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Controlling Partners: When Law Enforcement Meets Discipline in Public Schools

Lisa H. Thureau
Strategies for Youth

Johanna Wald
Harvard Law School

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LISA H. THURAU AND JOHANNA WALD

Controlling Partners: When Law Enforcement Meets Discipline in Public Schools

ABOUT THE AUTHORS: Lisa H. Thureau is Founder and Director, Strategies for Youth. Johanna Wald is Director of Strategic Planning, Charles Hamilton Houston Institute for Race and Justice, Harvard Law School.

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I. INTRODUCTION

In the past decade, police have moved into public schools in unprecedented numbers. Often referred to as “School Resource Officers,” (“SROs”) they have assumed a variety of roles that range from strict enforcers of rules and laws, to surrogate parents, to counselors and coaches, and to “an extra pair of hands” for school administrators. The rapid increase in the numbers of officers, now estimated at 17,000 nationally,¹ came about through the convergence of several interrelated events and trends, including: 1) the availability of federal funds to support police in schools through the COPS program;² 2) high visibility shootings in school, most notably Columbine in 1999, and the implementation of the harsh new “zero tolerance” policies; and 3) a vigorous “tough on crime” approach to juveniles, nationally, and the passage of new laws stiffening penalties against them in every state. These concerns conflated to create extensive school-based police involvement across the nation in the name of security.

Not surprisingly, behaviors such as schoolyard scuffles, shoving matches, and verbal altercations—once considered exclusively the domain of school disciplinarians—took on potentially sinister tones and came to be seen as requiring law enforcement intervention.³

In response, two camps quickly formed regarding this expanded role for police in schools. On the one hand, police officers, government officials, and many parents believed police officers were needed to squelch violence and crimes, and to keep schools safe and orderly. New York City Mayor Michael Bloomberg encapsulated this view when he beefed up police presence in “Impact” schools in New York City. He said: “We launched the Impact School initiative in order to put a stop to the

1. Editorial, *The Principal's Office First*, N.Y. TIMES, Jan. 4, 2009, available at http://www.nytimes.com/2009/01/05/opinion/05mon3.html?_r=1&csc=2&csq=officers&st=nyt.

2. See *infra* text accompanying note 42.

3. A recent report surveying arrests of youth found that while pre-teen and teen arrests for most offenses, especially violent offenses, were far lower in 2006 than they were in 1980, they increased 19% for simple assault. The data also showed that the majority of arrests for pre-teens occurred in school. This data may suggest that one of the long-term effects of expanding the role of SROs is an increase in the number of younger children arrested while in school for fist fights, shoving matches, and other behaviors that rarely warranted police intervention in the past. See JEFFREY A. BUTTS & HOWARD N. SNYDER, CHAPIN HALL CENTER FOR CHILDREN AT THE UNIVERSITY OF CHICAGO, *ARRESTING CHILDREN: EXAMINING RECENT TRENDS IN PRETEEN CRIME* (2008), available at http://www.njcn.org/media/resources/public/resource_813.pdf. An example of the environment that led to the deployment of police in so many schools can be found in a 1999 *New York Times* article entitled “After Shootings, Nation's Schools Add to Security.” David Firestone, *After Shootings, Nation's Schools Add to Security*, N.Y. TIMES, Aug. 13, 1999, at A1. The article stated that “many students returning to school will find metal detectors and armed security guards at the door,” and that these new policies “all are a direct reaction to the shootings this spring at high schools.” *Id.* Students in Massachusetts also returned to a police presence in their schools in the fall of 1999. See Robert Preer, *Local Schools Reopening with a Police Presence*, BOSTON GLOBE, Sept. 3, 2000, at 1 (noting that “[w]hen students in the Boston suburbs return to school this year, many will greet not only teachers, principals, and classmates, but their school police officer.”); Ronnie Casella, *Punishing Dangerousness Through Preventative Detention: Examining the Institutional Link Between Schools and Prisons*, 21–22 (2003), available at <http://www.civilrightsproject.ucla.edu/research/pipeline03/Casellav2.pdf>.

culture of crime and disorder that was ruining the educational opportunities for our students, and the results have been promising.”⁴ In another instance, when school officers were accused of unnecessary force, a police chief was quoted as saying: “School safety agents are the backbone of school security . . . They take front-line responsibility for keeping schools safe.”⁵

But civil rights and juvenile justice advocates have for years been distressed and concerned by what they view as the growing criminalization of student behaviors that in the past would have been addressed through a call to parents or after school detention. Advocates and some researchers have argued that officers’ and principals’ stated concerns about safety actually mask the true purpose of placing police in schools: to raise the stakes for student misconduct and exclude youth who do not conform to behavioral, attitudinal, or educational demands.⁶

This article explores the evolving role of the police officer in school, and attempts to identify several “models” that are currently being used in school districts in Massachusetts. It is intended to probe deeper than has been done in the past into the ways in which police and school officials attempt to bridge the divide between nurturing the academic and social development of pupils and preventing crime, enforcing laws, and keeping the peace.

A decade after police have become ubiquitous presences in schools across the country, the day-to-day activities and responsibilities of SROs still remain shrouded

4. Press Release, Mayor Michael R. Bloomberg, Schools Chancellor Joel I. Klein, and Police Comm’r Raymond W. Kelly, Impact School Update for 2004–2005 School Year (June 22, 2005), *available at* http://www.nyc.gov:80/portal/site/nycgov/menuitem.c0935b9a57bb4ef3daf2f1c701c789a0/index.jsp?pageID=mayor_press_release&catID=1194&doc_name=http%3A%2F%2Fwww.nyc.gov%2Fhtml%2Fom%2Fhtml%2F2005a%2Fpr241-05.html&cc=unused1978&rc=1194&ndi=1.

5. Jennifer Medina, *Safety Agents are Defended After Two Arrests at City School*, N.Y. TIMES, Oct. 11, 2007.

6. They cite new laws that came on the books such as “disrupting public school” and “safety ordinances” that could be interpreted so broadly as to include almost any student misbehavior. *See, e.g.*, Jennifer E. Obidah, *From “Disruptive Student” to “Juvenile Delinquent”: Changing Patterns in School Discipline* (2003) (unpublished manuscript, *available at* <http://www.civilrightsproject.ucla.edu/research/pipeline03/research03all.php>); Victor Goode & Jennifer D. Goode, *The Toledo Safe School Ordinance: An Exploratory Study of Race and Safe School Violations* (2003) (unpublished manuscript, *available at* <http://www.civilrightsproject.ucla.edu/research/pipeline03/research03all.php>). Statutes similar to that of MASS. GEN. LAWS ch. 272, § 40 (2009) (for “disturbing a school in session”) located thirteen similar statutes in other states: ARIZ. REV. STAT. ANN. § 13-2911 (2002); CAL. EDUC. CODE § 32210 (West 2002); GA. CODE ANN. § 20-2-1181 (2004); IOWA CODE § 718.3 (2003); MD. CODE ANN., EDUC. § 26-101 (LexisNexis 2002); MONT. CODE ANN. § 20-1-206 (1971); NEV. REV. STAT. § 392.910 (2003); N.D. CENT. CODE § 15.1-06-16 (1999); R.I. GEN. LAWS § 11-11-1 (2007); S.C. CODE ANN. § 16-17-420 (1972); S.D. CODIFIED LAWS § 13-32-6 (1982); TEX. EDUC. CODE ANN. § 37.123 (2006); UTAH CODE ANN. § 76-9-103 (1973). Judith Browne of the Advancement Project was quoted in an article in *The Nation* as saying:

We’re seeing very minor conduct becoming a criminal act. Things a police officer might not arrest someone for in a bar fight, we’re seeing schools calling in police to make arrests for . . . It could be a student who refuses to sit down in class, or the spitball . . . In addition to getting the three-to-five-day suspension, these kids are getting arrested.

Annette Fuentes, *Discipline and Punish: Zero Tolerance Policies Have Created a “Lockdown Environment” in Schools*, NATION, Dec. 15, 2003.

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in mystery, are poorly understood by the public, parents, students, and even the courts, and are often subject to very different interpretations by police and school officials in each district. In the debate over whether police should be placed in schools, there is little information on how officers see their role and how they perform it. Their voices and perspectives are rarely included in the discussion.

Anecdotal evidence, along with the few studies that have been conducted, suggest that students of color, low-income students, and students with disabilities are at highest risk of getting arrested in school. Without clear guidelines, policies, and practices protecting them, these students are at risk of falling into the “school-to-prison pipeline” that pushes them out of school and into the criminal justice system. There have been surprisingly few studies conducted to understand exactly how schools and police negotiate differences and determine how to co-exist every day in the same space, with the same charge—yet with very different goals, orientations, expectations, and powers.

We have divided this article into several major sections. The first section will provide a historical overview of advocates’ concerns, and examine case law, nationally and in Massachusetts, which defines the role, responsibilities, and limitations of police deployment in schools. The second section will summarize findings of a series of interviews that the authors conducted of SROs and their police chiefs across the state of Massachusetts. In the third section, we summarize trends in the study. The article concludes with a series of recommendations for: (1) how to reconcile some of the ambiguities, inconsistencies, and inequities that mark the current system and practice; and (2) how communities, schools, parents, and police departments might work more effectively together to ensure not only safe schools, but also equitable educational opportunities for all students.

II. HISTORICAL OVERVIEW AND LEGAL LANDSCAPE

A. Historical Overview of Advocates’ Concerns About SROs

Zero tolerance hit the national news in the fall of 1999 when Jesse Jackson took up the cause of seven African American boys in Illinois who had been expelled for two years for fighting briefly, without weapons or serious injuries, at a football game.⁷ Prior to Jackson’s involvement, juvenile justice advocates and defense attorneys across the country had for years been noting the rapid increases in school suspension, expulsion, and school-based arrests. Many also testified to the stark racial disparities among those most harshly punished.

The Advancement Project and the Civil Rights Project released the first national report on zero tolerance, entitled *Opportunities Suspended*, in June 2000.⁸ Although the report focused primarily on the harmful effects of suspensions and expulsions on

7. See, e.g., Bob Wing, *Zero Tolerance: An Interview with Jesse Jackson on Race and School Discipline*, COLORLINES, Spring 2000, available at <http://www.colorlines.com/article.php?ID=338>.

8. ADVANCEMENT PROJECT & CIVIL RIGHTS PROJECT, *OPPORTUNITIES SUSPENDED: THE DEVASTATING CONSEQUENCES OF ZERO TOLERANCE AND SCHOOL DISCIPLINE POLICIES* (2000), available at <http://advancementproject.org/sites/default/files/publications/opsusp.pdf>.

children of color, it also touched upon the growing involvement of law enforcement in schools, and on the increasing tendency of school officials to criminally charge students for behaviors, such as minor fights and scuffles, that would have been kept within the school domain in the past. That same month, Russell Skiba, Professor at Indiana University, released a report entitled *The Color of Discipline*.⁹ The report found disciplinary referrals were substantially disproportionate based upon race; yet no evidence existed to suggest that African American students, particularly boys, act out in school more than other students.¹⁰ Rather, according to Skiba: “Black students . . . appear to be referred to the office for infractions that are both less serious and more subjective in their interpretation than white students.”¹¹ Skiba concluded that when this evidence was combined with other data, “it becomes likely that highly consistent statistical discrepancies in school punishment for black and white students indicate a systematic and prevalent bias in the practice of school discipline.”¹²

Soon thereafter, the term “school-to-prison pipeline” and the “schoolhouse-to-jailhouse track” became part of the national lexicon. These phrases describe the growing trend of school officials to refer students to law enforcement for acts committed while in school, and the increasing deployment of police in schools. Advocates’ concerns focused primarily on two issues. The first was that the presence of police in schools had the effect of “criminalizing” behaviors—such as minor scuffles, thefts, and “disruptions of school assembly”—that would otherwise be handled by school officials. The second concern involved the disproportionate numbers of children of color, most notably black boys, and children with disabilities who were being referred to the juvenile justice system for school-based offenses. These disproportionate numbers were particularly troubling in light of the huge racial disparities that characterize the juvenile and criminal justice systems within every state, and the high dropout rates among these populations. In terms of children with disabilities, many advocates observed that their clients were being charged for behaviors that were, in fact, manifestations of their disabilities, and therefore were legally required to be handled therapeutically, rather than through law enforcement.

9. RUSSELL J. SKIBA ET. AL., IND. EDUC. POLICY CTR., *THE COLOR OF DISCIPLINE: SOURCES OF RACIAL AND GENDER DISPROPORTIONALITY IN SCHOOL PUNISHMENT* (2000), available at <http://www.indiana.edu/~safeschl/cod.pdf>. Author Johanna Wald contributed to the writing of this report as a staff member of the Civil Rights Project.

10. *Id.* at 14, 16.

11. *Id.* at 13.

12. *Id.* at 19. The results of this report were striking in keeping with the disproportionate findings based upon race in the juvenile justice system that boys of color who committed the same crimes were charged, arraigned, detained, and committed at higher rates—often by factors of more than ten or twenty—than white boys. See EILEEN POE-YAMAGATA & MICHAEL A. JONES, BLDG. BLOCKS FOR YOUTH, AND JUSTICE FOR SOME: DIFFERENTIAL TREATMENT OF MINORITY YOUTH IN THE JUSTICE SYSTEM (2000), available at <http://www.buildingblocksforyouth.org/justiceforsome/jfs.pdf>; CHRISTOPHER HARTNEY & FABIANA SILVA, NAT’L COUNCIL ON CRIME AND DELINQUENCY, AND JUSTICE FOR SOME: DIFFERENTIAL TREATMENT OF YOUTH OF COLOR IN THE JUSTICE SYSTEM (2007), available at http://www.nccd-crc.org/nccd/pubs/2007jan_justice_for_some.pdf.

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B. Legal Framework Underlying Role of Police and School Administrators in Schools

In *New Jersey v. T.L.O.*, the U.S. Supreme Court ruled on the police function of school administrators searching students for contraband.¹³ The Court decided that school administrators' searches had to be limited in scope and based on reasonable suspicion, a standard of suspicion lower than police officers must show when subjecting a person to a search.¹⁴ Students, while not "shed[ding] their constitutional rights . . . at the schoolhouse gate,"¹⁵ had little in the way of constitutional protections or disciplinary incentive to demur from school administrators' searches. Subsequent court interpretations of *T.L.O.* increased the scope of permitted school administrator searches within schools and on school field trips, and increased the kind of searches from urine analysis to pat frisks and locker checks.¹⁶ The scourge of drugs—often without evidence of the actual presence of drugs in schools—has been deemed sufficient to justify an array of warrantless searches by administrators. Only recently has the Court drawn a line in the sand about what constitutes necessary evidence for an administrator to conduct a search, and the extent to which an intrusion on a child's privacy is justifiable as a function of the suspected threat to school safety.¹⁷ In *Safford Unified School District Number 1 v. Redding*, the Court concluded that a school administrator's strip search of a teen girl based on rumor of possession of ibuprofen went too far.¹⁸ Writing for the majority, Justice Souter stated:

Changing for gym is getting ready for play; exposing for a search is responding to an accusation reserved for suspected wrongdoers and fairly understood as so degrading that a number of communities have decided that strip searches in schools are never reasonable and have banned them no matter what the facts may be.¹⁹

Across the country, the issue of the legality of the use of police powers by administrators arises most regularly in the context of searches of students' persons or possessions. Overall, state courts do not protect youth from searches by administrators.²⁰ State courts do, however, offer administrators immunity from most

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

14. *Id.* at 342.

15. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969).

16. *See, e.g., Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 657–66 (1995) (holding that urine analysis was not a violation of a student athlete's Constitutional right to privacy because, among other factors, student athletes have a lower expectation of privacy due to their tendency to disrobe before and after practice and games); *Commonwealth v. Cass*, 709 A.2d 350, 352 (Pa. 1998) (holding that searching school lockers is permissible as long as the search is reasonable and limited in its objective); *In the Interest of Isiah B.*, 500 N.W.2d 637, 341 (Wis. 1993) (holding that no Constitutional rights were violated because a student has no reasonable expectation of privacy in his student locker).

17. *Safford Unified Sch. Dist. No. 1 v. Redding*, 129 S. Ct. 2633, 2642–43 (2009).

18. *See id.*

19. *Id.* at 2642.

20. For a definitive compendium and analysis of school search law nationwide, see Alexander C. Black, Annotation, *Search Conducted by School Official or Teacher as Violation of Fourth Amendment or Equivalent State Constitutional Provision*, 31 A.L.R. 5th 229 (2010).

claims that students' Fourth Amendment rights have been violated.²¹ The "substantial interest of teachers and administrators in maintaining discipline in the classroom and on school grounds" is based on the consensus of parents and prosecutors alike that meeting the need for school safety justifies such incursions on students' privacy.²²

With the passage of the Gun Free School Zones Act of 1990,²³ the merging of school administrators and police as forces of law and order within schools led to complex arrangements, including the delegation and division of authority and labor. The result has been confusion among police and administrators that continues to this day. This confusion focuses on where administrators' disciplinary roles stop and police powers begin, what conduct should be handled exclusively by school disciplinarians, and what conduct becomes an arrestable offense. Students, parents, teachers, the courts, and legislatures experience this confusion.

Massachusetts is no different. Administrators were granted expansive authority, effectively the equivalent of police powers, in the name of safety, order, and discipline to conduct investigations and search students' property and persons.²⁴ This "Fourth Amendment lite" imposed no obligations on administrators to notify students that the information they collected would be provided to the police and that prosecution could follow.²⁵ The advantage of this approach was that it increased the number of searches and neatly circumvented *Miranda v. Arizona*.²⁶

Massachusetts's highest court codified this approach in *Commonwealth v. Ira I*,²⁷ holding that school administrators who conduct searches of students are not agents of the police—and whatever they obtain in the course of such a search may be turned over to SROs or police officers for prosecution.²⁸ The court also declined the juvenile's "invitation to overrule the portion of *Commonwealth v. Snyder*"²⁹ that concluded that the *Miranda* rule does not apply to a 'school administrator who is acting neither as an

21. See generally *id.* (summarizing state cases involving school search law).

22. *T.L.O.*, 469 U.S. at 339; see also *Acton*, 515 U.S. at 657 (students on interscholastic sports teams have ceded heightened privacy expectations by taking their clothes off to change into sports uniforms). There is variation among state courts' views of school-based police officers' use of police powers. The central question is geographic: does the special context of the school environment reduce officers' obligations to students under the Fourth Amendment? Again, this issue is most routinely seen in the search context, which is more susceptible to legal challenges by defense counsel than arrests based on simple assaults or disorderly conduct. Thus, the majority of case law focuses on how closely SROs have adhered to the requirements of the Fourth Amendment, as well as whether they should have to do so in a school environment.

23. Crime Control Act of 1990, 18 U.S.C. § 922(q) (2006).

24. See *Commonwealth v. Ira I*, 791 N.E.2d 894 (Mass. 2003).

25. See *id.* at 902.

26. See *id.* at 900–01. See generally *Miranda v. Arizona*, 348 U.S. 436 (1966).

27. See *Ira I*, 731 N.E.2d at 902.

28. *Id.* at 899.

29. *Id.* at 901; see also *Commonwealth v. Snyder*, 591 N.E.2d 1363 (1992).

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instrument of the police nor as an agent of the police.”³⁰ The court came to this conclusion based on the absence of any record showing that “the police directed, controlled, or otherwise initiated or influenced” the school administrator’s conduct.³¹

This decision, like so many others across the country, rendered youth who are obligated to attend school by mandatory attendance laws, effectively without constitutional protection to object to a search by a school administrator. It empowered school administrators to serve in both roles—as police and as minister of justice at an intermediate or ultimate level of authority, depending on whether the case is passed off to the police or allowed to result in a school-based disciplinary action.

When police are introduced into these situations and are seen consulting with school administrators about whether and when to arrest, the administrators’ power is clearly enhanced. Police may not *explicitly* direct, control, or otherwise initiate or influence school administrators to undertake searches, but *implicitly*, this appears to occur. The access to SROs for consultation on whether an act is an arrestable offense increases the likelihood that school administrators will use such information for police functions. The result of these decisions suggests that school administrators’ roles in searches have usurped that of SROs; SROs instead play a more ministerial role, deciding how to use the information they obtain and whether to teach or punish youth.

Even a cursory review of hundreds of state court decisions shows courts’ disparate views of both the role of police in schools and the extent of police powers in the schools. This growing array of decisions manifests the degree to which the issue remains in flux in the courts—as well as in the schools—and the absence of a standard by which officers, police departments, school administrators, and youth advocates can chart their respective courses.

In case law, the scope of SROs’ rights has been explored with contradictory results. Factors including who *pays* the officer—the school or the police department—have been determinants in court decisions about the scope of power and obligations of SROs. In *People v. Dilworth*, an Illinois court ruled that the SRO, hired by an alternative school, could conduct searches of students for contraband in furtherance of school safety on a lesser Fourth Amendment standard of suspicion and without obligation to *Miranda*-ize the students searched.³² And in other decisions, the mere fact of being a police officer in the school was viewed as sufficient justification to reduce the standard of suspicion from probable cause to reasonable suspicion—the level of suspicion a school administrator needs to conduct and justify a search.³³

30. *See Ira I.*, 791 N.E.2d at 901; *see also Snyder*, 591 N.E.2d at 1369.

31. *See Ira I.*, 791 N.E.2d at 901.

32. *People v. Dilworth*, 661 N.E.2d 310, 315–18 (Ill. 1995).

33. *See State v. D.S.*, 685 So.2d 41, 42 (Fla. Dist. Ct. App. 1996); *In the Interest of Angelia*, 564 N.W.2d 682, 690 (Wis. 1997); *Commonwealth v. J.B.*, 719 A.2d 1058, 1065 (Pa. Super. Ct. 1998); *State v. Whorley*, 720 So.2d 282, 283 (Fla. Dist. Ct. App. 1998); *State v. N.G.B.*, 806 So.2d 567, 568 (Fla. Dist. Ct. App. 2002); *In re William V.*, 4 Cal.Rptr.3d 695, 699 (Cal. Ct. App. 2003); *Wilson ex rel. Adams v.*

A line of cases now differentiates between SROs and “outside” officers. For SROs stationed in schools, Indiana and Tennessee courts have ruled that it is permissible to use a reasonable suspicion standard, while “outside” officers must abide by the probable cause standard.³⁴ Another line of cases holds that if a police officer is doing what a school administrator would have done, the special powers and authority of the officer should not require special due process protections for students because the powers of the administrator and officer are equivalent.³⁵ Similarly, if police support a search initiated by a school official *outside* of school, the reasonableness standard prevails because the state’s interest in keeping youth safe trumps youths’ due process protections.³⁶

The overall effects of these decisions must be confusing for America’s fifty-four million public school students. The bottom line looks like this: Administrators perform the duties of law enforcement, but retain the power of a school administrator. SROs may act like teachers and counselors, but they have the power and authority of law enforcement agents. SROs may become confidants of students, yet anything SROs hear, find, or receive from an administrator may be used to prosecute students. An officer dressed in uniform has the same rights of search and seizure as a school administrator and is not hired to handle disciplinary issues, yet the officer can arrest a student for disrespectful and disruptive conduct. A school administrator can ask students for information, which students must provide or face suspension. The school administrator may then give that information to the police who can arrest students.

This confusion becomes even more problematic when one recognizes that the presence of police in schools rests on the presumption that youth understand what conduct may be corrected as a disciplinary matter and what conduct will lead to arrest. Yet, if adults are experiencing difficulty distinguishing between the appropriate and inappropriate characterizations of such behaviors, it is certain that youth will be similarly or more confused. To be sure, youth are aware that fighting, hurting, and stealing are wrong and can sometimes lead to arrest. But most are unaware of some of the more nuanced aspects of the law, or the extent of an officer’s discretion, which can result in charges for less overt wrongdoing or passive participation leading to joint venture charges, disorderly conduct, simple assault, and resisting arrest.

The principle that “ignorance of the law will not excuse”³⁷ is deep in our law, as is the principle that of all the powers of local government, the “police power is one of the least limitable.”³⁸ But due process places some limits on its exercise. Engrained in

Cahokia Sch. Dist. No. 187, 470 F. Supp. 2d 897 (S.D. Ill. 2007); *Vassallo v. Lando*, 591 F. Supp. 2d 172 (E.D.N.Y. 2008).

34. *See* *T.S. v. State*, 863 N.E.2d 362 (Ind. Ct. App. 2007); *R.D.S. v. State*, 245 S.W.3d 356 (Tenn. 2008).

35. *See* *Wofford v. Evans*, 390 F.3d 318 (4th Cir. 2004); *Milligan v. City of Slidell*, 226 F.3d 652 (5th Cir. 2000).

36. *See* *Shade v. City of Farmington, Minn.*, 309 F.3d 1054 (8th Cir. 2002).

37. DAVID C. BRODY, JAMES R. ACKER & WAYNE A. LOGAN, *CRIMINAL LAW* 76–77 (2001).

38. *Id.*

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our concept of due process is the requirement of notice. “Notice is required in a myriad of situations where a penalty or forfeiture might be suffered”³⁹

If notice is core to procedural and substantive due process rights, student handbooks are not sufficient. In schools where SROs work, rigorous effort on the part of school administrators and police officers to fully disclose and explain to youth—a group entitled to special treatment and protection under the law—the consequences of their misconduct would appear to be a core due process obligation.

As our summaries of the interviews in the following section testify, the legal ambiguity and lack of clarity regarding the roles of law enforcement and disciplinarians in schools are reflected and underscored in practice.

III. FINDINGS OF MASSACHUSETTS STUDY

A. Methodology

Between November 2008 and May 2009, we conducted interviews with school police chiefs and SROs in sixteen school districts in Massachusetts. These officers shared their models of how policing should work and how they interacted with students and school officials. We attempted to secure interviews in as broad a cross section of the state as possible, including rural, urban, and suburban districts. Our discussions were guided by a questionnaire,⁴⁰ but we allowed SROs to focus on concerns of greatest interest. The interviews generally lasted between one-and-a-half to three hours, and often involved several SROs simultaneously. We interviewed police chiefs separately because we believed it was important that SROs be able to speak freely, without worrying about the responses of their supervisors. We audio recorded and transcribed several of these interviews.⁴¹

For each high school in each district, we collected information on the number of assigned SROs and number of officers on the force, methods of deployment, use of radio systems operated by school administrators, number of school security personnel, use of dogs to search for drugs, use of metal detectors and surveillance cameras, number of youth and school administrators in each building to which SROs were assigned, average number of days of suspension for fighting, weapons possession, and talking back to teachers. Further, each officer interviewed was asked to describe how he would respond to the same scenario involving a fight in school.

We attempted to collect data on the numbers of youth arrested, issued summons, referred to clerk magistrates, issued incident reports, and referred to diversion programs. Despite repeated requests for data from every district we visited, we were only successful in obtaining data for six of the sixteen districts. Even in those districts, we were able to secure only minimal data on overall numbers of school-based arrests.

39. *Id.*

40. The questionnaire was used throughout the study and is available for review by contacting the Institute.

41. In interviews where transcripts had been completed, this article quotes directly from the transcriptions. In some instances, the quotes were taken from authors' notes. For confidentiality purposes, names and identifying information have been removed.

In no instances were these arrests disaggregated by school, race, sex, grade, or disability status. Our difficulty in obtaining this data has been mirrored by other individuals and groups throughout the country that have attempted to obtain school-based arrest data.

The difficulty in obtaining arrest, summons, and clerk magistrate referral data suggests an opportunity for better collection efforts by departments and schools. Without it, the claims of officers and schools are subject to challenge and dispute.

1. *Structural Considerations*

During the course of these interviews, we identified three structural considerations that affect the manner in which SROs are deployed, their relationship to the school and the community, and the responsibilities they assume within the school. These are:

1. Payment structure—does the school pay or does the police department pay?
2. The socioeconomic context of the school, especially vis-à-vis crime rates and the number of youth who are involved either with the Department of Children and Families (“DCF”) or the Department of Youth Services (the state’s juvenile justice detention and incarceration agency).
3. The number of available adults per student in each school.

Payment Structure. Of the sixteen districts studied, only one paid for all of the SROs assigned to its schools. The vast majority of districts had police departments pay for SROs in public schools. Many departments raised money for SROs through grants, most frequently the Community Oriented Police Services (“COPS”) program. Interestingly, when these grants dried up, many departments continued to fund the SRO program out of their own funds, although they sometimes chose to reduce the number of officers assigned to schools. Several claimed that even with imminent, extreme cutbacks about to take place, they were committed to maintaining SROs in the schools.⁴²

Some districts entered into cost-sharing arrangements that included:

- School districts paying for SROs over-time or part-time salaries;
- School districts paying for some fraction of all officers allocated to the schools, i.e., the school district pays for one of three officers;
- School districts and police departments negotiate the arrangement each year.

42. In fact, since our interviews, two districts eliminated their SRO program. In still another city, reductions in force were less extreme, and there was a decision by the Chief of Police, School Superintendent, and Mayor to avoid reducing the SRO force.

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In some cities, the decision to maintain SROs was strongly influenced by the Mayor and/or City Council's commitment to the program. All maintained that parents also strongly supported the program. The average percentage of officers allocated to SRO duties was approximately 3% of surveyed police departments' forces.

Schools' Socioeconomic Context. Some of the communities served by these school districts suffered high rates of unemployment, poverty, and family instability. Many of the students were being raised in single parent households and lacked male role models in their lives. In one school in an impoverished city, workers from DCF were at the schools to observe five to six youth daily. For instance, two SROs estimated that of the 1800 students in the high school they policed, at least 400 students were court designated as children in need of services ("CHINS")⁴³ and another 400 were in DCF custody or care.

The socioeconomic context played a major part in the SROs' perceived role in the school. On the positive side, many SROs believed that they offered a caring male role model to these students. In particular, they felt that the boys in the schools flocked to them for this reason. They saw themselves as counselors and coaches, as offering a "firm but fair" approach to misbehavior. SROs, especially those who were bilingual, reported that many parents turned to them for assistance in dealing with the school and other challenges they faced in their lives.

On the negative side, many of these schools employed a zero tolerance approach to school discipline, and the SROs assigned to these schools also reflected this approach in their treatment of youths' minor infractions (i.e., taking hats off). This attitude stood in marked contrast to the disciplinary approach used in more affluent, suburban schools with predominantly white student populations. In these suburban schools, administrators were often portrayed by SROs as protective of students and of the schools' reputation within the community; that is, they did not want it widely known if crimes were taking place in school. In contrast, in larger, more urban school districts where the majority of students were not white, SROs suggested that school administrators were more inclined to make an example of students' misbehaviors by taking a hard-line approach to discipline.

Some schools were literally awash in resources while others had none. Some schools offered sophisticated school-based clinical mental health services or referred youth to services in the community. In other parts of the state, neither the schools nor the community had services to offer.

SROs with heavily DCF-involved school populations were not trained in the kinds of stresses and trauma of youth who are DCF-involved, and the likelihood that

43. According to Massachusetts General Laws, police, parents, and guardians, and school officials can petition the court to designate a child in need of services for any of the following reasons: "[T]hat said child persistently runs away from the home of said parent or guardian or persistently refuses to obey the lawful and reasonable commands of said parent or guardian resulting in said parent's or guardian's inability to adequately care for and protect said child." MASS. GEN. LAWS ch. 119, § 39E (2008). Supervisors of attendance may petition a court for the same designation for the following reason: "[T]hat said child persistently and willfully fails to attend school or persistently violates the lawful and reasonable regulations of his school." *Id.*

such family issues might lead to disruptive behavior in school. Nor were the majority of SROs aware of the services DCF or community-based programs provide to work with youth demonstrating behavioral problems.

The Availability of Adults Focused on Keeping Order in High Schools. The ratio of school administrators to students varied greatly. The lack of data makes it hard to prove our hypothesis that the fewer the resources available to school administrators, the more likely they were to turn to SROs to assist with discipline issues. What is clear, however, is the differences in school administrator staffing across the Commonwealth's high schools: the staffing ranges from a 1-to-100 to a 1-to-540 student ratio.

Juxtaposing these structural factors suggests that in some areas, the lack of school resources for administrators and the relative poverty of the students and the communities lead to higher levels of police involvement and school-based arrests of youth.

Another pronounced trend reflected in the interviews was that schools and police were aware that it was easier to secure government funding for police in schools than to place social workers or more administrators in schools.

The lack of social services in the public schools located in poorer cities led many parents of troubled youth to “co-parent with the police.” Officers frequently noted that parents turned to them for assistance—where before they might have turned to a school counselor or teacher—in getting their children involved in structured activities, to stay off the streets, out of trouble, and away from gangs. One chief noted that in recent years, school-based crisis teams composed of psychologists, guidance counselors, and community support agencies had been lost to budget cuts.

One chief observed that the extent of “parenting deficits,” including perceived widespread drug abuse among parents and physical and sexual abuse of youth, caused systemic challenges for schools which were ill-equipped due to lack of staff: “I see blatant disrespect for school authorities, just open disrespect. The school has structured boundaries that don't exist at a lot of these kids' homes and they try to defy those boundaries.”⁴⁴

B. Chiefs' Visions of the Role & Function of SROs & Memoranda of Understanding

“Police officers, frequently in children's lives, have been seen as a malignant authority figure...Now, when an officer in school wearing a uniform is seen...helping kids, it turns the concept of authority from negative to positive.”⁴⁵

44. Interview with a police chief who led a department in a densely populated town on the outskirts of a large city (on file with authors).

45. Christian Pazzanese, *Just How Safe Can Police Make a School? Resource Officer May Help, but Many Doubt One Could Have Prevented Death*, BOSTON GLOBE, Jan. 25, 2007, available at http://www.boston.com/news/local/articles/2007/01/25/just_how_safe_can_police_make_a_school/ (quoting Framingham Police Department Lt. Paul Shastany).

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1. *Vision*

Some chiefs interviewed for the study articulated a very clear vision of how SROs should work in the schools. Other chiefs lacked an overarching vision or core philosophy, often viewing schools as simple extensions of foot patrols. Some chiefs were clearly not familiar with SROs' work or the effects they had on the schools in which they were deployed. Overall, chiefs viewed the use of SROs as a wise investment in crime prevention and community and relationship building. Many stated that they believed the long-term value in developing positive relationships between youth and police would endure as these youth grew into adults. They also frequently expressed the value of SROs in obtaining information from students about crimes, gang activities, fights, and other criminal activities taking place outside of school.

In districts where the chief was detached from the SRO program, the personalities, temperaments, and approaches to school policing of the SROs defined the program. In other words, the SROs made it up as they went along, and defined the job according to their own personalities. In these instances, chiefs only became involved when someone at the school or within the community voiced a complaint or expressed a problem. In some districts, we noted that the chief was articulate, eloquent, and innovative, but it was clear that the SROs had never heard any of the chief's views. In one case, the SRO appeared to be implementing a policing strategy diametrically opposed to the chief's vision.

Philosophies espoused by chiefs and SROs divided into two categories: the extended-beat approach (regarding SROs as law enforcement handling crime), or the caseworker approach (regarding SROs as case workers with law enforcement powers, who promote a high quality of life for teens and schools).

Extended-Beat Approach:

"What we tried to instill in the SROs is that they were a tool for the administration to use."⁴⁶

"We are there to keep order when the principal won't."⁴⁷

Caseworker Approach:

If the children have a problem, the SRO should be able to direct it to the right counseling people. He's supposed to solve the problem before it happens. He should be able to know kids' mood swings. They should look at him and always use the philosophy, instead of "running from the badge, running to the badge." He should be a friend first and an officer second.⁴⁸

"My philosophy is not to lock up the kids but to educate them. I play basketball, volleyball, eat with them, play chess, goof around and interact with them all day

46. Interview with a police chief in a rural district in eastern Massachusetts (on file with authors).

47. Interview with a police chief in a city with few resources in southeastern Massachusetts (on file with authors).

48. Interview with a lieutenant in a wealthy suburb of Boston (on file with authors).

long. That's key with this age group [middle school] and I know that is effective in controlling them."⁴⁹

2. *Memoranda of Understanding*

Legal advocates of youth often point to the memorandum of understanding ("MOUs") between school and police departments as a key document that defines the relationship and interactions between the two institutions. Yet in our interviews we found that most SROs were barely aware that MOUs existed, and rarely referred to them, much less used them as a guide. They appeared to be mostly pro forma documents that were filed away.

In fact, there was a strong and often repeated interest on the part of the SROs to keep as much of their work and interactions out of official writings as possible. Officers repeatedly stated that codifying the relationship between SROs and school administrators would impose paralyzing constraints that would sabotage the SROs and make them ineffective.

Interestingly, the National Association of School Resource Officers ("NASRO") strongly recommends the use of MOUs. NASRO Executive Director, Richard Caster, thought that joint school administrator/police development of MOUs "word for word" is critical:

Everything from what time the shift starts, who provides/pays for the cars, whether the SROs are going to football games, and overtime issues. There are a multitude of issues that you are going to stub your toe on if you don't work them out ahead of time. So if a school says, "No tasers," and police say, "It's part of the uniform," you have to have that arranged before the SRO comes in wearing a taser.⁵⁰

In Caster's experience, it is usually the communities that object to some aspect of the SRO's conduct—not school principals.⁵¹

C. *SRO Deployment Strategies*

*"Police in schools is nothing more than a deployment decision."*⁵²

The way in which SROs are deployed is central to the role they play within the school. Deployment determines *how* officers connect with youth and school administrators. We identified four different deployment strategies used by police departments and four factors that are key to understanding the role of SROs: 1) structure of deployment, 2) availability of an officer to be with students when there is no incident as well as when there is a request for officer intervention, 3) officers' approach to use of referrals to the juvenile justice system, and 4) the ultimate decision-

49. Interview with a patrolman in a city with few resources in northern Massachusetts (on file with authors).

50. Interview with Richard Caster, NASRO Executive Dir., February 2009 (on file with authors).

51. *Id.*

52. Coco McCabe, *At Seven Local Schools, a Police Presence*, BOSTON GLOBE, Oct. 31, 1999.

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maker—officer or administrator—whose characterization of an incident controls the outcome. There were also four arrangements between the SROs and the schools that were evident from the results of this survey:

1. *School-Based SROs*

*“It’s our little city for eight hours.”*⁵³

In this model, officers are assigned on a daily basis to a public school. Typically, they have no other responsibility in the school, although some will occasionally teach safety courses. They are “on call” constantly. These SROs report that a typical day consists of observing cafeterias, walking the hallways, patrolling the perimeter of schools, and responding to incidents. They have many opportunities to interact with students in informal and positive ways. Most SROs deployed in this manner are provided office space in the administrative quarters of the school. Depending on the school’s philosophy towards the role of the SRO, they may use the same radio and communications system as school administrators, thus allowing them to overhear all communications.

These SROs typically enjoy enormous discretion in deciding how to address a student incident. Most expressed a tendency to consult with principals before summoning or arresting a student, but not necessarily before referring one to the clerk magistrate. Many expressed their belief that referring students to the clerk magistrate was the most effective option; these “wake up” calls for students had the advantage of keeping them out of the more formal aspects of the juvenile justice system.

2. *School-Based High School SRO & Multi-School SRO Assignment Approach*

In this approach, SROs assigned to high schools employ the approach noted above, while a separate group of SROs is assigned to several middle and/or elementary schools. The officers working in the elementary and middle schools focus on classroom education, as well as respond to incidents. Importantly, these SROs are called to schools in lieu of patrol officers. These officers have some opportunity to interact with youth in non-incident settings, but the level of interaction is left up to their discretion and availability.

SROs at the high school level followed the pattern noted above in regard to the use of the juvenile justice system. Elementary and middle school officers typically eschewed use of the “system” until they perceived that every other option was foreclosed; and then, they tended to issue summons or make referrals to clerk magistrates in lieu of arrests. High school SROs’ discretion appeared to determine the use of the juvenile justice system. But in the elementary and middle schools, where officers were not consistently present, SROs’ decision making was necessarily more dependent on reports and characterizations of student conduct from school administrators.

53. Interview with a patrolman in a city with few resources in northern Massachusetts (on file with authors).

3. *SROs by Day, Patrol Officers by Night*

In this deployment structure, officers work in the school and then switch to evening shifts (typically 4:00 p.m. to midnight). This strategy employed the first approach, but the scheduling looped the SROs from the school to the streets. The information the SRO collected is shared with the evening officer and vice versa. In this model, both officers were considered the “go to” officers for all youth issues in the police department. They had time to interact with youth in non-incident situations and were keenly aware of their area’s juvenile demographic and its issues. This approach to policing generally made limited use of the juvenile justice system. Arrests appeared to be limited to instances of fighting in which the officers became physically involved, and instances where parents insisted on filing charges.

4. *Dedicated School Liaison Officers (Dedicated Call for Service)*

This approach assigned officers to a certain area where they were responsible for elementary, middle and high schools. They operated from their patrol cars on a call-for-service basis or to perform daily check-ins at their assigned schools. Due to the number of schools in their “sector,” they were unable to spend sizeable amounts of time in any school and had almost no opportunity for non-incident related interaction with youth. When not dealing with schools, officers in this deployment strategy take calls from dispatchers to deal with other community needs.

In this deployment approach, officers are best known to school administrators. The officers typically were called by school administrators to respond to an incident. Some officers issued summons and referred students to clerk magistrates for minor offenses, others moved to arrest the student if there were sufficient witnesses. In this system, the school administrator has the controlling discretion. While some officers would resist pressures to arrest, it was clear that they were both less well-positioned to challenge, and more pressured by dispatch demands to accept claims of administrators about students’ behavior. These officers were typically least likely to consider diversion programs.

Officers from almost every district asserted that when SROs are permanently deployed in a school building, arrests decrease over a period of several years. One group of SROs noted that “when parents trust the police, then the kids do, too.”⁵⁴ Many SROs say that students come into their office just to talk to them and to “cool down.” SROs described similar methods for relationship building including joking around, watching students play sports or, in two schools, actually playing sports with them, attending sports events and dances, and frequently becoming acquainted with a student’s family. As they become more familiar with the students, many SROs told us that they became more inclined to seek alternatives to arrest. The difficulty of obtaining data on arrests in a single year, much less over a period of years, makes it difficult to document their contention. Officers believed that the relationships they had developed with students—if only by sight—explain the decrease in arrests.

54. Interview with a patrol officer in a city with few resources in southeastern Massachusetts (on file with authors).

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These differences in school-based and call-for-service approaches were characterized identically by all surveyed chiefs and officers. To an officer, there was the overriding belief that call-for-service officers did not possess the patience or aptitude for working with youth, or the freedom from time constraints to work through problems with students. They believed that SROs assigned to the school were much more inclined to resist arrest, except as a last option, and to make efforts to address the root causes of the students' problems.

The different approaches used by school-based SROs and by police responding to calls-for-service were characterized in the following comments made by a very experienced, newly assigned SRO:

A police officer comes after the fact. A police officer has nothing to do with intervention. An SRO is all about intervention and resolution, about getting to the root of the problem. It's more satisfying instead of moving on to the next call. It surprised me. What's good about SROs and is different from being a patrol officer is that we have more responsibility, more time for follow up, and we can dig deeper.⁵⁵

The presence of SROs seen consulting with school administrators was perceived to boost administrators' power:

So you have two kids who were shoving each other. The principal gets the two kids and sits them in the lobby to the front office. In walks the SRO and the kids see him. The principal tells the SRO, "This is what I've got. What can I do?" The SRO then says you have these three options, bang, bang, bang and walks out. Now in come the two students and they've seen the SRO and now the vice principal knows exactly what he can and can't do.⁵⁶

In other cases, it appeared that the presence of the SRO produced a more lenient result for the student:

We got a call about a kid stealing sandwiches from the cafeteria. [The school administrators] want him arrested. We get there and talk to the kid and hear that he hasn't eaten since yesterday. That's not unusual with the kids in this school. A lot of them are really poor. Anyway, we're not going to arrest in those situations.⁵⁷

Several chiefs commented that it was a more efficient use of departmental resources to deploy officers to serve as full-time SROs than to tie up sector cars at the schools. They noted that before assigning full-time SROs, on some days they would receive five to ten calls from one school for assistance. Between the repeated

55. Interview with a patrol officer in a city with few resources in northeastern Massachusetts (on file with authors).

56. Interview with an officer in a wealthy rural district in eastern Massachusetts (on file with authors).

57. Interview with an officer in a working class town just north of Boston (on file with authors).

calls and the longer time necessary to process juvenile arrests, it made more sense to assign officers to the schools.⁵⁸

Two police departments explicitly bifurcated the function of officers: there was the avuncular, coach-like SRO, and the “no nonsense” authoritarian officer sent to schools episodically and solely to arrest and to show force.

It appeared that generally, the greater the involvement of the SROs in the school environment, the fewer arrests. Conversely, officers more distant from and unfamiliar with the school environment are more likely to use the juvenile justice system based on the school administrators’ characterizations of students’ conduct. Consider this officer’s explanation of that phenomenon:

Officer: The majority of the time, it’s always a summons to the court, unless it’s a criminal act in front of me then it’s an arrest. Essentially, when they’re calling you in, they’ve already decided they want this to be handled by law enforcement.

Q. So it’s either summons or arrest?

Officer: Yes, right. It could be a past incident. Say there was a fight, and then the parents come in and say, “I want this kid charged.” Then they’ll call me in and I’ll write up a summons and charge this child with a past incident.

Q. But essentially it’s the school principal’s decision about whether to do that?

Officer: Assistant principal or the principal, yes.⁵⁹

D. Selection of SROs

“You can’t act like John Wayne.”⁶⁰

Fourteen of the sixteen departments used a combination of self-selection and interview processes to select SROs. Many chiefs voiced a need to select individuals with the ability to interact well with children, to be flexible, and to exercise what one labeled “mature police judgment.” Almost all seemed to recognize that young police officers, bent on “chasing the bad guys,” did not represent a good fit for the SRO position. However, in only one community did the selection committee include members of the school and the community. In all other instances, the police department chose the SROs without outside input.

From the officers’ perspective, the commanding officers were looking for officers “who really shined on patrol” or “who had kids of their own,” and had the requisite “level of police maturity.” The selection processes did not appear to explicitly consider race,

58. In Boston, SROs respond to an average of eighteen incidents a day—fights, chasing students, incidents on the schools’ perimeters. The Boston school police union kept a daily blog to record the incidents. Tracy Jan, *School Police, Saying Halls Meaner, Seek Bulletproof Vests*, BOSTON GLOBE, Apr. 14, 2007.

59. Interview with an officer in a city in central Massachusetts (on file with authors).

60. Interview with an officer in a wealthy rural district in eastern Massachusetts (on file with authors).

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ethnicity, linguistic facility, or gender. In two or three larger cities, it appeared some SROs were chosen because of their linguistic and cultural backgrounds. The few officers who were bilingual said it helped immensely in working with youth and their families in the many cities that were home to increasingly large immigrant populations.

Only two departments' selection processes were constrained by union rules. Chiefs and officers alike thought that assignment determined by union rules regarding seniority or bidding rules worked against finding "good matches." The absence of public agreement on what makes a good SRO further undermined the chiefs' ability to argue against union control of the selection and assignment of SROs.

SROs and their supervisors elucidated a very consistent description of what qualities an SRO should possess. Among chiefs was a clear recognition that SROs needed to use their time in school to develop positive relationships with students, to gain their trust, and to reach out to their families. In order of frequency, they mentioned the following qualities as important for SROs to be successful:

- Must like youth and be someone youth find approachable:
 - Friendly, outgoing, willing to break the ice to develop rapport and gain trust, and willing to "speak to anybody, any time, anywhere"
 - Strong sense of humor
 - Strong ability to empathize
 - Demonstrate genuine interest and care for youth
- Disinterested judgment:
 - Willing to listen to and give youth benefit of the doubt
 - Willing to consider both sides of a story
 - Able to verbally interpret how the world works to youth
- Possessing police maturity:
 - Able to depersonalize situations
 - Able to use an array of approaches when dealing with stressful and relationship-building situations
 - Trained in related issues (sexual assault, hostage taking, working with victims, crisis counseling)
- Authoritative but not authoritarian:
 - Able to be patient and show restraint with adolescents, including knowing which comments to ignore
 - Able to pick battles
 - Able to distinguish between when to correct and teach, and when to punish

- Able to listen to youth and understand key aspects of adolescent behavior, which may include:
 - Testing limits
 - Experiencing and expressing intense emotions
 - Mood lability
 - Saving face with peers
- Flexible and agile in approach:
 - Willing to try different approaches before resorting to use of power as law enforcement
 - “Wear many hats and know when to switch hats.”

One chief said he chose officers who are “like a big kid, with great interpersonal skills, who likes to perform and has or has had a mischievous streak and understands that in kids.” This chief noted that the more legitimate the SRO appears, the more the school administrators embrace the SRO and use them for a variety of challenges. Joking and laughter is key, especially between male officers and boys. The value of such humor for youth is that it lets them test the officers’ authority and the boundaries of acceptable conduct with fewer consequences. Officers can also cloak their care and affection for youth in humor, as well as use the relationship to demonstrate the rules and boundaries.

The issue of officers’ boundaries was raised only once by a chief who had learned the hard way what happens when SROs’ boundaries with students are not maintained. Two SROs in his district were arrested, one for child pornography and the other for assault. The temptations to fraternize inappropriately are particularly dangerous in high schools. The lack of oversight and the deference and legitimacy given the officers may render maintaining boundaries problematic.

Police maturity—independent of an officer’s age—is critical for SROs. As one chief noted, “[We give them] [s]o much discretion, we give them a lot of rope and that requires someone with maturity to take responsibility seriously.”⁶¹ Police maturity was of special importance in understanding officer reactions to youths’ expressions of disrespect towards teachers, school administrators, and officers. Some officers recognized that resorting to “extreme authoritarianism” or assuming that their uniform would achieve compliance were outdated concepts that would not work with many youth and would provoke such adversarial responses that the interaction would escalate. Other officers, arguably less able to distinguish which battles to pick, reported that they would not tolerate any expression of disrespect. Their explanation was that their zero tolerance approach would make the schools safer and the learning environment more educational.

61. Interview with a sergeant in a working class suburb of a city in western Massachusetts (on file with authors).

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1. *Training*

*“No kid is born bad.”*⁶²

SROs are not required by any state statute to receive any specialized training before becoming an SRO or working with youth. Approximately half of the departments that we interviewed had sent their officers to attend SRO training offered by the NASRO. The focus of this training is to

get an officer out of a patrol car and into the frame of mind to be in a school. It’s quite a transition A SRO at a normal high school will have more human contact in one day than a patrol officer in a car would have in one or two months. Officers find it more exhausting. Things are constantly demanded of you and you have to multi-task.⁶³

The NASRO training lasts forty hours and focuses on juvenile and education law, and on the permissible use of force. The NASRO training model is based on research that demonstrates that an SRO’s work is 50% law enforcement, 30% counseling, and 20% teaching for law-related subjects. Director Richard Caster noted that counseling is with a “small ‘c’ so kids don’t think you are a trained counselor and there are limits to the confidentiality they can assume with you [an SRO] and to get the kid the right professional support.”⁶⁴

A typical week of NASRO training focuses on building rapport with students, learning special education laws, and gaining interrogation and interview skills. The NASRO strongly recommends school principals take the interview and interrogation skills class. The NASRO noted that the funding available to train officers has been drastically cut at the federal level and those cuts are affecting the number of SROs attending its trainings. Some departments permit or encourage SROs to attend trainings offered by their local District Attorney’s office. The subjects of these trainings occasionally included information on how the teen brain works, but predominantly focused on how to prosecute gangs, illegal gun possession, and Internet crimes.

Most of the SROs had not received training in adolescent psychology or development, or in diffusing potentially volatile situations. Many assumed that their intuition, experience, or gut instincts were sufficient to carry them through their assignments. Yet, as many officers described interactions with students who appeared to be suffering from trauma, it was clear that many really did not understand the behaviors associated with those chronically exposed to trauma or violence. The response to interview questions about whether officers would like more training revealed much about how they perceived their role. Those officers who perceived it as an extension of regular police work typically were less interested in training:

62. Interview with an officer in a city with few resources in southeastern Massachusetts (on file with authors).

63. Interview with Richard Caster, *supra* note 50.

64. *Id.*

I think officers are probably choosing not to [go to courses on adolescent development and mental health issues] because that really isn't our role It is good to know those things, of course, you've got to learn them if you're doing the job. But we aren't supposed to be counselors in that sense.⁶⁵

Officers who worked intensely with youth were often inclined to ascertain the motivating causes of youth behaviors, and were generally far more receptive to receiving training about adolescent psychology than peers who seemed less interested in addressing underlying causes of youth behaviors. They expressed interest in more fully understanding the triggers and reasons for youths' behaviors and outbursts: "We want more legal information on how to question kids without their parents, how teens think, and the different changes in our communities. We have a lot of immigrant kids and we don't know anything about them."⁶⁶

One department invited and paid for school administrators to attend the NASRO training with their SROs. The police department's goal was to clarify the role of the SRO and set forth reasonable boundaries for administrators' expectations of the police:

There can be a huge basic difference between the way cops think and the way administrators think. What we did in order to help bridge the gap between the different perceptions between police and school is we brought all the administrators with us. . . . So they got the same training that we got on how you manage things within a school [Local instructors in Massachusetts law] were particularly great because what they do is they differentiate between what an administrator can do under the law versus what a police officer can do because there are different standards that we operate on. But some of our guys came back from the NASRO training saying, "We had to correct the instructors a couple of times because what they were saying doesn't work."⁶⁷

Significantly, it also seems that when schools adopt programs such as Positive Behavioral Interventions Systems ("PBIS") or Trauma Sensitive Schools that employ specific strategies for addressing student behaviors, the officers do not appear to participate in the trainings given to teachers or school officials. This lack of integration with other school officials means that while the school employs one form of discipline, the officer may be operating under a totally different set of assumptions. The unpredictability and lack of consistency of adult response in such situations may provoke confusion and, in some cases, harm students.

Finally, national standards for police departments set by the Commission on Accreditation of Law Enforcement Agencies requires that officers working with youth be well versed in available community-based resources for youth.⁶⁸ Yet only one district had trained its officers in such information; the vast majority did not

65. Interview with a police chief in a city with few resources in southeastern Massachusetts (on file with authors).

66. *Id.*

67. This was the approach of a police chief in a wealthy rural part of Massachusetts (on file with authors).

68. THE COMMISSION ON ACCREDITATION OF LAW ENFORCEMENT AGENCIES, STANDARDS FOR LAW ENFORCEMENT AGENCIES AMENDMENTS (2006).

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know of local resources or alternatives to the court system. This represented lost opportunities to provide youth with structured after-school programming and various kinds of services, especially in the districts where this represented the central aspect of the SROs' duties.

2. *Effective SROs Play an Interpretive and Educational Role*

"We're looking for kids to pause, stop, and think."⁶⁹

Interviews demonstrated that many SROs deliberately choose to empathize with students. The actions resulting from this empathy could be dramatic. Consider both the theory and practice that officers described in one extremely racially and culturally diverse high school in an impoverished city with a high school student population exceeding four thousand:

Our approach is anti-authoritarian first. Every kid is different and we treat them like human beings. We remember that we don't have to agree with everything they say, but we do have to listen. So we try to inverse the symbolism of our role: we listen first before we do anything.⁷⁰

This was apparent when officers responded to a knock on their office door during an interview for this report. A school cafeteria official was at her wits end trying to calm an Asian boy screaming and threatening a Latina girl while impermissibly holding her cell phone. Fearing that the students in the cafeteria would egg on the dispute, the school official asked for help from the SROs. One SRO spoke to the girl in Spanish and suggested she stay away from the boy—who turned out to be her boyfriend—for the rest of the day. He made sure the boy returned her cell phone. The other SRO invited the boy into the SRO office, told him to breathe and unclench his fists. The officers gave the boy five minutes to calm down and suggested breathing exercises.

Then the SROs described what they had observed and asked the boy what he had said to his girlfriend. The boy explained that he would not tolerate his girlfriend receiving texts from other boys. While they listened, one SRO printed out a fact sheet on domestic violence. The SRO read the fact sheet out loud to the boy two or three times. Both SROs kept speaking to the boy and asking him about his relationship with the girl, with his own mother, and what his home life is like. When the boy left, the SROs explained that they knew the boy's family and that he is "basically raising himself. His parents both work two jobs and are never home."⁷¹ One of the SROs planned to call the boy's mother, arrange a home visit, and work with the school to refer the boy to an anger management class.

This empathic, interpretative, and educational approach was not uniformly evident among the SROs with whom we spoke, frequently because officers did not recognize the source of the conflict (i.e., a student's mental health or family issue) or

69. Interview with an officer in a wealthy city outside of Boston (on file with authors).

70. Interview with an officer in a city with few resources in northern Massachusetts (on file with authors).

71. *Id.*

chose a strict law enforcement approach instead. For instance, in that same department, another officer described arresting a ten-year-old boy for opening the front door to the school after he had been told repeatedly not to do so by the assistant principal. The more the administrator and officer yelled at him, the more the boy did the opposite of what he was told to do. “What else was there for me to do?” the SRO asked, recounting the story. “I had to arrest him. He was driving the A.P. berserk and not listening to any of us.”⁷²

Officers who saw the importance of adopting an educational and interpretative approach felt this was especially important for youth with busy, neglectful, abusive, or otherwise inadequate parents. More so than cultural or class differences, officers attributed students’ misconduct to poor parenting and tended to give parents in cities less benefit of the doubt. Many attributed students’ bad behavior to the negligence of parents working two or three jobs, to drug addicted parents, not caring, abusive, or simply too busy to care or notice. Several officers suggested that parents are out of touch with their children’s school lives.

E. Relationships Between SROs and School Administrators

“The secret to a good relationship is wanting the same thing: a partnership to keep the school under control.”⁷³

The decision to place SROs in public schools was usually made by school superintendents, police chiefs, and mayors. Such decisions appeared to be strategic in nature and depended on these leaders’ ability to obtain financial support. The implementation of that decision was generally negotiated by SROs and principals, with relatively little input from police chiefs beyond the general outlining of an approach.

SROs and command staffs noted that their relationship with each principal was unique and required a negotiation and adjustment period. One lieutenant in a wealthy suburban district noted that, “[i]nstead of a policy with strict centralized authority, each school is a fiefdom here. We have some schools that call us constantly and some that never call.”⁷⁴ Elsewhere, command staffs noted similar variations manifesting differences in administrators’ relationships with SROs, the extent to which school administrators determine the extent of collaboration with police, and the extent to which they want police to assert their authority in lieu of school-based disciplinary measures.

The NASRO’s Executive Director commented on the challenges facing school principals and SROs in their efforts to work together:

If the administration doesn’t understand the ramifications of both of them working together, it won’t be as effective as it could be. Police need to understand the legal role of the principal and vice versa. They have different powers. How

72. Interview with an officer in a city with few resources in northern Massachusetts (on file with authors).

73. Interview with Richard Caster, *supra* note 50.

74. Interview with a lieutenant in a wealthy suburb of Boston (on file with authors).

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you collaborate between the two and how the powers intertwine is determinative. Police can't ignore the principals: the principal thinks that the police officer has another thing coming if he thinks he can control this building.⁷⁵

SROs and commanding officers noted that relations had to be re-established when there was a change in administrator. One department described the “sinking feeling” they experienced when a new superintendent dismantled an SRO program. Three years later, a new superintendent wanted to implement it again. As this department's chief noted “[t]he school administrators determine whether or not you [the SROs] are going to be successful.”

Below, we note some of the types of relationships that appear to characterize school/police relations:

1. Cooperation & Collaboration

In these relationships, the level of articulation, communication, and collaboration was high between SROs and school administrators. One group of officers used the term “symbiotic” to describe the relationship. The close working relationship was evidenced in a myriad of ways including sharing a radio, school administrators developing a strong consultative role with SROs, and formal and informal meetings between SROs and school administrators daily or weekly.

School administrators' use of SROs for consultative purposes was widespread. One chief saw schools embracing a division of labor in which principals handled school academics and SROs handled behavioral issues. The primary reason principals consulted with SROs was to ascertain when and for what conduct students could be arrested.

SROs reported that they have a genuinely counselor-like relationship with principals, in which various ideas and options for working with particular youth are discussed frequently. SROs reported being asked by principals to make home visits to follow up on cases of particularly troubled youth.

Few chiefs took a proactive role with school departments or principals. One chief, who did reach out to school leaders in a major city, said he routinely spoke with principals to understand their concerns. This chief's perspective on principals was instructive:

They are punished for hesitating to respond with police. They are basically invited to over-report. City principals are not worried about having a reputation of being tough on crime and inviting the police in while suburban schools, which may have the same problems, won't allow them in or address the problems.⁷⁶

2. Confusion & Conflict

Only three of the sixteen departments described overt hostility by school administrators toward SROs. In one case, the result was a decrease in arrests as well

75. Interview with Richard Caster, *supra* note 50.

76. Interview with a police chief of a department in a city with few resources in northern Massachusetts (on file with authors).

as constant surveillance of the SRO by the school administration. In the other two, an uneasy *détente* prevailed.

Some SROs and command officers in these three departments ascribed administrators' opposition to SROs as a pedagogical and philosophical matter. Others thought that the conflict derived from an implicit fear that SROs would try to control their schools. Officers thought that some of the hostility derived from school administrators refusing to recognize the dangers within their schools and "put their head in the sand to avoid it."⁷⁷ Repeatedly, suburban and more affluent school districts were characterized as most opposed to SROs for fear of being "embarrassed" by what SROs might find in the schools. The NASRO's Executive Director said similar divisions exist across the country.

The ability of school administrators and SROs to use the same lens through which to view student misconduct was key to effective relationships. If police viewed student conduct through the "crime" lens and administrators through the "normative youth development/discipline-only" lens, there was tension. Conversely, if police viewed student conduct through the "normative youth development" lens, and viewed school-based misconduct as a "quality of life" infraction, and principals viewed youth misconduct as a criminal offense, principals would be frustrated with the officers' refusal to arrest more frequently.

Consider this chief's recognition of how viewpoints had both changed over the last twenty years, and determined how youth misconduct was treated:

Most school issues always have been criminal, if they wanted to make them that. Fights are criminal, stealing is criminal, but they never used to have the police involved. If you realize, before police were in schools, principals never called the police for fights, for even marijuana and drugs. I mean we never even knew what was going on. So now you've got these two entitled groups that have to work together, and when we set the program up, it was made clear that the officers had discretion to work with the principals.⁷⁸

In one of the three districts where school administrators were reportedly hostile to SROs, the police department took a very authoritarian, zero tolerance approach. The chief in that district was unhappy with the schools' opposition to officers' arrests. He characterized school leaders as being in denial: "They should be a lot more concerned about the possibility of Columbine than they are. We feel there is a great potential for danger and we always see the potential for disruptive behavior. But the school administrators don't want criminal activity reports out."⁷⁹

Many SROs ascribed principals taking recourse to the police when "they are fed up with the kid."⁸⁰ SROs said that principals routinely turn to the police when

77. Interview with a police chief of a department in a city with few resources in southeastern Massachusetts (on file with authors).

78. Interview with a police chief of a department in a working class suburb east of Boston (on file with authors).

79. Interview with a police chief of a department in a city with few resources in southeastern Massachusetts (on file with authors).

80. This comment was made by at least ten officers during the course of the study.

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students disregard their directives, parents do not appear for suspension and expulsion hearings (for which they are required to be present), they have “given the kid 10,000 second chances and can’t give any more,” or they don’t know how to handle students’ defiance.

When dealing with children who are known to have special needs due to either low IQs or other developmental limitations, officers appear to resist principals’ pressures to arrest students. In the story below, the use of arrest for special education students’ misconduct gives pause:

And I’ve been called into situations where, for instance, there was a girl who was in a residential placement because she was very low level [functioning]. And she was just pulling a nutty one day in the school. She understood who I was and what my job is, and the principal’s looking at me saying, “She’s disorderly at this point, she’s disruptive, arrest her, arrest her.” I’m like, you know, I can do that, and it was approaching that that was going to happen but I’m like, “You know what, let’s find a spot for this person in the special ed office so she can get to the people she needs to speak to, to calm her down, and then once she’s calmed down, we can explain the whole situation to her . . . ”⁸¹

Ironically, with some special education students, SROs’ understanding of *mens rea* has given them the ammunition to prevent principals from pushing certain youth out of school.

F. SROs’ Role in Deciding When to Issue a Summons or Make an Arrest as Part of School Discipline or Zero Tolerance Infractions

*SROs to Principal: “This is not yours. This is mine.”*⁸²

SROs are enlisted to enforce school discipline and “order.” This is evidenced by available arrest data and SROs reports of the top reasons for arrest: 1) disturbing a school in session, 2) assault and battery, and in contest for third place were possession of marijuana and larceny. Notably, assault, possession, and larceny are the top charges brought against juveniles outside of schools in the state of Massachusetts. The fourth charge is typically disorderly conduct, which often results from acts of disrespect towards officers, as well as from rowdiness and loud public behavior; other times it is characterized as disturbing a school in session.

1. You Say School Discipline, I say “Disturbing a School in Session”

Irving Piliavin and Scott Briar identified a characteristic of juvenile arrests in their 1964 study of officers in a large, unidentified American city in which officers transferred attention from the “offense to the offender.”⁸³ This appeared to be a regular approach many school administrators used and urged SROs to support:

81. Interview with an officer in a wealthy, rural district in eastern Massachusetts (on file with authors).

82. Interview with an officer in a city with few resources in southeastern Massachusetts (on file with authors).

83. See Irving Piliavin & Scott Briar, *Police Encounters with Juveniles*, 70 *Am. J. Soc.* 206, 213 (1964).

In practice, the official policy justifying use of discretion served as a demand that discretion be exercised. As such, it posed three problems for juvenile officers. First, it represented a departure from the traditional police practice with which the juvenile officers themselves were identified in the sense that they were expected to justify their juvenile disposition decisions not simply by evidence proving youth had committed a crime . . . but in the *character* of the youth. Second, in disposing of juvenile offenders, officers were expected, in effect, to *make judicial rather than ministerial decisions*. Third, the shift from the offense to the offender as the basis for determining the appropriate disposition substantially increased the uncertainty and ambiguity for officers. . . . Officers were constrained to *base disposition decisions on the character of the apprehended youth* . . . because persistent failure to do so could result in judicial criticism, departmental censure, and, they believed, loss of authority with juveniles.⁸⁴

A similar dynamic appears to occur in schools when youth are disobedient and disrespectful or marginally involved in an infraction of school order. In these situations, SROs implicitly consider whether the offender or the offense is more important to address. By characterizing a defiant youth's behavior as disturbing a school in session, officers can kill two birds with one stone: address the character of the offender by labeling the conduct a criminal offense.

What conduct merits arrest, and how it can "be stretched to meet the elements of a crime" becomes the unique purview of the SRO and is influenced by a variety of issues, including the frequency with which students' conduct is disruptive, the degree to which the SRO views the youth's behavior as arrestable, and the pressure from school administrators. There was substantial variation in what was sufficient evidence to file a summons or refer a case to a clerk magistrate.

The default assumption underlying police responses to discipline infractions is that the failure stemmed from school administrators' inability to assert authority. Consequently, SROs may escalate the situation by raising the stakes. For some youths, increased assertion of authority is tantamount to repeating directions more loudly to someone who doesn't understand or can't follow them. For others, the SROs are the authority figures who matter and are effective in "getting their attention and giving them a wake up call."

SROs in other schools viewed themselves as the ones who could get through to the kids that the school was only too happy to write off and push out. These officers actively resisted pressures to take action against youth: "The schools are harsher than I am about adherence to the school handbook. I'm all about prevention and intervention and not arresting. I want to make sure the kids are getting the services they need."⁸⁵

Some SROs reported that they warned principals that teachers were setting up students for arrest, goading youth into losing control, and calling in officers to arrest. SROs described how they mediated the interests of the school administrators and students in those situations: "Teachers overuse the police for kids misbehaving in

84. *Id.* at 208–09 (emphasis added) (internal citations omitted).

85. Interview with an officer in a wealthy city near Boston (on file with authors).

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class. Some schools just won't handle the kids through the protocol and call us in to arrest them. These teachers need to learn more classroom management skills."⁸⁶

Thus the power of SROs, in conjunction with some principals' expectations and pressure for arrest, and in a context with little external oversight, has led to officers having unprecedented power in deciding who and how to charge, and into which door of the juvenile justice system the youth will enter—diversion, peer mediation, clerk magistrate, youth court, or arrest and juvenile court. SROs are often mediating frustrations of teachers and administrators on one hand, and considering which charges will stand up in court on the other.

There is substantial variation in what was deemed sufficient evidence to file a summons or to refer a case to a clerk magistrate and in whether an officer needed to observe an act or simply hear about it before arresting youth or referring them to a clerk magistrate for a hearing. SROs are divided as to whether an arrest or a summons is an appropriate response to students' discipline behaviors. When they characterize it as an arrestable offense, officers are astonished that detailing the repetitive nature of such disciplinary infractions in their police reports does not overcome some judges' decision to dismiss such cases at arraignment.

2. *Procrustes & the Police Officer*

The views of SROs and administrators determined whether the offense deserved police attention. SROs' approach to triaging generally, but not always, mimicked the categorization and labeling administrators and teachers had already conferred on students: those who were "salvageable" and "worth saving" were protected, and those who were not were sent into the system. SROs who disagreed with the pecking order or resisted arresting certain youth reported that they were criticized by teachers and administrators.⁸⁷

Consider the differential treatment of athletes as a case in point. In many schools, athletes were a protected class. When the SROs agreed, there was little conflict:

If it was one of those things where you're an athlete, you get good grades, and this was one of those things when she stepped on your cookies, and you got upset and gave her a shove, you're still going to have to deal with some consequence, but you know what, let's put him in diversion . . . good candidates for diversion would be someone that just had a bad day, stubbed a toe against the system and we can deal with it.⁸⁸

In others, SROs were in conflict with school administrators when the administrators refused to treat athletes differently: "The school wanted us to look the other way with these athletes for [underage] drinking and other infractions. But the

86. Interview with a sergeant in a city with few resources in the western Massachusetts (on file with authors).

87. This is in keeping with what Piliavin and Briar observed among police officers in 1964. See Piliavin & Briar, *supra* note 83, at 209 n.15.

88. Interview with an officer in a wealthy, rural district in southeastern Massachusetts (on file with authors).

chief and I refused and sat with them until the MOU made it clear that we were not going to look the other way. We leveled the playing field here.”⁸⁹

Similarly, youth who appeared more academic, more in conformity with what a school wants of a student, were perceived to conform to the behavioral expectations and less likely to be considered suspicious by teachers or administrators. *Attitudes* considered inappropriate—even *absent inappropriate behavior*—led to increased suspicion and put youth at risk of heightened visibility on both administrators’ and police “radar” for court involvement.

Because they are the last stage of the triage hierarchy (first teachers, then school administrators), officers’ perception of which youth deserve summons and arrests can be pivotal. Thus, officers’ lack of awareness of factors motivating youths’ behavior and officers’ assumptions about the intentionality of youth behavior and the view that only students should be accountable for disruption, typically led officers to reflect the discipline choices made by teachers and administrators. These decisions overwhelmingly affected the most vulnerable youth—youth without parental advocates, in need of behavioral support, crying out for help by being disruptive, and youth of color. The racial disparities that have been well documented among those students who are most often arrested in school also suggest that implicit bias of SROs may play a role in these results.

3. SROs’ Handling of Zero Tolerance Rules for Fighting

Many officers recognized that fighting among youth is normal if not normative. But their responses to a test scenario describing a fight varied greatly as a function of the extent to which they felt it necessary to implement a zero tolerance policy for fighting—policies derived from the school’s code or of officers’ view of how fights should be handled. Officers fairly routinely reported that school administrations’ and teachers’ responses to fights were “hysterical.”⁹⁰

SROs in all sixteen departments surveyed were asked how they would respond to the same scenario, in which two girls are fighting in a school hallway. During the course of the fight, one girl kicks the other. SROs come upon the fighting girls and separate them. The scenario explicitly involved kicking because such conduct often occurs during fights and can be charged as an assault and battery with a dangerous weapon—a “shod foot.” This charge is a felony and allows a principal to indefinitely suspend a student while charges are pending.⁹¹

89. Interview with an officer in a working class city just north of Boston (on file with authors).

90. Consider, for example, the story of a fifth grader being interrogated after drawing a “picture in art class of an Internet game figure wearing a timer on his belt and a cartoon bubble over his head saying he had a bomb. School officials waited a full day before calling police and the Fire Department and conducting a two-hour interrogation of the 10-year-old without a parent present, said the boy’s mother . . . No bomb was found, but the boy was suspended for two days.” Kay Lazar, *When School Needs Counter Student Rights: Questioning Raises Legal Issues For Some*, BOSTON GLOBE, Mar. 27, 2008.

91. Under Massachusetts General Laws, principals may indefinitely suspend students charged with a felony, such as assault and battery with a dangerous weapon, “for a period of time determined appropriate” if

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There appeared to be two approaches to officers' decision making. One officer characterized the approaches as "giving you an opportunity for intervention or for suppression."⁹²

The intervention approach depends on officers' making an effort to *understand* the fight and the fighters in their larger context, including the fight's causes and origins, and consider an array of options in response:

- Are the girls fighting in school to be safe?
 - These officers perceived that many fights occurred in school because youth hoped officers would referee the fights and break them up before they became dangerous.
- Is anyone injured?
 - What is the severity of the injuries?
- Don't I know you?
 - "Frequent flyers" got less benefit of the doubt and fewer opportunities to explain themselves or take advantage of [yet another] mediation option.
- What's the subtext of the fight?
 - Is one of these girls resisting gang recruitment? Is there a boy involved? Is there bullying? Is one girl a victim of the other?
 - Are any of these girls known to be special education students or experiencing severe problems at home?

The officers following a suppression or strict zero tolerance approach thought about the incidents in the manner chiefs routinely described as a "black and white street cop." This approach was characterized by an approach to *stop and control* the incident:

- The rule is no fighting in school:
 - Is this a first fight for the girls involved?
 - If so, clerk magistrate summons.
 - If not, arrest.
- How severe is the fight?
 - Can we charge for assault and battery with a dangerous weapon or aggravated assault and battery with serious bodily injuries?
 - Were weapons used?

the principal deems the student's continued presence in school would have a substantial detrimental effect on the general welfare of the school. MASS. GEN. LAWS ch. 71, § 37H1/2 (2008).

92. Interview with an officer in a town in northeastern Massachusetts (on file with authors).

4. *Zero Tolerance for Contraband & Student Searches*

Following the U.S. Supreme Court case of *New Jersey v. T.L.O.* in 1978, school administrators may initiate searches of students and their lockers based on a very low standard of suspicion.⁹³ Students have little expectation of privacy and school administrators have no obligation to provide youth with due process rights. This approach was based on the assumptions regnant in the 1970s, including that school safety required immediate access and that contraband obtained by principals did not warrant police involvement. The approach to searches by school administrators has changed with the advent of SROs. Thus, what was once an interaction between a student and a school official now involves police officers and the court system.

The impact of the Massachusetts Supreme Judicial Court's 2002 decision in *Commonwealth v. Ira I.* has resulted in a system in which administrators are conducting most searches and questioning youth.⁹⁴ When contraband is found on a student's person, in their backpack, or locker, administrators call police in to enforce the law. As a result, the role of police in school searches has both shrunk at the search stage and expanded enormously at the "ministerial" stage, in which they decide what level of juvenile justice system involvement the student merits. Officers conduct fewer searches because they don't need to; school administrators are not constrained by Fourth Amendment requirements like probable cause. With their greater latitude as to when and whom to search, administrators can increase the number of youth searched and turn over the information to the officers once contraband is located. SROs found this approach to work well; the *Ira I.* ruling has increased the expediency with which such searches occur and court involvement begins, while reducing demands on police.⁹⁵

While SROs were generally not aware of *Ira I.*, they were aware that school administrators could conduct searches without being viewed as "agents of the police." Most SROs were also aware that they needed to keep a physical and visual distance from the school administrator during searches. Summing up what the majority of SROs said about administrator-initiated searches, one officer stated: "I don't want to be there, or anywhere near."⁹⁶ One group of SROs understood *Ira I.* to also prohibit SROs from tipping off administrators about which students should be searched, recognizing this would effect an end run around the ruling. But one department's officers were not aware of *Ira I.*, and refused to take any evidence collected by administrators; in fact, they felt administrators' searches usurped the police role.

In one district, searches for drugs were conducted with SROs standing by in anticipation of locating a weapon during the search. SROs there said their cases had never been dismissed by the courts—even though the students were not given their *Miranda* rights by the officer observing the search. Officers said that the District

93. 469 U.S. 325.

94. 791 N.E.2d 894.

95. *Id.* at 900–01.

96. Interview with an officer in a school district in a suburb of a western Massachusetts city (on file with authors).

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Attorney's assertion that officers were nearby during administrator searches solely for protecting the administrator's safety during the search was routinely accepted by the court and went unchallenged by defenders. This was so in spite of the fact that the SROs in this urban school district noted they had not found guns on students and only occasionally found knives.

The use of police canine units for drug searches is prevalent. The majority of searches were initiated by police departments on a random basis. A minority of schools requested the searches. Schools go into "lock down" mode when dog searches are conducted. In schools that are too big to be searched in their entirety, sections of lockers are targeted. Officers reported that they rarely found contraband.⁹⁷ Parents and communities generally did not oppose the searches. Where there was opposition, the police mounted all the evidence they had—sometimes evidence as minor as several flakes of marijuana—and asserted that as police they had an obligation to eradicate contraband. In one district, this reportedly silenced opposition from teachers.

5. *Arresting Students in Schools*

There were sharp divides regarding whether to arrest or summons students in school. The larger, urban schools appeared to rely on arrest more than suburban or rural districts. SROs in these schools said they used public arrests to set an example and send a message. This approach was in line with the more authoritarian approach to school policing used by these departments, and most prevalently used by the dedicated call-for-service officers.

Conversely, departments that used the SROs to develop trust, intervene in, and prevent misconduct, were more likely to use summons and less likely to arrest in school or, if they did arrest a youth, less likely to cuff the student in school. When an interaction or incident appeared to make arrest and cuffs immediately necessary, the SROs would effectuate it. However, when an arrest did not require imminent intervention, the commanding officers would arrange for patrol officers to conduct the arrest.

G. *Courts & Clerk Magistrates*

The use of clerk magistrates by SROs was both a sword and a shield for officers and youth. Unlike their views of juvenile court judges, SROs uniformly described their relationships with clerk magistrates as collegial and collaborative. They are frequently in communication and can assume that the outcome that they seek will result:

We prepare the clerk in advance, so there are no surprises. Some families have contacted an attorney to appear at the clerk's hearing. We share our goal plan with the kid's attorney; some agree, some don't. Clerk magistrate hearings are effective for most kids. Juvenile court is an effective wake-up call

97. See George Barnes, *ACLU Questions how School Search was Carried Out; No Drugs Found at Narragansett*, WORCESTER TELEGRAM & GAZETTE, Nov. 16, 2007.

but mostly for kids who have supportive parents, who can set up counseling, anger management and deal with kids' substance abuse issues.⁹⁸

The use of clerk magistrates keeps youth from having a permanent juvenile record and decreases the possibility of probation oversight and the risk of detention and incarceration. According to SROs' anecdotal evidence, this approach to court involvement stopped the problem in 80% to 90% of referred cases. In one district, middle school children were referred only to clerk magistrates and all high school students were summonsed to court or arrested.

This finding represented a most promising aspect of SROs' decisions to make limited use of courts when assisting schools in demanding students to conform to behavioral requirements. It succeeds in obtaining the behavioral change without many of the collateral consequences that result from court involvement. SROs in one department theorized that youth typically "heard" that this was their last chance without permanent consequences. The SROs theorized that once youth were before a juvenile court judge and had a record, there was less incentive for some to behave well.

The clerk magistrate hearing was an opportunity for one representative of the court system to assess the youth's character. Was the youth remorseful, apologetic, and dressed respectfully? Was the youth a frequent flyer? While the offense in question may have been identical to that of another youth with a different demeanor, SROs frequently reported that the character of the offending youth determined whether the case was "kicked up" to the juvenile court.

Youth whose cases were referred or brought directly to the juvenile court resulted in their inclusion in both the criminal justice information system and the court activity record information system kept by the criminal history systems board and the department of probation. The cases for these youth took anywhere from six months to a year, and typically resulted in oversight through juvenile probation and increased risk of incarceration for violations of conditions of probation or subsequent offenses.

Use of the courts varied by SROs' opinions of the court's agenda and willingness to address juveniles' behavior. If SROs perceived judges would tolerate use of the courts as a "wake up call" for youth or as a reminder of the youth's obligation to be respectful and accept discipline requirements, then the courts were used quite liberally.

Officers believed that youth received services from the courts and were often surprised to learn that except for probation, detention, and incarceration, courts have few or no services to offer. Some departments referred youth to diversion programs operated by District Attorneys and found them useful.

There was dissatisfaction among SROs with some juvenile court judges' treatment of school issues. As one group of officers put it, "Courts have an agenda. Clerk magistrates don't." Some officers had learned that the best way to avoid dismissal of a case against a student charged with disrupting a school in session or disorderly conduct was to cite prior incidents. But when that strategy did not succeed, officers felt disrespected by the courts. Consider the similarity of the explanations given by

98. Interview with an officer in a wealthy suburb of Boston (on file with authors).

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departments in very different socioeconomic settings: “What the judges don’t realize is that this arrest comes after the seventh or eighth time we’ve dealt with a kid and we’re all fed up with the kid. The judges don’t understand we’ve tried everything before arresting the kid,”⁹⁹ and “When our SROs arrest, everyone knows that many chances have been given.”¹⁰⁰

SROs did not understand why judges dismissed such cases. Officers described feeling stuck between a rock and a hard place—on the one hand, the law permitted an arrest for disturbing a school in session, but on the other, judges characterized such conduct as a matter for school discipline after school administrators were unable to handle it. In one city, a conflict between the juvenile court judge and the SROs resulted in the judge inviting SROs to meet with him at regular intervals. The judge explained why he was dismissing certain cases and the SROs started to document prior intervention efforts. In another city, regular visits between the police, schools, and judges occurred to meet the twin goals of keeping schools safe and keeping students in school. “The judges understand the importance of not having the kids drop out,” one captain explained, “and they want to send the kids back to school.”¹⁰¹

Other officers and chiefs were quite pleased with how juvenile court judges responded to them: “They know that if we are arresting, it’s important. They’re respectful of that.”¹⁰²

But one chief, who was pleased with the judges’ treatment of his officers, seemed to think juvenile courts were not the best place for youth charged for offenses in schools:

They’re kids, not a lot is going to happen in court. They’ll get a continued without finding, pre trial probation, and do community service. I wonder, “Why not do all this in the community?” School offenses, graffiti, vandalism, possession of alcohol, it’s like the issue with immigrants and driver’s licenses: court is really meaningless for these kinds of offenses. For kids who are disruptive in school, we rather create a log item, bring the family in, charge the kid, and move him to diversion.¹⁰³

H. Spillover Impacts of SROs in Police Departments

Officers and chiefs uniformly spoke of the valuable information SROs receive from students and how SROs’ knowledge of students is used by other officers in the department.

99. Interview with an officer in a city with few resources in northern Massachusetts (on file with authors).

100. Interview with an officer in a city with few resources in southeastern Massachusetts (on file with authors).

101. Interview with an officer in a city with few resources in northern Massachusetts (on file with authors). That said, the top three charges in that school district were disrupting a school in session, trespass (for returning to school while suspended), and possession of marijuana. *Id.*

102. Interview with an officer in a city with few resources in central Massachusetts (on file with authors).

103. Interview with an officer in a wealthy city near Boston (on file with authors).

Typically, SROs would receive information about impending after-school fights; in some of the more violent cities surveyed, SROs also heard information about violent crimes, gangs, and how to identify graffiti styles.¹⁰⁴ SROs never questioned the accuracy of information youth proffered; indeed, it seemed that it was highly accurate and useful in heading off problems. One chief in a district where immigrant gang activity is high but few officers on the force understand the native language of the gang gave an example of the level of detail students offered:

The kids will tell us that some other kids [in a gang] will say a fight is going to happen in Wing B but that this is just a ploy to get us to Wing B when the real fight is going to happen in Wing A. They tell us, "We know exactly how you are going to respond." They were telling us what was going on and how to patrol and what to look for since gang stuff changes all the time and they feel utterly unprotected.¹⁰⁵

Some SROs were keenly aware of the importance of protecting young informants; some said they would wait months before issuing a summons or arresting a youth to hide an informant's identity. "We had to make clear to the kids, '[I]f you tell me, I'll stand by you . . . and if somebody gets in your face, you find me, and it will be taken care of.'"¹⁰⁶

SROs went to great lengths to describe how they were used as the department's "database" of area youth and asked to issue pronouncements, i.e., "good kid" or "bad kid," to assist street officers in deciding whether to give the benefit of the doubt to youth encountered outside the school. SROs worked as patrol officers during summer months, which had the dual social utility of keeping SROs in contact with youth over the summer and increasing the officers' awareness of youths' circumstances.

A major, unexpected spillover effect occurred within police departments. SROs reported that their access to information from youth and the resulting level of knowledge they had of their districts' workings increased their stature in the department and they were perceived to be very valuable to the functioning of the entire department. Every department reported that the information that youths pass on to SROs was used effectively and preventively. This information enabled officers to prevent fights, locate caches of drugs and weapons, and clarify or confirm suspicions about adult "players."

SROs said many students welcomed their presence in hallways, cafeterias, and around the schools at the end of the school day. "They definitely feel safer since we've been here," said one SRO of the students in his school.¹⁰⁷ This perception was echoed by the majority of SROs working in schools in the state's poorer cities.

104. In one school district, an SRO received a tip about an effort to make an explosive device. This led to the State Troopers bomb squad evacuating a neighborhood to remove combustible chemicals from a house of a boy. Szymon Twarog, *Bomb Squad Takes Items from Pupil*, BOSTON GLOBE, Mar. 14, 2001.

105. Interview with an officer in a working class city west of Boston (on file with authors).

106. Interview with an officer in a working class town just north of Boston (on file with authors).

107. Interview with an officer in a city with few resources in southeastern Massachusetts (on file with authors).

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IV. SUMMARY OF FINDINGS

Before we offer recommendations for policy, practice, and further research, we acknowledge some of the limitations of this study. First, thus far we have only received the viewpoint of SROs and police chiefs. We have not yet interviewed school officials, students, juvenile judges, or clerk magistrates, all of whom have important perspectives, and may well contradict or dispute some of the claims and assertions made by SROs and police chiefs.

Second, while we made every effort to secure school-based arrest data from every district we interviewed, record-keeping in this area is notoriously inadequate, not just in Massachusetts but across the country. Schools do not keep these records, and police data is frequently very thin. In some departments, police do not differentiate between school-based arrests and other juvenile arrests. None of the departments provide more than tallies, so it is difficult to disaggregate arrests by race, sex, special education status, grade, or school. It is also difficult to quantify claims about reductions in school-based arrests over time, based on the data we received. Two departments collected information on school-based arrests, investigations, weapons, referrals to clerk magistrates, and “no action taken.” One large, urban police department’s data collection system—in our judgment the best in the state—divided all collected data by month and school and provided daily tallies.¹⁰⁸ But this was the exception rather than the rule. Finally, the data we did receive typically documents only arrests, and does not include summons or referrals to clerk magistrates or other diversionary programs. While such referrals have less serious consequences for students than arrests, they nonetheless disrupt the educational process, can further push students toward dropping out, and involve them in the juvenile justice system.

With those caveats, there are a number of surprising and important findings that we drew from these interviews, summarized below:

1. Contrary to the assumptions of many, there is tremendous variation in approaches to school policing used by officers and school districts. At one end of the continuum, some departments espouse the authoritarian/zero tolerance approach in which surveillance and reports of any misconduct put youth at risk of arrest—whatever the circumstances. On the other end, some departments openly proclaim a “case worker” approach in which the officers view themselves as resources,¹⁰⁹ and often as advocates for youths and their families within the school system. This continuum of approaches was often observed *within* some of the larger police departments and school systems.

108. Data collected from a city with few resources in western Massachusetts (on file with authors).

109. Officers viewed themselves as resources in the sense that they were available for consultation. Most SROs evinced no awareness of local resources for children and youth. Only one department, in an affluent, densely populated suburb, equipped its officers with a resource “Bible” that enabled SROs to make referrals to community-based programs and services.

2. Placing officers in the school building, rather than relying upon a “call for service” model, in conjunction with an intervention and educational approach (i.e., *not* a suppression, zero tolerance model) appears to *reduce* the number of school-based arrests in some school systems over a period of time. As the SRO, students, and administrators become more familiar and comfortable with one another, arrests decrease, sometimes dramatically. The lack of accurate data on school-based arrests available over several years makes this claim difficult to verify across the board.
3. The use of clerk magistrate hearings (or other forms of diversion programs), which bring with them the threat of referral to juvenile court, is more effective in changing student behaviors than immediate referral to juvenile court. SROs explain that youth perceive that once they are before a judge in juvenile court, they have no incentive to behave well. This finding has huge implications for keeping youth charged with minor offenses out of the formalized juvenile justice system, and encourages the creation of more diversionary avenues for youth (particularly ones that spare them suspension and lengthy absences from school) and reduction of the speed at which youth are placed on and travel through the school-to-prison pipeline.
4. Officers uniformly perceived school administrators to be unschooled in criminal law. Many SROs believed school administrators tried to use SROs to push certain youth out of schools. SROs also complained frequently that teachers and administrators were using them inappropriately, asking them to arrest students or to intervene in situations that were clearly school discipline matters.
5. Relations between school administrators and SROs were, by and large, positive. The preeminent trend among SROs was the recognition that they were guests in schools, that principals set the tone for what SROs could do and how they could do it, and that when there was friction or disagreement, school administrators won.
6. Many officers care deeply for and express tremendous dedication to students. They counsel them, meet with their families, attend school dances, sports events, and in one case, organized a talent show to help students with low self esteem. In some schools, the racial, ethnic, and class similarity between officers and students was a major source of bonding, and these SROs clearly felt this work was the highest form of “giving back.”

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7. Data on SROs' work with youth can be measured routinely, in a computerized and highly detailed fashion.

The findings that reinforce concerns expressed by advocates across the nation about racial disparities and overcriminalization of students include the following:

1. The line between a misbehavior that can be addressed through traditional school disciplinary measures and an arrestable offense is murky. The factors that determine the final characterization of the conduct are often defined by an officer's personality, a youth's demeanor, the extent of administrative pressure, and the availability of alternatives for dealing with the youth. It became clear that these decisions were far too subjective, based on the experience and temperament of the officers more than on any guidance or protocols they had received.
2. Officers need training in mediation; basic de-escalation techniques; how to identify youths who suffer from exposure to violence, trauma, or abuse; adolescent psychology or development; or what behavioral precautions and protections need to be taken with youths on Individualized Education Plans.
3. SROs are likely to reflect and reify schools' views of youth. In the case of youth who are not valued by their school because they do not perform well academically or because they have low socioeconomic status and/or are perceived to come from families and population groups that do not cherish or protect their children, referrals by school officials to police and the likelihood of arrest appear higher. SROs are often placed in the position of carrying out school officials' agenda with students. The differences were particularly striking when comparing attitudes expressed by SROs in suburban and rural schools with largely homogenous white student populations, and those urban school districts with highly racially diverse student bodies. Suburban school administrators were viewed by SROs as more protective of their schools' reputations, to the point of ignoring or denying criminal activity in schools. Urban school administrators were viewed as more likely to make an example of students by taking a harder line, involving police routinely and issuing more sanctions.
4. There is little internal or external oversight of the work of SROs or examination of their overall effects on school climate. External review of school officials and SROs practices is conducted only by clerk magistrates and courts. The lack of interest in data collection by most police departments was striking. This gap in information makes it extremely difficult to contest or verify their

claims about school-based arrests, and makes them vulnerable to claims that they are over-arresting or arresting in a biased manner. In most schools, neither SROs nor school officials give formal notification to parents and students of the existence of SROs, the scope of their role and powers in school-based activities, or students' due process rights. In some schools, SROs and school officials meet regularly; in others, the relationship is entirely informal and focused only on incidents. In only one of the sixteen departments were officers given explicit, detailed protocols for their conduct.

5. Accountability for misconduct was demanded solely of students. While police often perceived certain teachers and administrators as less skilled in managing classrooms and schools, this factor had little import when it came to dealing with youths.

V. RECOMMENDATIONS

The following recommendations are predicated upon our acknowledgement that SROs have become an accepted fact in most schools, that their presence enjoys widespread community support, and that they are likely to remain fully engaged in most high schools and many middle and elementary schools in the foreseeable future. Thus, our recommendations are based on our observations and analyses of what will maximize the benefits derived from their continued involvement in schools, and minimize the potential for harm to vulnerable students.

1. Schools and SROs should clearly define the consequences of certain behaviors and communicate those consequences to students and parents. In particular, they should identify behaviors that may lead to arrest or summons. Youths rarely understand, or are even aware of, the law and the consequences of their conduct. Indeed, officers often reported that students held many incorrect assumptions about criminal law and the legal process. Further, in view of the level of discord among adults (including teachers, administrators, SROs, and the courts) about how to treat certain behaviors, it is clear that such distinctions are highly subjective and no doubt confusing to youths. For these reasons, we strongly recommend:
 - Massachusetts school districts closely examine and follow the approach now in place in Denver public schools. In that system, an agreement has been worked out by all parties that law enforcement intervention by means of either arrest or summons will be limited to certain offenses.¹¹⁰ Emphasizing an educational

110. DENVER PUBLIC SCHOOLS DISCIPLINE MATRIX, http://webdata.dpsk12.org/policy/pdf/Policy_JK-R_Attachment_B.pdf (last visited Mar. 17, 2010).

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“teachable moment” and socializing role for SROs should be the focus of SROs involvement in such a model. It is essential that students and their families, school officials, and SROs are clear about what conduct will trigger police intervention and put students at risk of summons or arrest.

- Mandate, as a key element of SRO programs, an explanatory orientation of how school administrators and SROs will respond to particular behaviors and the consequences students risk enduring. In our study, only five of the sixteen police departments recognized that students need express notice and explanations of how both disciplinary rules and criminal law work in the school environment. In those schools, SROs typically developed and implemented extensive orientation programs for the students to make clear “the rules of the house.” Greater clarity about what conduct will lead to an arrest in a school may also empower youth and their parents to observe and challenge how the law and discipline are implemented in their schools.
2. Mandate better data collection. Data collection systems on school arrests and summonses in Massachusetts must be created immediately. Given the potentially devastating impact of embroiling youths in the juvenile justice system, and the anecdotal evidence that juvenile defense attorneys offer concerning “frivolous” or inappropriate school-based arrests, it is critical that detailed and comprehensive data be kept by both the schools and the police about law enforcement intervention in school-based incidents. This data should include the age, race, sex, grade, and disability status of any student who is arrested or summoned to court, a brief description of the incident precipitating the arrest, the name of arresting officer, and the school official or teacher who pressed for the arrest or summons, as well as the charge. This data collection should be a required part of the MOUs that exist between all schools and police departments.
 3. Provide community oversight. A major weakness that we identified in the SRO program through this study is the lack of oversight of the use of police in school generally and officers’ actions specifically. Many SROs are dedicated and compassionate professionals who have defined their job to both keep schools safe and provide help and resources to students. Nonetheless, it is clear that far too much discretion has been built into their jobs, which raises the very real risk that some SROs will over-arrest students, target certain students for harsher penalties than others, and insist upon a law

enforcement solution to what should be a therapeutic response. Without appropriate oversight, the same applies for school officials, who may choose to use SROs inappropriately, to call them to respond to what should be school disciplinary issues, and to use them as an excuse to “push out” certain students.

- Thus, while maintaining confidentiality of individual students, we recommend that a community board that includes parents, youth advocates, and social service providers regularly review all school-based incidents leading to law enforcement intervention to ensure that no abuses, racial profiling, or other targeting of certain students or groups of students, is taking place. If, for example, one SRO, teacher, or school administrator is responsible for most law enforcement referrals, then the board will have an opportunity to flag this as a concern. Similarly, this community board could review the adequacy of information given to students and their families about the difference between an action that will receive discipline and one that could lead to an arrest.
 - Finally, just as schools whose students fare poorly on the state standardized tests¹¹¹ are scrutinized, schools where more than 3% of the students have been arrested or summonsed by SROs should trigger an immediate audit by the state Department of Education and the Attorney General’s office. They should investigate the number of charges, the kinds of behavior charged, the types of students charged, whether charges are overused in certain schools and by certain school officials, and the possibility of effectively implementing and using alternative sanctions that will not result in criminal records.
4. Mandate more and different types of training for SROs. SROs who interact daily with students—some of whom are deeply troubled—and make decisions that will profoundly affect their lives, need far more knowledge and training about: (1) adolescent development and psychology; (2) strategies for diffusing potentially volatile situations; (3) recognizing symptoms of trauma, abuse, and exposure to violence in children and adolescents, and using psychologists’ tactics for responding to their conduct; (4) recognizing manifestations of students’ disabilities; (5) the effects of poverty and concentrated community disadvantages on adolescents’ behavior; and (6) the short- and

111. MASSACHUSETTS DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION, SPRING 2009 MCAS TESTS: SUMMARY OF STATE RESULTS (2009), *available at* <http://www.doe.mass.edu/mcas/2009/results/summary.pdf>.

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long-term effects of court involvement, including detention, and the likelihood of recidivism and disengagement from school.

Many SROs have a strong instinctive and empathic understanding of the students they interact with, but their experience and gut-level understanding needs to be augmented with the latest and most current knowledge about adolescent psychology and development. Many could also benefit from training in implicit bias, which research increasingly shows may affect some of their decision making. These types of training are particularly important for SROs working in schools with large numbers of youth of color, immigrant youth, and youth living in poverty. SROs should also be included in any special training given to teachers and administrators, such as those provided for schools designated as “trauma-sensitive” or those where PBIS is being implemented. Such training should be required by state legislatures for all police working in schools.

5. Conduct further research. The research that we believe will be particularly helpful focuses on fully understanding and documenting the perspectives and experiences of juvenile judges, clerk magistrates, school officials, parents, and students about their experiences with SROs in school. These perspectives can be obtained through individual interviews, focus groups, and surveys. While our interviews with SROs and police chiefs have illuminated many issues, it is critical that the voices of other individuals with whom SROs regularly interact are also heard. Given the major differences in the treatment of youths’ conduct as a function of race and class, we also recommend that ethnographic research be conducted within and across schools. Such studies allow researchers to observe over a period of time the way in which police are deployed in schools, the relationships they have with students, administrators, teachers, and parents, and the various roles that they play during and after the school day.