

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

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

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Introduction:

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

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

Who is covered by these changes?

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

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

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

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

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

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

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

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

Occasions for using force:

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

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

Specific actions prohibited:

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

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

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

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

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

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

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

An employee or agent of a district, including a school resource officer, security personnel, or police officer contracted with a district, shall not inflict any form of physical holding that restricts or impairs a pupil’s ability to breathe; restricts or impairs a pupil’s ability to communicate distress; places pressure or weight on a pupil’s head, throat, neck, chest, lungs, sternum, diaphragm, back, or abdomen; or results in straddling a pupil’s torso.⁸

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

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

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

⁸ *Id.*

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

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

Potential confusion:

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

Application scenarios:

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

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

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

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

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

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

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

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

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

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

Discussion issues:

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

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