

# 2024 VIRGINIA SCHOOL SAFETY TRAINING FORUM

*"Prevention, Relationships, and Support: Keys to Ensuring Safe Schools, Students, and Staff"*



## Legal Aspects of School Safety: Two Views of Legal Challenges

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# Goals for today

- Review the Legal Restrictions on Searches & Seizures by Civilian School Staff
- Review the Legal Restrictions on Searches & Seizures by Law Enforcement
- Examine the Specific Challenges Regarding Discipline versus Use of Force with Juveniles by Civilian School Staff
- Examine the Specific Challenges Regarding Discipline versus Use of Force with Juveniles by Law Enforcement
- Special Scenario: Marijuana in the School Setting



# Search and Seizure

Fundamentals of Fourth Amendment  
& Law Enforcement in Schools



# Fourth Amendment

## 4th Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

- ✦ The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, AND
- ✦ No Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.



## Searches in Schools

- ✦ Searches by school officials: The Supreme Court set “a Fourth Amendment standard of reasonableness that stops short of probable cause” – i.e. Reasonable Suspicion.
  - *New Jersey v. T.L.O.*, 469 U.S. 325 (1985)
- ✦ Search Warrant NOT required for search by official: A search of a student by a school official need only be “justified at its inception” and “reasonably related in scope to the circumstances which justified the interference in the first place.”
- ✦ BUT the Fourth Amendment still applies to Law Enforcement



## Searches in Educational Environment

*Gallimore v. Henrico Co. Sch. Bd.*, 38 F. Supp. 3d 721 (E.D. Va. 2014)

- ✦ Two reports (from parents) to administrators: long-haired student smoked pot on bus
- ✦ Asst P patted down, searched backpack/shoes/pockets
- ✦ Associate P searched Vaseline jar, sandwich wrapper, and cellphone
- ✦ Fourth Amendment claim
- ✦ Assault and battery, failure to train claims



# Court: Search *Mostly* Valid

Legal Standard	Assistant Principal	Associate Principal
Justified by reasonable suspicion at inception	Y – at least moderate chance of finding evidence of wrongdoing	Y – at least moderate change of finding evidence of wrongdoing
Reasonably related in scope to the suspicion	Y for patdown, backpack, shoes, pockets	Y – Vaseline jar, sandwich wrapper N – cell phone
Qualified Immunity	N/A	N

*Gallimore v. Henrico Co. Sch. Bd.*,  
38 F. Supp. 3d 721 (E.D. Va. 2014)



MARIJUANA



# Hypothetical:

- ✦ A security officer smells marijuana in a student's backpack.
- ✦ The security officer requests that the student hand over the backpack for search.
- ✦ The student objects and refuses to permit a search.
- ✦ Question: What may the school do?
- ✦ Question: What may an SRO do?



# 2021: Legalization of Marijuana

- ✦ General Assembly eliminated criminal penalties for simple possession of up to one ounce of marijuana by persons 21 years of age or older.
- ✦ Modified several other criminal penalties related to marijuana.
- ✦ Imposed limits on dissemination of criminal history record information related to certain marijuana offenses.
- ✦ Moved regulation and criminal offenses to Title 4.1

# ● Re-Enactment” Required In 2022 for Some, But Not All, Changes

- The bill had staggered effective dates, and numerous provisions of the bill were subject to reenactment by the 2022 Session of the General Assembly.
- Sales were to begin January 1, 2024, *if* GA re-enacted bill in 2022.
- If the 2022 General Assembly *did not* re-enact the regulative scheme and the repeal of the old marijuana offenses, that repeal would not take effect.
- 2022 General Assembly did NOT re-enact the regulative scheme
- The repeal of 18.2-250.1 and some new crimes did not require re-enactment and remain in effect.



# Because Re-Enactment Did NOT Take Place, These Statutes Will Remain In Effect

- ✱ All of 18.2-248.1  
(Distribution/Possession with  
Intent/Manufacture to Distribute)
- ✱ All of 18.2-251.1 (Medical  
Marijuana)
- ✱ Marijuana Kingpin - 18.2-248(H)
- ✱ Importation of Marijuana - 18.2-  
248.01
- ✱ Distribution to a Child - 18.2-255
- ✱ Distribution in School Zone - 18.2-255.2
- ✱ Prescription Fraud re: Marijuana
- ✱ Paraphernalia - 18.2-265.1
- ✱ Poss'n of Firearm while PWID Marijuana
- ✱ Felony Obstruction re: Marijuana

Repeal of 18.2-250.1 (Marijuana Possession Offense)  
was effective July 1, 2021 and remains repealed



# Other Provisions that Survive past July 1, 2022

- ✱ Exceptions that allow Manufacturing/Distribution

- E.g. “Home Cultivation” under §4.1-1101(A)

- E.g. “Adult Sharing” under § 4.1-1101.1

- ✱ Offenses regarding Possession / Use

- E.g. Use in a vehicle under § 4.1-1107

- E.g. “Use in Public” under §4.1-1108

- E.g. “Possession on School Property” under §4.1-1109

## §4.1-1109: Marijuana on School Grounds

- A. No person shall possess or consume any marijuana or marijuana product in or upon the grounds of any public elementary or secondary school during school hours or school or student activities.
- B. In addition, no person shall consume and no organization shall serve any marijuana or marijuana products in or upon the grounds of any public elementary or secondary school after school hours or school or student activities.
- C. Any person convicted of a violation of this section is guilty of a Class 2 misdemeanor.



## Possession Limits: Existing Law § 4.1-1100

- A. Except as otherwise provided in this subtitle and notwithstanding any other provision of law, a person 21 years of age or older may lawfully possess on his person or in any public place **not more than one ounce of marijuana** or an equivalent amount of marijuana product as determined by regulation promulgated by the Board.
- B. Any person who possesses on his person or in any public place marijuana or marijuana products in excess that is subject to a civil penalty of no more than \$25.



# 2022 Budget Amendment: New Language in § 4.1-1100

- ✦ Amends § 4.1-1100 to provide that, with the exception of possession by a person in his residence or possession by a licensee in the course of his duties related to such licensee's marijuana establishment, any person who possesses on his person or in any public place
  - (i) **more than four ounces but not more than one pound** of marijuana or an equivalent amount of marijuana product as determined by regulation promulgated by the Board is guilty of a Class 3 misdemeanor and, for a second or subsequent offense, a Class 2 misdemeanor and
  - (ii) **more than one pound** of marijuana or an equivalent amount of marijuana product as determined by regulation promulgated by the Board is guilty of a felony punishable by a term of imprisonment of not less than one year nor more than 10 years and a fine of not more than \$250,000, or both.



## Is Odor Probable Cause? YES

★ “[I]f an officer smells the odor of marijuana in circumstances where the officer can localize its source to a person, the officer has probable cause to believe that the person has committed or is committing the crime of possession of marijuana.”

– *Bunch v. Commonwealth*, 51 Va. App. 491, 496 (2008)



## Does Odor, *ALONE*, Provide a Basis for a Search/Seizure? NO

§ 4.1-1302. Search without warrant; odor of marijuana.

✶ “A. No law-enforcement officer, as defined in § 9.1-101, may lawfully stop, search, or seize any person, place, or thing and no search warrant may be issued solely on the basis of the odor of marijuana and no evidence discovered or obtained pursuant to a violation of this subsection, including evidence discovered or obtained with the person's consent, shall be admissible in any trial, hearing, or other proceeding.”



# Oh ... One More Thing: § 18.2-371.2.

- ✱ 2024 Change:

- ✱ ~~B. No person less than 21 years of age shall attempt to purchase, purchase, or possess any tobacco product, nicotine vapor product, alternative nicotine product, or hemp product intended for smoking.~~

- ✱ The General Assembly eliminated that code section in 2024.





## BACK to Our Hypothetical:

- ✱ A security officer smells marijuana in a student's backpack.
- ✱ The security officer requests that the student hand over the backpack for search.
- ✱ The student objects and refuses to permit a search.
- ✱ Question: What may the school do? –
  - ANSWER: Search Appears Lawful
- ✱ Question: What may an SRO do?
  - ANSWER: Search May be Lawful, But Policy Dictates Response



# Detention in Educational Environment

## *Wofford v. Evans*, 390 F.3d 318 (4th Cir. 2004)

- ✱ Several reports (from students) to teacher: classmate (10 y.o.) has gun
- ✱ Admins searched bag and desk day of – no weapon
- ✱ Admins kept her in office twice for questioning
  - By admins, day of
  - By law enforcement, following school day (4 days later)
    - further investigation raised concern student threw gun into woods
- ✱ Mother not contacted before either detention (though student asked for mom)
- ✱ Fourth, Fourteenth Amendment claims



# Court: Detention Lawful

## ✶ Re detention:

- By admins: justified at inception, reasonably related in scope to the justifying circumstances
- By LE: lesser standard of *Terry* met because “criminal activity might be afoot”

## ✶ Re lack of parental notice: no rigid duty of parental notice for detentions, *at least under US Const.*

- **BUT SEE Va. Code 16.1-247.1 for law enforcement custodial interrogation**
- **SB policies (“reasonable effort” before LE interrogates)**

## ✶ “Over-constitutionalizing disciplinary procedures can undermine educators’ ability to best attain [the] goals [of maintaining order and securing a safe educational environment in which learning can flourish].”

- The “full panoply of constitutional rules [does not] apply with the same force and effect in the schoolhouse as it does in the enforcement of criminal laws.” *New Jersey v. T.L.O.*
- “educators are best situated to identify [the peculiar remedial needs],” and to “tailor their responses” to meet them



## Discipline versus criminal offense: *Gray v. Bostic*, 458 F.3d 1295 (11th Cir. 2006)

- ✦ After Gray was reprimanded by her gym teacher for failing to finish an assigned set of jumping jacks, she made a physical threat toward him.
- ✦ C, a law enforcement SRO intervened.
- ✦ He took the student into an adjacent lobby, where he pulled her arms behind her back and handcuffed her.
- ✦ At the time of the incident the age of the student was nine, and she was in the fourth grade.



# Why Detain Gray?

- ✱ Officer stated that he handcuffed Gray "to impress upon her the serious nature of committing crimes that can lead to arrest, detention or incarceration" and "to help persuade her to rid herself of her disrespectful attitude."
- ✱ Officer also stated that he told "her that she committed a misdemeanor in my presence" and that he was "showing her what would happen if a less generous officer than I were to arrest her for her actions."



# Court: Handcuffing was Unlawful

- ✦ Court: “At the time Deputy Bostic handcuffed Gray, there was no indication of a potential threat to anyone's safety. The incident was over, and Gray, after making the comment, had promptly complied with her teachers' instructions, coming to the gym wall and then to Coach Horton when told to do so.”
- ✦ “In fact, Coach Horton had insisted that she would handle the matter, but Deputy Bostic still intervened.”
- ✦ “Deputy Bostic does not even claim that he handcuffed Gray to protect his or anyone's safety. Rather, Deputy Bostic candidly admitted that he handcuffed Gray to persuade her to get rid of her disrespectful attitude and to impress upon her the serious nature of committing crimes. In effect, Deputy Bostic's handcuffing of Gray was his attempt to punish Gray in order to change her behavior in the future.”
  - Note: at trial, jury awarded Gray \$1, and court awarded almost \$100k in attorneys' fees



## Threat – Man with Gun

### *Walker v. Donahoe*, 3 F.4th 676 (4th Cir. 2021)

- ✦ A week after the Parkland school shooting, a citizen saw the defendant walking along the road, dressed in a black sleeveless shirt and camouflage pants, in a suburban neighborhood within a mile of a local school while carrying an AR-15-style rifle.
- ✦ Citizen called 911 and officers responded.
- ✦ Based on his appearance, officers believed that he could be under the age of 18.
- ✦ Officers detained the defendant, learned he was an adult who lawfully possessed the firearm, and a criminal history check revealed no ground for his continued detention.
- ✦ Officers released the defendant; entire encounter was less than nine minutes.



## Court: Lawsuit Dismissed

- ✱ Court ruled that the circumstances of defendant's firearm possession were unusual and alarming enough to engender reasonable suspicion.
- ✱ Although openly carrying a rifle is lawful in West Virginia, Court repeated that lawful conduct can contribute to reasonable suspicion.
- ✱ Possession of a firearm plus something "more" may "justify an investigatory detention."
  - *Walker v. Donahoe*, 3 F.4th 676 (4th Cir. 2021)



## Threat – Man with Crossbow

*U.S. v. Coleman*, 18 F4th 131 (4th Cir. 2021)

- ✚ SRO responded to a high school administrator's report that, as students were arriving that morning, an unknown man (who was plainly a non-student) was parked erratically in the campus parking lot, "asleep or passed out" in his vehicle with a crossbow visible in the backseat.
- ✚ Concerned for safety and believing that possession of the crossbow was illegal under § 18.2-308.1, officer pulled behind defendant's vehicle.
- ✚ Defendant's vehicle was running, had its brake lights engaged, and was haphazardly positioned and impeding a travel lane.
- ✚ When officer opened the door of his police cruiser, defendant began to drive away, and officer then engaged his emergency lights, stopping defendant.



# Court: Stop was Lawful

- ✦ Court: Presence of an unidentified individual on a school campus is a valid safety concern.
- ✦ Court: Reasonable officer could suspect that defendant was trespassing on school grounds, in violation of the school board policy and § 18.2-128(b).
- ✦ Court: Reasonable officer could determine that defendant was committing a parking violation.
- ✦ Court: Reasonable officer could suspect that defendant was unlawfully operating his vehicle under the influence, as he remained “asleep or passed out” during the bustling morning hours at the school.



# Role of Crossbow

- ✦ Court concluded that a reasonable officer could conclude that, though it may have been lawful, defendant was in possession of a dangerous weapon on school grounds, which could be used to harm students, faculty, and/or staff at the school.
- ✦ Legality of crossbow possession under Virginia law was “largely tangential” to the question of whether the officer’s suspicion was reasonable.
- ✦ Reasonable minds could differ on whether § 18.2-308(A) encompasses crossbows, since crossbows bear resemblance to slingshots, which are enumerated in the statute.

## ● Fourth Circuit: Quotes *Aguilera* ruling in Ca.

- “[S]chool officials, when faced with the credible threat of [weapon] violence, must have flexibility to respond in the manner most appropriate to protect the lives of students. Indeed, would any reasonable parent . . . send her child to [school] if a suspected armed non-student could not be disarmed by school administrators? It simply defies common sense to tie the[ir] hands . . . when they reasonably suspect a non-student visitor, armed with a “weapon,” threatens the lives and safety of students.”



# Use of force

Fundamental Rules for Law Enforcement  
Authority Regarding Juveniles in Schools



## Federal Liability: 42 U.S.C. § 1983

“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state... subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.”



## § 1983 Actions – 4<sup>th</sup> Amendment

- ❖ 1983 actions are based mostly on the 4<sup>th</sup> Amendment – freedom from unreasonable searches and seizures.
- ❖ Police officers' arrests and use of force are (almost) always judged under 4<sup>th</sup> Amendment standards.

# False Arrest



- ✦ The 4<sup>th</sup> Amendment protects citizens from unreasonable seizures.
  - § 1983 claims for “false arrest” or “false imprisonment” are based on whether it was **objectively reasonable** to believe that probable cause existed for the arrest.



# Probable Cause Justifies Arrest ... Usually

- ✱ *Nieves v. Bartlett*, 587 U.S. \_\_\_, (2019)
- ✱ Officers arrested plaintiff because they knew that he had been drinking, and observed him speaking in a loud voice and standing close to an officer and challenging the officer.
- ✱ HOWEVER, this rule does not apply when a plaintiff presents objective evidence that he was arrested when otherwise similarly situated individuals not engaged in the same sort of **protected speech** had not been.



# First Amendment Exception

- ✱ Court : A narrow qualification is warranted for circumstances where officers have probable cause to make arrests, but typically exercise their discretion not to do so.
- ✱ In such cases, an unyielding requirement to show the absence of probable cause could pose “a risk that some police officers may exploit the arrest power as a means of suppressing speech.”



# How Courts Evaluate Use of Non-Deadly Force by Law Enforcement





## ***Graham v. Connor***, 490 U.S. 386 (1989)

✓ “As in other Fourth Amendment contexts, however, the “reasonableness” inquiry in an excessive force case is an objective one: the question is whether the officers’ actions are “objectively reasonable” in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.”



## The “Graham” Test

- (1) The severity of the crime at issue;
- (2) Whether the suspect poses an immediate threat to the safety of the officers or others;
- (3) Whether he is actively resisting arrest or attempting to evade arrest by flight.

***Graham v. Connor***, 490 U.S. 386 (1989)  
AND Virginia Code § 19.2-83.6:

# The “Graham” Test Applies to Law Enforcement:

- ✦ Investigatory stops

- ✦ Arrests

- ✦ Any kind of seizure under the Fourth Amendment






# Federal Liability & “Qualified Immunity”

✦ “Qualified immunity attaches when an official’s conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.”

## WHAT IS QUALIFIED IMMUNITY?

**qualified immunity** (n)

judicial doctrine that protects government officials from civil lawsuits if unconstitutional action is not “clearly established”

SOURCE: NEWSY 



# Use of Force on Juveniles

*E.W. v. Doglos*, 884 F.3d 172 (4th Cir. 2018)

- ✦ Officer views a three-day old video in which a juvenile repeatedly kicked another juvenile on the bus, for appx. 11 seconds
  - Both had already been suspended from bus for the incident
- ✦ Officer confirms the offense and confronts the juvenile at school in the office
- ✦ The juvenile confesses but “doesn’t seem to care”
- ✦ The officer arrests and handcuffs the juvenile (10 y.o.)



## Fourth Circuit: Use of Force Unreasonable

✿ “We are not considering the typical arrest of an adult (or even a teenager) or the arrest of an uncooperative person engaged in or believed to be engaged in criminal activity. Rather, we have a calm, compliant ten-year-old being handcuffed on school grounds because she hit another student during a fight several days prior.”




# The Court Explained:

- ✦ The Court specifically found that the school setting—especially an elementary school— weighs against the reasonableness of using handcuffs.
- ✦ The Court ruled that there was no need for any physical force in this case.

However, case DISMISSED because the rule had not been clearly established (until now).



## Fourth Circuit/SLEP Policy Considerations *Doglos*, 884 F.3d at 188

-  “School-based policing is the fastest growing area of law enforcement. While the officers’ presence surely keeps the nation’s children safe, officers should not handcuff young students who may have committed minor offenses but do not pose an immediate threat to safety and will not evade arrest. Unnecessarily handcuffing and criminally punishing young school children is undoubtedly humiliating, scarring, and emotionally damaging. We must be mindful of the long-lasting impact such actions have on these children and their ability to flourish and lead prosperous lives – an impact that should be a matter of grave concern for us all.”



# Contrast: Use of Force on Juveniles

## *Murphy v. Fields*, 2019 U.S. Dist. LEXIS 183388

- ✦ Student allegedly “using cell phone” in violation of policy
  - Teacher → admin → SRO
- ✦ SRO attempted to physically remove student from desk – flipped backward
  - Body slammed, dragged/threw across floor, knee in back to arrest/handcuff
- ✦ Classmates captured on video
  - Officer’s testimony that student was fighting him



# District Court: Excessive Force Claim

- ✦ “Graham” factors = excessive force to use take down maneuver
  - Underlying offense minor
  - No threat posed by refusing to leave classroom
  - Any resistance was passive
  - Minor student/school setting: “officers should exercise more restraint when dealing with student misbehavior in the school context”
  - Extreme high end of force continuum



## Court: No QI

“Fourth Circuit precedent existing at the time of the incident gave fair warning that flipping over the desk of a seated, nonthreatening, and nonviolent special needs minor student, pulling her out of the desk, and slinging her across the floor to effect an arrest for a misdemeanor would constitute excessive force”



## Contrast: *K.W.P. v. Kan. City Pub. Schools*, 931 F.3d 813 (8th Cir. 2019)

- ✦ SRO summoned to classroom by teachers due to an “out of control” 7-year-old student, who had been yelling and confronting another student, appearing about to fight.
- ✦ Student had a history of striking other students and trying to leave when confronted about his behavior.
- ✦ SRO asked the student to leave the classroom and the student complied.
- ✦ The student attempted to flee from Officer, but the officer bent down to his level and asked him to “calm down,” repeatedly asking the student to come with him.
- ✦ Student repeatedly tried to walk away, so officer first tried to guide the student back by placing his hand on the student’s back, and then by grabbing his arm.



# Student detained

- ✦ Student then tried to forcibly pull away, pushing the officer and grabbing a handrail to pull away.
- ✦ Officer handcuffed the student.
- ✦ Student continued to struggle until officer led him to the school's front office.
- ✦ Officer left the student in handcuffs for 15 minutes in the office.



# Court: Lawsuit Dismissed

- ✦ Was the force reasonable?
- ✦ Court: "a reasonable officer could have concluded that K.W.P.'s admitted conduct constituted 'an act of violent resistance.'"
- ✦ Was the length of detention reasonable?
- ✦ Court: "A reasonable officer could conclude that, based on K.W.P.'s recent resistance, keeping him in handcuffs for 15 minutes until a parent arrived was a reasonable course of action and was necessary to prevent K.W.P. from trying to leave and posing harm to himself."

# Liability Under Virginia Law

- ❖ No such thing as “excessive force” claim under Virginia law.
- ❖ Most common theories are:
  - ❖ Battery
  - ❖ False Imprisonment
  - ❖ Gross Negligence



# Virginia Law – Battery



## ❖ Civil battery:

- ❖ Touching another without his consent and without legal justification.
- ❖ Reasonable force incident to arrest is legal justification.



# Virginia Law – Tort of False Imprisonment

“False imprisonment” under Virginia law is the same as “false arrest.” It is the intentional restriction of a person’s movement without legal right.

- “Direct restraint” can mean oral commands or other actions short of physical force.
- Probable cause is a complete defense.





## Best Defense? Get a Warrant

### Thweat v. Rhodes: June 28, 2023

- ✦ Plaintiff, working as a bus driver, threatened a student on her bus after the student made a comment to another student that the driver found threatening.
- ✦ Believing the student to have directed the comment at her, the plaintiff confronted the student, while unbuckling her seatbelt and exiting the driver's seat of the school bus to approach the student in her seat.
- ✦ When the plaintiff reached the student's seat, she yelled at the student, "Me? Bring it on. You going to hit me in the face?" While making these statements, the plaintiff gestured with her hands and raised her arms.



# Warrant for Disorderly Conduct

- ✶ The student did not respond, but the plaintiff continued to yell, “Who you talking to, me or who?”, then moved into the student’s seat, stood over the student, and shook her finger, while stating “Naw, you’re going to tell me who you’re talking to.”
- ✶ The student then stood up and pushed past the plaintiff to escape the bus.
- ✶ Video surveillance captured the incident.
- ✶ Student reported the incident and an administrator and officer agreed to seek a warrant for Disorderly Conduct.



# Lawsuit

- ✱ Magistrate issued a warrant, but defendant was found not guilty
- ✱ Defendant sued the administrator and the officer.
- ✱ Court: Officer had probable cause to arrest the defendant
- ✱ Court: Magistrate judge's order was an intervening cause that broke that causal chain such that neither the officer nor the school official "caused" the defendant's arrest.
- ✱ Court: Intervening acts of a decision maker such as a Magistrate can act as a superseding cause that shields an investigating officer from liability.



# "Force" in the Educational Environment

## **Physical Restraint and Seclusion**

Va. Code § 22.1-279.1:1  
8 VAC 20-750

Trained school officials only

## **Corporal Punishment**

Va. Code § 22.1-279.1

No one

## **Use of Force**

Dept procedures  
Fourth Amendment

LEO *if justified*



# NEW REQUIRED DISCLOSURES FOR 2022



## Ch. 542: Juvenile law-enforcement records; disclosures to school principals.

- Changes § 16.1-301 from discretionary to mandatory that the chief of police of a city or chief of police or sheriff of a county disclose to a school principal all instances where a juvenile at the principal's school has been charged with a violent juvenile felony, an arson offense, or a concealed weapon offense
- Adds an offense that requires a juvenile intake officer to make a report with the school division superintendent to the list of such instances that must be disclosed to a school principal for the protection of the juvenile, his fellow students, and school personnel.



# Offenses with Mandatory Reporting to Schools

- ✦ 1. Certain Firearms Offenses
- ✦ 2. Homicide
- ✦ 3. Felonious assault and bodily wounding,
- ✦ 4. Criminal sexual assault,
- ✦ 5. Manufacture, sale, gift, distribution or possession of Schedule I or II controlled substances,
- ✦ 6. Manufacture, sale or distribution of marijuana,
- ✦ 7. Arson and related crimes,
- ✦ 8. Burglary and related offenses,
- ✦ 9. Robbery,
- ✦ 10. Criminal street gang activity,
- ✦ 11. Recruitment juveniles for a criminal street gang,
- ✦ 12. An act of violence by a mob,
- ✦ 13. Abduction,
- ✦ 14. A threat pursuant to § 18.2-60

## Ch. 793/794



# School Principals & Incident Reports


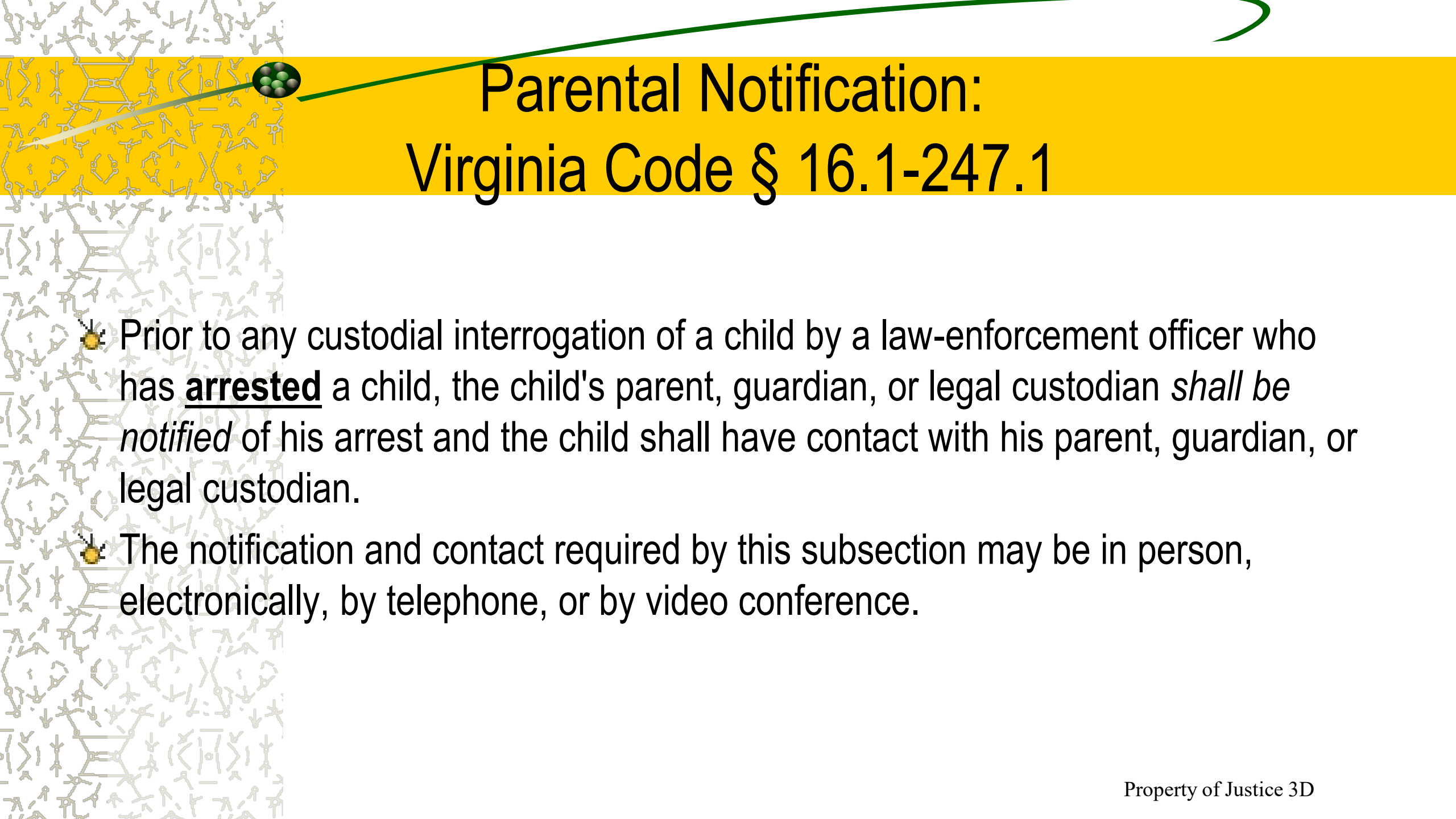
- ✦ Amends § 8.01-47, 22.1-279.3:1, and 22.1-279.3:3 to require that school principals report to law enforcement certain enumerated acts that may constitute a misdemeanor offense and report to the parents of any minor student who is the specific object of such act that the incident has been reported to law enforcement.
  - Under current law, principals are required to make such reports only for such acts that may constitute a felony offense.
- ✦ The bill provides, as an exception to the requirement to report any written threats against school personnel while on a school bus, on school property, or at a school-sponsored activity, that a principal is not required but may report to the local law-enforcement agency any such incident committed by a student who has an individualized education plan.

# Offenses Requiring Disclosure: Part One

1. Alcohol, marijuana, a controlled substance, an imitation controlled substance, or an anabolic steroid on a school bus, on school property, or at a school-sponsored activity, including the theft or attempted theft of student prescription medications;
2. The assault and battery that results in bodily injury, of any person on a school bus, on school property, or at a school-sponsored activity;
3. The sexual assault, death, shooting, stabbing, cutting, or wounding of any person, abduction of any person as described in § 18.2-47 or 18.2-48, or stalking of any person as described in § 18.2-60.3, on a school bus, on school property, or at a school-sponsored activity;
4. Any written threats against school personnel while on a school bus, on school property, or at a school-sponsored activity;

# Offenses Requiring Disclosure: Part Two

5. The illegal carrying of a firearm, as defined in § 22.1-277.07, onto school property;
6. Any illegal conduct involving firebombs, explosive materials or devices, or hoax explosive devices, as defined in § 18.2-85, or explosive or incendiary devices, as defined in § 18.2-433.1, or chemical bombs, as described in § 18.2-87.1, on a school bus, on school property, or at a school-sponsored activity;
7. Any threats or false threats to bomb, as described in § 18.2-83, made against school personnel or involving school property or school buses; or
8. The arrest of any student for an incident occurring on a school bus, on school property, or at a school-sponsored activity, including the charge therefor.



# Parental Notification: Virginia Code § 16.1-247.1

- ✦ Prior to any custodial interrogation of a child by a law-enforcement officer who has **arrested** a child, the child's parent, guardian, or legal custodian *shall be notified* of his arrest and the child shall have contact with his parent, guardian, or legal custodian.
- ✦ The notification and contact required by this subsection may be in person, electronically, by telephone, or by video conference.



# Exceptions

1. Child's parent, guardian, or legal custodian is a codefendant in the alleged offense;
2. Child's parent, guardian, or legal custodian has been arrested for, has been charged with, or is being investigated for a crime against the child;
3. If, after every reasonable effort has been made to comply with subsection A, the child's parent, guardian, or legal custodian cannot be located or refuses contact with the child; or
4. If the law-enforcement officer conducting the custodial interrogation reasonably believes the information sought is necessary to protect life, limb, or property from an imminent danger and the law-enforcement officer's questions are limited to those that are reasonably necessary to obtain such information.



# 2024 Amendment

- 📌 HB 266 (2024): Provides that if a law-enforcement officer violates § 16.1-247.1 , any statements made by such child shall be inadmissible in any delinquency proceeding or criminal proceeding against such child, unless the attorney for the Commonwealth proves by a preponderance of the evidence that the statement was made knowingly, intelligently, and voluntarily..
- 📌 Pending as of February 20, 2024

## § 16.1-247.1 New Language for 2024

- ✦ C. Except as provided in subsection B, if a law-enforcement officer knowingly violates the provisions of subsection A, any statements made by such child shall be inadmissible in any delinquency proceeding or criminal proceeding against such child,
  - unless the attorney for the Commonwealth proves by a preponderance of the evidence that the statement was made knowingly, intelligently, and voluntarily.

# 2023 VIRGINIA SCHOOL SAFETY TRAINING FORUM

*"Prevention, Relationships, and Support: Keys to Ensuring Safe Schools, Students, and Staff"*

## Questions?

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