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POLICE IN SCHOOLS: THE STRUGGLE FOR STUDENT AND PARENTAL RIGHTS

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INTRODUCTION

Having police stationed in schools has the potential for enormous unintentional consequences on upcoming generations of children. Our research has shown a possible connection between police in schools and the over-representation of minorities in the juvenile justice system. Nationally, there is growing awareness on the issue of schools using police to handle the difficulties of non-homogeneous populations. The increasingly institutionalized treatment of children eliminates the need for parental partnerships and leaves students without support. This is especially disturbing because police are being used with younger and younger children.

Minorities face special challenges when their schools act as an arm of the juvenile justice system. These challenges include the lack of parental involvement, labeling of students, and the use of the legal system instead of other alternatives. Further analysis must be conducted to determine whether their educational opportunities are being compromised and whether this has an impact on the success of minorities finishing school.

Our case study of Northern Colorado police identifies some of the causes of what is happening to students in school. Our objective is to add to a small, but growing body of literature on this topic. This would be especially beneficial if we could identify obstacles in the nationally rec-

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The authors are concerned parents who have or had children in the public schools. Fitzhorn, Matsumoto, and Emslie are co-chairs of the Students' Rights Advocates group which has investigated and influencd public policy since 1997 in regard to civil rights issues concerning police in schools. The group is currently working to define jurisdictional conflicts between school administrative discipline as opposed to the filing of criminal charges for student misconduct.

ognized alienation of the Latino community from public schools that too often result in their leaving school early.

Just two generations ago, a boy could leave school at 12, work all day for $1.00, and be considered the man of the house. Over the years, the status of children has changed dramatically. With fuller awareness of the need for work restrictions, education, and protection against child abuse, society has joined parents in becoming the protector of childhood in the belief that children are not just small adults.

With the recent rash of highly publicized juvenile violence incidents, society is now conditioning some of these protections. The potential legal liability and ease of operation for the school as an institution has begun to take precedence over the best interests of the individual child. This change in focus has led to increased compromises of children's rights in society's training ground: public schools.

Law enforcement officers have unprecedented access to children on the assumption of authority by school administrators during class hours when parents are not present. This effectively bypasses parents and devalues parental involvement. Locally, at the discretion of school administrators, high school children can be questioned by the officers without another adult present and without notification of parents. Although extreme cases hit the headlines, many stories are lost in anonymity. Following are some of these stories.

I. BACKGROUND

What began as normal school days for three students were anything but normal by day's end. One student was in jail. One started the downward spiral that leads to dropping out. One was preparing for suicide.

Mike was a soft-spoken, intelligent young man in his senior year of high school. Raised primarily by his single, Hispanic mother, he had high hopes. He worked nights at a convenience store, attended school until noon and then went home to sleep and study. According to his principal, he was doing well in school.

On this particular November morning, Mike had scheduled an appointment with a career counselor after school to locate college scholarships. It ran late and he missed his regular city bus ride home. While waiting in the school commons area for the next available bus, his best friend came to him with a bleeding finger, unable to get anyone in the school offices to help him. They managed to get a bandage, then asked for antiseptic. A student aide took them to the nurse's office and left them there. When one of the secretaries heard the boys trying to open the locked cupboards, she notified an administrator, "Mr. North," telling him that the two boys were being disruptive. The subsequent police report

stated that Mr. North found the boys standing at the sink rinsing off the friend's finger. When Mr. North asked what they were doing there, Mike turned and began to explain. He was cut short by Mr. North's statement, "I wasn't talking to you." Mr. North then ordered Mike out of the nurse's station because, by his account, "there was no reason for Mike to be in the health office." Mike disagreed with this assessment.

Mike realized that his friend was not going to get help unless he left. As Mike headed on back to the Commons area, Mr. North asked him to wait for his bus outside. Mike answered, "No thanks, I'll wait in here." His school handbook (which each student, administrator, and School Resource Officer (SRO) is responsible for knowing) states that if the student does not have a scheduled class, he is allowed to remain on the lawns, in the media center, or in the student Commons area. A publication from the local District Attorney's office states that the student "must have been asked to leave because of involvement in committing or attempting to commit a disruption, interference, or impairment of the school's lawful mission or functions." Mike felt that he was within his rights to remain in the Commons area. Nevertheless, at this juncture, Mr. North called the police "[r]ather than to argue with him," according to his own statement.

A short time later, a SRO, a back-up officer, a visiting DEA officer, and Mr. North confronted Mike who was sitting quietly with his friends and demanded that he leave. Mike asked three times if he was being arrested and was finally told that he would be arrested if he didn't leave immediately. According to both police and witness reports, Mike said, "OK, I will." At this point, the stories begin to differ. The SRO's report states that the officer pulled the chair out to assist Mike in leaving. The SRO also claimed that Mike pushed against him. Witnesses said that the other officer asked "Shall I take him down?" Mike and the witnesses state that while he was putting his book in his backpack, the officer pulled his chair out and grabbed his arm and that Mike tensed up. Whatever version is true, in the next thirty seconds, according to the officer's report, Mike was leg swept, placed in a chokehold, knelt on, and handcuffed. He was then frisked in sight of his friends.

In the police car, Mike was not informed of his *Miranda* rights, but was asked if he had any drugs and warned that he had better behave. Not until he was at the detention center was he finally told that he had been arrested for trespassing and resisting arrest. His parents were notified neither by the school nor by the police because Mike had recently turned eighteen. Because it was a Friday afternoon, Mike's mother was unable to raise the $1000 bail before the judge left, so he spent the next three nights in jail. On Monday morning, the mother of one of his friends loaned him money to post bail. Mike's mother was furious that she had not been notified earlier. She did not understand why the school's policy

was to call if he had missed a class, but not when he had been arrested and taken to jail.

Result: No disciplinary charges were ever brought by the school, but Mike still faced up to 6 months in jail. Due to the pressures of jail time, trial dates, and efforts on his own behalf, Mike ended up dropping out of school but continued to work to pay off the loan for his bail. His case was resolved in the summer of 2000 through a plea-bargain. Last fall, at the age of nineteen, he was back in school, determined to graduate. He still wonders why he was asked to wait outside for the bus, believing he had the right to remain in school.

Jared was an average high school student. His attitude toward authority was already colored by an incident with law enforcement during his sophomore year. In stopping an attack on a friend, he was charged with assault and required to do community service.

In his junior year, a rival school had been the recipient of a parcel of dead fish as a prank involving an upcoming football game. The SROs from both schools decided through descriptions and yearbook photos that Jared must be the culprit. The school district's policy allowed easy access to speak to Jared without parental notification or an advocate to be present for him. He was pulled out of class, not allowed to speak on his own behalf, ticketed for trespassing, and sent back to class. He fumed over his powerlessness at this new injustice throughout the school day. His parents were not involved in any of these events. Near the end of the school day, the same SRO pulled him out of class, asked for the ticket back, and tore it up, stating that he guessed they had the wrong person. It was later learned that another student was identified, a leader in the school community. He was given a chance to defend himself, and because he did not admit that he had done the deed, he was never ticketed.

Result: Jared's mother feels that his attitude began to harden against authority figures as a result of feeling labeled. Even after an attempt to apologize was made by the SRO supervisor, Jared dropped out of school permanently.

Our last example is Neal, 12 years old, with curly black hair, and a mischievous smile. He suffered from the effects of ADHD and was not doing well in his first year of junior high school. He did not feel comfortable interrupting school staff for his medicines, so his doctor was in the process of finding the proper dosage of a drug that could be given to him only once a day in his home.

On Monday, a school official discovered that Neal had a pack of cigarettes in his pants pocket. A school administrator notified law enforcement to ticket him for "possession of tobacco by a minor." The officer apparently impressed on Neal how bad it was to have a police record, which indicated to Neal that he no longer fit within acceptable norms.

His parents were later notified by phone and told only that the officer had ticketed him, not about the discussion. Under school policy, parents do not have to be present for ticketing, even though Neal was a special needs student dealing with medication issues. That night, Neal told his parents how sorry he was that he had a record and had failed them as a son. Neal's parents did not know exactly what the officer said to him or what the effects of this ticket would be on his future.

Result: On Wednesday, his mother found him dead in his room. At the funeral, his friends said that he never smoked, but that lately he had been bullied in the new school and that he may have put the cigarettes in his pocket to look tough. No one will ever know.

Schools are quick to blame lack of parental involvement when things go wrong. As these examples show, the parents are often not invited to be meaningful partners in finding solutions that are in their children's best interest. What if a school official had acted responsibly and given Mike's friend some antiseptic or made it comfortable for Neal to take his medication? What if administrators had taken the time to calm these situations instead of allowing them to escalate? What if the SRO had taken the time to listen closely to these students in order to understand why they did what they did?

The potential liability of learning institutions in this age of litigation has caused these institutions to protect themselves instead of the interests of the child. The phrase *in loco parentis* expresses the idea that the school administrator stands in place of the parent for the child. When the local school district was asked about this phrase, its answer was that *in loco parentis* "means that the District must act on behalf of the student body, not individuals who have discipline problems or problems with the law."[1] This certainly causes a conflict of interest when administrators are expected to act in the place of parents and allow police contact while protecting students' rights and best interests.

It was recently suggested to the local school district that it adopt the guidelines for police questioning in an American Civil Liberties Union Handbook.[2] It states that when parents cannot be contacted "the principal must . . . [e]nd the interrogation when it becomes obvious that a formal charge is likely."[3] In response, the school district's lawyer refused to recommend the suggestion, stating that it would impose additional legal

1. Written communication, Ruth Herron, Executive Principal, Poudre School District, Colo., and Ellyn Dickmann, Director of Operations, Poudre School District, Colo. (Jan. 28, 1998).

2. *See generally* JANET PRICE ET AL., AMERICAN CIVIL LIBERTIES UNION HANDBOOKS FOR YOUNG AMERICANS: THE RIGHTS OF STUDENTS 114 (1997).

3. *Id.*

duties on administrators and expose the district to liability.[4] A similar issue is recognized in an article from the ABA Journal:

> [H]elping kids to learn from mistakes often takes a back seat to law-and-order concerns. And, say some lawyers, psychologists and parents, the harshness of the penalties for seemingly innocuous offenses is often fueled less by genuine safety concerns and more by fear of lawsuits from those who might allege unequal treatment.[5]

The current situation allows the administrator acting *in loco parentis* to permit police questioning, but the administrator will not take the responsibility to end the questioning. The District has also stated that it is not its responsibility to protect students' and parents' rights, even though it has initiated this formal partnership with law enforcement in schools.

These examples and issues demonstrate the difficulties of the intersection of law enforcement and schools in today's society. This paper discusses what protections may be endangered, who is affected, and where it all started. A current case study of local policy as well as suggestions for policy change is also presented.

II. DEFINITION OF THE ISSUE

In Colorado, a "child" is defined as a person under eighteen years of age.[6] The first legally protected contact between a child and a law enforcement officer is usually during a "custodial interrogation" (in police custody) when the child is suspected or accused of committing a criminal offense. Although neither "custodial" nor "interrogation" is defined by statute, they have been defined by case law. Being "in custody" for the purposes of interrogation is defined as when a reasonable person in the juvenile's position would consider himself or herself deprived of his or her freedom of action in any significant way.[7] Or, as is more commonly used, when a child does not feel free to leave or otherwise ignore the officer.[8] Thus, the effort to protect children in the juvenile justice system begins here.

Nationally, children have the same rights as all citizens. This includes the right to be read *Miranda* warnings before a interrogation by

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4. George Haas, Informational Document (July 23, 1999) (document was prepared for the Poudre School District Board of Education).

5. Margaret Graham Tebo, *Zero Tolerance, Zero Sense*, 86 A.B.A.J. 40 (2000), *available at* http://www.abanet.org/journal/apr00/04ZERO.html.

6. COLO. REV. STAT. § 19-1-103.18 (2000).

7. *See generally* Mary Pat Daviet, *Police Officer's in Public Schools: What Are the Rules?*, COLO. LAW., Nov. 1998, at 79.

8. *See generally* Interview with Stephan Sneider, Deputy State Public Defender, Colo. (Nov. 23, 1999).

law enforcement officers.[9] *Miranda* warnings are the well-known set of constitutional rights spelled out in a 1966 United States Supreme Court decision that protect citizens from self-incrimination by mandating advisement of their rights to remain silent and their right to counsel.[10] Under Colorado law, children have the additional right to have their parents present before a custodial interrogation.[11] Then the child is given his *Miranda* warning in the presence of his parent or guardian.[12]

Scientific research has provided fuel to those calling for parental protection of children's rights. Recent neurological studies on the human brain have shown that the adolescent brain will not have the neural circuitry completed until the person is in their early 20s.[13] A child does not have the "hardware" to process complex decisions, resulting in a juvenile mind that acts under a diminished capacity in regard to consequences. The current consensus is that children are involved in risky behavior, not because of faulty thinking, but because they evaluate the consequences of that behavior differently from adults.[14] If not discounted, these poor decisions and outbursts can influence law enforcement officers and add to their evidence against the child. The question of whether children are of diminished capacity because they are undeveloped is one that must be taken seriously. This information indicates yet another possible consideration – the need for parents to be present to govern childish reactions when being interrogated by law enforcement officers.

III. DEMOGRAPHICS OF THE ISSUE

Although any child has the potential to become the focus of law enforcement interest, the number of children who actually do have contact is surprising. Data for 1997 shows that out of the 69.5 million juveniles in this country, law enforcement made an estimated 2.8 million arrests in that population.[15] The arrests were for offenses ranging from violent crimes to vagrancy.

In Colorado, approximately 3.8 million juveniles had 460,300 delinquency charges filed.[16] In Larimer County, there were an estimated 953 reported cases of delinquency among 226,000 juveniles.[17] Each of these figures represents only the confirmed contacts where there was a docu-

9. *See generally* In re Gault, 387 U.S. 1 (1967).
10. *See generally* Miranda v. Arizona, 384 U.S. 436 (1966).
11. *See generally* COLO. REV. STAT. § 19-2-511 (2000).
12. *See generally id.*
13. *See generally* Shannon Brownlee et al., *Inside the Teen Brain: Behavior Can Be Baffling When Young Minds Are Taking Shape*, U.S. NEWS & WORLD REPORT, Aug. 9, 1999.
14. *See generally* LAURENCE STEINBERG, ADOLESCENCE (1985).
15. *See generally* H. Snyder, *Office of Juvenile Justice and Delinquency Prevention Statistical Briefing Book* (1998), *available at* http://www.ncjj.org.
16. A. Stahl & Y. Wan, *Easy Access to State and County Juvenile Court Case Counts 1997* (2000), *available at* http://ojjdp.ncjrs.org/ojstatbb/ezaco/TableDisplay.asp.
17. *Id.*

mented arrest. The number of contacts where no charges are filed is unknown, but an obvious conclusion is that they would significantly increase these figures.

Though all children are included in the data cited above, minority populations might well be bearing the brunt of today's generalized fear of our youth. National disparity in the juvenile justice system is documented by data that shows the number of cases between 1987 and 1996 involving white juveniles increased 39%, while cases involving black youths increased 68%.[18] According to that report, nearly all Hispanic youth are included in the white category, so disparity cannot be documented at a national level for Hispanics.

It will become increasingly important to search out any disparity found in Larimer County in light of Hispanic population growth reported at 36% between 1990 and 1998.[19] In the same article, Hugh Mowery of the PSD states that the number of Hispanics increased by 79% (or 1,100 students) since 1987. The need to discover solutions to overrepresentation of Hispanic/Latino youths becomes more urgent following the findings in a Colorado State University study completed this summer in Larimer County. The report states that although Hispanic/Latino youth constitute only 10% of the population, they currently account for 32% of closed probation cases.[20] Although Barela-Bloom's research focused on signs that the juvenile justice system may punish minorities more harshly because of stereotyping, it is worth considering that this disparity may begin earlier, at first contact with the juvenile, the custodial interrogation. Decisions are made at that point that can entangle the child in the juvenile system. Children need to have their parents there.

Taking their strong family-centered culture into consideration, the Hispanic population is especially vulnerable to actions taken outside the family structure. It is theorized that overrepresentation in the juvenile justice system disrupts families and neighborhoods and provokes further anger.[21] For those who live with a constant awareness of their minority status, action taken by society sends a different message than the one received by those from the dominant culture. What makes parental presence at the time of interrogation even more imperative is the lack of diversity training for local law enforcement officers.

A local police chief admitted that his department has not followed through on an agreement requiring all new officers to participate in cul-

18. *See generally* ANNE L. STAHL, JUVENILE COURT STATISTICS 1996 (1999), *available at* http://www.ncjrs.org/pdffiles1/168963.pdf.

19. *See generally* David Persons, *The Fact of Larimer County Is Changing: Major Growth seen in Minority Population*, THE FORT COLLINS COLORADOAN, Oct. 3, 1999, at A1, A8.

20. *See generally* Carla Barela-Bloom, Hispanic Overrepresentation in the Larimer County Juvenile Probation Department (1999) (unpublished manuscript, on file with author).

21. *See generally* PHYLLIS J. DAY, A NEW HISTORY OF SOCIAL WELFARE (1989).

tural diversity training, but he did not understand the need since discrimination complaints are few.[22] All of these factors contribute to the need for parents to be present at the earliest interaction between their children and law enforcement.

IV. HISTORY

A. *Juvenile Justice Development*

The need for juvenile law and juvenile courts was recognized at the turn of the past century. Illinois legislators enacted the first juvenile court law in 1899. Until then, children had not been differentiated from adults for the purposes of hearings, detention, sentencing, or prisons.[23] By 1919, all states but three had laws providing a special juvenile courtroom, separate record-keeping, and juvenile probation officers.[24] Phyllis Day notes that the first drafts of these laws were influenced by Jane Addams, Florence Kelly, and other Hull House workers, and in a sense, this expansion into juvenile law institutionalized the idea that the government stood in place of the parents (*parens patriae*).[25]

By the 1930s, the juvenile justice system had made significant strides in protecting children with new children's codes, child labor laws, foster care, and protection for abused children.[26] The problem of how to care for poor children was well in hand. Attitudes toward children began a shift in the 1950s towards the "cherished" child, primarily under the tutelage of Dr. Spock. Although parents were increasingly held responsible for the success or failure of their child, children were beginning to be recognized as persons in their own right. The courts continued, without regard to the due process rights of children, in the paternal mindset of *parens patriae*, using their own judgment as to innocence or guilt.[27]

The 1967 landmark Supreme Court decision, *In re Gault*, finally overcame the long-standing apathy towards modernization of juvenile courts.[28] This case established that children should not be denied constitutional rights afforded to adults in *Miranda*.[29] Rather, *In re Gault* gave children the right to fair treatment and due process of law, the constitutional privilege against self-incrimination, the right to be advised of their

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22. *See generally* Kendra E. Fish, *Protestors Claim Discrimination: Citizens Upset over Unfair Police Treatment, Lack of Diversity Training*, THE ROCKY MOUNTAIN COLLEGIAN, Dec. 3, 1999, at P1.

23. *See generally* H. TED RUBIN, JUVENILE JUSTICE: POLICE, PRACTICE, AND LAW (1979).

24. *See generally* DAY, *supra* note 21.

25. *See generally id.*

26. *See generally id.*

27. *See generally* Richard Canalori, *Debating Teenage Rights* (1988), *available at* http://www.cis.yale.edu/ynhti/curriculum/units/1988/1/88.01.x.html.

28. *See generally* In re Gault, 387 U.S. 1 (1967).

29. *See generally id.*

right to be represented by counsel, and the rights of confrontation and sworn testimony of witnesses available on cross-examination.[30]

Over the ensuing years, numerous constitutional and legal safeguards for the juvenile process have been created, as the courts attempt to identify the role of the juvenile justice system.[31] These changes are continually under attack. There are those who believe that justice has "gone soft" and welcome children being tried in adult courts. There are also those who believe that the justice system runs roughshod over the rights of the young and encourage a shift to a family court system.[32]

B. *International Laws*

The United Nations' Convention on the Rights of the Child (1989) states many of the beliefs already prevalent in juvenile law, but it is important to recognize the universal nature of these beliefs. Relevant to the topic of this paper is part of the Preamble of the Convention's declaration: "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection . . . ."[33]

In addition, the United Nations' Standard Minimum Rules for the Administration of Juvenile Justice (1985) states under General Principle 7 that

> [b]asic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings.[34]

These resolutions appear to reinforce the current direction of juvenile law in the U.S., stating that "[n]othing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child . . . ."[35]

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30. *See generally id.*

31. *See generally* RUBIN, *supra* note 23.

32. *See generally* Robert E. Shepard, *Juvenile Justice Standards: Anchor in the Storm*, *at* http://www.abanet.org/crimjust/juvjus/cjstandards.html (visited Mar. 10, 2001).

33. Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, *available at* http://www.unhchr.ch/html/menu3/b/k2crc.htm (Nov. 20, 1989) [hereinafter Convention on the Rights of the Child].

34. *Standard Minimum Rules for the Administration of Juvenile Justice*, G.A. Res. 40/33, U.N. GAOR, Supp. No. 53, at 207, U.N. Doc. A/40/53, *available at* http://hei.unige.ch/humanrts/instree/j3unsmr.html (1985) [hereinafter The Administration of Juvenile Justice].

35. Convention on the Rights of the Child, *supra* note 33, at art. 41.

C. *State Laws*

States also are not prevented from having laws that are more conducive to the rights of children. After *In re Gault*, judges and lawyers became aware of the need for a separate law code for juveniles and began developing a children's code of law to define the interaction between the juvenile justice system and children.

The Colorado Revised Statutes (C.R.S.), for example, contain such a code. One of its major accomplishments is to further protect the rights of children by supplementing the requirement for reading the "Miranda warnings" with the stipulation that a juvenile must be accompanied by a parent, guardian, or legal or physical custodian during a custodial interrogation.[36] This allows parents, who are ultimately responsible for their children, to help determine what is in the child's best interest concerning his or her constitutional rights.

D. *Police in Schools*

One complicating factor with children's rights has been the introduction of police into public schools. Originally introduced in the 1960s, police were a response to the increasing disruption in society.[37] Less respect and trust for law enforcement was one result when, for the first time, millions of people could watch televised reports of officers' brutal responses to the civil rights activists and Vietnam War protesters. This societal shift caused uncertainty and instability among youth. They became activists, using sit-ins, walkouts, boycotts, and bomb threats as means of expressing their frustration. Coping with all this anger induced a lot of fear. It became appropriate for law enforcement officials to project a more positive image to help maintain a stable society. Police were brought into the schools with the goal of developing rapport and obtaining the greatest possible change in the attitudes of youth.[38]

These police programs have multiplied recently in the wake of several highly publicized violent shootings committed by children in school settings. Federal funds are being used to put a new wave of "school resource officers" in schools.[39] This has complicated the matter of children's rights by venturing into mostly uncharted territory, traditionally held to be the domain of school administrators and parents. Questions

36. *See generally* COLO. REV. STAT. § 19-2-511.1 (2000).

37. *See generally* U.S. Department of Justice, *School Disruptions: Tips for Educators and Police* (1977).

38. *See generally* ROBERT PORTUNE, CHANGING ADOLESCENT ATTITUDES TOWARD POLICE 39-46 (1971).

39. Michael Romano, *Cops To Walk New Beat: Schools*, ROCKY MOUNTAIN NEWS (Denver), Sept. 20, 1999, at 20A.

defining constitutional rights in schools have been pressed all the way to the Supreme Court.[40]

Locally, Fort Collins City Police officers were brought into schools by the School Resource Officer Program (SRO) in 1995. It was declared a successful example of an intergovernmental agreement by the Mayor and the City Council and welcomed by the Poudre School District (PSD) for bringing an additional caring adult into schools. But over the first years of implementation, complaints began to arise suggesting that perhaps all was not well. While there might be benefits to having a law enforcement officer in school, there were also some concerns. Administrators were being allowed to act in the place of parents when a child was being interrogated by an officer. This was not compatible with the children's code according to a local group of parents who eventually succeeded in having that function disallowed.[41] However, other changes made at the same time assert that children have the option to have their parents present when they are being interrogated by an officer and leave the responsibility to the child to make that determination instead of the officer.[42] The schools play no responsible roles in assuring that children's rights are not compromised. They trust the officer to use his or her discretion as to when an interrogation turns into a custodial one, which requires parental presence.

This raises the issue of whether custodial interrogation is implied when children are considered to be members of a "captive audience," whose attendance in school is mandated and where the authority of the administration cannot be avoided.[43] This issue is addressed in a letter to the PSD administrators (later disseminated to the authors) finding that a degree of control over students is inherent in a school setting and that it is appropriate for school administrators to protect the rights of students by making reasonable attempts to contact the parents.[44]

In Vancouver, Canada, the school board was confronted with the same issues in 1969.[45] The British Columbia Civil Liberties Association urged legislation that would embody the following relevant principles:

> [n]o student should be interviewed at school by police without prior consultation with at least one of the student's parents or

40. *See generally* JANET PRICE et al., AMERICAN CIVIL LIBERTIES UNION HANDBOOKS FOR YOUNG AMERICANS: THE RIGHTS OF STUDENTS (1991).

41. *See generally* Julie Baxter, *PSD board revises SRO rules on parental notification,* THE FORT COLLINS COLORADOAN, Oct. 12, 1999, at A1-A2.

42. *See generally* POUDRE SCHOOL DISTRICT (PSD), SCHOOL RESOURCE OFFICER (SRO) AND LAW ENFORCEMENT GUIDELINES (1999) [hereinafter PSD Publication].

43. *See generally id.*

44. Written communication, Susan Schermerhorn, Attorney, Poudre School District, Colo. (Oct. 4, 1999).

45. *See generally* B.C. CIVIL LIBERTIES ASSOCIATION, INTERROGATION OF MINORS IN THE SCHOOLS: A POSITION PAPER (1969).

> guardians, such a parent or guardian should be present (as is required in the case of juvenile court) at such an interview, and in no case should a principal or teacher assume this parental responsibility . . . .[46]

In Colorado, clarification on whether children's rights are compromised in school settings has yet to be decided either in case law or statute, but it may be necessary to clarify that issue soon.

V. POLICY ANALYSIS

In this analysis, two juvenile policies give conflicting direction. The first policy under consideration is found in C.R.S. § 19-2-511.

> (1) No statements or admissions of a juvenile made as a result of the custodial interrogation of such juvenile by a law enforcement official concerning delinquent acts alleged to have been committed by the juvenile shall be admissible in evidence against such juvenile unless a parent, guardian, or legal or physical custodian of the juvenile was present a such interrogation and the juvenile and his or her parent, guardian or legal or physical custodian were advised of the juveniles right to remain silent and that any statements made may be used against him or her in a court of law, of his or her right to the presence of an attorney during such interrogation, and of his or her right to have counsel appointed if he or she so requests at the time of the interrogation . . . .[47]

The second policy rests on the foundation set by the first. It is found in the PSD Publication SRO and Law Enforcement Guidelines.

> When a student is being investigated for a criminal violation but the student is not under arrest, students will have the option of calling their parent(s) or guardian(s) prior to their interrogation . . . . Whether or not to postpone the interrogation until the parent arrives is ultimately the law enforcement officer's decision.[48]

At issue is whether parental presence during a custodial interrogation is mandated or an option based on a decision either by the student or the officer. The responsibility is on the officer to recognize when an interrogation becomes custodial and to stop the questioning until the parents are present in order to assure that the evidence is admissible in court.

When the child is in school, the situation is legally similar to when the child is "on the street." It becomes the responsibility of the officer to

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46. *Id.*
47. COLO. REV. STAT. § 19-2-511.1.
48. PSD Publication, *supra* note 42.

stop the questioning when he or she feels that the child may not feel free to leave or ignore the questioning. The SRO and Law Enforcement Guidelines shift responsibility to the child to determine when it is in his or her best interest to request parental presence or to walk away during an interview.[49] No adult is responsible for seeing that the officer complies with the custodial interrogation statute in a way that benefits the child, although the child remains in a stressful situation, a "captive audience" member. Contrary to C.R.S.,[50] the guidelines governing interrogation by law enforcement officers in PSD also state that the child has an option to have parents present, which suggests that the child can waive that right.[51] The child's statement is based on a division of custodial interrogation into two types: "under arrest" and "not under arrest."[52]

Officers, schools, and children are left to their own divergent interpretations of what constitutes custodial interrogation without a formalized statutory definition. Because the only consequence for the officer is that the court may suppress the child's statements, the officer may feel relatively free to continue the interrogation to the point of arresting the child without deciding to involve the parents. Ultimately, it is the child's right to have his or her parents present that has been violated, hindering the parent's protective ability.

VI. PROPOSED POLICY OPTION

One solution to the need for parental protection of children's rights is a clearer definition of "custodial interrogation" in the C.R.S. and in the SRO and Law Enforcement Guidelines.[53] In recognition of the latest research showing that children operate under a diminished capacity in regard to consequences, it would be appropriate to define "custodial" and "interrogation" in the children's code.

Modern case law defines "custodial" as whether the child feels deprived of his or her freedom of action in any significant way.[54] The officer is given the discretion to make that immediate assessment, but the child must prove the deprivation in court.[55] Since it is reasonable to assume that no child would want to self-incriminate, the burden of protection should not be left to the child. Therefore, an amendment to C.R.S. should be added that outlines the interaction of an officer with an interest

49. *See generally id.*
50. *See generally* COLO. REV. STAT. § 19-2-511.
51. *See generally* PSD Publication, *supra* note 42.
52. *Id.*
53. *See generally* COLO. REV. STAT. § 19-2-511; PSD Publication, *supra* note 42.
54. *See generally* Miranda v. Arizona, 384 U.S. 436, 444 (1966) ("By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.").
55. Interview with Amy Berkner, Attorney, (Dec. 3, 1999).

in questioning a child and protects the child by not allowing interrogation until parents or counsel are present.

Such an amendment would likely cause a chain reaction to local regulations that are based on C.R.S. However, the SRO and Law Enforcement Guidelines should be changed immediately to come into compliance with the current C.R.S. The new policy should, at least, read in part that "[w]hen a student is being investigated for a criminal violation but the student is not under arrest, a school administrator shall notify parent(s) or guardian(s) prior to the interrogation."

One concern of note is that officers can simply circumvent custodial interrogation limitations by making criminal charges or ticketing and not interrogating the child at all. Attorneys have claimed that this is the best situation because the child has not in any way incriminated himself or herself before going to court. However, sending children to court without any chance to explain extenuating circumstances while in the presence of their parents violates a sense of fairness that children need to have fostered in their development. It also adds enormous stress and costs for the child and family, as well as adding a burden to the court system from situations that could have been better dealt with outside of the court systems. Moreover, particularly if wrongfully charged, sending children to court violates the purpose of the SRO and Law Enforcement Guidelines: to improve perceptions and relations between students and officers. For the sake of children and society, defining this new policy should not be taken lightly.

One approach to protect children's rights has been taken by a local parents' group, Students' Rights Advocates.[56] They have developed small cards, both in English and Spanish, which explain appropriate behavior when being questioned by police.[57]

CONCLUSION

Although the status of and protections for juveniles has improved over the last century, recent societal reactions to children have raised the question of whether we have come far enough. Enhancing the involvement of parents would continue the movement towards development of children's rights. This issue of custodial interrogation is important because decisions made at that stage have a lifelong influence on children.

The inclusion of law enforcement in the schools presents some grave concerns as expressed by Catherine Krebs who "advocates referrals of questionable student incidents to independent decision-makers, generally

56. *See generally* Appendix.
57. *Id.*

psychologists or others trained to deal with adolescent behavior."[58] Irwin Hyman, a professor of school psychology, "agrees that more psychological services are needed."[59] As for where the money would come from, "[w]e're turning our schools into a police state. Use some of the funds that are going for police officers, cameras and all of that."[60] In addition, using police in the schools adds the concern of the effect on minority communities where profiling and other examples of racial biases do not build a foundation of trust.

The larger issues of society can be directly traced to how our major social institution educates our new citizens about democracy. Hyman believes that using power and control instead of modeling democracy for our youth leads to the alienation and apathy seen in today's young voters.[61]

Many voices today recognize that the juvenile justice system is not effective in changing the attitudes of children. The Colorado Juvenile Intensive Supervision Program, intended for the most serious offenders, has a dismal ninety percent recidivism rate.[62]

The United Nations' Standard Minimum Rules for the Administration of Juvenile Justice identifies four pitfalls to the juvenile justice system related to its effects on children. First, General Principle 10 states that "[c]ontacts between the law enforcement agencies and a juvenile offender shall be managed in such a way as to . . . avoid harm to her or him . . . ."[63] The commentary also states that "[i]nvolvement in juvenile justice processes in itself can be 'harmful' to juveniles and therefore to 'avoid harm' should be broadly interpreted . . . ."[64]

Second, General Principle 11.2 provides that "[t]he police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings . . . ."[65] The commentary contends that "[d]iversion . . . serves to hinder the negative effects of subsequent proceedings in juvenile justice administration."[66] In many cases, non-intervention would be the best response. "This is especially the case where the offense is of a non-serious nature and where the family, the school or other informal social control institutions have already reacted, or are likely to react, in an ap-

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58. Tebo, *supra* note 5.
59. *Id.*
60. *Id.* (quoting Professor Irwin Hyman).
61. *See generally* Tebo, *supra* note 5.
62. *See generally* Michelle D. Johnston, *Audit Faults Youth Probation,* THE DENVER POST, Dec. 8, 1998, at A1.
63. The Administration of Juvenile Justice, *supra* note 34, at Gen. Princ. 10.
64. *Id.* at Commentary to Gen. Princ. 10.
65. *Id.* at Gen. Princ. 11.2.
66. *Id.* at Commentary to Gen. Princ. 11.

propriate and constructive manner."[67] A related concern addressed by General Principle 8 is that criminological research provides evidence that young people are particularly susceptible to the detrimental effects of labels and stigmatization.[68]

Third, the commentary for General Principle 13 recognizes that "[t]he danger to juveniles of 'criminal contamination' while in detention pending trial must not be underestimated [and therefore it is important] to stress the need for alternative placements."[69]

Finally, General Principle 19 declares that institutionalization shall always be a last resort.[70] The Commentary confirmed that progressive criminology has found little or no difference in the success of institutionalization.[71] In fact, it further states that,

> [t]he many adverse influences on an individual that seem unavoidable within any institutional setting evidently cannot be outbalanced by treatment efforts. This is especially the case for juveniles, who are vulnerable to negative influences. Moreover, the negative effects, not only of loss of liberty but also of separation from the usual social environment, are certainly more acute for juveniles than for adults because of their early stage of development.[72]

It seems clear that more effective methods of correction must be developed and involving the family as soon as a child first contacts law enforcement allows alternatives to be considered, encouraging a more holistic approach to the problems that have brought the child to this place. This is an arena worthy of social action.

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67. *Id.* at Commentary to Gen. Princ. 11.
68. *See generally id.* at Gen. Princ. 8.
69. *Id.* at Commentary to Gen. Princ. 13.
70. *See generally id.* at Gen. Princ. 19.
71. *See generally id.* at Commentary to Gen. Princ. 19.
72. *Id.*

APPENDIX A

Hi! Does a police officer want to talk to you?

Are you a witness? Or a victim? Or being questioned about a crime?

❶ Don't panic. Stay calm and polite.
❷ Tell the officer your name.
❸ Call your parent or guardian.
You have the right for them to be present.

You do not have to answer any questions.

Remember: *anything you say can be used in court; so it is important to have your parent or guardian there.*

These rights apply to persons under the age of 18 and are protected by the Colorado Children's Code.

SPONSOR ϑ STUDENTS' RIGHTS ADVOCATES

¡Hola! ¿Un policía quiere hablarte?

¿Eres un testigo? ¿o una víctima? ¿o te están preguntando sobre un crimen?

❶ No te pongas nervioso. Quédate calmado y atento.
❷ Dile tu nombre al policía.
❸ Llama a tus padres o a tu guardián.
Tienes el derecho de tenerlos presentes.

No tienes que contestar ninguna pregunta.

Recuerda: *Lo que digas se puede usar en la corte; así es importante tener a tus padres o guardián contigo.*

Estos derechos se aplican a personas *menores* de 18 y estan protegidos por el Codigo Legal de Niños de Colorado.

SPONSOR ϑ STUDENTS' RIGHTS ADVOCATES