff Attorney, APRI.

² LOS ANGELES COUNTY CODE tit. 13, ch. 13.57 (1998).

³ *E.g.*, LOS ANGELES MUNICIPAL CODE § 45.04 (1998).

⁴ *E.g.*, N.Y. EDUC. LAW § 3210 (Consol. 1997).

⁵ *E.g.*, LOS ANGELES MUNICIPAL CODE § 45.04 (1998).

The Scope Of The Truancy Dilemma

Truancy has evolved into a major problem in communities across the United States. The statistics speak for themselves:

- In the Northeast, the New York City public school system, the nation's largest school system, approximately 150,000 out of one million public school students are absent on a typical day. School officials remain uncertain how many of these public school students are absent without a legitimate excuse.⁶ In Philadelphia, approximately 2,500 students per day are absent without an excuse.⁷
- In the Midwest, 40 public school attendance officers in Detroit investigated 66,440 chronic absenteeism complaints in the 1994-1995 school year.⁸ In Milwaukee, on any given school day, there are approximately 4,000 unexcused school absences.⁹
- In the West, the Los Angeles Unified School District, the nation's second largest public school system, reports that an average of 62,000 students, or nearly 10% of its enrollment, are out of school each day. Of these absentees, only 50% arrive back to school with written excuses.¹⁰

Truancy has been proven to be tightly linked to other forms of juvenile crime. According to the Los Angeles County Office of Education, truancy is the most powerful predictor of delinquent behavior.¹¹ Studies have shown truancy to be a risk factor for substance abuse, delinquency, and teen pregnancy.¹² Research has also connected truancy to problems later in life including marital problems, job problems, and adult criminal behavior.¹³

⁶ B. Schuster, *L.A. School Truancy Exacts a Growing Social Price*, L.A. TIMES, June 28, 1995, § A, at 12.

⁷ U.S. Dep't of Educ. and U.S. Dep't of Justice, MANUAL TO COMBAT TRUANCY (July 1996) (available at www.ed.gov/pubs/Truancy/).

⁸ J. Richardson, *Searching for Answers to Student Absenteeism*, DET. FREE PRESS, Feb. 7, 1996, § NWS, at 1A.

⁹ U.S. Dep't of Educ. and U.S. Dep't of Justice, MANUAL TO COMBAT TRUANCY (July 1996).

¹⁰ B. Schuster, *L.A. School Truancy Exacts a Growing Social Price*, L.A. TIMES, June 28, 1995, § A, at 12.

¹¹ U.S. Dep't of Educ. and U.S. Dep't of Justice, MANUAL TO COMBAT TRUANCY (July 1996).

¹² M. L. Baker, J. N. Sigman, and M. E. Nugent, *Truancy Reduction: Keeping Students in School*, OJJDP: JUVENILE JUSTICE BULLETIN, September 2001.

¹³ *Id.*

The Role of an SRO in Fighting Truancy

School Resource Officers are in a unique position to help curtail, and even prevent, truancy. While the exact function of an SRO can vary, in all jurisdictions SROs are charged with enforcing the law from within the community and in conjunction with community agencies and organizations. That enforcement authority may well include attendance policies and state statutes regarding compulsory school attendance. In virtually all cases, SROs will have a significant amount of interaction with the students and with the local prosecutor. That puts them in a unique position to observe the many different factors that can cause a child to become truant, or contribute to his or her truancy.¹⁴ Some truant children are influenced by problems at home such as domestic violence, drug or alcohol use in the home, or an overall lack of parental guidance. Students may also be influenced by economic factors in their lives. For example, a child may be kept at home to watch younger siblings while the parents are out working one or more jobs. Additionally, students may encounter their own personal battles that cause them to avoid the school environment. Students may have problems with drugs or alcohol, or they may become frustrated at school because of an undiagnosed learning disability.¹⁵

The SRO has an ideal proximity to students and, as a result, may be aware of children who are experiencing problems with one or more of the factors mentioned above. If a child is using drugs or alcohol during school hours, the SRO should be aware of this problem and be ready to address it. In developing a presence in the school and relationships with the students, SROs may also be able to identify children who are exposed to violence in the home, or children whose parents appear to take little interest in the child's education. This will all be valuable information to a juvenile prosecutor charged with responsibility for truancy enforcement.¹⁶

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Much of this information will come from the SRO's own observations, and as a result there should be no restriction on sharing that information with the prosecutor. To the extent the information derives from "school records," however, Federal confidentiality laws may restrict whether and how that information can be transmitted. See pages 41 through 43, *supra*.

The Role of the Juvenile Prosecutor in the Fight Against Truancy

The U.S. Department of Justice and the U.S. Department of Education have published numerous pamphlets and handbooks for educators and attorneys outlining possible solutions to the problems associated with truancy.¹⁷ Juvenile prosecutors should work with schools to establish truancy programs that include all of the following elements:

- *Ensure that students face firm sanctions for truancy.* School districts should communicate to their students that they have zero tolerance for truancy. District attorneys should familiarize themselves with and vigorously enforce laws (such as those of Delaware and Connecticut) establishing daytime curfews during school hours.¹⁸ Juvenile prosecutors in some states (such as Wisconsin) may request judges to order offenders to attend educational programs specially designed for the individual truant.¹⁹
- *Establish ongoing truancy programs within school districts.* Juvenile prosecutors may take the lead in establishing close links among local prosecutor offices, police departments, and juvenile and family court officials to curb truancy. In Oklahoma City, Oklahoma, for example, district attorneys personally notify parents of the potential legal consequences their repeatedly truant children will face.²⁰ In Peoria, Arizona, students who continue to be truant are referred by school officials to the district attorney, who has the option to require wayward youth to participate in intensive counseling in lieu of criminal prosecution.²¹
- *Create meaningful incentives for parental responsibility.* Local prosecutors in some jurisdictions have the power to prosecute the *parents* of habitually truant children. In Oklahoma City, Oklahoma, parents who harbor youth with fifteen days of consecutive unexcused absences are subject to misdemeanor charges.²²

¹⁷ See, e.g., U.S. Dep't of Educ. and U.S. Dep't of Justice, *MANUAL TO COMBAT TRUANCY* (July 1996).

¹⁸ *Id.*

¹⁹ *Id.* at 3.

²⁰ *Id.* at 5.

²¹ *Id.* at 6.

²² *Id.* at 5.

Truancy Programs

Juvenile prosecutors should work with SROs and other members of the school community to create a consistent approach to truancy. Ideally, prosecutors and SROs should cooperate under a truancy program that makes services available to students and parents where necessary. The program should emphasize the importance of education and the social and legal consequences to both students and parents if the child continues to be truant. Most importantly, if the student continues to be truant after completing any diversion or truancy program, the matter may be suitable for prosecution.

A number of jurisdictions have put into place truancy programs that consist of progressive levels of consequences for truancy.²³ Common to many of these programs are the following three steps:

- *Parental contact and close student monitoring.* Most, if not all, jurisdictions send a letter home to parents after a certain number of unexcused school absences. In some jurisdictions, such as Ramsey County, Minnesota, the local prosecutor, rather than the school system, sends home the truancy letter. This provides the first indication to parents that criminal liability may result from continued truancy. These letters invite parents to meet with school officials regarding their child's attendance problems. At this early stage of intervention, schools will often offer services to the child and/or the parents to address problems that may be causing the child's failure to attend school.²⁴
- *Attendance contract.* Schools in many jurisdictions require the parents, child, and school official to sign an attendance contract. These contracts outline the terms of each party's responsibilities and explain the legal consequences to the parents and the student if the truancy continues.²⁵
- *Juvenile petition.* After a school has made an effort to provide services to the student and/or the parents, and has notified all parties of the potential legal consequences of continued truancy, the SRO (or other school official) should consult with the prosecutor to consider what the appropriate next step should be.

²³ See, e.g., the "Make the Right Choice" program by Mobile (AL) County District Attorney, John M. Tyson, Jr., described at the Web site <http://www.mobile-da.org/maketherightchoice/helping-families.org>.

²⁴ See, e.g., THE ACT NOW PROGRAM AND TRUANCY REDUCTION DEMONSTRATION PROGRAM.

²⁵ *Id.*

Resources: Where to Go for More Information

Abolish Chronic Truancy
Los Angeles County District Attorney's Office
Bureau of Special Operations, Juvenile Division
300 South Park Ave., Room 621
Pomona, CA 91766
(909) 620-3330

Fulton County Juvenile Court Truancy Intervention Project
4455 Capitol Ave., SW
Atlanta, GA 30312
(404) 730-1122

National Center for Education Statistics
Office of Education Research and Improvement
U.S. Department of Education
555 New Jersey Ave., NW
Washington, DC 20208-5721
(202) 219-2221

Ramsey County's Truancy Intervention Program
Office of the Ramsey County Attorney
50 West Kellogg Boulevard, Suite 315
St. Paul, MN 55102-1657
(651) 266-3222

The ACT Now Program
Pima County Attorney's Office
32 North Stone Avenue
Suite 1400
Tucson, AZ 85701
(520) 740-5600

SPECIAL NEEDS STUDENTS

Among the most challenging populations for a juvenile prosecutor and an SRO to understand and to properly accommodate are the children with special needs they will encounter in every school. It is important that both juvenile court prosecutors and SROs understand the basics of child development and the effects of learning disabilities on children. That understanding will help to discern the developmental reasons for the delinquent behavior of youthful offenders, and to avoid legal traps posed by some of the statutory protections afforded to children with disabilities, including behavioral and learning disabilities. While those disabilities, of course, do not excuse children's bad behavior or provide a legal defense to a delinquency action, understanding the behavior and its origins will enable prosecutors and SROs to make better decisions about the cases and situations they confront.¹

The Link Between Disabilities And Juvenile Delinquency

According to researchers, juveniles who have low education levels compared with their peers are more likely to be delinquent.² Other studies have shown that juveniles with a low IQ are more likely to be delinquent, independent of other factors such as socioeconomic status, ethnicity, neighborhood, and impulsivity.³ Generally, the "characteristics of the average juvenile offender in a public facility are low academic achievement, residency in a racially isolated area, and in many cases, learning disabilities or mental handicaps. As a matter of fact, 12%–70% of minors within the juvenile justice system have some handicapping condition."⁴ A study of youth in Pittsburgh published by the

¹ For a fuller discussion of this subject, see C. Kevin Morrison, CHILDREN WITH DISABILITIES IN JUVENILE COURT: IDEA AND THE JUVENILE PROSECUTOR (APRI 2003) (available at www.ndaa-apri.org).

² R. Johnson, *Destiny's Child: Recognizing the Correlation between Urban Education and Juvenile Delinquency*, 28 J. L. & EDUC. 313, 315 (April 1999) (referring to research discussed in L. Siegel & J. Senna, *Juvenile Delinquency: Theory, Practice and Law* 5th ed. (Belmont, CA: Wadsworth/Thomson Learning 1994)).

³ K. Browning & R. Loeber, *Highlights of Findings From the Pittsburgh Youth Study*, U.S. DEP'T OF JUSTICE, OJJDP, FACT SHEET #95 (1999).

⁴ *Destiny's Child*, *supra*, note 2.

Department of Justice indicates that low IQ, impulsivity, personality, and social environment were leading risk factors in developing juvenile delinquent behavior.⁵ In that study, more than 150,000 of the children who came into contact with the juvenile justice system each year had at least one mental disorder.

While it is still important to hold these juvenile offenders accountable for their behavior—indeed, accountability is often an important part of the therapeutic process for those juveniles—their condition is relevant to a fuller understanding of their behavior and to the appropriate charging and disposition in a delinquency case, since disabled and low-IQ juveniles will make up a significant portion of a juvenile prosecutor’s case-load. A full treatment of the issues presented by these youth is beyond the scope of this work, and the reader is advised to review the materials cited in the footnotes and at the end of this chapter. More important for this Desk Reference, however, are the legal issues under federal, and sometimes state law, which must be considered in any school discipline decision, any investigation involving a disabled child, and sometimes in the prosecutorial decision involving those juveniles.

Legal Protections for Disabled Juveniles

Disabled children, including those whose disability is mental or emotional, have some very significant protections under federal law that prosecutors and SROs must follow. The Individuals with Disabilities Education Act (“IDEA”)⁶ requires that all children with disabilities must receive a

⁵ *Highlights of Findings From the Pittsburgh Youth Study, supra*, note 3.

⁶ 20 U.S.C. § 1400 *et seq.*

“free appropriate public education.”⁷ To implement that requirement, the IDEA establishes an elaborate procedure with which every school system must comply. Central to those procedures is the requirement that the school, working with parents and other relevant professionals, must develop an Individualized Education Program (“IEP”) for each disabled child tailored to the child’s specific needs.

This process is important for prosecutors and SROs because the definition of disability is broad enough to encompass a child “whose behavior impedes his or her learning or that of others,”⁸ *i.e.* many of those who are most disruptive, and sometimes dangerous, in a school setting. Those children also must have an IEP developed by the school system that spells out how that juvenile’s disability will be accommodated and what will happen if the child’s behavior disrupts the educational process, “including positive behavioral interventions, strategies, and supports to address that behavior.”⁹ Thus, any action against that child, such as expulsion or suspension, which is contrary to the IEP can be challenged by the juvenile and his or her parents, including possible lawsuits against the school.

In 1997 Congress amended IDEA to allow for some discipline of disruptive disabled children. For example, a disabled child can be suspended from school for up to 10 days for incidents of misconduct that would also have resulted in suspension of a non-disabled child.¹⁰ In extreme cases, the disruptive juvenile can be placed in “an appropriate interim

⁷ The definition of “disability” includes not only the obvious physical disabilities like blindness and “orthopedic impairment,” but also learning disabilities, emotional disturbance, and mental retardation. 20 U.S.C. § 1401(3)(A). “Learning disabilities” are disorders “in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.” 34 C.F.R. § 300.7(b)(10) (1998). “Emotional disturbance” is even more vaguely defined as, “a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child’s educational performance: (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors. (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers. (C) Inappropriate types of behavior or feelings under normal circumstances. (D) A general pervasive mood of unhappiness or depression. (E) A tendency to develop physical symptoms or fears associated with personal or school problems.” 34 C.F.R. § 300.7(b)(4) (1998).

⁸ 20 U.S.C. § 1414(d)(3)(B).

⁹ *Id.*

¹⁰ 20 U.S.C. § 1415(k)(1)(A)(i).

alternative educational setting” for up to 45 days while the parents are pursuing appeals of any action taken against the child by the school. If it is determined in the appeals process that the misbehavior was not a “manifestation of disability,” then the same disciplinary measures may be imposed on the disabled child as would be imposed on any other child.¹¹ If, on the other hand, the bad behavior is found to be a “manifestation of disability,” the IEP must be reviewed, and perhaps amended, to address the new behavior, and the juvenile may be allowed to return to the school system.¹²

Prior to the 1997 amendments there was a question regarding whether reporting crime committed in school by disabled students and even bringing a juvenile prosecution might violate IDEA.¹³ In at least one case the courts have held that filing a delinquency petition against a disabled child without first following the procedural requirements of the IDEA could be a violation of the Act.¹⁴ Other courts have disagreed,¹⁵ and the 1997 IDEA amendments expressly permit reporting and prosecuting juvenile crime.¹⁶ Notwithstanding those amendments, however, in some jurisdictions attorneys and advocates continue to argue that the IDEA imposes limits on juvenile court prosecutions of students with disabilities.¹⁷ It will be important, therefore, for the prosecutor and SRO to be familiar with the current state of the law in their jurisdiction.

¹¹ 20 U.S.C. § 1415(k)(5).

¹² 20 U.S.C. § 1415(k)(4).

¹³ See *Spotlight on: IDEA, ADA and Section 504 of the Rehabilitation Act: Prosecutors and Schools in Federal Court*, IN RE... (APRI, SUMMER 2002).

¹⁴ *Morgan v. Chris L.*, 927 F. Supp. 267 (E.D. Tenn. 1994), *aff'd without published opinion* 106 F.3d 401 (6th Cir. 1997) (the appellate decision can be found at 1997 USAPP LEXIS 1041). The *Chris L.* case may be distinguishable from other cases by the fact that it was filed by a school official, not a prosecutor, under a Tennessee law that enables any person to file a delinquency action. Most states do not allow such direct filing of delinquency actions by non-prosecutors.

¹⁵ E.g., *In re C.S.* 804 A.2d 307 (D.C. 2002); *Commonwealth v. Nathaniel N.*, 54 Mass. App. Ct. 200, 764 N.E.2d 883 (Mass. App. Ct. 2002), *In re Trent N.*, 212 Wis.2d 728, 569 N.W.2d 719 (Wis. Ct. App. 1997).

¹⁶ 20 U.S.C. § 1415(k)(9)(A) (“Nothing in this subchapter shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.”)

¹⁷ E.g., J. B. Tulman, J. A. McGee, *Special Education Advocacy Under the Individuals With Disabilities Education Act (IDEA)* p. 4-23 (District of Columbia: University of the District of Columbia School of Law Juvenile Law Clinic 1998).

Resources: Where to Go for More Information

Center for Effective Collaboration and Practice
1000 Thomas Jefferson Street NW, Suite 400
Washington, DC 20007
(888) 457-1551
<http://www.air.org/cecp>

US Department of Justice
Office of Justice Programs
OJJDP
810 Seventh Street NW
Washington, DC 20531
(800) 638-8736
<http://ojjdp.ncjrs.org>

Center for Mental Health Services Knowledge Exchange Network
www.mentalhealth.org/index.html
Juvenile Information Network (JIN)
<http://www.juvenilenet.org>

Charles H. Post, *The Link Between Learning Disabilities and Juvenile Delinquency: Cause, Effect and Present Solutions*, JUVENILE & FAMILY COURT JOURNAL (Feb/Mar 1981).

Center for the Future of Children/The David and Lucile Packard Foundation, *THE FUTURE OF CHILDREN*, Vol. 6, No. 1, *Special Education for Students with Disabilities* (Spring 1996).

Kim Brooks, *et al.*, *THE SPECIAL NEEDS OF YOUTH IN THE JUVENILE JUSTICE SYSTEM: IMPLICATIONS FOR EFFECTIVE PRACTICE*, (Children's Law Center, Inc., Covington, Kentucky 2001) available at <http://www.childrenslawky.org/pubs.htm>.

APPENDIX

Appendix: Research and Programs

Listed below are publications, Internet sites, and other resources where prosecutors and SROs will find brief descriptions, as well as references where more details can be found, of recent research, information compilations, and some proven and promising programs. In addition to these materials, juvenile prosecutors will find important guidance on school crime prosecution issues as well as other issues confronting them in their daily work in the National District Attorneys Association's *Resource Manual and Policy Positions on Juvenile Crime Issues*, available on the Internet at http://www.ndaa-apri.org/pdf/resource_manual_juvenile_crime_july_14_2002.pdf.¹

Most of the programs identified below have been shown to be effective where they have been implemented, but that, of course, is no assurance that they will be effective elsewhere. Readers are urged to examine each program carefully for suitability in their local jurisdiction.

Research and Information

1. *INDICATORS OF SCHOOL CRIME AND SAFETY 2003* (U.S. Dep't of Education, October, 2003) (available at <http://nces.ed.gov/pubs2004/2004004.pdf>)—The latest version of this annual report provides a substantial volume of statistical information pertaining to crime in American schools. The report compiles data derived from many sources, and includes student reports, principal and administrator reports, and teacher reports of crime. It also analyzes “school environment” issues such as bullying, drug and alcohol use, and gang activity.
2. Tonja Nansel, Mary Overpeck, Ramani Pilla, June Ruan, Bruce Simmons-Morton, Peter Scheidt, *Bullying Behaviors Among U.S. Youth: Prevalence and Association with Psychosocial Adjustment*, 285 *JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION* 2094 (April 25, 2001)—This

¹ The Internet links provided in this Appendix and throughout this book are current as of the date of publication.

- article reports the results of research conducted to determine the prevalence of bullying behavior. It concludes that the prevalence is “substantial” and likely to result in “long-term negative outcomes.”
3. *2002 NASRO School Resource Officer Survey* (National Association of School Resource Officers 2000) (available at <http://www.nasro.org/2002NASROsurvey.pdf>) —This survey provides valuable information about the nature of the work currently being done by SROs, the issues they face, their perceptions of the population they serve, and that population’s perceptions of the SROs.
 4. *MANUAL TO COMBAT TRUANCY* (U.S. Dep’t of Educ. and U.S. Dep’t of Justice, July 1996) (available at www.ed.gov/pubs/Truancy)—This publication provides suggested practices and principles for deterring truancy, and an overview of truancy reduction initiatives implemented in several local school districts.
 5. Myriam L. Baker, Jane Nady Sigman, and M. Elaine Nugent, *Truancy Reduction: Keeping Students in School*, *JUVENILE JUSTICE BULLETIN*, September 2001 (U.S. Dep’t of Justice, OJJDP) (available at <http://www.ncjrs.org/pdffiles1/ojjdp/188947.pdf>)—This bulletin contains recent research on the correlation between truancy and juvenile crime, and outlines several truancy prevention recommendations from the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.
 6. *National Criminal Justice Reference Service*, <http://www.ncjrs.org> —The entire library of publications on juvenile justice subjects issued by the divisions of the U.S. Department of Justice, including the Office of Juvenile Justice and Delinquency Prevention, the National Institute of Justice, the Bureau of Justice Statistics, and others, is collected at this Web site. It contains a wealth of information on most subjects involved in juvenile justice, and new material is added continuously.
 7. *Educational Resource Information Center/Counseling and Student Services*, <http://ericass.uncg.edu/virtuallib/bullying/bullyingbook.html> —This website links to a significant body of research and programmatic materials on bullying and bullying prevention, as well as numerous other areas of interest to educators.
 8. *Sharing Information: A Guide to the Family Educational Rights and Privacy Act and Participation in Juvenile Justice Programs* (U.S. Dep’t of Justice, OJJDP 1997) (available at <http://www.ncjrs.org/pdffiles/163705.pdf>)

- This publication provides an excellent description of the requirements of FERPA and the effect of that statute on juvenile proceedings and on information sharing between juvenile prosecutors and school officials, including SROs.
9. *Schoolwide Prevention of Bullying* (Northwest Regional Educational Laboratory, December 2001) (available at <http://www.nwrel.org/request/dec01/bullying.pdf>)—This publication explains current understanding of the problem of bullying in the context of prevention by schools. It also describes and provides contact information for several successful anti-bullying programs around the country. The Northwest Regional Educational Laboratory also has a substantial volume of other resources on educational and school violence topics.
10. June L. Arnette and Marjorie C. Walsleben, *Combating Fear and Restoring Safety in Schools*, JUVENILE JUSTICE BULLETIN, April 1998 (U.S. Dep’t of Justice, OJJDP) (available at <http://www.ncjrs.org/pdffiles/167888.pdf>)—This bulletin provides an overview of recent research on violence in schools, including bullying, gangs, and weapons.
11. The *Safe School Initiative*, a joint research project of the U.S. Department of Education and the U.S. Secret Service, recently issued its final report, *Threat Assessment in Schools: A Guide to Managing Threatening Situations and to Creating Safe School Climates*. The Initiative studied incidents of “targeted violence” in schools to determine common characteristics among the incidents, and used that research to devise the strategies in the Guide. The Initiative’s Final Report is available on the Internet at <http://www.ed.gov/admins/lead/safety/preventingattacksreport.pdf>. The Guide is available on the Internet at <http://www.ed.gov/admins/lead/safety/threatassessmentguide.pdf>.

Web sites

National Association of School Resource Officers
<http://www.nasro.org>

Center for the Prevention of School Violence
<http://www.juvjus.state.nc.us/cpsv>

SCHOOL CRIME AND SCHOOL RESOURCE OFFICERS

National Resource Center for Safe Schools

<http://www.safetyzone.org>

National School Safety and Security Services

<http://www.schoolsecurity.org>

Virginia Center for School Safety

<http://www.vaschoolsafety.com/sro>

Alberta Association of School Resource Officers

<http://www.aasro.com>

Colorado Association of School Resource Officers

<http://www.casroinfo.com>

Kansas Association of School Resource Officers

<http://www.kasro.org>

National Center for Juvenile Justice

<http://www.ncjj.org>

National School Safety Center

<http://www.nssc1.org>

Committee for Children, Information on Bullying
and Sexual Harassment

<http://www.cfchildren.org/bully.shtml>

Fight Crime Invest in Kids

<http://www.fightcrime.org>

National Criminal Justice Reference Service

<http://virlib.ncjrs.org/JuvenileJustice.asp>

U.S. Department of Justice, Office of Juvenile Justice
and Delinquency Prevention

<http://ojjdp.ncjrs.org/>

Programs

1. Dan Olweus, Sue Limber, Sharon Mihalic, BLUEPRINTS FOR VIOLENCE PREVENTION, BOOK NINE: BULLYING PREVENTION PROGRAM, Delbert Elliott ed. (Center for the Study and Prevention of Violence, Univ. of Colorado 2000) (available at <http://www.colorado.edu/cspv/blueprints/index.html>).
2. Stuart Greenbaum, Brenda Turner, Ronald D. Stephens, SET STRAIGHT ON BULLIES (Pepperdine University Press 1989).
3. PROMISING STRATEGIES TO REDUCE GUN VIOLENCE (U.S. Dep't of Justice, February 1999) (available at http://www.ojjdp.ncjrs.org/pubs/gun_violence/173950.pdf)—DOJ's Office of Juvenile Justice and Delinquency Prevention has published this compendium of more than 60 programs and other information on the subject of gun violence.
4. Caroline Cooper, *Juvenile Drug Court Programs*, JAIBG BULLETIN (U.S. Dep't of Justice, Office of Justice Programs, May 2001) (available at <http://www.ncjrs.org/pdffiles1/ojjdp/184744.pdf>)—This bulletin gives an overview of drug court programs, including suggestions for initiating a program and necessary elements and principles to make them successful.
5. David Sheppard and Patricia Kelly, *Juvenile Gun Courts: Promoting Accountability and Providing Treatment*, JAIBG BULLETIN (U.S. Dep't of Justice, Office of Justice Programs, May 2002) (available at <http://www.ncjrs.org/pdffiles1/ojjdp/187078.pdf>) —In this bulletin the Office of Justice Programs outlines the relatively new gun court program. It provides information about the circumstances in which a gun court might be a useful tool to a juvenile court program, including the limitations of such a program, and provides information about the necessary elements of a successful gun court program.



American Prosecutors Research Institute
99 Canal Center Plaza, Suite 510
Alexandria, Virginia 22314
Phone: (703) 549-4253
Fax: (703) 836-3195
<http://www.ndaa-apri.org>



APRI