



Memorandum

To: Mayor Nelson and Members of the City Council

From: Daniel R. Buchholtz, MMC, Administrator, Clerk/Treasurer
Josh Antoine, Police Chief

Date: November 2, 2023

Subject: SRO Update and Discussion

During the 2023 Legislative Session, the Legislature amended Minn. Stat. § 121A.58 prohibiting prone restraint and certain physical holds by an employee or agent of a school district. The law expanded the definition of an agent of the school district to include a school resource officer, security personnel or a police officer contracted with the district.

The amended language is shown below:

121A.58 CORPORAL PUNISHMENT; PRONE RESTRAINT; AND CERTAIN PHYSICAL HOLDS.

Subdivision 1. Definition Definitions.

(a) For the purpose of this section, "corporal punishment" means conduct involving:

- (1) hitting or spanking a person with or without an object; or
- (2) unreasonable physical force that causes bodily harm or substantial emotional harm.

(b) For the purpose of this section, "prone restraint" means placing a child in a face-down position.

Subd. 2. Corporal punishment not allowed.

An employee or agent of a district shall not inflict corporal punishment or cause corporal punishment to be inflicted upon a pupil to reform unacceptable conduct or as a penalty for unacceptable conduct.

Subd. 2a. Prone restraint and certain physical holds not allowed.

(a) An employee or agent of a district, including a school resource officer, security personnel, or police officer contracted with a district, shall not use prone restraint.

(b) An employee or agent of a district, including a school resource officer, security personnel, or police officer contracted with a district, shall not inflict any form of physical holding that restricts or impairs a pupil's ability to breathe; restricts or impairs a pupil's ability to communicate distress; places pressure or weight on a pupil's head, throat, neck, chest, lungs, sternum, diaphragm, back, or abdomen; or results in straddling a pupil's torso.

Subd. 3. Violation.

Conduct that violates subdivision 2 is not a crime under section 645.241, but may be a crime under chapter 609 if the conduct violates a provision of chapter 609. Conduct that violates subdivision 2a is not per se corporal punishment under this statute. Nothing in this section or section 125A.0941 precludes the use of reasonable force under section 121A.582.

In addition, the Legislature amended Minn. Stat. § 121A.582 updating the reasonable force standard limiting the use of reasonable force by an agent of the district to restrain a student to prevent imminent bodily harm or death to the student or to another.

The adopted language is shown below:

Subdivision 1. **Reasonable force standard.** (a) A teacher or school principal, in exercising the person's lawful authority, may use reasonable force when it is necessary under the circumstances to correct or restrain a student ~~or to prevent imminent~~ bodily harm or death to ~~the student or to~~ another.

(b) A school employee, school bus driver, or other agent of a district, in exercising the person's lawful authority, may use reasonable force when it is necessary under the circumstances to restrain a student ~~or to prevent~~ bodily harm or death to ~~the student or to~~ another.

(c) Paragraphs (a) and (b) do not authorize conduct prohibited under section [125A.0942](#).

~~(d) Districts must report data on their use of any reasonable force used on a student with a disability to correct or restrain the student to prevent imminent bodily harm or death to the student or another that is consistent with the definition of physical holding under section 125A.0941, paragraph (c), as outlined in section 125A.0942, subdivision 3, paragraph (b).~~

~~(e) Beginning with the 2024-2025 school year, districts must report annually by July 15, in a form and manner determined by the commissioner, data from the prior school year about any reasonable force used on a general education student to correct or restrain the student to prevent imminent bodily harm or death to the student or another that is consistent with the definition of physical holding under section 125A.0941, paragraph (c).~~

These two legislative changes were significant as school resource officers were governed under the same use of force statute (Minn.Stat. § 609.06) that governs all police officers.

The new law resulted in widespread confusion and concern across the State. Many individuals interpreted the law to place significant limitations on the types of force that could be used, even in dangerous situations. The League of Minnesota Cities provided a training updated through PATROL (LMCIT's online police training) that provided Police Departments with guidance on how to interpret the law. The confusion and concern led to many cities across the State, including the City of Spring Lake Park, to cancel their School Resource Officer contracts and remove the SRO from the school.

Based on concerns raised by the League of Minnesota Cities, the Minnesota Police and Peace Officers Association, the Minnesota Chiefs of Police Association, and other groups, the Attorney General issued an opinion on August 22, 2023, augmented by a second opinion issued on September 20, 2023 attempting to address the concerns raised by the law enforcement community. The Attorney General's opinion essentially stated that SRO's must avoid the restraints identified in the statute. The AG also states the school employees and agents may "use reasonable force when it is necessary under the circumstances to restrain a student to prevent bodily harm or death to a student or another," meaning that if a school employee or other agent of the school determines that the student is about to harm themselves or others, they can intervene. The AG also states that Minn. Stat. § 609.06 governs use of force by an officer.

Minn. Stat. § 8.07 makes opinions of the Attorney General binding and decisive until the question involved is decided otherwise by a court of competent jurisdiction. That does not mean that there is uniform agreement on the AG's opinion. Hennepin County Attorney Mary Moriarty, Anoka County Attorney Brad Johnson and our City Attorney, John Thames, have expressed concerns about the AG's reasoning and determined that there are still significant risks associated with re-implementing the SRO program "unless and until the Legislature enacts some clarifications to the law."

With the issuance of the AG's opinions, as well as commitments from Legislative leaders to hold hearings on amending the law within the first two weeks of the 2024 Legislative Session, several police departments have reinstated their SRO programs. Many others have not until clarity is provided by the Legislature.

Based on these developments, staff felt it would be appropriate to have the City Council review the available information (see informational packet included with this memorandum) and make the best decision for the community as a whole.

The City Council's options include:

1. *Stay the course.* Keep the School Resource Officer out of Spring Lake Park School District for the foreseeable future, reevaluating the decision based on the outcome of the 2024 Legislative Session.
2. *Rely the Attorney General's guidance and reinstitute the School Resource Officer program.* This option would require the City to approach Spring Lake Park Schools leadership to negotiate a new SRO agreement that attempts to reduce both the City's and the Police Officer's liability.

Staff believes that this is ultimately a policy decision to be made by the City Council, as the City's governing body. Staff will continue to faithfully follow the direction provided by the City Council. In addition, staff will also continue to communicate with our Legislators on the importance of clarifying the statute.

Chief Antoine, City Attorney Thames and I will be on hand to address any questions the City Council may have and to help facilitate the discussion. In addition, staff has invited Spring Lake Park Schools Superintendent Jeff Ronneberg and Anoka County Attorney Brad Johnson to attend the work session.

If you have any questions, please do not hesitate to contact me at 763-784-6491.