



SPRING LAKE PARK CITY COUNCIL WORKSHOP
November 20, 2023

School Resource Office Discussion
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Chief Josh Antoine

MN Department of Education Legislative Update



Special Education

Legislative Update Pertaining to Restrictive Procedures, Prone Restraint and Reasonable Force

The following amendments are effective July 1, 2023.

Minnesota Statutes, section 125A.0942 (Standards for Restrictive Procedures – applicable to students with disabilities) is amended as follows:

- Clarifies the standards for the use of restrictive procedures apply to children with disabilities from birth until the child with a disability becomes 22 years old by adding **“individualized family service plan”** next to individualized education program throughout the statutory provision.
- Adds responsibilities to the oversight committee to quarterly review **“the use of restrictive procedures based on patterns or problems indicated by . . . any disproportionate use of restrictive procedures based on race, gender, or disability status; the role of the school resource officer or police in emergencies and the use of restrictive procedures; and documentation to determine if the standards for using restrictive procedures as described in sections 125A.0941 and 125A.0942 are met.”**
- Adds **“a brief description of the post-use debriefing that occurred as a result of the use of the physical hold or seclusion”** to the information required to be documented each time physical holding or seclusion is used.
- Prohibits **“the use of seclusion on children from birth through grade 3 by September 1, 2024.”**
- Clarifies the restrictive procedures reporting requirement for districts pertaining to children with disabilities by stating that **“[a]ny reasonable force used under sections 121A.582; 609.06, subdivision 1; and 609.379 which intends to hold a child immobile or limit a child's movement where body contact is the only source of physical restraint or confines a child alone in a room from which egress is barred shall be reported to the Department of Education as a restrictive procedure, including physical holding or seclusion used by an unauthorized or untrained staff person.”**
- Requires, **“[b]y February 1, 2024, the commissioner, in cooperation with stakeholders, [to] make recommendations to the legislature for urgently ending seclusion in Minnesota schools . . . [which] must include specific dates for ending seclusion by grade or facility . . . [and] must identify existing resources and the new resources necessary for staff capacity, staff training, children's supports, child mental health services, and schoolwide collaborative efforts.”**

Minnesota Statutes, section 121A.58 (Corporal Punishment – applicable to students with and without disabilities) is amended as follows:

- Adds to the definitions **“‘prone restraint’ means placing a child in a face-down position.”**
- Prohibits the use of prone restraint and certain physical holds, stating that **“[a]n 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 . . . [and] 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.”**

- Provides that “[c]onduct 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.”

Minnesota Statutes, section 121A.582 (Student Discipline; Reasonable Force – applicable to students with and without disabilities) is amended as follows:

- Amends the standard for when reasonable force may be used to “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.”
- Clarifies the restrictive procedures reporting requirement for districts pertaining to students with disabilities by stating that “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).”
- Adds a new reporting requirement for districts pertaining to general education students that “[b]eginning 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).”

Please direct any questions for the Minnesota Department of Education to consider while developing guidance for the field on this topic to mde.assistance-compliance@state.mn.us.

MN POST Board Director Misselt

To all,

I wanted to reach out and give all of you an update reference the new SRO law as it pertains to POST. For the more part this is an issue between LE, school districts and the legislature and not a POST issue. As a result, I have tried to keep us out of the arguments going back and forth but there is a nexus with our responsibilities. I also want you to have the heads up as the LE Associations have, and will likely continue their discussions with the legislature and the governor regarding all of the possible ramifications of the new law.

The main issue that has been asked about with regard to POST is whether or not there is the potential for POST discipline if an SRO would violate the law under Minn. Stat. 121A.582 (an education statute, not a POST statute) even though the potential use of force would not violate the reasonableness standard under 609.06. The short answer is yes, there is a path where a violation under 121A.582 could be in POST jurisdiction under the new rules. Below is the explanation I gave to the Governor's policy advisor upon request and after consulting with the AAG's for the board and the CIC.

Under old POST Board rules, specific statutes were identified in our standards of conduct, for example Minn. Stat. 609.066 deadly force was specifically called out as being within POST jurisdiction making violations of the specific statute subject to license sanctions.

Under the new POST Board rules adopted this year, 6700.1600 Standards of Conduct were changed, no longer relying on naming specific statutes. Specifically, with regard to the issue at hand, 6700.1600, Subp. 1, E (3) states it is a violation of standards of conduct to: "engage in unreasonable or excessive use of force, unauthorized use of force, or unauthorized use of deadly force". (emphasis added)

Therefore, because the standard for reasonable force was changed in 121A.582 Subd. 1, a violation of the standard by an SRO or "agent of the district", could be construed as an "unauthorized" or "unreasonable" use of force making the officer subject to licensing sanctions. In short, there is a path to potential license sanctions for an officer under 121A.582 Subd. 1.

As with any action taken by the POST Board, each case and circumstance is fact-specific so there is no guarantee that there would be or would not be licensing sanctions imposed, only that they are possible.

As always, feel free to call with any questions,

Erik

Erik Misselt - Executive Director



MINNESOTA

Board of Peace Officer Standards and Training

1600 University Avenue, Suite 200, Saint Paul, MN 55104

Main: (651) 643-3060 | www.mn.gov/post/

Direct # 651-201-7789

erik.misselt@state.mn.us

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LELS e-mails

Josh Antoine

From: Karen Fiske <kfiske210@gmail.com>
Sent: Tuesday, September 26, 2023 11:46 AM
To: Josh Antoine
Subject: Fwd: School Resource Officer (SRO) Statute and Related Issues - Follow Up

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From: Law Enforcement Labor Services <cdeans@lels.org>
Date: Fri, Sep 22, 2023, 17:59
Subject: School Resource Officer (SRO) Statute and Related Issues - Follow Up
To: <kfiske210@gmail.com>



Date: September 22, 2023

Greetings LELS Members:

Earlier this afternoon, MPPOA, through its General Counsel, sent a letter to MPPOA members discussing the most recent Attorney General Advisory Opinion (AGAO). While the analysis in that letter included discussion of the application of Minn. Stat. §609.06, subd. 1(1), Use of Force and the POST Board statement regarding the controlling application of the AGAO to POST license matters, the labor/employment aspect was not addressed.

As a result, the options and review of the employment issues detailed in the Memo sent to you from LELS on September 20, 2023, remain in place. See the referenced memo below.

Please contact your Business Agent or LELS General Counsel (Mark Schneider) to discuss your agency's or your individual circumstances and alternatives on how to proceed. If you have any questions about SRO/contracted officer(s) in the schools issues, do not hesitate to contact us.

Respectfully yours,

Jim Mortenson
LELS – Executive Director

Mark Schneider

To: LELS Members
From: Law Enforcement Labor Services, Inc.
Date: September 20, 2023
Re: School Resource Officer (SRO) Statute and Related Issues

As you know, the legislature passed legislation during the last legislative session amending *Minn. Stat. §121A.58*. The new legislation prohibits “an employee or agent of a district, including a school resource officer, security personnel, or police officer contracted with the district”, from using any prone restraint or “any form of physical holding” that “restricts or impairs a pupil’s ability to breathe; 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.” *Minn. Stat. §121A.58, subd. 2*.

Of note, the legislation is not limited only to SRO’s—it applies to agents of a school district or “police officer(s) contracted with the district”. *Id.* As a result, officer(s) assigned to football games and other school activities/extracurricular events are bound by the same statutory restrictions.

While there is much activity in the background attempting to amend the statute so that it conforms with *Minn. Stat. §609.06, 609.065* and *609.066*, in addition to discussions to schedule a special session of the legislature, that path will take time and may not occur until the legislature reconvenes in 2024.

As a result, LELS has discussed the new statute with several of its members, stakeholders, and legislators to determine how best to proceed on behalf of our members. While we are working with others to amend or clarify the new statute, until that happens, LELS recommends the following to address the school resource officer (SRO) statute and limitations:

- Option 1: If your agency has not removed SRO’s/contracted officers from the schools within your jurisdiction and continues to require SRO’s/contracted officers to report for duty, inform your Business Agent immediately. At that time, LELS will formally notify your agency/employer of its demand to impact bargain the continuation of the school resource officer relationship prior to clarification or amendment of the applicable law.
- Option 2: If you are assigned as a SRO/contracted police officer and do not want to act in that capacity given the civil liability, criminal liability and POST license ramifications, advise your Business Agent immediately. At that time LELS will reach out to your employer to discuss alternatives to that assignment and the effect on your employment status with the agency.
- Option 3: If the SRO/contracted police officer assignment is required by your chief law enforcement officer (CLEO) and you are directed to fulfill that assignment/duty, contact your business agent immediately to discuss the particular circumstances in order to determine whether a grievance may be pursued pursuant to the terms of your particular collective bargaining agreement and/or applicable policies. Many, if not all, agency policies require that you obey “lawful orders”; and, if you fail to do so, you will risk discipline for insubordination. However, if an order is *not* lawful, you are not required to fulfill or follow that order. Nonetheless, you may still be subject to an internal investigation in order to determine the particular circumstances and lawfulness of any order.

The amendment to *Minn. Stat. §121A.58* creates uncertainty and places officers in a difficult, uncertain and potentially dangerous position that may expose SRO’s/contracted police officers to civil and criminal liability; in addition to a review of their license by the POST Board. The law conflicts with *Minn. Stat. §609.06, 609.065* and *609.066*; thereby risking the wellbeing and lives of students, school

staff and officers. The amended statute also conflicts with use of force training and further compounds the uncertainty and risks placed upon the officers.

If you have any questions regarding any SRO/contracted police officer issues, please contact your Business Agent or our General Counsel, Mark Schneider, to discuss those matters. We are here to help and assist you as best we can along the way.

Thank you and stay safe!

Law Enforcement Labor Services | 2700 Freeway Boulevard, Suite 700, Brooklyn Center, MN
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MPPOA letters

Josh Antoine

From: Tony Bennek
Sent: Tuesday, September 26, 2023 8:05 AM
To: Josh Antoine
Subject: FW: SRO Update: Further Guidance from MPPOA's General Counsel

From: Minnesota Police and Peace Officers Association <aitschert+mppoa.com@ccsend.com>
Sent: Friday, September 22, 2023 3:08 PM
To: Tony Bennek <tbennek@slpmn.org>
Subject: SRO Update: Further Guidance from MPPOA's General Counsel

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SRO Update: Further Guidance from MPPOA's General Counsel

September 22, 2023

Dear MPPOA Members,

On September 20, 2023, Attorney General Ellison issued a supplementary opinion (AGO) as it relates to the ongoing SRO issue. This opinion was

generated after law enforcement stakeholders (including the Minnesota Police and Peace Officers Association, Minnesota Chiefs of Police Association, and Minnesota Sheriffs' Association) brought valid and legitimate concerns regarding the uncertainty in the application of the new law. This included clarity to the initial AGO opinion dated August 22, 2023. Our associations were concerned that the new law created two standards—one for peace officers and another for peace officers working in or contracted with a school or district.

In sum, the September 20, 2023 AGO concluded that the new law “does not limit the types of reasonable force that may be used by school staff and agents to prevent bodily harm or death. It also does not limit the types of reasonable force that may be used by police officers to carry out their lawful duties, as described in Minnesota Statutes section 609.06, subdivision 1(1). The test for reasonable force remains unchanged and is highly fact specific.”

Based on this AGO, now all peace officers, including those SROs or others contracted with a school district, may use reasonable force to effectuate their lawful duties. The new AGO extends “reasonable force” beyond threats of bodily harm or death and is now consistent with Minnesota Statutes 609.06, subdivision 1(1).

The updated AGO provides a legal opinion regarding part of the “Education Code” in Minnesota Statutes, section 121A. Minnesota Statute section 8.07 provides that “on all school matters” attorney general opinions like this one are “decisive.”^[1] Because the AGO addresses law relating to schools, section 8.07 authorizes the Minnesota Attorney General to issue an opinion that becomes “decisive.” On September 21, 2023 Governor Walz issued a statement concluding that this AGO opinion is “binding.”

Importantly, Minnesota Statutes 8.07 further states that the opinion is “decisive until the question involved shall be decided otherwise by a court.” This means that the standard to use force outlined by the AGO is decisive^[2] unless and until a court disagrees. There remains a chance that if a judge is presented with a civil or criminal action in any jurisdiction in Minnesota, a court may disagree with the AGO and issue their own opinion as it relates to Minnesota Statutes 121A.58. Again, this is hypothetical and as of the date of this letter, no such action has been taken against any peace officer regarding

their actions as a school resource officer in the State of Minnesota under the guidance of the new law.

On September 20, I, on behalf of MPPOA and its members, along with leaders of the Minnesota Police Chiefs Association and the Minnesota Sheriffs' Association, met with Governor Walz and leaders of the Minnesota House and Senate. We expressed our concerns with the new language in section 121A (the SRO law), and the way the law came to fruition. Governor Walz agreed and promised to prioritize a legislative fix in the next legislative session. The Speaker of the House and the Majority Leader of the Senate announced a "commitment to hold public hearings" about the SRO issue within the "first two weeks" of the legislative session.

On September 21, 2023, the Minnesota Post Board provided the following guidance:

"The POST Board concurs with the supplemental opinion issued by the Attorney General on September 20, 2023, concerning the recent amendment to the student discipline laws, and understands it binds the Board by virtue of Minnesota Statutes section 8.07. As set forth in the Attorney General's supplemental opinion, the amendment to the student discipline laws "does not limit the types of reasonable force that may be used by school staff and agents to prevent bodily harm or death" nor does it limit "the types of reasonable force that may be used by public officers to carry out their lawful duties, as described in Minnesota Statutes section 609.06, subdivision 1(1)."

As such, on matters involving the POST Board regarding complaints against SROs or officers contracted with a school/ districts, the POST Board will use the *decisive* language of the AGO.

Conclusions:

1. "Reasonable force" in Minnesota Statutes 609.06 is the standard for all peace officers, including SROs and officers that are contracted with a school district as per the AGO.
2. The most recent AGO is "decisive" unless and until a court disagrees with the AGO.
3. If SROs and officers contracted with a school district return to their assignment based upon the new guidance from the AGO, they should

understand that the AGO is binding unless and until overruled by a court. Should that occur, further guidance will be needed.

4. MPPOA thanks Governor Walz, the Attorney General, and legislative leaders for their work towards finding a temporary solution to return SROs back to Minnesota schools. A legislative solution is the only way to permanently fix this issue. Although commitments for hearings are helpful, they are not commitments to correcting the law. We will work with Governor Walz and legislative supporters to bring about a permanent resolution to this issue. The sooner that is accomplished, the better for all those involved. However, if this law is unable to be fixed statutorily next session, law enforcement agencies will need to re-evaluate their relationships with school districts and their SRO programs in the long-term.

I will continue to be a voice for you both in and out of the courtroom. Keep up the good work and be safe.

Imran S. Ali

General Counsel

Minnesota Police and Peace Officers Association

¹ The Minnesota Supreme Court has confirmed the opinions are “binding” until overruled by courts. *Eelkema v. Bd. of Ed. of Duluth*, 11 N.W.2d 76, 78 (Minn. 1943). “School matters” have been construed broadly, including the interpretation of how general statutes apply in an education context. E.g., *Village of Blaine v. Indep. Sch. Dist. No. 12*, 138 N.W.2d 32, 39-40 (Minn. 1965) (noting attorney general opinion had properly construed statute regarding municipal utilities in applying it to school district); *Mattson v. Flynn*, 13 N.W.2d 11, 16 (Minn. 1944) (noting reliance on attorney general opinion interpreting statutory language regarding teachers retirement funds); *Eelkema*, 11 N.W.2d at 78 (adopting attorney general analysis and noting that attorney general opinion regarding “tenure act”’s application to superintendent had been binding until any contrary court opinion was issued); *Lindquist v. Abbott*, 265 N.W. 54, 55 (Minn. 1936) (noting attorney general

opinion regarding whether school district could enter into year-long contract with attorney was "followed ever since" it was issued).

[2] <https://www.revisor.mn.gov/statutes/cite/8.07>

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From: **Minnesota Police and Peace Officers Association** <aitschert@mppoa.com>

Date: Fri, Sep 15, 2023, 13:38

Subject: SRO Update: Guidance from the POST Board



SRO Update: Guidance from the POST Board

September 15, 2023

Dear Members:

This morning, I learned the Minnesota POST Board updated its interpretation on the interaction of the legislative changes to Minnesota Statutes 121A.582 and the new Minnesota POST Board "Standards of Conduct" pursuant to 6700.1600. As you may remember from the letters President Titus and I sent earlier about this topic, we warned that this new law could impact licensure through the Minnesota POST Board. **Now, the new guidance from the POST Board makes it clear that SRO conduct could result in serious sanctions on your license.**

Under the new Minnesota POST Board rules adopted this year, 6700.1600 "Standards of Conduct" were changed and no longer rely on naming specific statutes. Specific to the issue at hand, 6700.1600, Subd. 1, E (3) states it is a violation of standards of conduct to "engage in unreasonable or excessive use of force, unauthorized use of force or unauthorized use of deadly force."

Therefore, because the standard for the use of reasonable force has been changed by the legislature in 121A.582 Subd. 1, a violation of the new statutory




language by an SRO (or "agent of the district") could be construed as an "unauthorized" or "unreasonable" use of force, making the officer subject to licensing sanctions.

In short, the Minnesota POST Board agrees with us: Due to the legislative changes, there now is a potential for license sanctions for an officer under 121A.582 Subd. 1.

This letter serves to advise all our members that are SROs, or any "agent of the district" through a contract, may be subject to a complaint with the Minnesota POST Board. This alarming guidance from Minnesota POST is further evidence that all liability is squarely on the officer, who can now face potential civil, criminal, and now licensure sanctions for their actions.

Until this matter is rectified at the Minnesota Legislature, **it is recommended that you contact your union representative** about your collective bargaining agreement options to not work any assignment under a school district's contractual agreement.

Imran S. Ali
General Counsel
Minnesota Police and Peace Officers Association



Gerae Christensen
Insurance Agent
651-793-2304

Andy Melcher
Insurance Agent
651-793-2305

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Josh Antoine

From: Tony Bennek
Sent: Thursday, August 24, 2023 7:48 AM
To: Josh Antoine
Subject: FW: Letter to members re: SROs

From: Minnesota Police and Peace Officers Association <aitschert+mppoa.com@ccsend.com>
Sent: Wednesday, August 23, 2023 4:03 PM
To: Tony Bennek <tbennek@slpmn.org>
Subject: Letter to members re: SROs

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Dear Members:

This communication is a continuation from our initial member communication on August 16, 2023 regarding new laws pertaining to school resource officers.

Yesterday Minnesota's Attorney General issued an opinion on the new SRO law language (which can be read here), essentially saying that the law could only be changed due to an act of the state legislature (which begins in February 2024, if no special legislative session is called by the Governor in the meantime, which is highly unlikely). The new law is ambiguous and unclear. We know the vagueness and

uncertainty of the law is a result of having no law enforcement stakeholders providing input into this important legislation.

The ability of an SRO or contracted police officer to intervene in other instances where a crime is being committed on school grounds or at school events is limited as they cannot physically engage a student unless there is threat of bodily harm or death. This potentially creates difficult situations for officers in these positions because they would have limited ability to properly intercede in the event a student is physically damaging school property, fleeing from an illegal situation, engaging in disorderly conduct, etc., which goes against their training.

The unintended consequences of this new law limit the lawful authority of SROs to keep children safe at school and those contracted with school districts to provide safety to the students and staff. SROs are counted on to support students and staff safety and must have a clear understanding and meaningful procedures and training in place before the implementation of any law. As we know, training is essential to protect all and to ensure the SRO is complying the state and local laws and the Minnesota POST Board.

With the school year fast approaching and with some extracurricular activities occurring this week, it is important to advise our members about the increased liability, both criminally and civilly, with this law and how it runs contrary to Minnesota Statutes 609.06. Our members are advised to proceed with caution as a school resource officer or contracted officer with a school district.

We encourage police departments, school administrators, and their counsel, to consider options that keep SROs in schools with their established law enforcement trainings and rules. This will best maintain school safety and assist in clarification of proper procedures. One option could be to forgo formal SRO contracts and simply allow law enforcement access to schools, so the new SRO requirements would not apply. Members may also consider requiring the school district to agree in a contract that it would defend and indemnify your agency and officers in the event of a civil suit for the use of a prone or passive restraint or taking someone to the ground.

Our team continues to work hard and be a voice for our members. Please be safe!

Sincerely,

Imran S. Ali, General Counsel, MPPOA

Brian Peters, Executive Director, MPPOA



 	 Gerae Christensen Insurance Agent 651-793-2304	 Andy Melcher Insurance Agent 651-793-2305	
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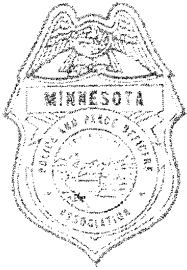
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MINNESOTA POLICE AND PEACE OFFICERS ASSOCIATION

525 Park Street, Suite 250 St. Paul, MN 55103-2145
Phone: 651-291-1119 Website: www.mppoa.com

August 16, 2023

Dear Members:

Student Resource Officers (hereinafter SRO) are asked to provide a variety of public services within the school setting, including mentoring and building deeper relationships between law enforcement, the students, and staff. When a crisis or altercation occurs, school SRO's are often the first to respond to address and manage the situation. They truly are the best line of defense when a school needs to protect children who are defenseless and often exposed to acts of violence.

One of the many laws passed during this year's state legislative session amended Minnesota Statutes Chapter 121A by adding two provisions in the education bill that limit the use of force towards students. This law applies to all school employees and agents of the school district. This would include SRO and law enforcement working contractually with a school through sporting and student events. This amendment became law was never subjected to traditional public safety committee processes nor were any law enforcement associations or stakeholders consulted.

In the amended Minnesota Statute sections 121A.58 and 121A.582, the language now "prohibits the use of prone restraint." The authority to use force for the sole purpose of restraining a student has been removed from law. As a result, using a prone restraint circumstances in any situation, including the threat of death or bodily harm is no longer an option.

According to the Minnesota Department of Education's Legislative Update Pertaining to Restrictive Procedures, Prone Restraint and Reasonable Force: "[a]n 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 . . . [and] 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."¹

¹ <https://education.mn.gov/MDE/dse/sped/PROD081619>

The Minnesota Police and Peace Officers Association, along with the Minnesota Chiefs of Police and Minnesota Sheriffs' Associations, are greatly concerned by the uncertainty of the language, the application of the amended law, and the increased liability, both civilly and criminally, that may occur. The unintended consequences of this new law limit the lawful authority of SRO's to keep children safe at school and those contracted with school districts to provide safety to the students, players and staff. SRO's are counted on to support students and staff safety, and must have a clear understanding and meaningful procedures and training in place before the implementation of any law.

The MPPOA recommends each of our member officers working for a school district to evaluate the risks associated with the new law to make a choice on whether to participate in school functions. If a member has any concerns regarding the applicability of the law, they should consider SRO assignments or any contracted work as an agent of the school district until more clarity is provided. Until then, as your general counsel, I have significant concerns for our members to work in any capacity as an SRO or any work contracted through a school district.

Be well and stay safe!

Sincerely,

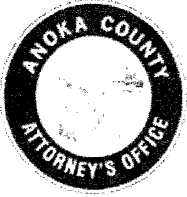


Imran S. Ali
General Counsel, MPPOA



Brian Peters
Executive Director, MPPOA

Anoka County Attorney Letters



Anoka County Attorney

BRAD JOHNSON

VIA EMAIL ONLY

James Mork
Chief of Police
Centennial Lakes Police Department &
President of the Anoka County Chiefs of Police Association
54 North Road
Circle Pines, MN 55014

September 26, 2023

**Re: New Amendments to Minnesota Statute Section 121A.58 and Review in
Police Use-Of-Force Referrals – One Standard**

Dear Chief Mork,

I write to you as the President of the Anoka County Chiefs of Police Association. You may share this letter with the chiefs and other law enforcement partners.

Cutting to the chase, I write to make clear that it has been, and will continue to be, the policy of the Anoka County Attorney's Office to review criminal referrals on peace officers use of force using one standard of conduct, the "reasonable force" standard in Minnesota Statute § 609.06. Unless and until a court says otherwise or the Legislature clarifies the law, it matters not to our decisions whether the peace officer at issue is a patrol officer, a school resource officer (SRO), a police officer contracted with a district, or otherwise, so long as the officer involved is engaged in their official duties.

Earlier this year, by way of an education bill, the Minnesota Legislature passed significant amendments to Minnesota Statute § 121A.58, which had previously addressed only corporal punishment by school employees and agents. The 2023 amendments expanded the law to include the following subdivision in Section 121A.58:

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.

(Emphasis added). This new language appeared designed to create new, absolute prohibitions and resulting civil and criminal liabilities for SROs and contracted law enforcement officers who are professionally obligated to intervene in dynamic situations that occur (i) between students, (ii) between students and staff, (iii) between students and non-students, and (iv) even in situations involving a single student in distress, regardless of age, physical characteristics, physical location in the community, and other surrounding circumstances.

Suffice it to say that confusion abounded across Minnesota about the meaning and import of these amendments among law enforcement, school districts and their officials and administrators, their civil counsel, various professional associations, prosecutors, and even legislators. It resulted in two published statements from the League of Minnesota Cities. It resulted in hard decisions whether, or not, to terminate SRO programs in schools, which varied from community to community even within a single school district. And it also resulted in two opinion letters from Minnesota's Attorney General, the most recent of which was released on September 20, 2023.

As the Anoka County Chiefs know, I have engaged on this issue since the beginning. Laws, especially those intended to regulate conduct and behavior, must be as clear as possible and consistent with both good public policy and reality. I remain resolute that the Legislature must make it a priority to fix the 2023 amendments to Section 121A.58 as soon as possible. To that end, Sheriff Brad Wise and I met with local legislators this past weekend. We all agreed to work on fixing the law as soon as practical, and we discussed with them our preferences on the solutions.

We appreciate that the Minnesota Attorney General has also engaged on this issue and has been attempting to bring additional clarity through his opinions. Setting aside the problems and ambiguities in the 2023 amendments, I agree with the Attorney General in two significant respects. First, it is the better interpretation that the "reasonable force" standard in Minnesota Statute § 609.06 governs peace officer conduct, and that test remains unchanged notwithstanding the passage of the 2023 amendments. Unless a court determines otherwise or the law changes, that is the authority that will guide our office's charging decisions. Second, I agree with the Attorney General that there remains much room for additional clarification by the Legislature.

While Sheriff Wise and I are collaborating with the Anoka-Hennepin School District to continue to provide protection and service in and around the Andover schools, I do not envision advising the Anoka County Sheriff to re-institute the Sheriff's SRO program as previously conceived unless and until the law is fixed.

As you each make your own individual decisions on how to deal with this situation, I hope this letter clarifies for you and your departments how our office will consider future criminal referrals. As always, please do not hesitate to call if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Brad Johnson", written in a cursive style.

Brad Johnson

cc: Brad Wise, Anoka County Sheriff



Anoka County Attorney
BRAD JOHNSON
Justice. Advocacy. Prevention.

VIA EMAIL ONLY

Jim Dickinson
City Administrator
City of Andover
Andover City Hall
1685 Crosstown Blvd. NW
Andover, MN 55304

August 23, 2023

Greg Cole
Chief Operations Officer
Anoka-Hennepin School District No. 11
Education Service Center
2727 N. Ferry Street
Anoka, MN 55303

**Re: Decision Not to Renew the Annual Memorandum of Understanding For
School Resource and Prevention Program Officer Services in Andover.**

Dear City Administrator Dickinson and Chief Operations Officer Cole,

I never imagined a day when I would be writing this letter.

As you know, our office represents the Anoka County Sheriff's Office in all matters related to the sworn deputies who are assigned to serve as school resource officers (SROs) in Andover. There exists a Memorandum of Understanding (MOU) between the City of Andover, Anoka-Hennepin School District No. 11, and the Anoka County Sheriff's Office, which has evolved over the years and reflects a robust and extremely successful relationship between law enforcement, schools and the city. The MOU and SRO program covers five (5) schools, including the Andover High School, Oak View Middle School, Andover Elementary, Crooked Lake Elementary, and Rum River Elementary. The term of the most recent MOU ran from July 1, 2022, through June 30, 2023.

Every year, the Sheriff, the City Council, and the District look forward to renewing that agreement. It is often done with tremendous community support and some fanfare and excitement for the beginning of a new school year. Law enforcement officers across Anoka County are as eager to get back to schools as the students and staff. Unfortunately for all of us, after considering the consequences of the new laws passed this year that incorporated language about SROs from the Governor's 2023 Education Policy bill, I now have had to advise our Sheriff that renewal of the annual MOU is untenable. Entering into the same MOU under these laws would create too many significant risks, liabilities, and uncertainties for the Sheriff, his office, the individual deputies serving as SROs or contracting for school events, and ultimately the citizens and taxpayers of Anoka County, which is self-insured and must bear those risks with the City of Andover.

Accordingly, please consider this letter as formal notice that the annual MOU for SRO services will not be renewed.

I have met with Sheriff Brad Wise and various Chiefs of Police across Anoka County. We all remain steadfast and dedicated to do all that is reasonably possible not only to protect the children in our community and the schools where they learn and grow, but also to foster positive relationships with the schools in our communities so that children and school personnel can thrive in safe and secure environments. The general purpose and goals articulated in the annual MOU remain. We must, however, redefine the roles for sworn officers who work in proximity to schools.

Deputies and other sworn law enforcement officers are not employees or agents of any district.¹ The problem lies with misguided language in the new laws that, either overtly or impliedly, describes and treats SROs as employees or agents of a district and restricts their abilities to exercise independent, professional discretion in the use of force in difficult situations. For example, Minnesota Statute § 121A.58 now states as follows:

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.

(Emphasis added). These new limitations are designed to create absolute prohibitions and resulting civil and criminal liabilities for SROs and contracted law enforcement officers who are professionally obligated to intervene in dynamic situations that occur (i) between students, (ii) between students and staff, (iii) between students and non-students, and (iv) even in situations involving a single student in distress, regardless of age, physical characteristics, physical location in the community, and other surrounding circumstances.

¹ I do not agree with, and I expressly reject, the cautionary sentiments in recent letters from certain affected associations that their members should "consider their SRO assignments or any contracted work as an agent of the school district." Only a city or county law enforcement agency employs an SRO, and their authority in their sworn capacity stems only from that employer. Perhaps well intentioned, such unqualified expressions of opinion can be imputed to members in future litigation. More accurately, a court will consider all the facts or circumstances surrounding an individual's actions to determine if a principal-agent relationship exists by agreement, implication, ratification, estoppel, or necessity. I am also concerned about the analysis in a recent, limited Attorney General Opinion, which raises more questions than answers. Nevertheless, the new laws create confusion and concern surrounding the issue.

Under these new laws, SROs (and district personnel) apparently now have far less ability to use reasonable and necessary force than both a parent and a patrol officer. It is unconscionable to curtail a SRO's ability to restrain children who, in the view of that sworn officer, are posing a risk to themselves, others, property, or a safe and secure learning environment for all children.

As a result, I must ask for your cooperation to bring the SRO program in Andover schools to an end for this coming school year. Here are our initial requests, which we ask to be completed no later than the beginning of the school year, i.e., September 5, 2023.

1. Please disable all Andover SRO email addresses in the District's email system(s).
2. Please take down all references to SROs and any SRO office on school grounds in Andover. Pending further discussions, we ask that you work with our deputies to secure areas of the school(s) previously occupied by SROs and their equipment, especially those that may contain critical incident or county equipment. If you have designated a parking space for a "SRO," please take down the sign.
3. Please examine the District's policies and procedures with an eye toward eliminating references to SROs and SRO programs, at least insofar as it applies to the Andover schools. If there are specific matters or concerns that arise during your review, we stand ready to confer with you on those items.
4. Sheriff Brad Wise and I would appreciate having an opportunity to collaborate with the District and its counsel on a message to Andover school staff and parents about the need to end the MOU and existing SRO program, as well as the ongoing efforts to maintain safe and secure schools this year and into the future.

Generally speaking, Anoka County Sheriff's Deputies who respond to school incidents or are attending school events on duty will now be in uniform or other professional attire approved by the Sheriff. They are no longer permitted to wear school attire, letters and logos, or school branded apparel. They will also turn in radios and other equipment provided to them by the schools.

There can be no vestige or remnant of the SRO program left over that would tend to imply that any Anoka County Sheriff's Deputy has apparent authority to act on behalf the District, nor that would serve as a basis for a claim that any Anoka County Sheriff's Deputy is an agent of the District by estoppel, implication, or other means. We would especially appreciate the District's efforts to help us and the Andover schools to eliminate any potential impression to laypersons that any deputies are authorized agents of the District. They are not.

I am certain that you all share in these concerns. It is hard enough to sort this out in the context of traditional public schools, which have significant student populations in special education programs, or dealing with serious domestic, chemical, or mental health issues. Imagine also the issues now created for county staff, corrections, and law enforcement officers in special schools such as the Pines School at the Anoka County Juvenile Center in Lino Lakes, a part of Centennial School District No. 12.

Finally, as we move forward into the new school year, both Sheriff Wise and I would like to continue to work collaboratively with the District, the City of Andover, and our other law enforcement partners to find solutions to the new problems we must face together. In that process, we will work with our respective associations and partners to reach out to policymakers for legislative solutions. We ask that you do the same, and that you encourage the parents of your students to support all of our efforts.

As always, please do not hesitate to call if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Brad Johnson", written in a cursive style.

Brad Johnson

cc: Brad Wise, Anoka County Sheriff
Cory McIntyre, District Superintendent
Tim Palmatier, District General Counsel
Sheri Bukkila, Andover Mayor
Rhonda Sivarajah, Anoka County Administrator
Anoka County Board of Commissioners

MN Chiefs of Police Association letters



MINNESOTA CHIEFS OF POLICE ASSOCIATION

DEDICATED TO THE IDEALS OF PROFESSIONAL POLICING

803 Old Highway 8 NW * Suite 1 | New Brighton, MN 55112 | 651.457.0677 * 800.377.4058 | www.mnchiefs.org

Minnesota Chiefs of Police Association (MCPA)

Executive Director Jeff Potts

jeff@mnchiefs.org

FOR IMMEDIATE RELEASE: MCPA STILL SEEKING CLARITY FOLLOWING ATTORNEY GENERAL'S OPINION REGARDING NEW LAW IMPACTING SCHOOL RESOURCE OFFICERS

August 23, 2023

On behalf of the Minnesota Chiefs of Police Association, Executive Director Jeff Potts expresses the association's concerns about a lack of clarity in the new law impacting School Resource Officers (SRO) despite an opinion by the Minnesota Attorney General (AG).

Potts said the Attorney General's opinion, issued on August 22, does resolve some issues with the new law but does not address many of the common scenarios faced by SROs in schools across Minnesota.

"Our number one priority continues to be keeping students and staff members inside schools across our state safe," Potts said. "Although we are grateful for the Attorney General's expertise and thoughtful opinion, we still aren't confident that can be accomplished with the new law."

On August 14, 2023, the Minnesota Chiefs of Police Association contacted elected state officials to seek guidance related to the new laws impacting School Resource Officers (SROs) and Officers hired as agents of a school district; Mn Stat. 121.58 and 121A.582. Our association requested that the Mn Department of Education (MDE) ask the Mn Attorney General for an opinion to offer binding guidance on how the new law impacts the use of force exercised by SROs and school agents. On August 18, 2023, the MDE asked the Attorney General for clarity regarding the recent amendments to student discipline laws. The Attorney General connected with police chiefs impacted by this question and asked for input before issuing the Attorney General's guidance.

The MDE asked the Attorney General if the new language acts as an exception to the general prohibition on prone restraints and other types of physical holds, thereby allowing the use of these practices when doing so would prevent imminent bodily harm or death to the student or another. In summary, The Attorney General stated that the statute amendment does not limit the types of reasonable force that school staff and agents may use to prevent bodily harm or death. We appreciate that the Attorney General provided binding guidance on this question and provided SROs and school agents clarity on this change to the law. However, the AG Opinion did not address other questions submitted by the MCPA.

In response to the outreach from the AG's Office, the MCPA asked the Attorney General to clarify several additional questions, including what is acceptable under the new law in situations that do not present a threat of bodily harm or death but are clearly violations of State law. The Attorney General's Opinion did not answer or address these questions. However, the AG Opinion acknowledged that other important questions were raised about the standards applicable to SROs or other contracted peace officers at school events. He said those questions are beyond the scope of the August 18 request and more appropriately directed at the legislature.

In some situations, an SRO responds to a student acting unruly and committing crimes such as damage to property, trespassing, or disorderly conduct. If an SRO is involved in these situations, what authority does an SRO have to intervene and stop the criminal behavior? The Attorney General indicated these are important questions but directed us to the legislature. Had the MCPA and other stakeholders been included in the original legislative process, these present questions could have been discussed, and a consensus could have been reached. Unfortunately, those impacted by these changes have been excluded from the process, and schools are now vulnerable. All of the questions presented by the MCPA need to be answered in order to provide the appropriate clarity and guidance to SROs and school agents.

Students, Teachers, School Administrators and Staff, and parents all deserve clarity on the expectations of what force SROs and agents can use to keep schools and school events safe. We want to avoid any impacts on school and student safety due to the lack of clarity of the law and important unanswered questions. This lack of clarity has created enough concern that some Chiefs are now having to carefully determine the risk both SROs and students may be put in under this new law. Agencies will need to weigh all of their options, the information we have received from the Attorney General, and what is best for everyone involved.

ABOUT THE MCPA

The Minnesota Chiefs of Police Association is a professional member organization representing approximately 1000 current and retired law enforcement and public safety leaders. Together, we bring the highest quality police services and leadership to the people of Minnesota



MINNESOTA CHIEFS OF POLICE ASSOCIATION

DEDICATED TO THE IDEAL OF PROFESSIONAL POLICING

Office of Governor Walz
75 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

TO: Governor Tim Walz

FR: Jeff Potts, Executive Director, Minnesota Chiefs of Police Association

CC: Keith Ellison, Attorney General
Senator Ron Latz, Chair of Senate Judiciary and Public Safety Committee
Senator Warren Limmer, Minority Lead of Senate Judiciary and Public Safety Committee
Representative Kelly Moller, Chair of House Public Safety Finance and Policy
Representative Paul Novotny, Minority Lead of House Public Safety Finance and Policy
Commissioner Bob Jacobson, Minnesota Department of Public Safety
Commissioner Wille Jett, Minnesota Department of Education

Date: August 14, 2023

Re: New Law impacting School Resource Officers; Mn Stat. 121A.58 and 121A.582

Governor Walz,

On behalf of approximately 325 police chiefs and another 150 command staff members at police departments across the state, the Minnesota Chiefs of Police Association (MCPA) writes this letter to articulate our concerns about the provisions that were contained in your education policy proposal, specifically related to limiting the lawful authority of School Resource Officers (SROs). Ultimately, the recommendations in your proposal were included in the Education Policy bill and have been signed into law.

With students returning to school very soon and SROs preparing to help at many schools across the state, we raise these concerns with the hopes that you will provide an immediate response that will provide clarity to police chiefs about the law change regarding SRO's abilities to keep the children and staff safe. We bring this concern forward with added frustration that although this law directly impacts the actions of police officers assigned to schools across the state, the public safety community was never invited to provide input, perspective, or feedback on the unintended consequences of this significant law change. In fact, we learned of the changes after you had already signed them into law.

The specific provisions causing concerns are in Minnesota Statute 121A, which governs student rights, responsibilities, and behavior. The effects of these changes to sections 121A.58 and 121A.582 are to: (1) limit the use of force toward pupils to situations where it is necessary to prevent bodily harm or death; (2) **prohibit the use of prone restraint**; and (3) **prohibit the use of compressive restraint on the head, neck, and across most of the torso**.

SROs are asked to provide a variety of public services within the school setting, including mentoring and building deeper relationships between law enforcement, the students, and staff. When a crisis or altercation occurs, school SROs are often the first to respond to address and manage the situation. With your 20 years of experience as an educator and observing how frequently violent incidents occur at schools across our Nation, you can understand the value of having SRO programs in our schools. They truly are the best line of defense when a school needs to protect children who are defenseless and often exposed to acts of violence.

The practical implications of the changes to Minnesota Statute 121A prevent a school resource officer from safely intervening in situations that occur regularly in schools. When an altercation between students or students and staff members occurs at a school, the school staff swiftly alerts the SRO to intervene. Often responding alone, the SRO quickly respond and attempt to de-escalate the situation. This work frequently requires the SRO to physically intervene to stop students from fighting. Prohibiting the most basic measure of safely restraining and controlling the aggressor in a fight severely impacts the SRO's ability to intervene, stop the altercation, and protect everyone's safety. The new law restricts the SRO from separating those involved in the fight or altercation, safely holding them on the floor while trying to calm them down. Again, this is a measure used commonly in schools by SROs to keep all children safe. With the passage of this law, these professional and expected measures of an SRO would be illegal and further subject the officer and their department to criminal and civil liability.

Since learning about the law change, we have had conversations with legislators and non-partisan House of Representatives staff to seek clarification and guidance about the legislative intent and interpretation of the law change. The answers to our questions are unclear about the use of prone restraints. Additionally, it appears that any physical contact with a student's upper torso by an SRO is prohibited, even if the actions prevent bodily harm or death to another.

While an SRO program has many benefits, the ultimate goal is keeping the nearly 900,000 students and staff members inside schools across our state safe. We implore you to use whatever powers you have to address this situation.

Respectfully,

A handwritten signature in black ink that reads "Jeff Potts". The signature is written in a cursive, flowing style.

Jeff Potts
Executive Director
Minnesota Chiefs of Police Association

Minnesota Attorney General Opinions

SCHOOL PUPILS: DISCIPLINE: Laws of Minnesota 2023 ch. 55, art. 2, § 36 and art. 12, § 4 do not limit the types of reasonable force that may be used by school staff and agents to prevent bodily harm or death or to carry out lawful duties as set forth in Minnesota Statutes section 609.06, subd. 1(1). Minn. Stat. §§ 121A.58; 121A.582. Op. Atty. Gen. 169f (August 22, 2023) supplemented.

169f



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Minnesota Attorney General Keith Ellison
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September 20, 2023

Willie L. Jett, II
Commissioner
Minnesota Department of Education
400 NE Stinson Boulevard
Minneapolis, Minnesota 55413

Re: Recent Amendments to Student Discipline Laws

Dear Commissioner Jett:

Thank you for your letter of August 18, 2023, which seeks clarity regarding recent amendments to student discipline laws, Minnesota Statutes sections 121A.58 and 121A.582. *See* Act of May 24, 2023, ch. 55, art. 2, § 36; art. 12, § 4 (hereinafter, the Amendment). Pursuant to Minnesota Statutes section 8.07, I issued an opinion on August 22, 2023, with binding guidance on the issue you raised. Since that date I have met with many stakeholders, including the Minnesota Chiefs of Police Association, Minnesota Sheriffs' Association, Minnesota Police and Peace Officers Association, individual police chiefs, legislators, city elected officials, and county attorneys, who brought forward valid questions about the application of the new law. As a result, I supplement that opinion today. By operation of section 8.07, this opinion is "decisive until the question involved shall be decided otherwise by a court," and therefore it may be relied upon.¹

¹ Minnesota Statutes section 8.07 provides that "on all school matters" attorney general opinions like this one are "decisive." The Minnesota Supreme Court has confirmed the opinions are "binding" until overruled by courts. *Eelkema v. Bd. of Ed. of Duluth*, 11 N.W.2d 76, 78 (Minn. 1943). "School matters" have been construed broadly, including the interpretation of how general statutes apply in an education context. *E.g., Village of Blaine v. Indep. Sch. Dist. No. 12*, 138 N.W.2d 32, 39-40 (Minn. 1965) (noting attorney general opinion had properly construed statute regarding municipal utilities in applying it to school district); *Mattson v. Flynn*, 13 N.W.2d 11, 16 (Minn. 1944) (noting reliance on attorney general opinion interpreting statutory language regarding teacher retirement funds); *Eelkema*, 11 N.W.2d at 78 (adopting attorney general analysis and noting that attorney general opinion regarding "tenure act"'s application to superintendent had been binding until any contrary court opinion was issued); *Lindquist v. Abbott*, 265 N.W. 54, 55 (Minn. 1936) (noting attorney general opinion regarding whether school district could enter into year-long contract with attorney was "followed ever since" it was issued).

BACKGROUND

Relevant to your inquiry, the Amendment revises Minnesota Statutes section 121A.58 to include a definition of “prone restraint” and to specify that school employees and agents generally: (1) “shall not use prone restraint” on pupils; and (2) “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” (i.e., compressive restraint techniques). *Id.* at art. 2, § 36.

The Amendment also revises Minnesota Statutes section 121A.582 to provide that: (1) teachers and principals may use reasonable force “to correct or restrain a student to prevent imminent bodily harm or death to the student or another”; and (2) other school employees, agents², and bus drivers may use reasonable force “to restrain a student to prevent bodily harm or death to the student or another.” *Id.* at art. 12, § 4.

QUESTION PRESENTED

You have expressed uncertainty regarding whether the Amendment categorically prohibits prone restraint and compressive restraint techniques in all scenarios. In particular, you ask: “whether the new language in Minnesota Statutes, section 121A.58, subdivision 3 and its reference to Minnesota Statutes, section 121A.582, acts as an exception to the general prohibition on prone restraints and other types of physical holds, thereby allowing the use of these practices when doing so would ‘prevent imminent bodily harm or death to the student or to another.’”

SUMMARY OF CONCLUSIONS

The Amendment does not limit the types of reasonable force that may be used by school staff and agents to prevent bodily harm or death.³ It also does not limit the types of reasonable force that may be used by public officers to carry out their lawful duties, as described in Minnesota Statutes section 609.06, subdivision 1(1). The test for reasonable force remains unchanged, and is highly fact-specific.

² Neither the relevant statutes nor the Amendment defines “agents” of the school district. In the absence of a definition provided by the Legislature, Minnesota courts would likely apply “its ordinary legal meaning, which is one who has the authority to act on another’s behalf.” *Hogan v. Brass*, 957 N.W.2d 106, 109 (Minn. Ct. App. 2021) (using that definition of “agent” to interpret chapter 317 of Minnesota law). Whether an individual has authority to act on behalf of the school district depends on facts specific to each circumstance.

³ Teachers and principals may use these restraints only when a threat of bodily harm or death is *imminent*. See Act of May 24, 2023, ch. 55, art. 2, § 36. However, the word “imminent” is not included in subdivision 1(b), which relates to a broader set of individuals, including school employees, bus drivers, and other “agent(s) of the district.”

ANALYSIS

Three things support these conclusions. First, the Amendment adds a new sentence to Minnesota Statutes section 121A.58, subdivision 3: “Nothing in this section or section 125A.0941 precludes the use of reasonable force under section 121A.582.” *Id.* at art. 2, § 36.⁴ By this language, the Legislature expressed its clear intent to not limit the use of reasonable force when faced with the threat of bodily harm or death. *See, e.g., Houck v. Houck*, 979 N.W.2d 907, 911 (Minn. Ct. App. 2022) (interpreting a “nothing in this section” provision as unambiguous and “susceptible to only one reasonable interpretation”).

Second, Minnesota Statutes section 121A.582 states that: “Any right or defense under this section is supplementary to those specified in section 121A.58[.]” Minn. Stat. § 121A.582, subd. 4. This further evinces the Legislature’s view that the use of reasonable force authorized in Minnesota Statutes section 121A.582 is separate and distinct from the conduct prohibited by Minnesota Statutes section 121A.58. *See, e.g., Christensen v. State Dep’t of Conservation, Game and Fish*, 175 N.W.2d 433, 434 (Minn. 1970) (noting that provisions of an act that are supplementary to each other are construed together so as not to defeat rights); *Merriam Webster’s Collegiate Dictionary* (11th ed.) (defining “supplementary” to mean “additional”).

Similarly, because chapter 609 is referenced in section 121A.58, subdivision 3, as well as in section 121A.582, subdivisions 3 and 4, the restrictions on prone and compressive restraints do not apply under the circumstances enumerated in section 609.06, subdivision 1(1). Therefore, all peace officers, including those who are “school resource officers” or otherwise agents of a school district, may use force as reasonably necessary to carry out official duties, including, but not limited to, making arrests and enforcing orders of the court. *See* Minn. Stat. § 609.06.

Third, and relatedly, even without those clear indications of intent from the Legislature, the usual canons of statutory construction support the same result. Section 121A.582 specifically governs responses to threats of violence, and therefore controls over the more general statute about acceptable punishments. *See* Minn. Stat. § 645.26, subd. 1 (stating that when a conflict exists between two statutory provisions, the specific provision “shall prevail and shall be construed as an exception to the general provision”); *accord Connexus Energy v. Commissioner of Revenue*, 868 N.W.2d 234, 242 (Minn. 2015). Furthermore, had the Legislature intended to exclude prone restraint and compressive restraint techniques from the reasonable force permitted under Minnesota Statutes section 121A.582, it would have clearly said so. *See In re E.M.B.*, 987 N.W.2d 597, 601 (Minn. Ct. App. 2023) (reiterating that courts cannot add words or meaning to a statute that the Legislature intentionally or inadvertently omitted).

Accordingly, the Legislature did not change the types of reasonable force that school staff and agents are authorized to use in responding to a situation involving a threat of bodily harm or death. Of course, what force is “reasonable” is not defined in law and is determined on a case-by-

⁴ Minnesota Statutes sections 125A.0941-.0942 restrict the actions that may be taken toward students with disabilities. It explicitly allows the use of reasonable force under section 121A.582. Minn. Stat. § 125A.0942, subd. 6(b).

Commissioner Willie L. Jett, II
September 20, 2023
Page 4

case basis. *See Moses v. Minneapolis Pub. Schs.*, No. C4-98-1073, 1998 WL 846546, at *3 (Minn. Ct. App. Dec. 8, 1998) (“[T]he question of whether the school employees’ acts were a reasonable use of force is a fact issue to be answered by the jury.”); *cf. Bond by and through Bond v. Indep. Sch. Dist. #191*, No. A21-0688, 2022 WL 92661, at *5 (Minn. Ct. App. Jan. 10, 2022) (declining to apply official immunity where school dean used force explicitly defined as prohibited in school restraint training). In addition, the level of threat posed by a particular student or situation can change rapidly, and any assessment of what use of force is reasonable must take that into account.

In recent meetings with representatives of your staff, the Minnesota Chiefs of Police Association, the League of Minnesota Cities, the Minnesota Sheriffs’ Association, and the Minnesota Police and Peace Officers Association, participants raised other important questions. Those questions demonstrate that coordinated training and guidance from trusted law enforcement leaders could be very beneficial in this area and there may be room for additional clarification from the Legislature.

Sincerely,



KEITH ELLISON
Attorney General

Cc: Jeff Potts, Executive Director
Minnesota Chiefs of Police Association
Imran Ali, counsel for MPPOA
Patricia Beety, General Counsel
League of Minnesota Cities

SCHOOL PUPILS: DISCIPLINE: Laws of Minnesota 2023 ch. 55, art. 2, § 36 and art. 12, § 4 do not limit the types of reasonable force that may be used by school staff and school resource officers to prevent bodily harm or death. Minn. Stat. §§ 121A.58; 121A.582.



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August 22, 2023

Willie L. Jett, II
Commissioner
Minnesota Department of Education
400 NE Stinson Boulevard
Minneapolis, Minnesota 55413

Re: Recent Amendments to Student Discipline Laws

Dear Commissioner Jett:

Thank you for your letter of August 18, 2023, which seeks clarity regarding recent amendments to student discipline laws, Minnesota Statutes sections 121A.58 and 121A.582. *See* Act of May 24, 2023, ch. 55, Art. 2, § 36; Art. 12, § 4 (hereinafter, the Amendment). Pursuant to Minnesota Statutes section 8.07, I issue this opinion to offer binding guidance on the issue you have raised.

BACKGROUND

Relevant to your inquiry, the Amendment revises Minnesota Statutes section 121A.58 to include a definition of “prone restraint” and to specify that school employees and agents generally:¹ (1) “shall not use prone restraint” on pupils; and (2) “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” (i.e., compressive restraint techniques). *Id.* at Art. 2, § 36.

The Amendment also revises Minnesota Statutes section 121A.582 to provide that: (1) teachers and principals may use reasonable force “to correct or restrain a student to prevent imminent bodily harm or death to the student or another”; and (2) other school employees, agents,

¹ Neither the relevant statutes nor the Amendment defines “agents” of the school district. In the absence of a definition provided by the Legislature, Minnesota courts would likely apply “its ordinary legal meaning, which is one who has the authority to act on another’s behalf.” *Hogan v. Brass*, 957 N.W.2d 106, 109 (Minn. Ct. App. 2021) (using that definition of “agent” to interpret chapter 317 of Minnesota law). Whether an individual has authority to act on behalf of the school district depends on facts specific to each circumstance.

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and bus drivers may use reasonable force “to restrain a student to prevent bodily harm or death to the student or another.” *Id.* at Art. 12, § 4.

QUESTION PRESENTED

You have expressed uncertainty regarding whether the Amendment categorically prohibits prone restraint and compressive restraint techniques in all scenarios. In particular, you ask: “whether the new language in Minnesota Statutes, section 121A.58, subdivision 3 and its reference to Minnesota Statutes, section 121A.582, acts as an exception to the general prohibition on prone restraints and other types of physical holds, thereby allowing the use of these practices when doing so would ‘prevent imminent bodily harm or death to the student or to another.’”

SUMMARY OF CONCLUSION

The Amendment does not limit the types of reasonable force that may be used by school staff and agents to prevent bodily harm or death.² The test for reasonable force remains unchanged, and is highly fact-specific.

ANALYSIS

Three things support this conclusion. First, the Amendment adds a new sentence to Minnesota Statutes section 121A.58, subdivision 3: “Nothing in this section or section 125A.0941 precludes the use of reasonable force under section 125A.582.” *Id.* at Art. 2, § 36.³ By this language, the Legislature expressed its clear intent to not limit the use of reasonable force when faced with the threat of bodily harm or death. *See, e.g., Houck v. Houck*, 979 N.W.2d 907, 911 (Minn. Ct. App. 2022) (interpreting a “nothing in this section” provision as unambiguous and “susceptible to only one reasonable interpretation”).

Second, Minnesota Statutes section 121A.582 states that: “Any right or defense under this section is supplementary to those specified in section 121A.58[.]” Minn. Stat. § 121A.582, subd. 4. This further evinces the Legislature’s view that the use of reasonable force authorized in Minnesota Statutes section 121A.582 is separate and distinct from the conduct prohibited by Minnesota Statutes section 121A.58. *See, e.g., Christensen v. State Dep’t of Conservation, Game and Fish*, 175 N.W.2d 433, 434 (Minn. 1970) (noting that provisions of an act that are supplementary to each other are construed together so as not to defeat rights); *Merriam Webster’s Collegiate Dictionary* (11th ed.) (defining “supplementary” to mean “additional”).

² Teachers and principals may use these restraints only when a threat of bodily harm or death is *imminent*. *See* Act of May 24, 2023, ch. 55, Art. 2, § 36. However, the word “imminent” is not included in subdivision 1(b), which relates to a broader set of individuals, including school employees, bus drivers, and other “agent(s) of the district.”

³ Minnesota Statutes sections 125A.0941-.0942 restrict the actions that may be taken toward students with disabilities. It explicitly allows the use of reasonable force under section 121A.582. Minn. Stat. § 125A.0942, subd. 6(b).

Third, and relatedly, even without those clear indications of intent from the Legislature, the usual canons of statutory construction support the same result. Section 121A.582 specifically governs responses to threats of violence, and therefore controls over the more general statute about acceptable punishments. *See* Minn. Stat. § 645.26, subd. 1 (stating that when a conflict exists between two statutory provisions, the specific provision “shall prevail and shall be construed as an exception to the general provision”); *accord Connexus Energy v. Commissioner of Revenue*, 868 N.W.2d 234, 242 (Minn. 2015). Furthermore, had the Legislature intended to exclude prone restraint and compressive restraint techniques from the reasonable force permitted under Minnesota Statutes section 121A.582, it would have clearly said so. *See In re E.M.B.*, 987 N.W.2d 597, 601 (Minn. Ct. App. 2023) (reiterating that courts cannot add words or meaning to a statute that the Legislature intentionally or inadvertently omitted).

Accordingly, the Legislature did not change the types of reasonable force that school staff and agents are authorized to use in responding to a situation involving a threat of bodily harm or death. Of course, what force is “reasonable” is not defined in law and is determined on a case-by-case basis. *See Moses v. Minneapolis Pub. Schs.*, No. C4-98-1073, 1998 WL 846546, at *3 (Minn. Ct. App. Dec. 8, 1998) (“[T]he question of whether the school employees’ acts were a reasonable use of force is a fact issue to be answered by the jury.”); *cf. Bond by and through Bond v. Indep. Sch. Dist. #191*, No. A21-0688, 2022 WL 92661, at *5 (Minn. Ct. App. Jan. 10, 2022) (declining to apply official immunity where school dean used force explicitly defined as prohibited in school restraint training). In addition, the level of threat posed by a particular student or situation can change rapidly, and any assessment of what use of force was reasonable must take that into account.

In a recent meeting with representatives of your staff, the Minnesota Chiefs of Police Association, the League of Minnesota Cities, and the Minnesota Police and Peace Officers Association, participants raised other important questions about the standards applicable to school resource officers or other contracted peace officers at school events. Those questions are beyond the scope of your August 18 request and more appropriately directed at the Legislature.

Sincerely,



KEITH ELLISON
Attorney General

Cc: Jeff Potts, Executive Director
Minnesota Chiefs of Police Association
Imran Ali, counsel for MPPOA
Patricia Beety, General Counsel
League of Minnesota Cities

Hennepin County Attorney letter

Dear Hennepin County Chiefs of Police:

Thank you for your patience as we worked through how to reconcile your legitimate request for guidance with our lack of authority to issue binding opinions on statutory changes and the reality that we cannot give your departments legal advice.

I am grateful for the collaborative relationship that we have built this past year. Through our regular monthly meetings and open, transparent lines of communication we have effectively partnered to address community safety concerns. Our youth auto theft initiative is an innovative collaboration which is showing early promising signs of success. The attorney I assigned to be your liaison has trained officers on the new marijuana laws and has responded to your questions and concerns effectively and quickly. And we have continued collaborative efforts to more effectively prosecute sexual assault cases.

I know that you want clarity on the potential legal consequences for school resource officers and contracted law enforcement (“SROs”) for their actions taken at schools.

During our last meeting, some of you expressed significant frustration with different interpretations of the new school restraints legislation.

Even after the Attorney General’s latest opinion, many of you have asked to hear directly from me. For that reason, and in furtherance of our ongoing collaborative partnership, I am sharing with you our office’s interpretation of the new statutory language in Minnesota Statutes section 121A.58 and Ch. 121A.582.

I want to reiterate that you should contact your city attorney for specific legal advice. While we can share our interpretation of the law with your officers for training purposes, we cannot give your departments or individual officers legal advice.

I also want to be clear that our office’s interpretation of these statutory changes is not legally binding. Only the Attorney General has the authority to issue binding opinions in this context. Even the Attorney General’s opinions are binding only until reviewed by a court, which could occur in the context of a criminal prosecution. Given our office’s jurisdiction to review cases and make charging decisions in Hennepin County, we do think it important to provide insight on our interpretation of this new statutory language.

First, nothing in the new legislation bars SROs from working in schools. Further, Minnesota Statutes section 121A.582 authorizes reasonable force where it is necessary to prevent bodily harm or death to a child or another person. The test for reasonable force under this section remains highly fact specific.

Prior to these legislative changes, school personnel and agents, which had not been interpreted to include SROs, were not allowed to use prone restraints when engaging with special education students. These statutory changes establish that SROs and contracted law enforcement *are* agents of the school district and expand the protections related to restraints beyond special education to

all students. Specifically, the legislature passed, and the Governor signed, legislation banning prone restraints and other physical holds that impair a child's ability to breathe or communicate distress, unless such physical holds are "reasonable force" to prevent bodily harm or death.

Additionally, there is relevant language in Minnesota Statutes section 121A.582, subdivision 3, which was unchanged, but is relevant to your inquiry. Specifically, this section states:

(b) A school employee, bus driver, or other agent of a district who, in the exercise of the person's lawful authority, *uses reasonable force under the standard in subdivision 1, paragraph (b)*, has a defense against a criminal prosecution under section 609.06, subdivision 1.

This is important because although there was not a statutory change to Minnesota Statutes section 609.06, the defense to a criminal prosecution in this subdivision is tied to the use of reasonable force standard defined in subdivision 1, which was changed to only allow reasonable force when there is a risk of bodily harm or death.

I know from speaking with many of you that you see the key role of your SROs as building relationships with youth in schools to help ensure safety. In other words, they have a different role than officers outside schools whose primary role is to enforce the law. This statutory change indicates that the legislature wants SROs aligned with school personnel in terms of the tools used to interact with youth in schools. This may require a shift in training and policy to bring SROs' youth engagement practices in line with that of school personnel. I am aware of federal funding for technical assistance for exactly this type of support.

My hope is this message brings some clarity to your consideration of these issues. I also understand there will be hearings on this issue in the next legislative session. I look forward to those thoughtful discussions, as well as continued transparent collaboration and engagement with you.

Mary

Mary F. Moriarty

Hennepin County Attorney

She/her

Patrol Online Special Updates

PATROL

PEACE OFFICER ACCREDITED TRAINING ONLINE

Special Update

Subject: Statutory changes regarding use of force by school resource officers.

Principal Issues: Use of force by school resource officers and other officers who are agents of a school district; Minnesota Statutes, sections 121A.58, 121A.582, and 609.06, subdivision 1(1); reliance on attorney general opinions.

Date Issued: September 27, 2023

Prepared By: League of Minnesota Cities Insurance Trust

Executive summary:

As a result of recent changes to Minnesota law, and subsequent interpretations of these changes by the Minnesota Attorney General:

- School resource officers (SROs) and officers contracted to work in a school district (contracted officers) may use reasonably necessary force toward students under the circumstances enumerated in Minnesota Statutes section 609.06, subdivision 1(1).
- Outside the circumstances enumerated in section 609.06, subdivision 1(1), SROs and contracted officers may only use force, including prone and compressive restraint, when necessary to restrain a student to prevent death or bodily harm to the student or another.

Background:

Minnesota Statutes chapter 121A governs student rights, responsibilities, and behavior. In 2023, lawmakers included two provisions in the education

bill amending this chapter to limit the use of force toward students by SROs and contracted officers.

This is the third Special Update on this topic since August, as our basis for understanding the effects of the amendments on police practice has kept changing. The Minnesota Attorney General (AG) is empowered by law to issue binding guidance on legal issues relating to public schools.¹ The AG has exercised this power twice now regarding the amendments to Chapter 121A, once on August 22² and again on September 20, 2023.³ The AG's opinions rendered the earlier Special Updates on this topic obsolete and they have been withdrawn.

This Special Update is based on the 2023 legislation governing the use of force by SROs and contracted officers toward students and the AG's statutorily authorized September 20 interpretation of that legislation.

2023 statutory amendments:

The 2023 amendments were addressed to sections 121A.58 and 121A.582. As amended, section 121A.58 prohibits SROs and contracted officers from using prone or compressive restraint toward students.⁴ Prone restraint consists of "placing a child in a face-down position."⁵ Compressive restraint is "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."⁶

Section 121A.582, subdivision 1(b), governs the use of force toward students by school employees

¹ Minn. Stat. § 8.07 (2022).

² Recent Amendments to Student Discipline Laws, Op. Att'y Gen. 169f (August 22, 2022), available at <https://www.ag.state.mn.us/Office/Opinions/169f-20230822.pdf> (hereinafter, "August AG Opinion").

³ Recent Amendments to Student Discipline Laws, Op. Att'y Gen. 169f (August 22, 2023) supplemented

(September 20, 2023), available at <https://www.ag.state.mn.us/Office/Opinions/169f-20230920.pdf> (hereinafter "September AG Opinion").

⁴ Laws 2023 Ch. 55, Art. 2, sec. 36.

⁵ *Id.*

⁶ *Id.*

and agents of a school district. Before the recent amendments, this law permitted the use of reasonable force to “restrain a student or to prevent bodily harm or death to another.”⁷ Notably, the word “or” has been stricken from the operative language. Thus, following the amendments, subdivision 1(b) permits agents of a school district to use reasonable force only “when it is necessary under the circumstances to restrain a student to prevent bodily harm or death to the student or to another.”⁸

The Attorney General opinions:

Briefly summarized, the August AG Opinion concluded that the amendments to Chapter 121A did not impose an outright ban on the use of prone and compressive restraint by SROs and contracted officers toward students.⁹ Instead, the opinion held that section 121A.582 permits the use of these techniques when necessary to prevent bodily harm or death to the student or another.¹⁰ Though answering this question, the August opinion offered no guidance on whether SROs could lawfully use force in situations that do *not* involve a threat of death or bodily harm, such as to arrest a student for trespassing or criminal damage to property.¹¹

The September AG Opinion addressed these latter issues. It states in relevant part:

The Amendment [to Chapter 121A] does not limit the types of reasonable force that may be used by school staff and agents to prevent bodily harm or death. It also does not limit the types of reasonable force that may be used by public officers to carry out their lawful duties, as described in Minnesota Statutes section 609.06, subdivision 1(1).

[B]ecause chapter 609 is referenced in section 121A.58, subdivision 3, as well as in section 121A.582, subdivisions 3 and 4, the restrictions on prone and compressive restraints do not apply under

the circumstances enumerated in section 609.06, subdivision 1(1). Therefore, all peace officers, including those who are “school resource officers” or otherwise agents of a school district, may use force as reasonably necessary to carry out official duties, including, but not limited to, making arrests and enforcing orders of the court. See Minn. Stat. § 609.06.¹²

Authority to use force under section 609.06:

The September AG Opinion supplemented the earlier one by determining that the authority of SROs and contracted officers to use force is, like that of peace officers generally, governed by section 609.06, subdivision 1(1).¹³ This law states:

Except as otherwise provided in subdivisions 2 and 3, reasonable force may be used upon or toward the person of another without the other’s consent when the following circumstances exist or the actor reasonably believes them to exist:

(1) when used by a public officer or one assisting a public officer under the public officer’s direction:

- (i) in effecting a lawful arrest; or
- (ii) in the execution of legal process; or
- (iii) in enforcing an order of the court; or
- (iv) in executing any other duty imposed upon the public officer by law....¹⁴

Arrests and other duties imposed by law:

It should not be difficult for SROs and contracted officers to recognize when they are involved in effecting a lawful arrest, executing legal process,

⁷ 2023 Minn. Laws Chap. 55, Art. 12, sec. 4 (emphasis added).

⁸ *Id.*

⁹ See generally August AG Opinion, *supra* note 2.

¹⁰ *Id.*

¹¹ See *id.*

¹² September AG Opinion, *supra* note 3, at 2-3.

¹³ *Id.*

¹⁴ Minn. Stat. § 609.06, subd. 1(1) (2022).

or enforcing an order of the court. But knowing when one is “executing any other duty imposed... by law” is an important focus under this new legal framework.

It is crucial for SROs and contracted officers to consider that they may be called on in a school environment to perform “duties” that fall outside those covered by section 609.06, subdivision 1(1). In those circumstances, the statute provides no authority to use force, so sections 121.58 and 121A.582 are controlling. Section 121A.582 permits SROs and contracted officers to use force only as necessary to prevent death or bodily harm.¹⁵ The net practical effect is that SROs and contracted officers may use reasonable force toward students to carry out a duty that exists by virtue of law, but may not use force to enforce a school rule or policy. The case law provides a helpful framework for determining when an officer is performing a duty imposed by law.

In *State v. Ivy*, the court considered whether a St. Paul police officer was performing a duty imposed by law when the defendant, Ivy, assaulted him.¹⁶ The officer was working off-duty at Regions Hospital. Ivy had sneaked into the locked emergency room, yelled profanities and racial epithets, and became verbally aggressive toward staff. Ivy assaulted the officer as he was escorting her out of the building. Ivy argued that the officer was not performing a legal duty but was instead only enforcing a hospital policy as a private security guard.¹⁷

The court took a two-step approach to determining whether the officer was carrying out a duty imposed by law. It first considered, at a general level, whether off-duty officers working at Regions performed any duties that the law imposed on regular, on-duty officers. The court observed that peace officers are responsible by law for the “prevention and detection of crime and the enforcement of the general criminal laws of the state...”¹⁸ Their duties also include “exercises of

professional judgment that are legitimately calculated to protect the health, safety, and general welfare of the public.”¹⁹ The evidence in the case showed that hospital peace officers at Regions were tasked with handling “police matters” that arose at the hospital, and thus they had some of the same duties that the law imposed on regular, on-duty officers.²⁰

Next, the court turned to the question of whether the officer was *actually performing* a duty imposed by law when Ivy assaulted him. The court found that he was. Ivy’s behavior had amounted to disorderly conduct, and “By escorting [her] out of the emergency room, the officer was protecting the health and safety of the hospital’s patients and preventing [a] breach of the peace.”²¹

The Minnesota Court of Appeals has issued some unpublished decisions that, while not precedential, nevertheless illustrate how courts approach the question of whether an officer is carrying out a duty imposed by law:

- In *State v. Boudreau*, a state trooper was assaulted while making a traffic stop.²² The court held that the trooper’s duties under the law included enforcement of the traffic code.²³
- In *State v. Steenerson*, an officer assigned to work at a block party told the defendant he could not bring an outside beverage into a beer tent.²⁴ The defendant got rid of the beverage, became “highly agitated,” and tried to reenter the tent. When the officer held up a hand to stop him, the defendant pushed the officer to the ground.

Although the encounter started with the officer enforcing a private policy against outside beverages, the defendant’s agitated behavior gave rise to a reasonable concern that he posed a “threat to breach the peace.” Therefore, the officer was carrying out a duty imposed by law

¹⁵ 2023 Minn. Laws Ch. 55, Art. 12, sec. 4.

¹⁶ 873 N.W.2d 362, 366 (Minn. Ct. App. 2015).

¹⁷ *Id.* at 367-68.

¹⁸ *Id.* at 368; Minn. Stat. 626.84, subd. 1.

¹⁹ *Ivy*, 873 N.W.2d at 368 (quoting *In re Claim for Benefits by Sloan*, 729 N.W.2d 626, 629-30 (Minn. Ct. App. 2007)).

²⁰ *Id.*

²¹ *Id.* at 368-69.

²² No. CX-89-1684, 1990 WL 61279, at *2 (Minn. Ct. App. May 15, 1990).

²³ *Id.* at 3.

²⁴ No. C0-99-1405, , 2000 WL 943564, at *1 (Minn. Ct. App. July 11, 2000).

when he tried to stop the defendant from reentering the beer tent.²⁵

- In *State v. Carter*, uniformed officers were providing off-duty security at an event when a vehicle jumped the curb and veered toward several pedestrians.²⁶ An officer ran toward the car, drew his gun, and ordered the driver to stop. The driver reversed course and drove toward the officer, who had to jump out of the way to avoid being struck.²⁷ The officer was responding to a “deadly force situation” when the driver came at him, and was therefore carrying out a duty imposed by law.²⁸

These cases illustrate that officers have a duty (or authority) under the law to respond to instances of disorderly conduct, to prevent assaults and breaches of the peace, and to take other actions they reasonably deem necessary to protect public safety. Statutory law imposes additional duties on peace officers that could potentially be relevant to SROs. These include, for example, taking children into custody who have run away from home or are found in dangerous conditions,²⁹ and effecting transport holds on persons in crisis.³⁰ Because all these duties are imposed by law, section 609.06, subd. 1(1)(iv) permits officers to use force as reasonably necessary to accomplish them.

There are limits, however, on what constitutes a duty imposed by law, as illustrated by *Reetz v. City of St. Paul*, a 2021 decision of the Minnesota Supreme Court.³¹ The officer in *Reetz* worked off-duty at a St. Paul homeless shelter.³² His responsibilities there included searching clients’ bags to keep weapons and alcohol from entering the facility.³³ One client stabbed another. The victim sued the officer for failing to detect the knife used in the assault.³⁴ The officer asked the city to defend and indemnify him against the lawsuit, claiming that it arose from his performance of peace officer duties.³⁵ The court disagreed. The claim against the

officer was that he negligently carried out the shelter’s policy against weapons and alcohol. His job searching clients’ bags did not involve the actual exercise of law enforcement powers.³⁶ The court observed that the officer would have had “no authority as a police officer to confiscate the knife from the client.”³⁷

In the case of SROs, schools may have rules against speaking disrespectfully to teachers or other students, or engaging in verbal harassment. But unless the behavior that violates these rules also amounts to disorderly conduct or threatens a breach of the peace, then SROs and contracted officers would have no authority to use force in enforcing them. Similarly, a teacher might tell a student who is wearing a T-shirt with vile language to leave their classroom and go to the office. If the student refuses, the SRO would have no authority to use force in dealing with the situation, unless and until the matter escalates into something criminal or threatening. As in *Reetz*, where an officer is acting only to enforce a school policy or rule, then the officer is not engaged in a duty imposed by law. Accordingly, the officer would not be permitted to use force to carry out that duty.

Reliance on AG opinions:

The September AG Opinion provides guidance that can be relied upon, pending further developments in the courts. Minnesota Statutes, section 8.07, provides that opinions of the AG on school matters are “decisive until the question involved shall be decided otherwise by a court of competent jurisdiction.”³⁸ The Minnesota Supreme Court has held that such opinions are “binding” until reversed by the courts.³⁹ Indeed, the September AG September Opinion declares that it may be relied upon.⁴⁰ In addition, attorney general opinions are entitled to “careful

²⁵ *Id.* at *2.

²⁶ No. C6-00-1514, 2001 WL 1117568, at *1 (Minn. Ct. App. Sept. 25, 2001)

²⁷ *Id.*

²⁸ *Id.* at *4-5.

²⁹ Minn. Stat. § 260C.175, subd. 1 (2022).

³⁰ Minn. Stat. 253B.051 (2022).

³¹ 956 N.W.2d 238 (Minn. 2021).

³² *Id.* at 241.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* at 241-42 (citing Minn. Stat. § 466.07).

³⁶ *Id.* at 246.

³⁷ *Id.* at 248 (emphasis in original).

³⁸ Minn. Stat. § 8.07.

³⁹ *Eelkema v. Bd. of Educ. of City of Duluth*, 11 N.W.2d 76, 78 (1943).

⁴⁰ September AG Opinion, *supra* note 3, at 1.

consideration” by the courts.⁴¹ Thus, while it is possible a court would reach a different conclusion than the AG Opinion, it is reasonable to rely upon the opinion until someone challenges it in court *and* obtains a decision that reverses it.⁴²

Finally, answering whether the AG opinions regarding SROs afford protection to officers against criminal charges is beyond PATROL’s function as a training partner. An examination of this issue would need to consider many factors. One of them would be whether officers who act in reliance on these opinions could still have “clear notice,” sufficient to satisfy due process concerns, that their conduct was prohibited by law.⁴³ Agencies may wish to make appropriate inquiries to their city and county attorneys to determine if they will seek to challenge the September AG Opinion in court.

Application scenarios:

1. Officer Josh is an SRO. A student is causing a disturbance in the lunchroom by screaming and throwing food trays on the floor. Staff and students are backing away from the area. The student’s behavior would constitute a breach of the peace and disorderly conduct. Officer Josh may attempt de-escalation, if safe and appropriate. He also has the option of arresting and escorting the student away from the area and may use force as reasonably necessary to do so.
2. SRO Fran works at the high school. The principal complains that a student, Charlotte, got in a conflict with a teacher and is presently in a hallway kicking locker doors and bending them. Charlotte is committing criminal damage to property. Hopefully, SRO Fran will be able to de-escalate Charlotte and persuade her to stop the destructive behavior. If not, SRO Fran

may use reasonably necessary force to make an arrest or otherwise intervene in the situation.

3. Deputy Jamie is providing security at a football game under a contract with the school district. A 911 caller reports that a person with a gun is threatening others in the parking lot of the school where the game is occurring. Deputy Jamie responds and conducts a high-risk stop of the person who was reported to have a gun, ordering the person to lie face-down on the ground. The limitations on prone restraint in Chapter 121A have no bearing on this situation. This is because Deputy Jamie is responding to a reported life-threatening emergency and threat to public safety, not a violation of a school rule. Therefore, Deputy Jamie is authorized to use reasonable force under section 609.06, subdivision 1(1).
4. Student Quinn returned to the school building after being expelled for disciplinary reasons. The principal orders Quinn to leave and not return until the expulsion is over. Quinn refuses to depart. The principal calls SRO Madison and, with Madison present, repeats the order to leave. Quinn still refuses to depart. SRO Madison may place Quinn under arrest for trespassing. Under section 609.06, subdivision 1(1), SRO Madison may use reasonably necessary force to complete the arrest and overcome any resistance.
5. Student Dorfman hurls a series of swear words and biting insults at Assistant Principal Johnson. Dorfman is neither loud nor threatening. Dorfman’s conduct is not disorderly in a criminal sense, and it does not indicate that violence is about to unfold. Dorfman’s behavior, however, violates two or three different rules in the student handbook.

⁴¹ *Village of Blaine v. Indep. Sch. Dist. No. 12, Anoka Cty.*, 138 N.W.2d 32, 39 (1965); *Minnesota Daily v. Univ. of Minnesota*, 432 N.W.2d 189, 194 (Minn. Ct. App. 1988).

⁴² *See Cty. of Hennepin v. Cty. of Houston*, 39 N.W.2d 858, 861, 229 Minn. 418, 424 (1949) (court ruled contrary to attorney general’s opinion issued in the same case).

⁴³ *State v. Welke*, 216 N.W.2d 641, 648 (Minn. 1974) (a criminal statute must give the defendant clear notice of

what is prohibited); *see also Bouie v. City of Columbia*, 378 U.S. 347, 352-53 (1964) (defendants do not have fair warning of what is prohibited when the courts expand the reach of a criminal statute); *State v. Miller*, No. A13-2094, 2014 WL 7343794, at *5 (Minn. Ct. App. Dec. 29, 2014) (unpublished) (defendant could not “be punished for conduct that was not effectively defined as criminal.”)

An SRO confronting this situation could certainly try to speak with or de-escalate Dorfman, but would have no authority to use force.

6. Two students got in a fistfight in a classroom. Very minor injuries ensued. The fight is over when SRO Nancy arrives. School procedures dictate that the two students should be sent to the principal's office. SRO Nancy can *ask* them to go to the office but cannot use force to make them go. Engaging in brawling or fighting is a misdemeanor under the disorderly conduct statute, section 609.72. But the fight was over by the time Nancy arrived. The "completed misdemeanor" rule applies so Nancy cannot make a custodial arrest for the offense. The requirement to go to the office is a school rule, not a legal one, so SRO Nancy may not use force to achieve compliance with it.

PATROL

PEACE OFFICER ACCREDITED TRAINING ONLINE

**Special
Update**

Subject: Statutory changes regarding use of force by school resource officers and other officers working in school settings.

Principal Issues: Use of force by SROs and other officers who are agents of a school district; limitations on circumstances allowing the use of force toward students; use of prone and compressive restraint toward students.

Date Issued: August 28, 2023

Prepared By: League of Minnesota Cities Insurance Trust

Executive summary:

As a result of recent changes to Minnesota law, and an interpretation of these changes by the Minnesota Attorney General:

- School Resource Officers (SROs) and officers contracted to work in a school district (contracted officers) may only use reasonable force toward a student when necessary to prevent bodily harm or death to the student or another.
- SROs and contracted officers are legally permitted to use prone and compressive restraint toward a student, but only when necessary to prevent bodily harm or death to the student or another.

Introduction:

Minnesota Statutes chapter 121A governs student rights, responsibilities, and behavior. In 2023, lawmakers included two provisions in the education bill that amended this chapter to limit the use of force toward students by SROs and contracted officers. PATROL published a Special Update discussing the amendments and their effects on August 9, 2023. On August 22, the Minnesota Attorney General issued an opinion covering some of these same topics and arriving at

different conclusions than the Special Update.¹ Under Minnesota law, opinions of the Attorney General “upon any question arising under the laws relating to public schools... shall be decisive until the question involved shall be decided otherwise by a court of competent jurisdiction.”² The Attorney General’s Opinion has the force of law until a court declares otherwise.³ Accordingly, the August 9 PATROL Special Update is withdrawn. It is replaced with this one, which considers the effects of both the Attorney General’s opinion and the statutory amendments that the opinion did not address.

Who is covered by these new limitations?

The new limitations on the use of force apply to, among others, agents of a school district. The recent changes to section 121A.58 clarify that the term “agent” includes SROs, security personnel, and officers who are “contracted with a district.”

A prudent interpretation of these amendments is that sections 121A.58 and 121A.582 now apply to all peace officers who work as SROs, to those who work under the somewhat related title of school liaison officer, and likely to those who provide police or security services within the school environment under a contract with a school district. Arguably, section 121A.58, subdivision 2a could be read as applying only to

¹ *Laws of Minnesota 2023 ch. 55, art. 2, § 36 and art. 12, § 4 do not limit the types of reasonable force that may be used by school staff and school resource officers to prevent bodily harm or death. Minn. Stat. §§ 121A.58; 121A.582. Op. Att’y Gen. (August 22, 2022) (hereinafter, “AGO Opinion”), https://www.ag.state.mn.us/Office/Communications/2023/docs/Opinion_SchoolDiscipline.pdf.*

² *Minn. Stat. § 8.07 (2022); see also City of Brainerd v. Brainerd Inves. P’ship*, 812 N.W.2d 885, 891 (Minn. Ct. App. 2012), *aff’d sub nom. City of Brainerd v. Brainerd Invs. P’ship*, 827 N.W.2d 752 (Minn. 2013) (“For example, Minn. Stat. § 8.07 (2010) grants attorney general’s opinions the force of law regarding the regulation of certain school matters.”).

³ *Id.*

SROs and contracted officers who would, because of contract language or other factors, meet the legal test for being “agents” of a school district.⁴ But subdivision 2a is written in a way that appears to categorize all SROs and contracted officers as “agents” of a school district—the subdivision governs those who are an “employee or agent of a district, *including* a school resource officer, security personnel, or police officer contracted with a district . . .” (emphasis added.) The word “including,” according to the Minnesota Supreme Court, means “to contain as part of the whole.”⁵ “Consequently, the word is used to suggest that what follows is a partial and not exhaustive list of the content to which it refers.”⁶ Read thusly, SROs, security personnel, and contracted officers are among the class of “agents” to whom the statutory amendments apply. This reading also avoids an unreasonable result. The purpose of these amendments could be virtually nullified if municipalities were able to place SROs beyond the statutory limitations on using force by merely avoiding contract language or circumstances indicating an agency relationship between SROs and school districts.

For law enforcement personnel, this means that officers with different assignments will face different standards for the use of force during interactions with students. SROs are likely to know they are SROs and thus governed by the statutory changes. But what does it mean to be “contracted” with a school district and therefore to be considered an agent? If a school district has contracted with a law enforcement agency or with individual officers to provide extra patrol, general security, or to be on hand for specific events, these officers would likely come under the new restrictions on the use of force.

Next, agencies should have their legal advisors review any agreements with school districts promptly. It is important to clarify that your agency is contracting to provide services through the presence of SROs or other officers on campus, not that your agency is agreeing more generally to

⁴ See *Hogan v. Brass*, 957 N.W.2d 106, 109 (Minn. Ct. App. 2021) (The ordinary legal meaning of “agent” is “one who has the authority to act on another’s behalf.”).

⁵ *In re H.B.*, 986 N.W.2d 158, 168 (Minn. 2022), *reh’g denied* (Dec. 12, 2022) (internal citation omitted).

⁶ *Id.*

have all officers work cooperatively with the school district. Care should be taken to ensure that contracts cannot be construed as making all officers agents of the school district.

Finally, it does not appear that these new limitations apply to SROs and officers working in private (nonpublic) schools. This is because sections 121A.58 and 121A.582 apply to “agent[s] of a district,” which means a “school district.”⁷ That said, there may be situations where it is not immediately clear if a school is private or part of a district. Consult your agency’s legal advisor if there is any doubt about whether these new limitations apply in a particular school setting.

Occasions for using force:

Section 121A.582, subdivision 1(b) regulates the use of force toward students by school employees and agents of a school district. Before the recent amendments, this law permitted the use of reasonable force to “restrain a student *or* to prevent bodily harm or death to another.”⁸ Notably, the word “or” has been stricken from the operative language. The effect of this change is significant. Following the amendments, subdivision 1(b) permits school employees and agents to use reasonable force only “when it is necessary under the circumstances to restrain a student *to* prevent bodily harm or death to the student or to another.”⁹

⁷ 2023 Minn. Laws Ch. 55, Art. 2, sec. 36 (codified at Minn. Stat. § 121A.58); Minn. Stat. §§ 121A.582, 120A.05, subd. 8. Moreover, statutes applicable to nonpublic schools generally refer to them specifically. See, e.g., Minn. Stat. §§ 123B.86 (equal treatment in transporting students); 171.321, subd. 4(d) (qualifications for bus drivers, referring to “a school district, nonpublic school, or private contractor shall . . .”); 120A.22, subd. 7 (compulsory instruction, stating “a district, a charter school, or a nonpublic school that receives services . . .”). The provisions of sections 121A.58 and 121A.582 that bring peace officers within their ambit contain no reference to nonpublic schools.

⁸ 2023 Minn. Laws Chap. 55, Art. 12, sec. 4 (codified at Minn. Stat. § 121A.582, subd. 1(b) (emphasis added)).

⁹ *Id.*

In other words, the authority to use force for the sole purpose of restraining a student has been removed from the law. Going forward, reasonable force may only be used in situations where it is necessary to prevent bodily harm or death to the student or another.¹⁰ Thus, force cannot be used where the only justification is to control the behavior of a student who is damaging property, causing a disturbance, or is acting out in a way that does not pose a threat of death or bodily harm.

As a result of the amendments, SROs and contracted officers are not permitted to use force for the purpose of arresting students for nonthreatening offenses. Section 121A.582, as amended, prohibits these officers from using any type or degree of force to *restrain* students except when necessary to prevent death or bodily harm, regardless of the offense level. This should not, however, stop SROs from taking students into custody when the arrest itself is a necessary act of restraint to prevent bodily harm or death. Unlike teachers and principals, SROs and contracted officers are not limited to only using force in situations where the threat of bodily harm or death is imminent.¹¹ The analysis for SROs in school settings should instead be similar to the one required under Rule 6.01 of the Minnesota Rules of Criminal Procedure, which permits officers to take someone into custody for a witnessed misdemeanor when necessary to prevent bodily harm to the accused or another.¹² As in cases involving Rule 6.01, facts showing that a threat of bodily harm is ongoing should suffice to support an arrest. Officers may draw reasonable inferences about the risks of bodily harm based on the totality

¹⁰ The Attorney General did not provide guidance on how the amendments to section 121A.582 apply to SROs and officers contracted to work in schools where the situation does not involve a threat of bodily harm or death. However, the plain language of this law prohibits the use of force except as necessary to prevent death or bodily harm.

¹¹ Compare Minn. Stat. § 121A.582 subd. 1(a), as amended (teachers and principals may use reasonable force “to prevent imminent bodily harm or death. . .”) with *id.* subd. 1(b) (employees and agents may use reasonable force when necessary “to prevent bodily harm or death. . .”). Black’s Law Dictionary (11th ed. 2019) defines “imminent” as “threatening to occur immediately; dangerously impending” and “[a]bout to take place.”

¹² Minn. R. Crim. P. 6.01(a)(1).

of the circumstances, including people’s behavior in the immediate past, their present emotional state, and any other factors indicating that the situation is volatile.¹³

Restricted methods of restraint:

Section 121A.58 prohibits SROs and contracted officers from using prone or compressive restraint techniques toward a student. The Attorney General has issued binding guidance to the effect that section 121A.582 creates an exception to this prohibition for situations where the use of reasonable force is necessary to prevent bodily harm or death.¹⁴ Taking that guidance together with the plain language of section 121A.582 results in straightforward guidelines for SROs and contracted officers when responding to pupils:

- Reasonable force may only be used toward students when necessary to prevent bodily harm or death.
- When reasonable force is authorized, prone and compressive restraint may also be used so long as they are reasonable under the circumstances.

The reverse is also true: when the situation does not involve a threat of death or bodily harm, officers may not use prone restraint, compressive restraint, or any other form of force toward a student.

Given that the authority to use reasonable force, prone restraint, and compressive restraint all arise from circumstances involving a threat of bodily harm or death, it is unclear why the Legislature provided detailed definitions of prone and compressive restraint. At the very least, the existence of these definitions may signal an

¹³ See *State v. Mikkalson*, No. A07-2339, 2008 WL 5215866, at *5 (Minn. Ct. App. Dec. 16, 2008) (holding that arrest for a witnessed misdemeanor to prevent bodily harm was authorized under Rule 6.01 because the “[a]ppellant had just been in a fight and appeared to be injured. It would have been reasonable for the officers to have believed that another fight could ensue after they left, making the arrest necessary to prevent bodily harm. . . .”)

¹⁴ AGO Opinion.

increased sensitivity about the use of these techniques toward students. The statutory definition of prone restraint is likely broader than many officers might imagine from their training in defensive tactics. The statutory definition consists of merely “placing a child in a face-down position”—it does not require holding or maintaining the person in that position.¹⁵ Thus, using a takedown technique that culminates with a pupil’s chest against the ground could constitute prone restraint, even if the officer intends for the subject to be “prone” only momentarily.

“Compressive restraint” is shorthand for other methods of restraint covered by section 121A.58, subd. 2a(b), which provides as follows:

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.¹⁶

Application scenarios:

1. Officer Josh is an SRO. A student is causing a disturbance in the lunchroom by screaming and throwing food trays on the floor. Because this behavior does not involve a risk of bodily harm or death, Officer Josh may not use force to control the student’s behavior, or use force to arrest the student for the commission of an offense, even if it appears likely that the offense will continue.
2. Officer Londa is an SRO. A student, Lynn, became extremely upset after an argument with a peer and began attacking windows and glass inside the school building with a metal bar. It reasonably appears to Officer Londa

that the act of breaking glass, and the presence of broken glass, is placing Lynn and others in the building at risk of bodily harm. Officer Londa may use reasonable force if necessary to restrain Lynn to prevent bodily harm.

3. Deputy Fran is assigned to regular patrol duties and is dispatched to the high school. The principal complains that a student, Charlotte, got in a conflict with a teacher and is presently in a hallway kicking locker doors and bending them. Deputy Fran is not an SRO or under a contract to work in the school and is therefore not subject to the new restrictions on the use of force. Accordingly, Deputy Fran may use reasonably necessary force to make an arrest or carry out other duties imposed by law when intervening in the situation.
4. Officer Christy is an SRO. A large adolescent student, Henry, is punching a smaller student, Bailey. Officer Christy may lawfully use reasonable force if necessary to restrain Henry to stop him from harming Bailey. Because Officer Christy is authorized to use force, she is permitted to utilize prone or compressive restraint with Henry if reasonably necessary under the circumstances.

Next, assume that once Henry is separated from Bailey, he screams at Bailey that the fight isn’t over, tries to pull away from the officer and go toward Bailey, and continues to display a high level of emotional agitation. Officer Christy would be authorized to take Henry into custody. This is because Officer Christy has witnessed what is at least a misdemeanor-level assault and the circumstances demonstrate that custody is necessary to prevent bodily harm.

5. Deputy Jamie is providing extra security at a football game under a contract with the school district. A 911 caller reports that a person with a gun is threatening others in the parking lot of the school where the game is occurring. Deputy Jamie responds and conducts a high-risk stop of the person who was reported to have a gun, ordering the

¹⁵ 2023 Minn. Laws Ch. 55, Art. 2, sec. 36.

¹⁶ *Id.*

person to lie face-down on the ground. It does not matter if this person is a student or not. This is because the use of prone restraint would likely be deemed reasonably necessary in the situation, as a means of safely gaining control over someone reportedly threatening others with a gun.

for off-duty employment arrangements with school districts, since these may very well result in conclusions that the officers are serving as agents of the district.

6. Student Quinn returned to the school building after being expelled for disciplinary reasons. The principal orders Quinn to leave and not return until the expulsion is over. Quinn refuses to depart. The principal calls SRO Madison and, with Madison present, repeats the order to leave. SRO Madison emphasizes to Quinn that he will be arrested for trespassing unless he leaves at once. Quinn still refuses to depart. Technically, SRO Madison may place Quinn under arrest for trespassing. But legally, SRO Madison is only permitted to use force toward students in situations where it is necessary to prevent bodily harm or death. It follows that Madison may not use force to overcome any non-dangerous resistance to the arrest. Because handcuffing is a form of restraint, Madison may not handcuff Quinn to effect the arrest. In other words, unless Quinn voluntarily complies, Madison would need to call another officer, who is not an SRO, to handle the arrest.

Training and deployment issues:

These new limitations are apt to require some substantial rethinking of how SROs and other officers who would be deemed agents of a school district will intervene in situations involving students. Using force in circumstances that do not present a threat of death or bodily harm is no longer an option. Persuasion and de-escalation skills will be at a premium. Agencies and officers may wish to consult with other professionals, such as special education and mental health personnel, who are trained in nonforceful intervention. Officers may also wish to consult with school staff on how they will work together to manage disruptive but non-dangerous behaviors without force.

Agencies and officers should also consider what kinds of safeguards and training to have in place



PATROL

Special Update

PEACE OFFICER ACCREDITED TRAINING ONLINE

Subject: Statutory changes regarding use of force by school resource officers and other officers working in school settings.

Principal Issues: Use of force by SROs and other agents of a school district; limitations on circumstances allowing the use of force toward students; restrictions on prone and compressive restraint.

Date Issued: August 9, 2023

Prepared By: League of Minnesota Cities Insurance Trust

Introduction:

As background, Minnesota Statutes chapter 121A governs student rights, responsibilities, and behavior. In 2023, lawmakers included two provisions in the education bill amending this chapter to limit the use of force toward students. The new limitations apply to school employees and agents of a school district, which include school resource officers (SROs) and officers under contract with a school district.

The effects of these changes to sections 121A.58 and 121A.582 are to: (1) limit the use of force toward pupils to situations where it is necessary to prevent bodily harm or death; (2) prohibit the use of prone restraint; and (3) prohibit the use of compressive restraint on the head, neck, and across most of the torso. The bans on prone and compressive restraint are similar to ones that were already in place under laws governing special education.¹

Who is covered by these changes?

Sections 121A.58 and 121A.582 govern the use of force by teachers, school principals, school employees, bus drivers, and other agents of a school district. The Merriam-Webster online dictionary defines “agent” as “one who is

authorized to act for or in the place of another . . .”² Section 121A.58, as amended, clarifies that the term “agent” includes school resource officers (SROs), security personnel, and officers who are “contracted with a district.”

For law enforcement personnel, this means that some officers will be subject to different standards for using force toward students depending on their assignments. SROs are likely to know they are SROs. But what does it mean to be “contracted” with a school district and therefore to be considered an agent? If a school district has contracted with a law enforcement agency or with individual officers to provide extra patrol, general security, or to be on hand for specific events, these officers would likely come under the new restrictions on the use of force. Agencies may wish to have their legal advisors review any agreements with school districts promptly. It may be important to clarify whether your agency is contracting to provide services through the presence of SROs or other officers on campus, or on the other hand, whether your agency is agreeing more generally that all officers will work cooperatively with the school district. Care should be taken to ensure that contracts cannot be construed as making all officers agents of the school district.

It does not appear that these new limitations apply to SROs and officers working in private (nonpublic) schools. This is because sections 121A.58 and 121A.582 apply to “agent[s] of a district,” which means a “school district.”³ That

² MERRIAM-WEBSTER ONLINE DICTIONARY, <https://www.merriam-webster.com/dictionary/agent> (last visited August 7, 2023).

³ 2023 Minn. Laws Ch. 55, Art. 2, sec. 36 (codified at Minn. Stat. § 121A.58); Minn. Stat. §§ 121A.582, 120A.05, subd. 8. Moreover, statutes applicable to nonpublic schools generally refer to them specifically. See, e.g., Minn. Stat. §§ 123B.86 (equal treatment in transporting students); 171.321, subd. 4(d) (qualifications for bus drivers, referring to “a school district, nonpublic school, or private contractor

¹ See Minn. Stat. § 125A.0942, subd. 4 (2022).

only →
No longer
can restrain
a child for
other reasons

said, there may be situations where it is not immediately clear if a school is private or part of a district. Consult your agency's legal advisor if there is any doubt about whether these new limitations apply in a particular school setting.

Occasions for using force:

Section 121A.582 regulates the use of force toward students by school employees, bus drivers, and agents of a school district. Before the recent amendments, this law permitted the use of reasonable force to “restrain a student *or* to prevent bodily harm or death to another.”⁴ Following the amendments, subdivision 1(b) permits school employees and agents⁵ to use reasonable force only “when it is necessary under the circumstances to restrain a student to prevent bodily harm or death to the student or to another.”⁶

Notably, the word “or” has been stricken from the operative language. The effect of this change is significant. The authority to use force for the sole purpose of restraining a student has been removed from law. Going forward, reasonable force may only be used in situations where it is necessary to prevent bodily harm or death to the student or another. Thus, force cannot be used where the only justification is to control a student who is damaging property, causing a disturbance, or acting out in a way that does not pose a threat of death or bodily harm to the student or another.

Specific actions prohibited:

Amendments to section 121A.58 prohibit “prone restraint” as well as compressive restraint on a pupil’s head, neck, and across much of the torso. The statutory definition of prone restraint is likely

shall . . .”); 120A.22, subd. 7 (compulsory instruction, stating “a district, a charter school, or a nonpublic school that receives services . . .”). The provisions of sections 121A.58 and 121A.582 that bring peace officers within their ambit contain no reference to nonpublic schools.

⁴ Minn. Stat. § 121A.582, subd. 1(b) (emphasis added).

⁵ Note that section 121A.582, subdivision 1(b) covers school employees, bus drivers, and agents of a district, while teachers and principals are covered separately by subdivision 1(a).

⁶ 2023 Minn. Laws Chap. 55, Art. 12, sec. 4 (codified at Minn. Stat. § 121A.582, subd. 1(b)).

broader than many officers might imagine from their training in defensive tactics. The statutory definition consists of merely “placing a child in a face-down position”—it does not require holding or maintaining the person in that position.⁷ Thus, using a takedown technique that culminates with the subject’s chest against the ground could potentially violate the statute, even if the officer intends for the subject to be “prone” only momentarily. Imagine that an SRO uses a takedown on a student; the student lands face down; and, in the process, sustains a broken nose and lacerations to the forehead. These circumstances could potentially give rise to civil or criminal allegations that the child was injured as the result of a banned method of restraint.

“Compressive restraint” is shorthand for what is covered by the statute; it is not a statutory term. Section 121A.58 provides as follows:

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.⁸

This language embodies four potentially overlapping prohibitions. Officers may not impose restraint that:

1. Impairs a pupil’s ability to breathe;
2. Impairs a pupil’s ability to communicate distress;
3. Places “pressure or weight” on a pupil’s head, throat, chest, lungs, sternum, diaphragm, back, or abdomen; or

⁷ 2023 Minn. Laws Ch. 55, Art. 2, sec. 36.

⁸ *Id.*

4. Results in straddling the pupil's torso.⁹

In practical terms, item number 3 prohibits the use of pressure or weight on basically every part of a pupil's body except the limbs and extremities. Squeezing a student's torso in a "bear hug" is prohibited, even if the pressure would be unlikely to impair breathing or the ability to communicate. Applying pressure to sites such as the mandibular angle or hypoglossal nerve would involve the application of pressure to the head or neck and would also be prohibited. Taking hold of and applying pressure to the arms, legs, hands, and feet are not prohibited.

Potential confusion:

The amendments to section 121A.58 may generate confusion. Subdivision 2 of the statute prohibits corporal punishment, and subdivision 3 indicates that prone and compressive restraint are not "per se corporal punishment . . ." "Per se" means intrinsically, or by its very nature. Thus, while these forms of restraint may not amount to prohibited forms of corporal punishment in every circumstance, they will nevertheless always constitute prohibited methods of restraint when used by an agent of a school district toward a student. This is because subdivision 2a(a) provides that agents of a school district "shall not use prone restraint," and subdivision 2a(b) provides that they "shall not" use compressive restraint.¹⁰ Subdivision 3 clarifies that these bans on prone and compressive restraint do not foreclose officers from using otherwise reasonable force under section 121A.582, that is, when necessary to prevent bodily harm or death to the student or another.¹¹

Application scenarios:

1. Officer Josh is an SRO. A student is causing a disturbance in the lunchroom by screaming and throwing food trays on the floor. Because this behavior does not involve a risk of bodily harm or death, Officer Josh may not use force to control the student. Since Officer Josh may not use force, it is unnecessary to consider

how the amendments banning specific methods of restraint apply to this situation.

2. Officer Christy is an SRO. A large adolescent student, Henry, is punching a smaller student, Bailey. Officer Christy is approaching Henry from behind. Christy can lawfully use reasonable force to stop Henry from causing bodily harm to the other student. But she may not apply weight or pressure to Henry's torso, such as by grabbing him in a bear hug. Nor may she place Henry in a face-down position to control him or facilitate the placement of handcuffs.
3. Deputy Jamie is providing extra security at a football game under a contract with the school district. Deputy Morgan does not work in the schools and is assigned to routine patrol duties. A 911 caller reports there are people with guns threatening others in the parking lot of the school where the game is occurring. Deputy Morgan responds and conducts a high-risk stop, ordering a student suspected of having a gun to lie face-down on the ground. Deputy Morgan's actions are permissible. Deputy Jamie, however, cannot participate in or assist Deputy Morgan in placing the student in a face-down position. This is because Jamie, as an agent of the school district, is prohibited from using prone restraint.

What if the person with the gun appears to be about 16 years of age, but the SRO cannot tell if this person attends the school where the SRO works? What if this person is a student at a different high school? What is this person is not a student at all? It may often be impossible for officers to sort this out in the context of an unfolding encounter. A court, however, could hold that the law bars prone restraint by SROs against students of both the host school and any visiting school.¹² As a practical matter, it may be necessary for SROs and other agents of a school district to

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* (defining "prone restraint" as "placing a *child* in a face-down position" (emphasis added)).

avoid the use of prone and compressive restraint on school grounds, in situations likely to involve students, as a means of ensuring that these methods are not used when prohibited.

Finally, agencies and officers should consider what kinds of safeguards and training should be in place for off-duty employment arrangements with school districts, since these may very well result in conclusions that the officers are serving as agents of the district. It will be important for officers who work in schools to be trained in the restrictions that apply to them. But of just as much importance, these officers should also be trained in any alternative tactics and methods that agencies develop for dealing with students in volatile situations.

4. SROs Robin and Taylor are notified by radio of a student threatening a teacher with a knife. SRO Robin arrives first. When SRO Taylor arrives a minute later, Robin has the student face-down on the ground. Robin has one knee on the student's shoulder blade while holding the student's arm upward to apply handcuffs. Taylor has observed Robin using force that "exceeds the degree of force permitted by law" and that is therefore unreasonable. Pursuant to Minnesota Statutes section 626.8475, Officer Taylor has a duty to intervene, if possible, and to also report Officer Robin's use of excessive force.
5. Student Quinn returned to the school building after being expelled for disciplinary reasons. The principal orders Quinn to leave and not return until the expulsion is over. Quinn refuses to depart. The principal calls SRO Madison and, with Madison present, repeats the order to leave. SRO Madison emphasizes to Quinn that he will be arrested for trespassing unless he leaves at once. Quinn still refuses to depart. SRO Madison may place Quinn under arrest for trespassing. However, SRO Madison is only permitted to use force toward students in situations where it is necessary to prevent bodily harm or death. It

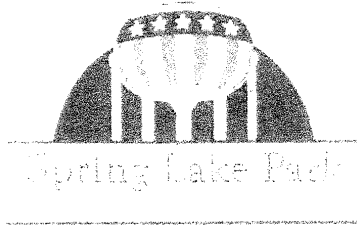
follows that Madison may not use force to overcome any non-dangerous resistance to the arrest. Because handcuffing is a form of restraint, Madison also may not handcuff Quinn to effect the arrest. In other words, unless Quinn voluntarily complies, Madison would need to call another officer, who is not an SRO, to assist with the arrest.

Discussion issues:

School personnel may be unaware of these changes, and it will be important to inform them, so they know what to expect from SROs and officers working in schools.

These new limitations are apt to require some substantial rethinking of how SROs and other officers who are agents of a school district will intervene in situations involving students. Using force in circumstances that do not present a threat of death or bodily harm is no longer an option. Verbal and de-escalation skills will be at a premium. Agencies and officers may wish to consult with other professionals, such as special education and mental health personnel, who are trained in nonforceful intervention. Officers may also wish to consult with school staff on how they will work together to manage disruptive but non-dangerous behaviors without force. When force must be used, prone and compressive restraint are off the table, and officers and agencies should consider and train in advance in whatever appropriate alternatives may be deployed.

Letters to
Superintendent
Ronnenberg



August 22, 2023

Dr. Jeff Ronneberg
Superintendent
Spring Lake Park School District
1415 81st Avenue NE
Spring Lake Park, MN 55432

Subject: Termination of the School Resource Officer Agreement

Dear Dr. Ronneberg:

Pursuant to Section 5 of the School Resource Officer Service Agreement Between the City of Spring Lake Park and Independent School District #16, originally dated August 12, 2013 (the "SRO Agreement"), I am writing to officially inform you of the City's decision to provide its 30-day notice to terminate the SRO Agreement.

As you may be aware, recent legislative changes, specifically pertaining to the use of force by SROs, have brought about new guidelines and restrictions. The amendments to M.S. chapter 121A have imposed significant limitations on the use of force toward students, prohibited the use of prone restraints, and restricted the use of compressive restraint on certain parts of the body. These changes have deprived SROs of important authority to safely carry out their duties and correspondingly increased the potential liability for our SROs when serving in this capacity.

The City believes that under the new law, the liability risks for SROs have become untenable. It is essential to protect both the students and our officers, and until the Legislature provides further clarity on the recent changes, we believe this action is in the best interest of all parties involved.

Over the years, our SRO program has been instrumental in fostering a safe learning environment. We remain grateful for our collaboration and the trust you have placed in our officers. We want to assure you that this decision was made after thorough consideration and with the utmost respect for our partnership. We further assure you that our commitment to ensuring the safety of our students remains of paramount importance.

Presently, we are forced to take this action to ensure that none of our officers are determined to be "agents" of the School District and therefore retain their full requisite authority as peace officers. Should the Legislature provide clearer guidance and rectifications concerning the authority, roles, and responsibilities of SROs in the future, the City stands ready to discuss and potentially enter into a new SRO contract with the School District.

Thank you for your understanding and for the longstanding partnership we have shared. We look forward to continuing our collaborative efforts in other capacities to ensure the safety and well-being of the students and staff.

Sincerely,

A handwritten signature in cursive script, appearing to read "Daniel R. Buchholtz".

Daniel R. Buchholtz
Administrator, Clerk/Treasurer

cc: Mayor Nelson and Members of the City Council
Josh Antoine, Police Chief
John Thames, City Attorney



Date: 8/25/2023

To: Jeff Ronnenberg, Ed.D
Superintendent
Spring Lake Park School District
1415 81st Ave Ne
Spring Lake Park, MN 55432

Subject: Deployment of Patrol Officers during SLP School Football Games

Dear Superintendent Ronnenberg,

I hope this letter finds you well. In light of public safety concerns and the need to ensure a secure environment during events with significant crowds, the Spring Lake Park Police Department wishes to inform the Spring Lake Park School District of our decision to deploy patrol officers on-site during Spring Lake Park School Football Games.

I would like to emphasize the following points regarding this deployment:

Direction and Authority: The officers present at the games will be under the direct and exclusive guidance and command of the Spring Lake Park Police Department and specifically the Police Chief. They will not be under the direction of the school district staff or any other entity during their deployment. Their patrol deployment may be altered or terminated at any time, at the direction of the Police Chief.

No Agency Relationship: These officers are not and should not be considered agents of the school district or any other associated entity. Their presence is solely in their capacity as law enforcement officers of the Spring Lake Park Police Department, and not in fulfillment of any contractual or other duty. Further, no deployed officer will act in the capacity of a School Resource Officer (SRO) during event deployment and all deployed officers shall act exclusively under the direction and authority of the Police Chief. In past years, the School District and Department have collaborated on a discretionary overtime posting of the SRO at football games, and the School District (upon the mutual approval of the District and the Chief of Police) agreed to fund any earned compensatory time for the SRO. The Department is expressly discontinuing these discretionary SRO postings and the District will not be responsible for any compensation to the Department or officers deployed at these events. Further, deployed officers will not have access to School District radios nor be subject to any direction from District staff.


Law Enforcement Powers: The officers will possess full law enforcement authority while on duty at the games, and any actions taken will be in line with their duties and responsibilities as members of our department. Our officers are well-informed and trained in use of force decision making and will exercise their authority as peace officers carefully and thoughtfully, but without direction from or on behalf of any entity outside of the Spring Lake Park Police Department.

We believe that this initiative will not only enhance the safety and security of attendees but will also ensure a smooth and enjoyable experience for all.

Should you have any questions, concerns, or need further clarifications, please feel free to reach out to me directly. We value the Spring Lake Park School District and are committed to ensuring the well-being of our community.

Thank you for your understanding and cooperation.

Warm regards,

A handwritten signature in black ink, appearing to read "Josh Antoine". The signature is fluid and cursive, with a prominent loop at the end.

Josh Antoine
Chief of Police
Spring Lake Park Police Department

Legislative Media Releases

FOR IMMEDIATE RELEASE

August 30, 2023

MEDIA CONTACT:

Senate: Rachel Aplikowski, 952-913-8426

Rachel.Aplikowski@Senate.MN

House: Christine Snell, 612-345-2547

Christine.Snell@House.MN.gov

Legislative Republicans propose fix as another school metro district plans to remove SROs

ST. PAUL – Legislative Republicans gathered on Wednesday morning to propose a bipartisan bill to fix a recent change in law that is causing the removal of Student Resource Officers (SRO) from public schools. They presented [a letter](#) from House Minority Leader Lisa Demuth (R-Cold Spring) and Senate Minority Leader Mark Johnson (R- East Grand Forks) asking the Governor to meet to discuss a special session. Also attending the press conference was Blaine Police Chief Brian Podany and Centennial Schools Superintendent Jeff Holmberg who shared their concerns about how this change is impacting safety for students and staff as the school year begins.

“Students, teachers, and school staff are less safe than they were a year ago as a direct result of the loss of school resource officers,” said Rep. Jeff Witte (R-Lakeville). “As a former SRO myself, I know firsthand how important it is to have an officer onsite to respond to challenges, be a resource, prevent problems, and build relationships. SROs play a critical role in keeping our schools safe, and it is unacceptable to be sending our students back to school without this resolved. This is not a time for partisanship or political games—we need a special session to take swift action to get SROs back in our schools and ensure our students and teachers have a safe learning environment this school year.”

Blaine Police Chief Brian Podany was clear that until there is clarity, SROs are not able to do their job as they have been trained. “The varying interpretations have created confusion about how to respond to and manage incidents in our schools. Attorney General Keith Ellison even issued binding guidance in which he indicated that the questions we continue to have are ‘more appropriately directed at the legislature,’” Podany said. “It is hard enough for our educators and our peace officers to manage at times chaotic, violent, and unusual situations involving our children and their safety. Having to navigate the legal confusion surrounding that in a split-second sets up all involved for failure.” Podany said he expects a vote to suspend SROs in the Centennial District as soon as tomorrow.

Centennial School Districts serves Blaine, Centerville, Circle Pines, Lexington, and Lino Lakes families with 6,500 students enrolled from elementary to high school. Holmgren explained the unique role SROs have in the Centennial district, which also educates juveniles incarcerated at Lino Lakes correctional facility. “It is absolutely essential that we have a strong community and school district partnership on issues that impact all of us,” Centennial Schools Superintendent



August 30, 2023

Governor Tim Walz
130 State Capitol 75 Rev Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Governor Walz,

With students and teachers returning to the classroom, we write to request an immediate special session to address the consequence of new legislation as it pertains to school resources officers. This new language is too vague and leaves police officers across the state without the needed confidence they can properly do their jobs to keep their school communities safe. With schools already in session, we need to act quickly to get school resource officers back where they belong.

The real-world impacts of this legislation are undeniable; students attending schools in Moorhead, Anoka, Coon Rapids, Andover, Rockford, Redwood Falls, St. Louis County, and a growing number of other communities have been forced to suspend or cancel SRO agreements. These decisions were all made after calls for clarity led to an advisory opinion from Attorney General Keith Ellison. A special session is needed to fix the law passed by the legislature just a few months ago.

School resource officers have a valued position in schools across the state. They are relied upon to both respond to direct challenges in schools as well as work within the schools to prevent problems. It is an unfortunate reality that there are times within the school day SROs are called upon to restrain students from causing harm to themselves, the school, or others in the building. We have all heard the concerns from SROs that they need legislative action to know they can do their job as they have been trained. Students and teachers are less safe than they were a year ago as a direct result of the loss of school resource officers.

Senate and House Republicans are ready to help address this urgent problem and ensure all members of our schools can have safe environments that promote learning and community. Let's show Minnesotans we can come together to correct this mistake, and return these law enforcement professionals to their posts as soon as possible.

We look forward to further conversations on this important matter.

Respectfully,

Handwritten signature of Lisa M. Demuth in black ink.

Minority Leader Lisa Demuth
Minnesota House of Representatives
District 13A

Handwritten signature of Mark Johnson in black ink.

Minority Leader Senator Mark Johnson
Minnesota State Senate
District 01

SRO Contract

**SCHOOL RESOURCE OFFICER SERVICE
AGREEMENT BETWEEN THE CITY OF SPRING LAKE
PARK AND INDEPENDENT SCHOOL DISTRICT #16**

This agreement is made the 15th day of July, 2013, pursuant to M.S. 471.59 by and between the City of Spring Lake Park (City) and Independent School District #16 (School District).

1. **PURPOSE:** The City and the School District wish to participate in a School Resource Officer Program. The purpose of this Agreement is to set forth in writing the terms and conditions of the mutual duties and obligations' to implement and maintain the position of School Resource Officer (SRO).
2. **FUNDING:** The formula for one School Resource Officer "SRO" shall be based on the City providing funding (salary, benefits and related expenses) for 87 days and the District funding 173 days for a total of 260 days per year. District/School officials and the City of Spring Lake Park Police Chief shall determine the specific days/hours to be worked under this agreement.
3. **PAYMENT:** The City shall provide billing to the School District for services provided in this agreement, and the School District will remit payment to the City on a quarterly basis.
4. **COMP TIME/OVER TIME:**

In addition to the above funding formula for the School Resource Officer services, the District agrees to compensate the "SRO" with comp time (at the rate of one and one half hours, per hour of time worked, over the regularly scheduled school day) in lieu of paying overtime, for special events (Ex: Dances, Football games, Basketball games, Graduation etc.) as determined/approved by School Officials and the Chief of Police.

The District/School Officials agree to limit the number of comp time hours accrued by the "SRO" as described above; to the number of days (determined by the current year school calendar) that school will be out of session (Ex: Spring Break, Thanksgiving, MEA, Christmas break, etc).

In the event that the number of comp time hours accrued by the "SRO" exceed, the number of days school is out of session during the school year, the District/School Officials agree to be billed the overage difference at the School Resource Officers current overtime rate of pay, per the current City of Spring Lake Park/LELS agreement with the Police Officers.

5. **TERM:** The term of this contract shall be from July 1, 2013_ to June 30, 2014_, the Districts fiscal year, renewable each year unless terminated by either party. Either party may terminate this agreement upon 30 days written notice of such termination. All payments due hereunder shall be prorated in the event of such termination.

6. **GENERAL PROVISIONS:** It is expressly agreed that the School Resource Officer is a City employee and shall **not** be considered an employee of the School District for any purpose including, but not limited to, officers wages, fringe benefits, worker's compensation, unemployment compensation, P.E.R.A., Social Security, liability insurance, keeping of personnel records, termination of employment, individual contracts or other contractual rights.

The SRO is part of, and covered under, the local law enforcement labor agreement between the City and Law Enforcement Labor Services. The City shall assume all liability for the actions taken by the SRO in the performance of his/her duties as a peace officer. The SRO will report to, and be directed by, the City of Spring Lake Park Police Chief or his/her designee, and is subject to all Police Department policies and procedures. The SRO will work closely with School Administration and keep them informed of his/her activities and duties. The SRO will keep daily activity logs and monthly summary reports as directed which shall be turned into the Chief of Police and the School Administration for their review. Representatives of the School District and the Police Chief or his/her designee shall negotiate resolution of unforeseen problems arising in this program.

7. **SERVICES:** The City shall provide the services of one licensed police officer and related administrative support services as needed to assist the School District in maintaining a School Resource Officer Program. The officer will provide specialized law enforcement services specifically for faculty, students, and school administrators within the City limits of Spring Lake Park. These services include the detection, investigation, and apprehension of those persons involved in any criminal activity. In addition, the officer shall participate in classroom activities for the promotion of positive juvenile behavior. Any duties performed outside the City limits must be approved by the Chief of Police. The City shall provide required clothing, uniforms, vehicle, necessary equipment and supplies for the officer to perform law enforcement duties. The District shall provide the SRO with a private lockable office, telephone, and supplies necessary for the officer to perform duties as required.

8. **LEVEL OF SERVICE:** The officer may be called upon to respond to emergency calls within the City limits and will attend police training and perform special duties as assigned by the City while fulfilling the terms of this contract.

9. **SCHEDULING:** The duty hours of the SRO are flexible and will be primarily coordinated with the school day and activities. The SRO will make daily contact with the Police Department for the purpose of keeping abreast of incident reports and other City activity. The SRO will restrict taking vacation during the school year, but in the event the SRO must take a day off or schedule vacation during the school year, he/she will coordinate school coverage with the day shift Patrol Sergeant and keep school administrators informed of scheduling changes.

When school is not in session, the SRO shall use accumulated school comp time to cover days off or the City will determine the SRO's duties and schedule.

10. **SELECTION:** The selection and assignment of the SRO shall be at the sole discretion of the Police Chief. Generally, the length of assignment shall be three calendar years.

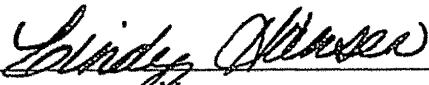
11. **POLICE ADMINISTRATION RESPONSIBILITIES:** Law enforcement services rendered to the District shall be at the sole direction of the City. Standards of performance, discipline of the officer assigned, and other internal matters shall be under the authority of the City. The Police Chief and the High School Principal or his/her designee shall meet periodically during each school year to evaluate and assess the quality and effectiveness of the SRO position and individual assignment making recommendations and or adjustments as needed.
12. **DISCRIMINATION:** The City and the School District agree not to discriminate in providing services under this Agreement on the basis of race, sex, creed, national origin, age, or religion.
13. **INDEMNIFICATION BY THE CITY:** The SRO is a City employee. The City shall indemnify, hold harmless, and defend the District, its elected officials and employees against any and all liability, loss, costs, damages, expenses, claims or actions which the District, its officers and employees may hereafter sustain, incur or be required to pay arising out of, or by reason of, any negligent or willful act or omission of the City, its agents or employees, in the execution, performance, or failure to adequately perform the City's obligations pursuant to this agreement. Nothing herein shall be deemed a waiver by either party of the limitations on liability set forth in Minnesota Statutes, chapter 466.
14. **INDEMNIFICATION BY THE DISTRICT:** The District shall indemnify, hold harmless, and defend the City, its elected officials and employees against any and all liability, loss, costs, damages, expenses, claims or actions which the City, its officers and employees may hereafter sustain, incur or be required to pay arising out of, or by reason of, any negligent or willful act or omission of the District, its agents or employees, in the execution, performance, or failure to adequately perform the District's obligations pursuant to this agreement.

Nothing herein shall be deemed a waiver by either party of the limitations on liability set forth in Minnesota Statutes, chapter 466.

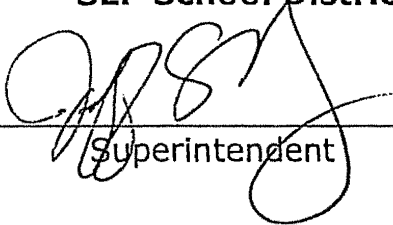
IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS
AGREEMENT ON THIS THE 12th DAY OF August 2013.

City of Spring Lake Park

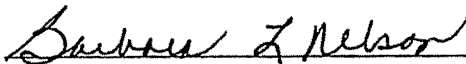
SLP School District #16



Mayor



Superintendent



City Administrator

News Articles

"Parents rely on me in the school to keep you safe": Former SRO speaks out about the death of a student and current SRO law

Send to Kindle

MINNEAPOLIS — Amid controversy over a new school resource officer (SRO) law in Minnesota, a former SRO spoke out about his experiences at North Minneapolis High.

The law restricted officers from using certain holds on students and police departments said they couldn't do their jobs with this law in place in schools. Since then, Minnesota Attorney General Keith Ellison [issued a revised opinion](#) that SROs are still allowed to use restraints and reasonable force when making an arrest.

Still, many agencies have kept their SROs out of schools.

Charles Adams has firsthand knowledge when it comes to SROs. Right now - he coaches players at North Minneapolis High. But a few years ago, he was also responsible for protecting them as a SRO.

It's a responsibility he took very seriously.

"You got to insert yourself in that community," Adams said. "And that school is a community. Not just being somebody that works there and it's a 9 to 5 job."

But Minneapolis Public Schools [ended its contract](#) with Minneapolis police back in 2020, shortly after the murder of George Floyd - meaning no more SROs.

Adams said it's left a void.

"Like I've said a million times, you know, I feel that my school is the safest with me being there."

Recently, state lawmakers passed a new law banning SROs from using some forms of restraints — notably, the prone restraint — on students. In turn, a

number of police departments in the state decided to pull their SROs from schools, saying it undermines the ability of officers to do their jobs.

Adams said that for him, the prone restraint was never in his arsenal.

"Me personally, being a big guy, I wouldn't even want to have anything that would let me do that when it comes to a child," Adams said. "It wasn't a position that I used quite often anyway when I was a police officer."

He said it shouldn't be a deal breaker for departments.

"That's just another tool that can protect you as a police officer," Adams said. "You can work around, and that's where you use your voices."

As an SRO, the job was less about force and more about relationships, which is something Adams brought up while talking about the death of North High Star quarterback Deshaun Hill last year.

Fifteen-year-old Hill was shot and killed after bumping into Cody Fohrenkam while walking in the neighborhood.

That day, students were released early from school to attend a protest.

Back in January, the Minneapolis Public School Board approved a \$500,000 settlement with Hill's family. The family's attorney claimed the school's decision to allow students to leave early ultimately led to Hill's death.

"I know that parents rely on me in the school to keep you safe for those six hours," Adams said. "So I would have deterred those kids and came up with an alternative to do something else to keep them from going into the neighborhood."

Moments like that, he says, are why it's important for SROs to forge those relationships.

"Nope, man. You're not, you're not leaving, man," Adams said. "Go we'll go to the weight room. We'll watch film, you're not leaving. And I think about it every day."

He says SROs are needed - for a sense of safety and community.

"Being in the schools and working as an SRO is not a law enforcement job," Adams said. "It's a resource and a community connection. And once you

approach that job that way, that's when your success comes."

KARE 11 did reach out to the district for comment, and to see if there is a plan to get resource officers back in schools. A spokesperson said they would get back to us.

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Watch the latest local news from the Twin Cities and across Minnesota in our [YouTube playlist](#):

St. Cloud school resource officers will return amid 'clarification and legal support'

By Jenny Berg

Send to Kindle



Jenny Berg, Star Tribune

St. Cloud Police Department squads are parked outside the community outpost in August 2022.

ST. CLOUD — School resource officers here will return to their posts Monday following a two-month pause in the program prompted by confusion over a recent law change.

St. Cloud Police Department was one of [several in the state](#) to suspend its SRO program at the beginning of the school year over a new state law that banned the use of some physical holds of students, including prone restraints and “any form of physical holding that restricts or impairs a pupil’s ability to breathe or ... communicate distress.”

But the confusion arose over a word change that led many of the state's police chiefs, county attorneys and sheriffs to interpret the statute as preventing officers from restraining students unless they're about to inflict harm on themselves or others, causing concern that SROs would be forced to react to situations contrary to training or policy.

Many Minnesota Republicans and law enforcement officials pushed Gov. Tim Walz to hold a special session to amend the law. Then, in late September, Attorney General Keith Ellison released a legal opinion stating the interpretations that the law restricts any physical intervention are incorrect and that officers "simply must avoid the restraints identified" in the new language.

Some confusion and hesitation remains, but DFL legislative leaders have pledged to hold a hearing at the start of the next legislative session.

"The decision for the city of St. Cloud to reinstate the SRO program, prior to a legislative fix, did not come lightly and was in response to many factors," read a news release issued Wednesday by St. Cloud Mayor Dave Kleis, St. Cloud Area School District Superintendent Laurie Putnam and St. Cloud Police Chief Jeff Oxton.

The St. Cloud leaders said Ellison's statement, as well as guidance from state organizations and local county and city attorneys, has "provided enough clarification and legal support to make this transition possible."

Oxton said during the suspension, the department assigned officers to cover calls for service in the district and at other school-related events.

St. Cloud's SRO program dates back at least three decades and has grown from one school resource officer to six officers and a sergeant who provide in-school programming and security services at district-related games and events.

School resource officers may soon return to dozens of Minnesota campuses

Send to Kindle

Law enforcement groups say resource officers can return to school districts following days of conversations between police officials, lawmakers and the Minnesota Attorney General's Office that have eased concerns about a [controversial law on student restraints](#).

The development comes amid new guidance from the state's top lawyer, along with directions from the board that licenses Minnesota police that says a school resource officer's ability to enforce local laws takes priority over the new restraint rules. Police groups also say they have assurances from the governor that he'll prioritize a patch to those rules in February.

"We will work with Governor Walz and legislative supporters to bring about a permanent resolution to this issue," Imran Ali, an attorney for the Minnesota Police and Peace Officers Association, wrote in new guidance to members on Friday. "The sooner that is accomplished, the better for all those involved."

It is not immediately clear if, or when, agencies will return school resource officers to their posts.

The guidance said officers could return to roughly 40 schools across the state, where confusion over the new law prompted law enforcement agencies to [remove staff out of fear of legal liability](#). Several districts maintained their school resource officer (SRO) programs throughout the tussle, some of them even expanding the ranks of police [patrolling their middle and high schools](#).

The clarification means lawmakers are not likely to return to the Capitol to tackle the issue in a special session, but DFL legislative leaders have pledged to hold a hearing within the first two weeks of the next legislative session, which convenes Feb. 12.

"The health and welfare of everyone in the schools will be at the heart of the discussions moving forward," House Speaker Melissa Hortman and Senate

Majority Leader Kari Dziedzic said in a joint statement. "Our top priority is for students to learn and thrive in Minnesota schools, and to be able to do that, students, staff and teachers must have a safe environment."

The breakthrough comes after a meeting Wednesday night with Gov. Tim Walz, DFL legislative leaders and groups that represent law enforcement and cities. At issue for the last several weeks is a new law passed by the DFL-led Legislature in May that put restrictions on prone restraints and "any form of physical holding that restricts or impairs a pupil's ability to breathe or ... communicate distress."

The substitution of one two-letter word for another in state law led most of Minnesota's police chiefs, county attorneys and sheriffs to interpret the new law as preventing them from restraining students unless they're about to inflict harm on themselves or others.

Republicans repeatedly asked that Walz call legislators into a special session to amend the law. Walz initially said he was open to a special session, but the idea got pushback from a large group of rank-and-file DFL legislators and some education advocacy groups who said the ban on prone restraints simply extended a law passed a decade ago for students enrolled in special education programs.

Republican House Minority Leader Lisa Demuth said Friday that the issue is not resolved until every district has restored SRO coverage.

"We don't need to wait until next year," she said in a statement. "Democrats should be working with us now to hold hearings and develop a legislative fix that can pass right away instead of continuing to delay while many schools remain without SRO coverage."

An updated legal opinion from DFL Attorney General Keith Ellison released Wednesday said interpretations that the change in the law restricts SROs and school professionals "from engaging in any physical contact to address non-violent behavior" are not correct, and that they "simply must avoid the restraints identified" in the new language.

"If a student is misbehaving in a way that does not and will not harm that student or anyone else, professionals in schools still have many tools at their disposal, including other kinds of physical contact," the supplemental opinion reads.

"Law enforcement leaders came to the Attorney General with valid questions, and I am grateful for the Attorney General's binding opinion clarifying that

school resource officers can continue to do their jobs effectively,” Walz said in a statement. “I am committed to further addressing this issue next legislative session and eager to see school resource officers return to schools as soon as possible.”

The Minnesota Board of Peace Officer Standards and Training also weighed in on the attorney general’s latest guidance. The agency, which licenses police officers and also has the [authority to revoke their credentials](#), has interpreted Ellison’s clarification to say that the new rules don’t prohibit school resource officers from using holds and restraints if they’re enforcing the law.

While legislators are not likely to come back into special session, the issue will be at the forefront when they return to the Capitol in February. Ali said DFL leaders’ promises to hold hearings is helpful, but law enforcement officials wanted commitments to fixing the law.

“If this law is unable to be fixed statutorily next session, law enforcement agencies will need to re-evaluate their relationships with school districts and their SRO programs in the long-term,” he wrote.

As some Minnesota school resource officers return, letter sparks uncertainty

Sep. 29th, 2023

[Send to Kindle](#)

After several weeks of controversy and legal debate, some Minnesota law enforcement agencies are starting to return their resource officers to schools — but a new interpretation of recent changes to state law is causing further uncertainty.

A few dozen Minnesota law enforcement agencies pulled their school resource officers out of schools in recent weeks, citing a lack of clarity about the changes in state law that they believed could legally limit officers or staff in how they can physically restrain students when needed.

Earlier this week [KARE 11 reported](#) Hennepin County Attorney Mary Moriarty sent a letter to police chiefs in her county outlining her office’s interpretation of the law in question.

According to her reading, the law bans school resource officers — SROs — from using prone restraints or holds that restrict students’ ability to breathe or communicate distress, except “to prevent bodily harm or death.”

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This differs from a legal opinion [issued last week](#) by Attorney General Keith Ellison. He said the law doesn’t change when SROs can use force.

Gov. Tim Walz and the Minnesota Police and Peace Officers Association took Ellison’s opinion — his second on the issue — as a [step towards a resolution](#) on the issue.

Some agencies that had [pulled their SROs](#) over concern with the law, including the Blue Earth County Sheriff’s Office, Mankato Department of Public Safety and Eagan Police Department, said they would return their officers to schools. Law

enforcement agencies bringing back their SRO programs have cited Ellison's further clarification of the law in making their decisions.

Moriarty's office said that her letter came after local police chiefs had asked for her reading of the law.

"The county attorney talks frequently with Hennepin County chiefs and has developed a trusting, open, and transparent relationship with them," her office said in a statement. "They know they can ask her questions directly and seek her guidance, and that the county attorney will be direct and honest in response, even as they recognize we cannot provide their departments with legal advice."

Ellison's office, in a statement, noted that Moriarty's opinion is not legally binding.

"As the County Attorney concedes, only the Attorney General's opinion is binding under state law. Her interpretation is not," a spokesperson for the Ellison's office said.

Moriarty's letter prompted Minnesota Police and Peace Officers Association President Brian Peters to send his own letter to members on Friday, highlighting the differing opinions.

"We are disappointed to hear that the county attorney of our state's largest county is in direct conflict with our state's Attorney General," Peters wrote. "We know this could lead to 87 county attorney positions as well, which have the prosecution authority on civil and criminal charges for our rank-and-file members."

Peters wrote that "the only way to adequately address this issue and return school resource officers to school is an urgent legislative fix." He said his group is urging members to work with their local city and county attorneys, and advising school resource officers to use caution until the Legislature revisits the law.

Meanwhile, Mankato's SROs will be returning to schools on Monday.

"We have been working with the school districts since this whole situation came to light. We have been in many meetings and discussions, and we now feel comfortable — both us and the school district — with moving forward," Mankato's Director of Public Safety Amy Vokal said.

MPR News reporter Hannah Yang contributed to this report.

<https://www.mprnews.org/story/2023/09/29/as-some-minnesota-school-resource-officers-return-letter-sparks-uncertainty>

List: Minnesota law enforcement agencies that are pulling SROs out of schools

Aug. 31st, 2023

Send to Kindle

(FOX 9) - As Minnesota law enforcement agencies grapple with a new law that restricts the use of force, some are pulling their school resource officers (SROs) out of schools, while others are keeping them in place.

The amendments, which were passed by the Minnesota Legislature this session, do not allow school employees or resource officers to put a student in certain physical holds, including the prone position. Law enforcement agencies have said the new changes cause significant concerns and could limit how peace officers can do their jobs if a situation at school becomes unsafe.

As a result, some agencies have announced they will be [pulling their SROs out of schools](#), while others are keeping them in place.

Here is a rundown of the law enforcement agencies that have announced changes to their SRO programs.

Agencies dropping SROs

- **Alexandria Police Department:** Suspending the program, but introducing a pilot program with two officers designated for schools. They won't have a set schedule or be assigned to a certain school, and the program is funded by the department's budget. To learn more, [click here](#).
- **Anoka County Sheriff's Office:** Removing SROs from Andover High School and Oak View Middle School. To learn more, [click here](#).
- **Anoka Police Department:** Removing SROs from Anoka High School and Anoka Middle School for the Arts. To learn more, [click here](#).
- **Blaine Police Department:** Removing SROs. Additional officers working patrol will be dedicated to responding to calls from the school districts, and periodically walk through the school. To learn more, [click here](#).
- **Blue Earth County Sheriff's Office:** *Announced on Sept. 25, that it would reinstate its SRO program.*

- **Brooklyn Park Police Department:** The department initially said it would keep its officers in schools. However, in a Sept. 14 announcement, they reversed course, suspending the SRO program. To learn more, [click here](#).
- **Champlin Police Department:** Removing SROs. The Jackson Middle School and Champlin Brooklyn Park Academy will not have SROs for the 2023-24 school year. To learn more, [click here](#).
- **Clay County Sheriff's Office:** Suspending the program. Patrol deputies will be stopping in the schools throughout the day to ensure student and staff safety. To learn more, [click here](#).
- **Coon Rapids police:** Removing SROs. Police will not be inside Anoka-Hennepin schools, but will be present at school events at the department's expense and have a response plan in place. To learn more, [click here](#).
- **Eagan Police Department:** *UPDATE: On Sept. 28, Eagan PD announced it would reinstate its SRO program.*
- **Hennepin County Sheriff's Office:** Removing SROs. The sheriff's office is removing the SRO at Rockford High School. To learn more, [click here](#).
- **Maple Grove Police Department:** Suspending the program until the "law is changed." Current SROs are being placed on patrol duty, but the department will work to provide safety and security to the schools. To learn more, [click here](#).
- **Moorhead Police Department:** *UPDATE: On October 3, Moorhead PD announced that it would reinstate its SRO program.*
- **New Hope Police Department:** Suspending the program. Initially started the year with SROs but decided to pull them from Robbinsdale School District and Cooper High School. To learn more, [click here](#).
- **Plymouth Police Department:** Suspending the program. Current SROs are being placed on patrol duty, but the department will continue to work with the Wayzata and Robbinsdale school districts for safety and security services. To learn more, [click here](#).
- **Wayzata Police Department:** Suspending the program. There will not be an SRO at Wayzata West Middle School for the 2023-24 school year. To learn more, [click here](#).
- **White Bear Lake Police Department:** Suspending the program. Police officers will respond to school district related calls, conduct regular walkthroughs, and have a presence at football games. To learn more, [click here](#).
- **Willmar Police Department:** Terminating the program. SROs are remaining in schools, but the city terminated the program to allow full law enforcement authority. To learn more, [click here](#).

Agencies keeping SROs

- **Duluth Police Department:** While the police department has not officially put out a statement about keeping SROs, they've been introducing the officers on [social media](#) who are a part of the program.
- **Faribault Police Department:** Keeping SROs for the "foreseeable future." But, officers will limit their duties to public safety and general community-building until an agreement is in place. To learn more, [click here](#).
- **Hermantown Police Department:** Keeping SROs in schools. To learn more, [click here](#).
- **Lakeville Police Department:** Keeping SROs in Lakeville Area Schools. To learn more, [click here](#).
- **Minnetonka Police Department:** Keeping SROs at Minnetonka High School. To learn more, [click here](#).
- **Mounds View Police Department:** Initially removed SROs at Edgewood Middle School, Pinewood Elementary School and the Mounds View Bridges Program. But has since reinstated the program. To learn more, [click here](#).
- **Rogers Police Department:** Keeping SROs citing in part "the risks of removing the SROs may potentially put staff and students at higher risk." To learn more, [click here](#).

On Wednesday, Minnesota House and Senate Republicans requested Governor Walz to convene a [special session](#) to address concerns surrounding the state's new school resource officers (SRO) law. But Walz said earlier this month lawmakers are misinterpreting the law and that school resource officers can use reasonable force whenever needed.

"There are exceptions for students' health, risk to them, risk to the police. So it is not being interpreted correctly; they certainly have the ability to do that," he said.

The governor has not said whether there will be a special session to address law enforcement concerns.

This list may change as more law enforcement agencies make announcements about their SRO programs.

The 10 largest Twin Cities school districts' plans for school resource officers

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MINNEAPOLIS — A law passed earlier this year at the Minnesota Capitol has led several school districts and law enforcement agencies to [rethink their use and deployment of school resource officers](#) (SROs).

The law restricts the use of force on students unless a student poses a bodily risk to themselves or others. And a part of the law forbids SROs and school district employees from placing students in certain physical holds, including putting weight on a student's head, throat, neck and chest, and putting them face down on the ground.

RELATED: [What is the exact language of the new law concerning school resource officer conduct?](#)

Several law enforcement agencies across the state have already pulled SROs, fearing costly lawsuits and legal action against officers.

Several Minnesota politicians, law enforcement departments and unions, and school districts are [calling on Gov. Tim Walz to enact a special session](#) to modify the details of what they believe is flawed legislation.

RELATED: [After dozens of departments pull SROs, Minnesota attorney general makes more clarifications to new law](#)

WCCO reached out to the 10 largest school districts in the Twin Cities metropolitan area to find out if they plan to use SROs this school year.

Anoka-Hennepin Schools

The Anoka County Sheriff's Office, the Anoka Police Department and several neighboring law enforcement partners — including Blaine, Brooklyn Park, Champlin and Coon Rapids police departments — will not station SROs in the following Anoka-Hennepin Schools:

- Andover High School (Anoka County Sheriff)
- Anoka High School (Anoka Police)
- Anoka Middle School for the Arts (Anoka Police)
- Blaine High School (Blaine Police)
- Champlin Park High School (Brooklyn Park Police)
- Coon Rapids High School (Coon Rapids Police)
- Coon Rapids Middle School (Coon Rapids Police)
- Northdale Middle School (Coon Rapids Police)
- Oak View Middle School (Anoka County Sheriff)
- River Trail Learning Center at L.O. Jacob (Coon Rapids Police)
- Roosevelt Middle School (Blaine Police)

Lakeville Area Schools

The district has an SRO from the Lakeville Police Department at Lakeville North High School and Lakeville South High School.

Minneapolis Public Schools

Following the murder of George Floyd in 2020, [Minneapolis Public Schools ended its SRO contract with the Minneapolis Police Department.](#)

Mounds View Public School District

The New Brighton Department of Public Safety will continue to provide some SROs at district schools. The Mounds View Police Department and the Ramsey County Sheriff's Office stopped providing SROs at the start of the school year, with the latter agency saying that they would not be signing a contract to provide officers to Edgewood Middle School, Pinewood Elementary School, or Mounds View Bridges Program. On Oct. 3, Mounds View police announced an SRO would return to district schools.

Osseo Area Schools

The Maple Grove Police Department has [pulled SROs from Maple Grove Senior High School](#), and the Brooklyn Park Police Department has pulled its officers from Park Center Senior High School following [a fight this school year that injured the assistant principal.](#)

Robbinsdale Area Schools

The Plymouth Police Department will no longer place SROs at Armstrong High School and Plymouth Middle School. The department, however, will continue to provide safety and security at the schools

The New Hope Police Department started the school year with SROs at Cooper High School, but then decided to [suspend its agreement with Robbinsdale Area Public Schools on Sept. 19.](#)

The Robbinsdale Police Department doesn't have the staffing to place an SRO at Robbinsdale Middle School, but that may change later in the fall.

The Golden Valley Police Department may bring SROs back to Sandburg Middle School and Robbinsdale Academy-Highview, subject to a review of its contract with the district that will be discussed at a Board of Education meeting set for Sept. 6.

New Hope and Plymouth police departments will continue to provide support at major school events and sports games at Armstrong and Cooper high schools.

Rosemount-Apple Valley-Eagan Independent School District No. 196

At the start of the school year, the district said SROs will continue to be placed at each of the district's six high schools, and three SROs will move between the district's six middle schools. But on Sept. 20, the Eagan Police Department announced [it would be pulling SROs from Eagan schools.](#)

South Washington County County School District

The Woodbury Police Department will continue to have one SRO at Woodbury High School and East Ridge High School. And the Cottage Grove Police Department will continue to have one SRO at Park High School.

St. Paul Public Schools

Following the murder of George Floyd in 2020, [St. Paul Public Schools ended its SRO contract with the St. Paul Police Department.](#) A spokesperson with the

district said:

"There is not a plan to bring back SROs to Saint Paul Public Schools. SPPS is committed to ensuring the safety of our students and staff, with extensive staffing and security measures in place at all of our buildings. Our trained security staff, known as School Support Liaisons or SSLs, are growing in numbers, with up to three at every high school and at least one at every middle school and K-8 campus this year. In addition, our ongoing partnership with the Saint Paul Police Department and Office of Neighborhood Safety, as well as the U.S. Department of Justice and a \$1 million violence prevention grant, are essential pieces of our commitment to making our schools as safe as they can be."

Wayzata Public School District

The Wayzata Police Department will no longer have an SRO at Wayzata West Middle School.

<https://www.cbsnews.com/minnesota/news/school-resource-officers-twin-cities-school-districts/>