Since Newtown, legislation accounts for most of the reform in the area of school safety, a trend that continues in 2016. Fewer court decisions are being handed down over the enforcement of school rules. Both students and educators appear to perceive the bright line between student rights and the authority of schools to maintain a safe and effective learning environment. Nevertheless, the politics of safe school reform are complicated. Policymakers continue to demonstrate a high degree of commitment to answer questions raised by parents, students, educators, and community groups on a broad range of campus safety concerns.

The single biggest reform issue in the year 2016 involves identifying the priorities for maintaining a safe campus. Three concerns animate the current wave of legislation. First, policymakers are assessing the tools for educators to effectively reduce the routine and foreseeable incidents that occur on campus. As to these activities, the law imposes a duty of reasonable care. Liability is often the result for the failure of schools to implement a response to known and recurring conditions on campus. It matters little what label is given to the failure. School officials are likely to fare no better in the community when a court declares their underperformance to be negligence or deliberate indifference. Legislators would prefer that educators take charge of the campus climate.

Second, after Newtown, policymakers widely believe that it is essential for schools to have a crisis plan for the improbable but terrifying events that may occur on campus. Liability has nothing to do with making effective crisis planning a priority. American jurisprudence is known for making allowances for events that are not foreseeable. Keeping students alive is the goal of policymakers. The moral imperative is that a child who is compelled by law to attend school should be protected from this low probability, high consequence event. Third, current legislation reflects a commitment to the constraints imposed by the Constitution and a rejection of the strategy to preserve campus safety by sacrificing student rights.

In 2016, state and local legislators are focusing on seven specific areas of reform. Background checks of school personnel, student transportation and safe school zones, interagency collaboration, expansion of school resource officer programs, arming school personnel, social networking by students, and school discipline.

I. BACKGROUND CHECKS OF SCHOOL PERSONNEL

All states require fingerprints of teachers who apply for certification and employment in schools. The expansion of these laws in recent school safety reform reflects a desire by policymakers to require background checks of nearly all public school employees, including volunteers and student teachers. The typical policy states:

As a condition of employment, the school boards of the Commonwealth shall require any applicant who is offered or accepts employment ... to submit to fingerprinting and to provide personal descriptive information to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding such applicant. The school board may (i) pay for all or a portion of the cost of the fingerprinting or criminal records check or (ii) in its discretion, require the applicant to pay for all or a portion of the cost of such fingerprinting or criminal records check. The Central Criminal Records Exchange, upon receipt of an applicant’s record or notification that no record exists, shall report to the school board whether or not the applicant has ever been convicted of a felony or a Class I misdemeanor or an equivalent offense in another state.

In Illinois, a new law requires student teacher applicants to submit to a fingerprint analysis. All school districts must verify that the new educator is not on the sex offender, child murderer or violent offender against youth registries. The legislation amends the
III. INTERAGENCY COLLABORATION

Interagency collaboration between school officials and local agencies has been a priority since Columbine. Every state has enacted some form of collaborative reporting with the goal of improving assessments, decision-making, and policy implementation. The typical state law mandates reporting as a means to more effective collaboration.

It is the intent of the Legislature... to provide for limited exceptions to juvenile court record confidentiality to promote more effective communication among juvenile courts, law enforcement agencies, and schools to aid in the rehabilitation of juvenile criminal offenders as well as to lessen the potential for drugs use, violence, and other forms of delinquency.

Another state provision puts it this way. The Legislature intends to support increased efforts by the juvenile justice system comprised of law enforcement, district attorneys, probation departments, juvenile courts, and schools to identify these offenders early in their careers, and to work cooperatively together to investigate and record their activities, prosecute them aggressively by using vertical prosecution techniques, sentence them appropriately, and to supervise them intensively in institutions and in the community.

Continuing the trend, Wisconsin legislature is considering a bill that would improve public and private high schools participating in the state's voucher program to collect statistics on crimes and safety incidents on school property, school buses, and school-sanctioned events. In Colorado, the legislature is expanding the collaborative team to include counselors. It has enacted a school safety plan that authorizes mental health professionals to disclose "articulable and significant" threats against schools to administrators and police. The proposal would not require therapists and counselors to disclose such threats, but those who do would be protected from lawsuits. Current state law requires mental health professionals to report "imminent" school threats.

IV. EXPANSION OF SRO PROGRAMS

The most important single conclusion that emerges from a survey of school safety data is that, in all cases, school campuses are safer with school resource officer programs. Campus safety after Columbine and Newtown cannot be understood apart from SRO programs. The modern school campus is
shaped by a well-trained, fully supported school resource officer. The typical state law both acknowledges and reinforces the empirical data. For example, Rhode Island law provides:

This section contains the intent of the legislation on encouraging a balanced use of school resource officers in maintaining school safety. Subsection (b) of the law states that: “it is the intent of the legislature to encourage [SROs] to form positive relationships with both parents and pupils who are part of the school community.

In 2016, legislative development of SRO programs is the norm. In Florida, the legislature has proposed a bill that would require school-resource officers at every public-school campus. The legislation would require that at least one officer be present at each public school from 30 minutes before classes start until 30 minutes after classes end. In New Jersey, a bill before the state Legislature would create a new category of police officer, stationing armed, retired cops under the age of 65 inside New Jersey schools. The bill (S2983) establishes “Class Three” special police officers designated to provide security at both public and private schools. They would not replace school resource officers, who are specially trained full-time police officers stationed at some schools. In Virginia legislation has been introduced that would allow school security officers, who are not active duty police, to carry firearms if they are retired law enforcement officers serving with the local school board’s approval.

V. ARMING SCHOOL PERSONNEL

The growing number of states that are exploring the arming of school personnel suggests the increased possibility that educators with guns will become a decisive factor in school safety. Since Newtown, at least 33 states have introduced more than 80 bills on the topic. A few states authorize so-called “campus carry” status on almost anyone -- to carry concealed handguns on campus. But this experiment is not catching on in most states. Typically, state or local policy will (1) authorize school districts to determine whether the policy should be implemented; (2) create a training program for the purpose of providing school personnel with firearms; and (3) designate who will carry concealed firearms in the school.

Texas is among the most progressive states that have passed laws allowing school employees to carry firearms on campus. Nearly 100 local school districts have implemented a program for providing school personnel with firearms. The non-profit firearms foundation, the Buckeye Firearms Foundation, has signed up more than 600 educators from more than twelve states to receive firearms training.

In South Carolina, proposed legislation would create “School Protection Officers,” who would be teachers, administrators or any other school employee who would be allowed to carry guns or pepper spray at school. In Oklahoma, the rural school district of Okal is arming teachers and staff members to protect its students. The policy is authorized by the passage of HB 2014 that was signed into law last year. In Tennessee, the House of Representatives approved and moved along legislation allowing teachers and staff to carry guns at school for self-defense.

VI. STUDENT SOCIAL NETWORKING

School safety law reform is taking place under the watchful eye of a variety of federal and state guidelines. The most important limitation is a reflection of the importance of student records privacy. All states have adopted a variation on the Family Educational Rights and Privacy Act (FERPA) that protects the privacy of student education records. Contributing to this emphasis is a broader, suspicious attitude by policymakers on the use to which educators put information obtained by students through the use of surveillance programs. An example of such a campus policy comes from Alabama. The Huntsville City School District is implementing a district-wide social media-monitoring program. School officials will monitor students’ social media posts and, if necessary, discipline students for the content of the posts.

Policymakers are beginning to push back on school surveillance. In New Hampshire, a new law prohibits school officials from making students reveal their social networking accounts, or supply account information, or force students to add school officials to their accounts. The school district would have to request information from parents. The law does not apply to accounts created at a school or on school computers. In Wyoming, legislation has been introduced that would restrict school districts’ access to student data, particularly online social media accounts or emails. If enacted, the law would prohibit school or district employees from compelling a student to provide their username and password for various digital media accounts, such as a Facebook page or an email account. Administrators also could not require a student to log into such an account so that the contents could be read over the student’s shoulder.

VII. SCHOOL DISCIPLINE

In school disciplinary reform there is a broad national shift away from zero-tolerance policies toward a focus on discretionary conflict management. In form, “restorative justice” responds to campus misconduct by identifying all affected by the incident and collaboratively addressing the solutions to right the wrong. In function, restorative justice alters generally applicable sanctions for similarly situated incidents, customizing solutions to student misconduct as educators exercise discretion in light of the risk factors and protective factors of the perpetrator(s) and victim(s).

The politics of school disciplinary reform are infinitely complex, but the current trend toward excluding the SRO in school discipline suggest that there is a vigorous interest by state and local policymakers to control the conflicts that arise between restorative justice and existing laws on mandatory crime reporting, child abuse reporting, obstruction of justice, prohibitions on discrimination, and victims’ rights.

In Virginia, the legislature has enacted HB 487 that relieves school resource officers of the duty to enforce school board rules and codes of student conduct. The law takes effect on July 1, 2016. The new law deletes language in the state law that authorizes grants to pay for school resource officers that required the SRO to enforce “school board rules and codes of school conduct.”

The goal of the legislature is to provide more discretion to school administrators to exclude police in violations of school rules.

In Illinois, House Bill 5617 has been introduced. If enacted into law it would prohibit student arrests during (1) the school day, (2) during school-sponsored events and (3) in school vehicles, unless the student has committed a felony.

2016 NASRO Keynote Speaker

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