

# THE REAL SCHOOL SAFETY DEBATE: WHY LEGISLATIVE RESPONSES SHOULD FOCUS ON SCHOOLS AND NOT ON GUNS

Rebekah Elliott\*

*Recent tragedies in our nation’s schools—such as the Sandy Hook shooting in Newton, Connecticut and the Marysville-Pilchuck shooting near Seattle, Washington—have brought the school safety debate to the forefront of American politics. Issues of serious school violence receive intense media scrutiny. As a result, the school safety debate tends to incite emotional responses from legislatures, school districts, and parents alike. However, given that school safety concerns more than just mass shootings, emotionally charged legislation focused upon firearms is not the answer. Rather, school safety legislation needs to be school-centered.*

*In response to the current guns-in-schools debate, this Note proposes that the proper way to address school safety is through state legislation that requires school resource officer programs and individual school safety plans, and creates a source of financial support for these increased safety measures. Recent legislation from Indiana and Connecticut serve as models for state policymakers to follow when responding to the issue of school safety through legislation.*

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\* J.D. Candidate, University of Arizona James E. Rogers College of Law, 2015. I am incredibly grateful to Professor Ellen Bublick for her guidance and advice on this topic. I would also like to extend a special thank you to David Udall, Alex Taber, Gabriela Rios, Colleen Ganin, and the rest of the *Arizona Law Review* editorial staff for their invaluable feedback and assistance during the editing process. Finally, I would like to thank my husband, Robert Elliott, for his endless support and encouragement.

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## INTRODUCTION

Recent tragedies in our nation’s schools—such as the Sandy Hook incident in Newton, Connecticut<sup>1</sup> and the Marysville-Pilchuck High School shooting near Seattle<sup>2</sup>—have brought the school safety debate to the forefront of American politics. While both sides agree that there is a need for increased school safety, the responses have been scattershot: ranging from increasing restrictions on firearm sales to arming teachers.<sup>3</sup> Understandably, the issue of school safety tends to incite

1. See James Barron, *Nation Reels After Gunman Massacres 20 Children at School in Connecticut*, N.Y. TIMES, Dec. 15, 2012, at A1 (20 young children and six school staff members lost their lives at the hands of an armed intruder).

2. See Daniella Silva & Elisha Fieldstadt, *Marysville High School Victim Andrew Fryberg Dies After Shooting*, NBC NEWS (Nov. 7, 2014, 10:33 PM), <http://www.nbcnews.com/storyline/marysville-school-shooting/marysville-high-school-victim-andrew-fryberg-dies-after-shooting-n244136> (a high school student opened fire in the cafeteria, killing four other students before taking his own life).

3. Compare N.Y. SAFE Act, S.B. 2230, 236th Leg., 2013–2014 Reg. Sess. (N.Y. 2013) (expanding New York’s assault weapons ban, requiring background checks on private gun and ammunition sales, reducing lawful magazines to seven bullets, requiring healthcare workers to report patients they believe will seriously harm themselves or others to local health officials, and increasing sentences on certain gun crimes), *with* Second Amendment

emotional responses from legislatures, school districts, and parents alike. Emotionally charged legislation focused upon firearms is not the answer to the perceived threat to student safety. If our state and local governments believe school safety is an issue of critical importance, and wish to legislate in this area, then proposed legislation must encompass more than gun regulation, or a lack thereof. The solutions introduced by state and local governments, however, must be deliberate and systematic.

This Note provides a framework for state lawmakers to use when addressing the issue of school safety through legislation. Specifically, state legislation aimed at increasing school safety should focus on requirements for school resource officer programs and individual school safety plans. School safety legislation should also create a source of financial support for schools that may need assistance with securing funds for increased safety measures. To this end, recently enacted legislation from Indiana and Connecticut serve as models for states looking to address the issue of school safety through legislation.

Part I of this Note introduces the legal setting surrounding the school safety debate. Part II then discusses the problem of reactive, emotionally driven legislation created to enhance school safety. Part III presents the solution of developing state legislation that increases funding for school resource officers and creates minimum requirements for school safety plans, and then provides examples of legislation that does just this. Part IV outlines why the responses from the exemplar jurisdictions, Indiana and Connecticut, are effective solutions to the problem. Finally, Part V addresses criticism of the solution suggested in this Note.

## I. LEGAL SETTING

Education is arguably the most critical function of state and local governments.<sup>4</sup> Local governments first founded public schools beginning in the 1830s through what is now known as the common-schools movement.<sup>5</sup> At the time, education was locally controlled and financed.<sup>6</sup> Around 1870, the common-schools movement came to an end, leaving American society with a “statewide public school system—a centrally administered organization of public schools, overseen by a state superintendent or department of education and financed by state income tax revenues in addition to local taxes.”<sup>7</sup> Today, every state constitution recognizes a duty to provide a public-school system.<sup>8</sup> Within this system, states have the authority

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Protection Act, S.B. 102, 2013–2014 Leg. Reg. Sess. (Kan. 2013) (excluding firearms manufactured and owned within Kansas state lines from all federal gun-control laws), and H.B. 1087, 88th Leg., 2013 Reg. Sess. (S.D. 2013) (authorizing school boards to train and arm school employees, hired security personnel, or volunteers).

4. *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954) (“[E]ducation is perhaps the most important function of state and local governments . . .”).

5. See Barry Friedman & Sara Solow, *The Federal Right to an Adequate Education*, 81 GEO. WASH. L. REV. 92, 121–22 (2013).

6. *Id.*

7. *Id.* at 122.

8. See, e.g., ALA. CONST. art. XIV, § 256; ALASKA CONST. art. VII, § 1; ARIZ. CONST. art. XI, § 1; ARK. CONST. art. XIV, § 1; CAL. CONST. art. IX, § 1; COLO. CONST. art. IX, § 2; CONN. CONST. art. VIII, § 1; DEL. CONST. art. X, § 1; FLA. CONST. art. IX, § 1; GA.

to determine educational policy and school districts have the authority to determine its implementation.<sup>9</sup>

Despite states' primary responsibility for education, the federal government has increased its influence over educational policy in recent years.<sup>10</sup> Even with federal involvement, however, localism remains at the heart of educational policy.<sup>11</sup> As expressed by the U.S. Supreme Court in *Milliken v. Bradley*, "No single tradition in public education is more deeply rooted than local control over the operation of schools; local autonomy has long been thought essential both to the maintenance of community concern and support for public schools and to [the] quality of the educational process."<sup>12</sup> While the federal government may influence the design of state legislation through funding, responses to the perceived threat to school safety should occur at the state and local level. Every school is unique, and the needs of each school are largely dependent upon its surrounding community. In order to maintain community support for public schools, and to ensure the quality of school safety responses, school safety policy should be determined by states and implemented at the local level.

To provide context to the broader debate surrounding school safety, and to recognize that all levels of government influence educational policy, the following Sections discuss both federal and state laws. A student's right to a safe and welcoming school is found, either directly or impliedly, in state and federal law. This right necessitates a legislative response to a threat of school safety.

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CONST. art. VIII, § 1; HAW. CONST. art. X, § 1; IDAHO CONST. art. IX, § 1; ILL. CONST. art. X, § 1; IND. CONST. art. VIII, § 1; IOWA CONST. art. IX, § 3; KAN. CONST. art. VI, § 1; KY. CONST. § 183; LA. CONST. art. VIII, § 1; ME. CONST. art. VIII, pt. 1, § 1; MD. CONST. art. VIII, § 1; MASS. CONST. pt. 2, ch. 5, § 2; MICH. CONST. art. VIII, § 2; MINN. CONST. art. XIII, § 1; MISS. CONST. art. VIII, § 201; MO. CONST. art. IX, § 1(a); MONT. CONST. art. X, § 1; NEB. CONST. art. VII, § 1; NEV. CONST. art. XI, § 2; N.H. CONST. pt. 2, art. LXXXIII; N.J. CONST. art. VIII, § 4, para. 1; N.M. CONST. art. XII, § 1; N.Y. CONST. art. XI, § 1; N.C. CONST. art. IX, § 2; N.D. CONST. art. VIII, § 1; OHIO CONST. art. VI, § 2; OKLA. CONST. art. XIII, § 1; OR. CONST. art. VIII, § 3; PA. CONST. art. III, § 14; R.I. CONST. art. XII, § 1; S.C. CONST. art. XI, § 3; S.D. CONST. art. VIII, § 1; TENN. CONST. art. XI, § 12; TEX. CONST. art. VII, § 1; UTAH CONST. art. X, § 1; VT. CONST. ch. 2, § 68; VA. CONST. art. VIII, § 1; WASH. CONST. art. IX, § 1; W. VA. CONST. art. XII, § 1; WIS. CONST. art. X, § 3; WYO. CONST. art. VII, § 1.

9. Aaron J. Saiger, *Legislating Accountability: Standards, Sanctions, and School District Reform*, 46 WM. & MARY L. REV. 1655, 1658 (2005).

10. The federal government "provided a boost to the standards of assessments movement during the 1990s." Michael Heise, *Equal Educational Opportunity and Constitutional Theory: Preliminary Thoughts on the Role of School Choice and the Autonomy Principle*, 14 J.L. & POL. 411, 429–30 (1998); see also Friedman & Solow, *supra* note 5, at 141–42 ("Beginning with the Goals 2000: Educate America Act ('Goals 2000') and the Improving America's School Act ('IASA'), both passed in 1994, and culminating with the No Child Left Behind Act of 2001 ('NCLB'), the federal government so deepened its involvement in America's schools during the 1990s and early 2000s that it is fair to say that today, the provision of a minimally adequate education has become broadly accepted as one of the federal government's core responsibilities.")

11. Saiger, *supra* note 9, at 1662–63.

12. 418 U.S. 717, 741 (1974).

Additionally, because many of the existing legislative responses have centered on guns, a discussion of gun rights and regulation is also included.

### A. What Does the Law Require?

#### 1. Second Amendment Right to Bear Arms

The Second Amendment to the U.S. Constitution recognizes an individual right to bear arms: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”<sup>13</sup> In *District of Columbia v. Heller*, the U.S. Supreme Court clarified that this right is unconnected with militia service and extends to uses of firearms for traditionally lawful purposes, such as self-defense within the home.<sup>14</sup> However, the Court clarified that this right is not absolute, stating that “nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the *carrying of firearms in sensitive places such as schools . . .*”<sup>15</sup> *Heller* is relevant to the school safety debate for two reasons: it strengthens the Second Amendment right to bear arms for purposes of self-defense and it recognizes the government’s ability to restrict the carrying of firearms in schools.<sup>16</sup>

#### 2. The Federal Gun-Free School Zones Act

In 1990 Congress restricted the right to bear arms by passing the Gun-Free School Zone Act, which banned guns on K–12 school property and within a 1,000-foot radius of these schools.<sup>17</sup> Although participants often cite the Act during school safety debates, Professor David Kopel persuasively argues that this law is mostly irrelevant.<sup>18</sup> Despite aiming to ban firearms on K–12 school grounds, the Act exempts certain firearm usage for school-approved programs and certain personnel, including: (1) possession by an individual for use in a program approved by a school in the school zone;<sup>19</sup> (2) possession by an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;<sup>20</sup> and (3) possession by a law enforcement officer acting in his or

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13. U.S. CONST. amend. II.

14. 554 U.S. 570, 573–625 (2008) (determining the meaning of the Second Amendment).

15. *Id.* at 626–27 (emphasis added).

16. See Jonathan Zimmer, *Regulation Reloaded: The Administrative Law of Firearms After District of Columbia v. Heller*, 62 ADMIN. L. REV. 189, 195–97 (2010).

17. 18 U.S.C. §§ 921(a)(25), 922(q) (2006) (defining “school zone” and restricting guns in school zones); see also David B. Kopel, *Pretend “Gun-Free” School Zones: A Deadly Legal Fiction*, 42 CONN. L. REV. 515, 518–19 (2009). In 1994, the U.S. Supreme Court found the law to be an unconstitutional use of Congress’s commerce power. *United States v. Lopez*, 514 U.S. 549, 551 (1994). However, Congress re-enacted the law in 1996, this time limiting its application to guns that had moved through interstate commerce. See Kopel, *supra* note 17, at 519.

18. Kopel, *supra* note 17, at 517 (noting the many exceptions contained in the federal law make it irrelevant to public debate over carrying guns on school campuses).

19. 18 U.S.C. § 922(q)(2)(B)(iv).

20. *Id.* § 922(q)(2)(B)(v).

her official capacity.<sup>21</sup> Because of these exceptions, the Act is unenforceable against school resource officers and school personnel who have been authorized to carry firearms on school grounds through a school program.

In addition to the significant limitations created by the statutory exceptions included in the Act, federal legislation is not the end point for gun regulation.<sup>22</sup> States may legislate further in this area. And by the time Congress had passed the Act, many states had already imposed their own bans, and exceptions, through legislation.<sup>23</sup> As a result, the Act is largely immaterial to the current debate surrounding school safety. State lawmakers need only look to their own state regulations pertaining to the carrying of firearms in school zones when considering options for enhancing school safety.

### 3. Student Right to a Safe and Welcoming School

Under common law, school districts—as government entities—have no general duty to protect students.<sup>24</sup> Accordingly, a lawsuit claiming that a school district was negligent in providing adequate security will likely fail in court.<sup>25</sup> However, some states have enacted statutes recognizing a right to attend a safe and welcoming school.<sup>26</sup> While, other states recognize a student’s constitutional right to attend a safe school.<sup>27</sup>

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21. *Id.* § 922(q)(2)(B)(vi). These three exceptions apply to the solutions discussed in this Note, which are the more popular solutions being advanced in the larger political debate—school programs arming teachers, utilizing school resource officers or other law enforcement agents on school grounds, and hiring private security agencies. *See* Kim Severson, *Guns at School? If There’s a Will, There are Ways*, N.Y. TIMES, Sept. 28, 2013, at A9.

22. *District of Columbia v. Heller*, 554 U.S. 570, 619–20 (2008).

23. *See, e.g.*, ARIZ. REV. STAT. ANN. § 13-3102(A)(12) (2014) (prohibiting the possession of a deadly weapon on school grounds); *id.* § 13-3102(C)(4) (creating an exception for any “person specifically licensed, authorized or permitted pursuant to a statute of this state or of the United States”); *see also* Kopel, *supra* note 17, at 519.

24. *See* Allan E. Korpela, Annotation, *Modern Status of Doctrine of Sovereign Immunity as Applied to Public Schools*, 33 A.L.R.3D 703, at § 3 (2011) (pursuant to the doctrine of sovereign immunity, all “authorities in charge of or conducting public schools or public institutions of higher learning, including school districts, school boards or similar agencies or authorities, and public colleges or universities or their managing or governing boards . . . enjoy tort immunity in the absence of a legislative enactment to the contrary . . . on the theory that such bodies merely act as agents or instrumentalities of the state in the furtherance of its public educational system and thus partake of the state’s sovereign character with respect to tort liability.”).

25. *See, e.g.*, *Johnson v. Dall. Indep. Sch. Dist.*, 38 F.3d 198 (5th Cir. 1994) (rejecting a claim for damages for student who was killed by a gunshot during an altercation at a high school); *Transon v. Bd. of Educ.*, 659 N.Y.S.2d 102 (App. Div. 1997) (reversing \$350,000 verdict for student stabbed by three teenagers in a high school special education class).

26. In its Bill of Rights and Responsibilities for Students and School Personnel, West Virginia recognizes a “right to attend a school and ride a bus that is safe, orderly and drug free.” W. VA. CODE, § 18A-5-1c (2008).

27. In California, the right to attend a safe school is a constitutional guarantee. CAL. CONST. art. I, § 28(f)(1). California’s Constitution states, “[A]ll Students and Staff of

Similarly, the federal government recognizes the importance of a safe and welcoming school. Through the No Child Left Behind Act,<sup>28</sup> states are required to identify and label “persistently dangerous” schools and allow students attending these schools to transfer to a safe school in the same district.<sup>29</sup> In order to receive federal education funding, states must certify that they complied with this “unsafe school” choice provision.<sup>30</sup> While not specifically using “student right” language, the U.S. Supreme Court has held that schools have a responsibility to maintain safe and positive learning environments.<sup>31</sup>

As it stands, several states and the federal government have recognized the importance of a safe and welcoming school. Therefore, in light of the renewed school safety debate, state policymakers should develop legislation that promotes a safe and welcoming school environment. With this legal landscape as a backdrop, Part II introduces the core issues that this Note addresses.

## **II. THE PROBLEM: REACTIVE, EMOTIONALLY DRIVEN LEGISLATION ADVANCED TO ENHANCE SCHOOL SAFETY**

Unfortunately, violent crime in our nation’s schools is not a recent development. The deadliest known primary-school tragedy occurred in 1927 when a bombing claimed the lives of 37 children.<sup>32</sup> News headlines in the 1990s featured a series of school shootings that claimed multiple victims,<sup>33</sup> including the infamous shooting at Columbine High School in which two active shooters took the lives of 12 students and one teacher.<sup>34</sup> When 20 young children and six school staff lost their lives at the hands of an active shooter on December 14, 2012 at Sandy Hook Elementary School,<sup>35</sup> the issue of school safety became a topic of American political

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public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses that are safe, secure and peaceful.” *Id.*

28. No Child Left Behind Act of 2001, Pub. L. No. 107-110, § 9532, 115 Stat. 1425 (2001).

29. 20 U.S.C. § 7912(a) (2012).

30. *Id.* § 7912(b).

31. See *Safford Unified Sch. Dist. No. 1 v. Redding*, 557 U.S. 364, 393 (2009) (stating “[t]eachers, administrators, and the local school board are called upon both to ‘protect the . . . safety of students and school personnel’ and ‘maintain an environment conducive to learning’”) (quoting *New Jersey v. T.L.O.*, 469 U.S. 325, 353 (1985) (Blackmun, J., concurring in judgment))).

32. A bombing at the Bath Consolidated School in Bath, Michigan claimed the lives of 37 children and two teachers on May 18, 1927. See Larry Beresford, *Looking Back at Columbine*, in *LIVING WITH GRIEF: COPING WITH PUBLIC TRAGEDY* 41 (Marcia Lattanzi-Licht & Kenneth J. Doka eds., 2003).

33. *Id.* (“The Columbine shootings culminated a series of high-profile incidents of classroom violence during the previous three years, including multiple-fatality shootings in Moses Lake, Washington, on February 2, 1996; Bethel, Alaska, February 19, 1997; Pearl, Mississippi, October 1, 1997; West Paducah, Kentucky, December 1, 1997; Jonesboro, Arkansas, March 24, 1998; and Springfield, Oregon, May 21, 1998.”).

34. *Id.*

35. See Barron, *supra* note 1.

debate.<sup>36</sup> Amid this new wave of debate, most state legislatures have sought to address the issue of school safety through legislation that focuses on guns rather than on schools.<sup>37</sup>

### A. Trends in School Safety

Although school shootings appear frequently in the media, schools generally remain a safe place for children.<sup>38</sup> Statistically—even when accounting for “two decades of high-profile shootings”—schools have become more safe over the years.<sup>39</sup> For the 2010–2011 school year,<sup>40</sup> public schools reported 31 school-associated violent deaths.<sup>41</sup> Eleven of these reported deaths were homicides of children ages 5–18 on school grounds.<sup>42</sup> Except for certain years, the number of school-associated violent deaths and homicides of children ages 5–18 has decreased since 1993.<sup>43</sup>

What has increased progressively over the years is the occurrence of “mass shootings,” meaning four or more fatalities brought about by a single gunman in a public place.<sup>44</sup> Over the last three decades, the highest number of mass shootings in

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36. See generally Ben Wieder, *States Tackle School Safety After Sandy Hook Shootings*, STATELINE.ORG (Mar. 5, 2013), <http://www.pewstates.org/projects/stateline/headlines/states-tackle-school-safety-after-sandy-hook-shootings-85899456250> (discussing various school safety laws being advanced in states); Michael D. Shear, *Obama Vows Fast Action Pressing for Gun Control*, N.Y. TIMES, Dec. 20, 2012, at A1 (discussing President Obama’s decision to make gun control a “central issue” of his second term and congressional response to that decision).

37. In the year following the Sandy Hook massacre, about 15,000 gun bills were introduced in state legislatures. Karen Yourish et al., *State Gun Laws Enacted in the Year Since Newtown*, N.Y. TIMES, Dec. 11, 2013, at A20.

38. See SIMONE ROBERS ET AL., NAT’L CNTR. FOR EDUC. STATISTICS AND BUREAU OF JUSTICE STATISTICS, INDICATORS OF SCHOOL CRIME AND SAFETY: 2012 (2013) [hereinafter ISCS] (approximately 83% of schools said they experienced no serious violent crime during the 2009–2010 school year).

39. Greg Toppo, *Schools Safe as Ever Despite Spate of Shootings, Scares*, USA TODAY (Nov. 13, 2013, 5:06 PM), <http://www.usatoday.com/story/news/nation/2013/11/13/school-violence-security-sandy-hook/3446023/>. Jean Ajamie, director of school safety and prevention for the Arizona Department of Education, notes that school shootings are “extremely rare.” *Id.*

40. This is the most recent year for which data was available.

41. ISCS, *supra* note 38, at 6. A “school-associated violent death” is defined as “a homicide, suicide, or legal intervention (involving a law enforcement officer), in which the fatal injury occurred on the campus of a functioning elementary or secondary school in the United States . . . while the victim was on the way to or from regular sessions at school or while the victim was attending or traveling to or from an official school-sponsored event.” *Id.* Victims of school-associated violent deaths include students, staff, and other non-staff individuals such as parents. *Id.*

42. *Id.* at fig. 1.1.

43. *Id.*

44. See David Kopel, *Guns, Mental Illness and Newtown*, WALL ST. J. (Dec. 18, 2012, 12:01 AM), <http://online.wsj.com/news/articles/SB10001424127887323723104578185271857424036>; Mark Follman, *The NRA Myth of Arming the Good Guys*, MOTHER

a single year—seven incidents—occurred in 2007.<sup>45</sup> Further, 6 of the 12 deadliest shootings have taken place since 2007.<sup>46</sup> Of the 79 total mass shootings that occurred from 1983 to 2012, only eight occurred in elementary or secondary education facilities.<sup>47</sup>

School safety, however, encompasses more than school shootings and school-associated violent deaths. Students also encounter other serious threats of violence while attending school. Data from a recent study conducted by the National Center for Education Statistics (“NCES”) and the Bureau of Justice Statistics show that the total rate of incidents of “serious violent crime”<sup>48</sup> recorded in public schools is a little over one incident for every 1,000 students.<sup>49</sup> While the rate seems low on a national level, it increases for middle schools, city schools, and schools with a greater proportion of low-income students.<sup>50</sup>

Data from the NCES study also show an overall increase in the percentage of public schools taking safety and security measures between 1999 and 2010.<sup>51</sup> For the 2009–2010 school year, about 92% of public schools controlled access to school buildings during school hours (e.g., by locking or monitoring doors).<sup>52</sup> Additionally, 46% of public schools controlled access to school grounds during school hours.<sup>53</sup> Further, 28% of all public schools reported employing armed guards during school hours.<sup>54</sup> When controlling for school levels,<sup>55</sup> the percentage of armed guards on campus increases to 51% of middle schools and 63% of high schools.<sup>56</sup> While the data from the NCES study does show an overall increase in safety measures, arguably, more schools would be implementing increased security measures—measures beyond locking doors—if they had the funds to do so.<sup>57</sup>

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JONES (Dec. 28, 2012, 1:11 PM), <http://www.motherjones.com/politics/2012/12/nra-mass-shootings-myth>.

45. Follman, *supra* note 44.

46. *Deadliest U.S. Shootings*, WASH. POST (Sept. 23, 2013), <http://www.washingtonpost.com/wp-srv/special/nation/deadliest-us-shootings/>.

47. See JEROME P. BJELOPERA, CONG. RESEARCH SERV., R43004, PUBLIC MASS SHOOTINGS IN THE UNITED STATES: SELECTED IMPLICATIONS FOR FEDERAL PUBLIC HEALTH AND SAFETY POLICY, at 27 (2013).

48. For the purpose of the survey, serious violent crime incidents include “rape, sexual battery other than rape, physical attack or fight with a weapon, threat of physical attack with a weapon, and robbery with or without a weapon.” ISCS, *supra* note 38, at 26 n.17.

49. The rate of incidents of “serious violent crime” per 1,000 students increases to 1.5 for middle schools, to 1.3 for city schools, and to 2.0 for schools where 76% or more of the student population is eligible for free or reduced lunch. *Id.* at 116 tbl. 6.2.

50. *Id.*

51. *Id.* at 87, fig. 20.2.

52. *Id.* at 84, fig. 20.1.

53. *Id.*

54. *Id.* at 88.

55. Elementary school, middle school, or high school.

57. ISCS, *supra* note 38, at 88.

57. Many of our public school buildings are old and in need of significant upgrades in order to support safety improvements, such as access controls, video surveillance, and communication systems. Tyree K. Doward & Dina Harris, *Before and After Sandy Hook: Legal and Policy Developments in School Safety*, ASPATORE, Oct. 2013, at 2, available at

With these statistics on school safety in mind, the key task becomes finding a proper balance between safety and cost. One group of commentators articulated this as follows:

On the one hand, we cannot ignore or tolerate violence in schools, especially on the scale of mass, indiscriminate shootings, and we must take action. On the other hand, we cannot develop haphazard, comprehensive strategies that do not take into account the realities of school violence or that are disproportionate to the alleged violence threatened.<sup>58</sup>

Schools cannot avoid every tragedy; however, meaningfully designed legislation can save lives, and possibly mitigate the scope and frequency of future tragedies. Thus, enhancing school safety is necessary and this should be achieved through state legislation that takes a more individualized, school-centered approach.

### ***B. Current Efforts to Enhance School Safety***

The 2012 shooting at Sandy Hook Elementary School brought the school safety debate to the forefront of American politics.<sup>59</sup> And this debate is renewed with each subsequent school shooting.<sup>60</sup> While most lawmakers agree that there is a real need for enhanced school safety, most legislative responses following Sandy Hook have primarily focused on gun regulation.<sup>61</sup> In 2013, state legislatures introduced 1,500 gun bills, 109 of which became law.<sup>62</sup> Generally, the bills fell into two categories: arming teachers and gun control. While these bills show that state legislatures recognize the importance of school safety, their primary focus is on guns. School safety encompasses far more than preventing shootings—it is about ensuring a safe and welcoming learning environment for all students. Accordingly, legislation advanced by state policymakers must consist of more than gun regulation.

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2013 WL 6116854. However, they cannot afford these costs due to budget cuts and limited resources. *Id.*

58. Ira M. Schwartz et. al, *School Bells, Death Knells, and Body Counts: No Apocalypse Now*, 37 HOUS. L. REV. 1, 16–17 (2000).

59. See *supra* note 36 and accompanying text.

60. The Marysville shooting, combined with other recent local events, prompted the Shawnee Mission School District near Kansas City to increase school security measures. Linda Cruse, *Shawnee Mission Develops New School Security Plan*, KAN. CITY STAR (Oct. 28, 2014, 5:45 PM), <http://www.kansascity.com/news/local/community/joco-913/northeast-joco/article3423063.html> (the district's director of safety and security noted that the events in Marysville prove that school violence has not gone away). Not surprisingly, the debate surrounding arming teachers has also renewed. Compare Russ Moore, *No, Teachers Should Not Carry Guns*, EDUC. WEEK (Oct. 29, 2014), <http://www.edweek.org/ew/articles/2014/10/29/10moore.h34.html> (arguing that changing laws and regulations to allow educators to bring guns into schools is bad policy), with Ty Beaver, *Ki-Be Considers Arming School Administrators*, TRI-CITY HERALD (Nov. 24, 2014), <http://www.tri-cityherald.com/2014/11/24/3278411/ki-be-considers-arming-school.html> (school board seeks public input on a proposal to arm school administrators after the Marysville shooting).

61. See *supra* note 3 and accompanying text.

62. Yourish et al., *supra* note 37. Seventy of these bills expanded the rights of gun owners and 39 increased restrictions on gun use and ownership. *Id.*

*1. Arming Teachers*

In 2013 and following the Sandy Hook Elementary School shooting, 34 states introduced more than 80 bills with language specifically focused on arming teachers or administrators in K–12 public schools.<sup>63</sup> Five of these states, including Kansas and South Dakota, enacted laws expanding educators' ability to arm themselves.<sup>64</sup> Kansas enacted legislation that permits school districts to allow licensed employees to carry concealed handguns on school grounds.<sup>65</sup> South Dakota enacted legislation "authorizing school boards to create, establish, and supervise individual school sentinel programs to promote school safety."<sup>66</sup> In addition to authorizing the arming of school employees, the South Dakota sentinel program is unique in that it also allows school districts to utilize armed volunteers as a means to enhance school safety.<sup>67</sup>

The absence of express legislative authorization, however, has not stopped some school districts from seeking to arm teachers. For example, Arkansas state law prohibits guns on school campuses,<sup>68</sup> yet school districts are arming teachers through loopholes in existing concealed-weapons laws.<sup>69</sup> Thirteen school districts have obtained permission to use rules designed for private security firms to arm teachers on school grounds.<sup>70</sup> Despite an opinion from Arkansas's Attorney General expressing disapproval of these plan and stating that school districts did not qualify as private security firms for purposes of the concealed-weapons law, school districts are allowed to continue using the law until, if ever, the Arkansas legislature considers the issue.<sup>71</sup>

Proponents of arming teachers cite these plans as cost-effective approaches to enhancing school safety.<sup>72</sup> The alternative cost to employ one school resource officer varies upon location, but the National Association of School Resource

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63. Rodd Zolkos, *Insurers Weigh Risks of New Kansas Law Allowing School Workers to Carry Guns*, BUS. INS. (July 28, 2013, 6:00 AM), [www.businessinsurance.com/article/20130728/NEWS06/307289980?](http://www.businessinsurance.com/article/20130728/NEWS06/307289980?)

64. Severson, *supra* note 21.

65. H.B. 2052, 2013 Leg. Sess. (Kan. 2013).

66. H.B. 1087, 88th Leg., Sess. Leg. Assemb. (S.D. 2013). The school sentinel program authorizes school boards to train and arm school employees, hired security personnel, or volunteers. *Id.*

67. *Id.* §1.

68. See Severson, *supra* note 21.

69. AP, *Ark. Panel: Schools Can Arm Teachers*, *Staff*, CBS NEWS (Sept. 11, 2013, 6:37 PM), [http://www.cbsnews.com/8301-201\\_162-57602502/ark-panel-schools-can-arm-teachers-staff/](http://www.cbsnews.com/8301-201_162-57602502/ark-panel-schools-can-arm-teachers-staff/).

70. *Id.* In the Clarksville School District, sixteen district employees—including a janitor and a kindergarten teacher—carry 9-millimeter handguns to school every day. *Id.*

71. *Id.*

72. South Dakota State Representative Scott Craig believes the South Dakota Sentinel Bill is a cost-effective approach for small, rural districts. Wieder, *supra* note 36 (stating, "[t]hese folks can't afford it . . . . They've got one sheriff."); see also AP, *supra* note 69 ("Clarksville Superintendent David Hopkins pleaded with the panel to allow his school to keep the licenses, saying it was a cheaper option than hiring private security guards or paying for police to act as school resource officers.").

Officers estimates the cost to fall between \$50,000 and \$80,000 per year.<sup>73</sup> However, even if arming teachers, administrators, or volunteers might be cost effective, it still poses a safety risk.<sup>74</sup>

One major concern of this approach is the possibility that schools choosing to allow school personnel to carry firearms on campus will open themselves up to increased tort liability.<sup>75</sup> Although teachers are generally immune from negligence claims,<sup>76</sup> there is a valid question as to whether this immunity would extend to actions involving a teacher's use of a firearm.<sup>77</sup> The scope of the immunity varies depending upon the applicable state statutory provisions.<sup>78</sup> In addition, whether the availability of governmental immunity extends to teachers may also depend on whether the allegedly negligent activity is ministerial or discretionary.<sup>79</sup> Tort liability may be imposed for acts or functions considered ministerial or operational in nature.<sup>80</sup> However, the law preserves immunity with respect to acts or functions deemed discretionary, or involving personal deliberation or judgment.<sup>81</sup> For example, an employee's duty to follow protocol is ministerial.<sup>82</sup> Thus, in a school district that authorized its employees to carry firearms, "[i]mmunity may be waived if an employee was negligent in storing a firearm, despite written protocol regarding storage, and the negligence resulted in injury to a student."<sup>83</sup> It would be wise for school districts to consider the possibility of the potential increase in liability for negligence that may arise from new policies allowing teachers to carry firearms on campus.

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73. Wieder, *supra* note 36.

74. *But see* Severson, *supra* note 21 (noting that some educators have been carrying guns to schools for years in states with permissive gun laws such as Hawaii, New Hampshire, and Utah); *see also* Kopel, *supra* note 17, at 527 ("[S]ince 1995, any person with a concealed carry permit has been able to carry a handgun in Utah K–12 public schools. Lawful carriers include teachers, as well as any other licensed adult, such as a parent visiting the school to pick up a child.").

75. *See* Wieder, *supra* note 36.

76. Francis Amendola et al., *Schools and School Districts*, 78 CORPUS JURIS SECUNDUM § 505 (2014) ("[G]enerally, superintendents, principals, and teachers may be immune from tort liability under governmental or sovereign immunity statutes, or under statutes that relate specifically to school employees.").

77. *See* Wieder, *supra* note 36 ("Francisco Negrón, General Counsel for the National School Board Association, says it could also open up schools to liability in the case of an accident. 'A teacher has qualified immunity in performing his or her duties,' he says, 'but are his or her duties to carry a gun?'").

78. For a synthesis, compilation, and analysis of the state statutory provisions and major case law applicable to governmental and official immunity of school districts and their employees with respect to negligence liability, *see generally* Peter J. Maher et al., *Governmental and Official Immunity for School Districts and Their Employees: Alive and Well?*, 19 KAN. J.L. & PUB. POL'Y 234 (2010).

79. JAMES RAPP, EDUCATION LAW, CH. 12, § 12.07(5)(c) (Matthew Bender & Co. ed., 2014) (1984).

80. *Id.*

81. *Id.*

82. TEX. ASS'N OF SCH. BDS. LEGAL SERVS., GUNS ON SCHOOL PROPERTY: LEGAL AND PRACTICAL CONSIDERATIONS REGARDING FIREARMS AND SCHOOL SAFETY 13 (2013).

83. *Id.*

Another risk associated with arming school personnel is the potential for higher insurance costs, or loss of insurance coverage. In light of the potential for increased school liability, many insurance companies are refusing to insure school districts that allow school personnel to carry firearms on campus.<sup>84</sup> For example, in response to Kansas's House Bill 2055, which expanded concealed-carry privileges on school grounds, EMC Insurance Co. refuses to provide coverage to schools that permit teachers and faculty to carry concealed firearms on their campuses.<sup>85</sup> EMC Insurance Co. insures roughly 90% of all Kansas school districts.<sup>86</sup> Defending its refusal, EMC's vice president of business development stated, "[w]e've been writing school business for almost forty years, and one of the underwriting guidelines we follow for our schools is that any on-site armed security should be provided by *uniformed, qualified law enforcement officers*."<sup>87</sup> Rather than completely refusing to insure school districts that allow employees to carry concealed weapons, another school district insurer in Kansas, Write Specialty Insurance, created a policy exclusion for injuries or liabilities resulting from employees' use of weapons.<sup>88</sup>

When considering only the direct costs of hiring school resource officers, allowing school personnel to carry firearms might be appealing to many school districts. But if one considers the ramifications such a policy might have on insurance and litigation costs, hiring school resource officers in lieu of arming teachers may be the more reasonable and economically viable choice.

## 2. Gun-Control Legislation

Legislation focused on characteristics of a specific segment of guns (i.e., assault weapons) is not a solution to the perceived threat to school safety because it does not address the actual cause of the recent waves of school shootings.<sup>89</sup> To begin, the effectiveness of gun-control legislation is questionable. A task force for the Center for Disease Control and Prevention ("CDC") conducted a comprehensive review of over 51 studies from various scientific bodies to determine the effectiveness of firearms laws in preventing violence.<sup>90</sup> Specifically, the survey looked at "bans on specified firearms or ammunition; restrictions on firearms acquisition; fire-arms registration; licensing of firearms owners; 'shall issue' carry laws that allow people who pass background checks to carry concealed weapons;

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84. See Victor Epstein, *Kansas Law Thrusts Iowa Insurer Into Gun Debate*, DES MOINES REGISTER, July 6, 2013, at ARC; Zolkos, *supra* note 63.

85. Epstein, *supra* note 84.

86. *Id.*

87. *Id.* (emphasis added).

88. Zolkos, *supra* note 63.

89. For an explanation of the ineffectiveness of reactionary gun control laws, see Aimee Kaloyares, *Annie, Get Your Gun? An Analysis of Reactionary Gun Control Laws and Their Utter Failure to Protect Americans from Violent Gun Crimes*, 40 S.U. L. REV. 319 (2013). Kaloyares explains that reactionary laws do not address the root causes of gun crime and instead introduce legislation that ultimately affords no better protection than the laws that were already in effect. *Id.* at 319.

90. TASK FORCE ON CMTY. PREVENTIVE SERVICES, CDC, FIRST REPORTS EVALUATING THE EFFECTIVENESS OF STRATEGIES FOR PREVENTING VIOLENCE: FIREARMS LAWS (2003), available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5214a2.htm>.

child access prevention laws; zero-tolerance laws for firearms in schools; and combinations of firearms laws.<sup>91</sup> Ultimately, the task force determined that the evidence was insufficient to determine the effectiveness of any of the laws it examined.<sup>92</sup> While the survey did clarify that this finding only means that the effectiveness of the laws is not yet known,<sup>93</sup> insufficient evidence from a comprehensive review of over 51 studies casts doubt on the actual effectiveness of gun-control regulation.

Further, statistics demonstrate that relaxed gun-control laws are not the source of increased mass shootings.<sup>94</sup> Overall, gun-control laws today “are far stricter than at the time when ‘active shooters’ were rare.”<sup>95</sup> One law that has been relaxed in recent years is the ban on assault weapons. In 1994, Congress passed the Federal Assault Weapons Ban,<sup>96</sup> and while the Ban expired in 2004, the number of crimes involving firearms has remained relatively static.<sup>97</sup> In 1994, there were 17,527 firearm homicides in the United States;<sup>98</sup> in 2004, when the Ban expired, there were 11,624 firearm homicides;<sup>99</sup> and in 2011, there were 11,101 firearm homicides.<sup>100</sup> One explanation for these statistics is that legislation banning assault weapons focuses solely “on the guns’ cosmetics, such as whether the gun has a bayonet lug, rather than their function.”<sup>101</sup> Another explanation is that the original ban was not comprehensive enough. The very objects the legislation intended to ban were still available to the public because any “assault weapon” magazine manufactured before the law went into effect was legal to own or sell.<sup>102</sup> In reality, many factors could account for the stability of crimes involving firearms following the expiration of the assault weapon ban. Just the same, it seems that a ban on assault weapons would do little to decrease overall gun violence—and very little to increase school safety.

Very strict gun-control laws, including complete bans and buyback schemes, like that of Australia’s, would likely decrease gun violence.<sup>103</sup> However,

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91. Robert A. Hahn et al., *Firearms Laws and the Reduction of Violence: A Systemic Review*, 28 AM. J. PREV. MED. 40, 40 (2005).

92. *Id.*

93. *Id.*

94. *See supra* notes 44–47 and accompanying text.

95. *See* Kopel, *supra* note 44.

96. *See* Robert A. Levy, *Reflections on Gun Control by a Second Amendment Advocate*, NAT’L L. J. ONLINE (Feb. 11, 2013), <http://www.nationallawjournal.com/id=1202587764936>.

97. *Id.*

98. MICHAEL PLANTY & JENNIFER L. TRUMAN, U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, FIREARM VIOLENCE, 1993–2011, at 2 (2013).

99. *Id.*

100. *Id.*

101. *See* Kopel, *supra* note 44.

102. Brad Plumer, *Everything You Need to Know about the Assault Weapons Ban*, in *One Post*, WASH. POST WONKBLOG (Dec. 17, 2012, 10:34 AM), <http://www.washingtonpost.com/blogs/wonkblog/wp/2012/12/17/everything-you-need-to-know-about-banning-assault-weapons-in-one-post/>.

103. The 1996 gun reforms in Australia banned certain weapons and included a federally financed gun buyback scheme in which almost 700,000 guns were bought back and

this type of gun control is not an option in the United States because of the constitutionally recognized right to bear arms.<sup>104</sup> Patchwork legislation will only go so far. As demonstrated by the Ban, enacting legislation that bans weapons based on attachments that have no effect on lethality seems senseless.<sup>105</sup> State legislatures focusing on gun control in the wake of recent school shootings should keep in mind, “[g]un control legislation with gaping loopholes may be a wonderful political compromise . . . but ineffectual laws will not stop the bloodshed.”<sup>106</sup>

State policymakers need to look beyond legislation involving guns in order to find an effective solution to the perceived threat to school safety. First, the effectiveness of gun-control legislation in preventing violence is questionable. Additionally, on its face, arming teachers may seem like a cheap solution to the school safety problem but it presents increased insurance and litigation costs to school districts. While school shootings have brought attention to the issue of school safety, schools face threats beyond those brought by firearms. Legislation advanced by state policymakers needs to focus on the big picture of school safety rather than guns-in-schools pixels. Although state legislation cannot prevent all tragedies, it can serve to lessen the frequency in which school violence occurs and better equip schools to handle situations of violence.

### **III. THE SOLUTION: STATE LEGISLATION INCREASING FUNDING FOR SCHOOL SAFETY MEASURES AND PROVIDING MINIMUM REQUIREMENTS FOR SCHOOL RESOURCE OFFICERS AND SCHOOL SAFETY PLANS**

Education<sup>107</sup> and, more specifically, ensuring the safety of students in public schools is undoubtedly the responsibility of state and local governments.<sup>108</sup> In light of recent tragedies, we should focus on increasing school safety through legislation. Rather than hastily pushing through reactive and emotional legislation that tends toward the extremes—arming teachers or banning guns—state government officials should consider legislation that increases funding for school resource officers and establishes minimum requirements for individualized school safety plans.

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destroyed. John Howard, Op-Ed., *I Went After Guns. Obama Can, Too*, N.Y. TIMES, Jan. 16, 2013, at A27. In the 18 years before the 1996 reforms, Australia had 13 mass shootings. *Id.* Since the 1996 reforms, there has not been a single mass shooting incident. *Id.*

104. See *supra* Part I.A.1. Australia has no constitutional right to bear arms or Bill of Rights. Howard, *supra* note 103.

105. Levy, *supra* note 96. The Levy article notes that, out of 13,000 people identified by the Federal Bureau of Investigation as being murdered with a weapon, only 323 were killed with rifles of any type as opposed to 728 being killed by someone’s bare hands. *Id.*

106. John J. Donohue, *What Can Be Done to Stem Gun Violence?*, SFGATE (Dec. 21, 2012, 5:35 PM), <http://www.sfgate.com/opinion/article/What-can-be-done-to-stem-gun-violence-4139575.php#ixzz2G4qIkJJ2>.

107. *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954) (“[E]ducation is perhaps the most important function of state and local governments . . .”).

108. See discussion *supra* Part I.A.3.

Under the National Association of School Resource Officers (“NASRO”) definition, school resource officers are “commissioned law-enforcement officers selected, trained, and assigned to protect and serve the education environment.”<sup>109</sup> The NASRO states that a school resource officer has responsibilities to act as: (1) an educator; (2) an informal counselor; and (3) a law enforcement officer.<sup>110</sup> Data from the last two decades show a drop in incidences of school violence, homicide rates, and violent crime that coincides with the expansion of school resource officer programs around the country.<sup>111</sup>

These numbers tend to support the notion that the presence of a school resource officer positively influences the overall safety of the school environment.<sup>112</sup> Not only does having an armed officer on campus provide defense and deterrence in active-shooter situations,<sup>113</sup> but also school resource officers reduce the burden on local law enforcement agencies by responding to individual problems at local schools and eliminating the need for response from patrol officers and road deputies.<sup>114</sup> School resource officers can also prevent problems in schools that would have required police response through strengthening communication between law enforcement agencies and school districts,<sup>115</sup> and by improving the image of police

109. NAT’L ASS’N OF SCH. RES. OFFICERS, TO PROTECT & EDUCATE: THE SCHOOL RESOURCE OFFICER AND THE PREVENTION OF VIOLATION IN SCHOOLS 9 (2012), *available at* <https://nasro.org/cms/wp-content/uploads/2013/11/NASRO-To-Protect-and-Educate-nosecurity.pdf>.

110. *Id.* at 3.

111. ASA HUTCHINSON, THE NAT’L SCHOOL SHIELD, REPORT OF THE NATIONAL SCHOOL SHIELD TASK FORCE 7 (2013), *available at* [http://www.nraschoolshield.com/nss\\_Final\\_full.pdf](http://www.nraschoolshield.com/nss_Final_full.pdf).

112. *See id.* (“The past two decades have witnessed a drop in incidences of school violence, including homicide rates and violent crime. This positive trend mirrors the expansion of [School Resource Officer (“SRO”)] programs around the country: As more SRO officers have been assigned to schools, school death rates have decreased.”); *but see* NATHAN JAMES & GAIL MCCALLION, CONG. RESEARCH SERV., R431264, SCHOOL RESOURCE OFFICERS: LAW ENFORCEMENT OFFICERS IN SCHOOLS 1 (2013), *available at* <https://www.fas.org/sgp/crs/misc/R43126.pdf> (“Data suggest that the decline in violent victimizations experienced by children at school might, in part, be the result of an overall decline in crime against juveniles and not the result of more SROs working in schools.”).

113. Police studies show that most killers who attack schools tend to kill themselves as soon as they are faced with armed resistance. Kopel, *supra* note 17, at 536.

114. *See* PETER FINN ET. AL., U.S. DEP’T. OF JUSTICE, A GUIDE TO DEVELOPING, MAINTAINING, AND SUCCEEDING WITH YOUR SCHOOL RESOURCE OFFICER PROGRAM 209–10 (2005), *available at* <http://iriglobal.com/PDF/School%20Security/07-0701-School-SRO.pdf> (“According to Sergeant Paul Marchand, the program supervisor in Salem, New Hampshire, ‘We pay for the program because, by assigning officers to the schools, we free up manpower on the street. Before we had SROs, we were constantly sending patrol officers to the schools. It makes sense from a deployment point of view to have officers in the schools rather than send over patrol officers whenever there is a problem. The high school has 2,300 kids and 200 staff; it’s a small town.’”).

115. *Id.* at 211 (quoting an SRO: “The transfer of intelligence between the schools and the [juvenile] bureau has allowed the department to respond proactively to potential youth-related problems. If there has been a fight between students over the weekend and the bureau believes the dispute may carry over to school on Monday, the SRO reports this to

among juveniles.<sup>116</sup> When school resource officers establish a relationship of trust and comfort with students, concerned students are more likely to report potentially dangerous situations.<sup>117</sup> This allows the school resource officer to intervene before the situation escalates into a more serious problem.<sup>118</sup>

An armed school resource officer proved extremely effective in a 2013 school shooting incident. On December 13, 2013, a high school senior entered Arapahoe High School in Centennial, Colorado, armed with a pump-action shotgun, a machete, and a backpack with three Molotov cocktails.<sup>119</sup> Upon hearing shots, an armed deputy sheriff assigned as the school resource officer immediately ran toward the shooter.<sup>120</sup> The shooter committed suicide less than 80 seconds after entering the school.<sup>121</sup> Arapahoe County Sheriff Grayson Robinson claims that the deputy's response was "a critical element to the shooter's decision to kill himself,"<sup>122</sup> and that the "one minute and 20 seconds, in [his] mind, was extraordinarily relevant," considering that the shooter was heavily armed.<sup>123</sup> Robinson stated that authorities "knew from research and contact with forensic psychologists that school shooters typically continue firing until confronted by law enforcement."<sup>124</sup> Response time is critical in active-shooter situations and, as this incident shows, having a school resource officer on campus can save lives.

The increased cost of employing a school resource officer is one of the biggest factors contributing to the decision of school districts to allow school personnel to arm themselves.<sup>125</sup> Funding for school resource officer programs exists through various sources, including federal programs.<sup>126</sup> State legislatures should take the lead and coordinate federal and state funding for school districts who wish to employ school resource officers.<sup>127</sup>

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school administrators even before classes begin so they can take steps to prevent anything from developing.").

116. *Id.* Police Chief Paul Donovan reported: "I have walked through school hallways with the SRO, and kids come up to me asking to talk about problems—I was amazed kids would do that; it showed a lot of respect." *Id.*

117. *See id.*

118. *See id.*

119. Tom Watkins & Ana Cabrera, *Colorado's School Shooting—Over in 80 Seconds*, CNN U.S. (Dec. 15, 2013, 2:33 PM), <http://www.cnn.com/2013/12/14/us/colorado-school-shooting/>.

120. *Id.*

121. Ray Sanchez, *Lesson of Columbine and Other School Shootings Helped in Arapahoe*, CNN U.S. (Dec. 15, 2013, 12:04 PM), <http://www.cnn.com/2013/12/14/us/colorado-school-shooting-response/index.html>.

122. Watkins & Cabrera, *supra* note 119.

123. Sanchez, *supra* note 121.

124. *Id.*

125. *See supra* notes 72–73 and accompanying text.

126. The Community Oriented Policing Services Program is a federal program that provides funding for school resource officers. The Obama Administration requested \$150 million in funding for a Comprehensive Schools Safety Program as a part of its Fiscal Year 2014 budget request for this program. JAMES & MCCALLION, *supra* note 112, at 12.

127. The state of Virginia coordinates funding for its school resource officer program, using both federal and state funds. *See HUTCHINSON, supra* note 111, at 9 ("In

In addition to providing funding for school resource officers, state legislatures should also reexamine their statutory requirements, if any, for school emergency plans. Every school is different—from layout, to size, to location, to demographics. Accordingly, a one-size-fits-all security plan will not be effective in an emergency.

A frequently updated, individualized school emergency plan that is unique to the needs of each school, and where the measures included in it are frequently practiced, can save lives during a crisis. On August 20, 2013, in Decatur, Georgia, when a man entered the front office of an elementary school with an AK-47-type weapon, Antionette Tuff, working as a front office receptionist, prevented casualties from occurring by following protocol.<sup>128</sup> In her school district, school staff attended regular training sessions to review emergency protocol for dangerous situations such as those involving trespassers.<sup>129</sup> Tuff and two other staff members received specialized training on how to handle hostile situations.<sup>130</sup> Tuff was so well trained for emergencies, in fact, that she and others in the office initially thought the situation was a drill.<sup>131</sup> While speaking to the gunman and keeping him calm, Tuff “signaled a code to her two counterparts, who immediately triggered a phone tree to tell teachers to lock doors and send children to safety.”<sup>132</sup> Because of Tuff’s ability to stay calm and follow familiar emergency protocol, the gunman surrendered to police without taking any lives.<sup>133</sup> While not every gunman would respond to Tuff’s actions by surrendering, having individualized school emergency plans and familiarizing school personnel with these plans can minimize the harm caused in these hostile situations.

In a government accountability survey addressing public-school safety plans, only 32 states reported laws or other policies requiring school districts to have safety plans.<sup>134</sup> Among the 32 states that do require school district safety plans, many of these states fail to identify the particular kinds of crises these plans must address.<sup>135</sup> Further, many of the statutes refer only to plans at the school district level and do not require individualized safety plans for each public school.<sup>136</sup> Further, statistics show that of those public schools with written emergency plans, most fail

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Virginia, the School Resource Officer Program is generally subsidized by two sources: Byrne Justice Assistance Grant Program (JAG), the leading source of federal justice funding to state and local jurisdictions, and the SRO Incentive Grants Fund, which comes from the state. In addition, school communities may also seek funding from private sources.”)

128. Greg Botelho et al., *Antionette Tuff Hailed as ‘True Hero’ for Handling Georgia School Gunman*, CNN U.S. (Aug. 22, 2013, 10:05 PM), <http://www.cnn.com/2013/08/21/us/georgia-school-gunshots/>.

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-07-609, EMERGENCY MANAGEMENT: MOST SCHOOL DISTRICTS HAVE DEVELOPED EMERGENCY MANAGEMENT PLANS, BUT WOULD BENEFIT FROM ADDITIONAL FEDERAL GUIDANCE 57–58 (2007).

135. *Id.* at 11.

136. *Id.* at 10.

to familiarize their students and staff with these plans.<sup>137</sup> As the Decatur, Georgia incident shows, individualized emergency planning and practice can help save lives during crises.<sup>138</sup> Each state should require its public schools to conduct a security assessment and create an individual security plan to address the unique needs of their school.<sup>139</sup> State legislatures should set the minimum requirements for security and risk assessment and outline the development process of an adequate security plan.<sup>140</sup> Local school districts can tailor the plans to the unique needs of each school.

Schools with individual safety plans, as well as staff that are familiar with these plans, are better equipped to mitigate the damage from serious acts of violence. Additionally, school resource officers not only have a positive impact on the overall safety of the school environment but they may further mitigate damage from serious acts of violence through a shortened response time. State government officials should consider legislation that increases funding for school resource officers and establishes minimum requirements for individualized school safety plans. Two states in particular, Indiana and Connecticut, provide a good model of legislation involving school resource officers and individualized school security planning.

#### A. Indiana's Response

The Indiana General Assembly passed legislation in 2013 that serves as a model for other state legislatures wishing to enact legislation on the topic of school safety. Primarily, Indiana's newly enacted School Resource Officers Act ("P.L. 172"): (1) provides matching grant funding to school districts<sup>141</sup> for safety programs; (2) sets out requirements for school resource officers; (3) creates a school safety commission and school safety specialists to oversee school safety plans; and (4) indemnifies public schools for certain actions of school resource officers.<sup>142</sup> The following subsections summarize the pertinent parts of the new law.

##### 1. Matching Grant Funding

Indiana's P.L. 172 created the Indiana Secured School Fund.<sup>143</sup> The Fund operates under the administration of the Indiana Department of Homeland Security

137. In a 2010 survey, 84% of public schools reported having written response plans in the event of a shooting, but only 52% had drilled their students on the plan in the past year. THE WHITE HOUSE, VICE PRESIDENT UNVEILS GUIDES FOR DEVELOPING HIGH-QUALITY EMERGENCY OPERATIONS PLANS FOR SCHOOLS, INSTITUTIONS OF HIGHER EDUCATION (IHES), AND HOUSES OF WORSHIP 1 (2013), available at [http://www.whitehouse.gov/sites/default/files/docs/fact\\_sheet\\_emergency\\_planning\\_0.pdf](http://www.whitehouse.gov/sites/default/files/docs/fact_sheet_emergency_planning_0.pdf).

138. See *supra* notes 128–33 and accompanying text.

139. Sandy Hook Elementary was a "safe school." They had no prior episodes of violence, and no one anticipated the need for additional security. SAFE AND SOUND, OUR STORY, <http://www.safeandsoundschools.org/our-story-safe-and-sound-schools/> (last visited Mar. 5, 2015). Locked doors could not keep the armed intruder from entering campus. *Id.*

140. See HUTCHINSON, *supra* note 111, at 9.

141. Indiana public schools are organized into "school corporations." IND. CODE ANN. § 20-23-1-6 (West 2014). For purposes of consistency, this Note will refer to school corporations as school districts.

142. Act of May 7, 2013, P.L. 172-2013, §§ 3, 6, 7, 9 (2013).

143. IND. CODE ANN. § 10-21-1-2 (West 2014) (as amended by P.L. 172-2013).

for the purpose of providing matching grants to school districts and charter schools, which can be used to: (1) employ school resource officers; (2) conduct threat assessments of school buildings; and (3) purchase safety equipment and technology.<sup>144</sup>

P.L. 172 also creates a state agency, called the Secured School Safety Board, to approve or disapprove applications for matching grants from the Secured School Fund and to develop best practices for school resource officers.<sup>145</sup> The amount of funds available to each school district is dependent upon the size of each district, but is capped at \$50,000 a year.<sup>146</sup>

When applying for a matching grant under the Fund, a school district must describe its needs, the estimated costs of its program, the extent to which the school district has access to, and support from, nearby law enforcement, and a statement of whether the school district filed a completed safety plan with the school safety commission.<sup>147</sup> By tying the grant of funds to the filing of a completed local plan, Indiana recognizes the importance of school safety plans and ensures school districts do not sidestep the crucial planning process.

## 2. *Requirements for School Resource Officers*

P.L. 172 also specifies how a school resource officer program may be established and sets forth duties and responsibilities for school resource officers.<sup>148</sup> Specifically, the legislation regarding school resource officers provides that a person, before being appointed as a school resource officer, must successfully complete the training requirements for law enforcement officers and receive 40 hours of certified school resource officer training.<sup>149</sup> In addition, the Secured School Safety Board, which also approves or disapproves the matching grants to schools from the Secured School Fund, develops best practices for school resource officers.<sup>150</sup> Setting forth the duties and responsibilities of school resource officers ensures a minimum level of competency for the position that is not easily changed. However, tasking the Secured School Safety Board with creating best practices allows the expectations for the position to be responsive to current needs and specific circumstances of the schools. Through these requirements, the Indiana legislature recognizes that a school resource officer is not just a law enforcement officer that happens to be walking through the halls of a school. The school resource officer plays a unique role and, accordingly, should be held to standards that reflect that unique role.

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144. *Id.* § 10-21-1-2(a)(1)–(3).

145. *Id.* § 10-21-1-3.

146. *Id.* § 10-21-1-4(b)(1)–(2).

147. *Id.* § 10-21-1-5(b).

148. *Id.* § 20-26-18.2-2–18.2-3.

149. *Id.* § 20-26-18.2-1(b)(1)–(2).

150. *Id.* § 10-21-1-2.

### 3. *School Safety Commission*

Under P.L. 172, each school district must designate an individual to serve as the school safety specialist for the district.<sup>151</sup> The school safety specialist's primary responsibilities include: serving on the county school safety commission (if a county school safety commission is established), participating in yearly school safety training, and developing and coordinating school safety plans for each school in the school corporation.<sup>152</sup> At a minimum, each school safety plan must: (1) protect against outside threats to the physical safety of students; (2) prevent unauthorized access to school property; and (3) secure schools against violence and natural disaster.<sup>153</sup> In order to receive a matching grant, a school district or charter school must be located in a county that has a county school safety commission.<sup>154</sup>

### 4. *Indemnity to Public Schools for Actions of School Resources*

P.L. 172 states that Indiana shall indemnify a public school against a loss resulting from any injury to a person caused by a school resource officer if the loss was the result of misfeasance, malfeasance, or nonfeasance in connection with the use of the officer's weapon.<sup>155</sup> This provision should put insurance carriers at ease, and allow schools to approach the decision of employing a school resource officer without having to worry about any increase in potential liability.

## **B. Connecticut's Response**

In the same year, the Connecticut General Assembly approved an Act Concerning Gun Violence Prevention and Children's Safety ("Public Act 13-3").<sup>156</sup> Although Public Act 13-3 does significantly increase gun restrictions,<sup>157</sup> a major focus of this law is school safety planning and the discussion in this Section will focus on its school safety provisions.<sup>158</sup> In summary, Public Act 13-3: (1) creates standards for security infrastructure; (2) provides funding for competitive infrastructure grants; (3) mandates school safety plans; and (4) establishes individual school safety and security committees.

### 1. *Minimum Standards for Security Infrastructure*

S.B. Public Act 13-3 creates the School Safety Infrastructure Council ("SSIC"), and charges the eight-member council with developing standards for "the existing school construction projects program" and "a new school security infrastructure competitive grant program" that is also created within the law.<sup>159</sup> At a minimum, the new standards must include:

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151. *Id.* § 5-2-10.1-9(a).

152. *Id.* § 5-2-10.1-9(c).

153. *Id.* § 20-26-18.2-2 (b).

154. *Id.* § 5-2-10.1-10(e)(3)-(4).

155. *Id.* § 34-31-10.2-2.

156. 2013 Conn. Acts. 13-3 (Reg. Sess.).

157. *See generally id.* §§ 1-58.

158. *Id.* §§ 80-83.

159. CONN. GEN. ASSEMBLY, OLR BILL ANALYSIS: SB 1160 § 80(b) (2013), available at <http://www.cga.ct.gov/2013/BA/2013SB-01160-R00-BA.htm>.

(1) entryways to school buildings and classrooms, such as, reinforcement of entryways, ballistic glass, solid core doors, double door access, computer-controlled electronic locks, remote locks on all entrances and exits, and buzzer systems, (2) the use of cameras throughout the school building and at all entrances and exits, including the use of closed-circuit television monitoring, (3) penetration resistant vestibules, and (4) other security infrastructure improvements and devices as they become industry standards.<sup>160</sup>

These construction standards help to ensure that any new construction or improvements on existing buildings consider the security of the school.

## 2. *Funding for Competitive Infrastructure Grants*

Public Act 13-3 authorizes up to \$15 million in bonds for a new competitive grant program benefitting school safety projects.<sup>161</sup> The grant program will reimburse local governments for certain expenses incurred by school districts for the development or improvement of the security infrastructure of schools, as well as for school personnel training relating to security infrastructure.<sup>162</sup> It will also reimburse local governments for the purchase of portable entrance security devices, including metal detector wands, screening machines, and related training.<sup>163</sup> Infrastructure improvements eligible for reimbursement include, but are not limited to, the installation of surveillance cameras, penetration-resistant vestibules, ballistic glass, solid-core doors, double-door access, computer-controlled electronic locks, entry-door buzzer systems, scan card systems, panic alarms, and other systems.<sup>164</sup>

The grants may reimburse school districts for 20%–80% of the eligible expenses for such security measures incurred after the law's effective date.<sup>165</sup> The actual reimbursement percentage is determined based upon the town's wealth.<sup>166</sup> To receive a grant, a district must show that: (1) it has conducted a uniform security assessment of its school entrances and any security infrastructure; (2) it has an emergency plan developed by its schools with applicable state and local first-responders; and (3) it periodically practices the plan.<sup>167</sup> This provision acknowledges that many school districts lack adequate funding in order to make the infrastructural improvements that aging buildings require. Through tying the funding to security assessments and the development and implementation of emergency plans, Connecticut is also ensuring that school districts do not overlook these crucial steps.

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160. 2013 Conn. Acts. 13-3 § 80(b) (Reg. Sess.).

161. *Id.* § 84(a).

162. *Id.* § 84(a)(2)(A).

163. *Id.* § 84(a)(2)(B).

164. *Id.* § 84(a)(1).

165. *Id.* § 84 (c)(1)–(3).

166. *Id.*

167. *Id.* § 84(c)(3)(A).

### 3. Requirements for School Safety Plans

Connecticut's Public Act 13-3 requires the Connecticut Department of Emergency Services and Public Protection ("DESPP") to consult with the Department of Education on the development of standards for school security plans.<sup>168</sup> The standards are to be an "all-hazards approach to emergencies at public schools"<sup>169</sup> and, at a minimum, they must include:

- (1) requirements that local and regional school boards conduct security and vulnerability assessments of their schools every two years, develop a school safety and security plan for each school based upon the assessment results, and give DESPP annual fire and crisis response drill reports;
- (2) requirements that local officials, including the chief executive officer of the municipality, superintendent of schools, law enforcement, fire, public health, emergency management, and emergency medical services, participate in school security and safety plan development;
- (3) requirements that local law enforcement and other local public safety officials evaluate fire and crisis response drills;
- (4) guidelines for command center organization structure, based on the federal National Incident Management System, as well as command center responsibilities;
- (5) guidelines for crisis management and various emergency management procedures;
- (6) requirements that each school establish a school security and safety committee;
- (7) requirements that each school's safe school climate committee collect, evaluate, and report information about disturbing or threatening behavior, which is distinct from bullying, to the district safe school climate coordinator and the school security and safety committee; and
- (8) guidelines for providing school safety and security plan orientation, as well as violence prevention training, to each school employee.<sup>170</sup>

Though Public Act 13-3 leaves the implementation aspect to local school districts, these minimum standards provide guidance for school districts; they are an effective way to ensure that individual plans will at least cover the necessities of an operative security plan.

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168. *Id.* § 86(a).

169. CONN. GEN. ASSEMBLY, OLR BILL ANALYSIS: SB 1160 § 86 (2013), available at <http://www.cga.ct.gov/2013/BA/2013SB-01160-R00-BA.htm>.

170. *Id.*

#### 4. School Safety and Security Committees

Under Public Act 13-3, every school district must develop and implement a school security and safety plan for each school under their jurisdiction.<sup>171</sup> School districts should base these plans upon the school security and safety plan standards developed by DESPP, under the security plan provision of the law.<sup>172</sup> Additionally, Public Act 13-3 establishes a school security and safety committee at each school to assist in developing and administering the school's safety and security plan.<sup>173</sup> These provisions help ensure that each school's safety plan meets minimum standards while it also uniquely addresses the needs of the individual school.

### IV. WHY THE RESPONSES FROM INDIANA AND CONNECTICUT WORK

The legislative responses from Indiana and Connecticut represent comprehensive approaches to keeping students and teachers safe. Rather than solely focusing on gun regulation, both responses are school centered, focus on security planning, and provide methods for school districts to receive grants to fund safety programs and infrastructural improvements. While the focus of each law may differ (with Indiana's focus on school resource officers and Connecticut's focus on regulating school security plans and infrastructure), both states considered school safety to be their target when drafting legislation.

Additionally, neither response was reactionary.<sup>174</sup> The first half of Connecticut's Public Act 13-3, which focuses on gun legislation, seems a bit emotion fueled.<sup>175</sup> However, many provisions of the law focused upon school safety were actually improvements of preexisting programs.<sup>176</sup> In Indiana, the Office of the Attorney General began researching the statewide condition of school safety and the effectiveness of its school resource officer program towards the end of 2012.<sup>177</sup> This study determined that teachers, administrators, law enforcement officers, and parents were supportive of the concept of placing school resource officers in schools and that school resource officers were effective.<sup>178</sup> Not only did constituents believe "that school resource officers [could] play a valuable role in promoting positive citizenship among students, but [also] that [school resource officers] with their law

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171. 2013 Conn. Acts. 13-3 § 87(a) (Reg. Sess.).

172. *Id.*

173. *Id.* § 87(b).

174. *See supra* note 89.

175. Not surprisingly, significant amendments to this portion of the law were approved on June 18, 2013. *See* S.B. 1094, 2013 Gen. Assemb., Jan. Reg. Sess. (Conn. 2013).

176. For example, Public Act 13-3 expands upon the role of safe school climate committees and the new infrastructure standard requirements were an expansion of, and improvement upon, the pre-existing school buildings projects advisory council. 2013 Conn. Acts. 13-3 §80(c), 87 (Reg. Sess.).

177. The study was conducted from November 5, 2012 through December 10, 2012, and a total of 1,149 constituents (including teachers, parents, law enforcement agents, and administrators) across Indiana were sampled. OFFICE OF THE IND. ATT'Y GEN., INDIANA SCHOOL RESOURCE OFFICER NEEDS ASSESSMENT STUDY EXECUTIVE SUMMARY—JANUARY 2013, at 1 (2013).

178. *Id.* at 2.

enforcement training and experience in emergency operations [could] also serve as deterrents to potential threats on school premises.”<sup>179</sup> The study also showed that funding was the primary barrier keeping schools from adopting school resource officer programs.<sup>180</sup> Because the Indiana General Assembly’s newly enacted P.L. 172 acknowledged both the desires of the constituents and the barriers of funding, it was an effective response to the needs of Indiana’s schools.

## V. CRITICISM

Addressing the issue of school safety through school-centered legislation is not without criticism. Some may question whether the issue needs a legislative response at all. Others may doubt the need for legislation focused solely on schools and advocate for legislation with a broader focus. Many are likely to prefer legislation that is less costly and oppose any increase in funding. And others may oppose the use of school resource officers for fear of criminalizing students. The following Sections address each of these criticisms.

### A. Response is Not Necessary

Given the rarity of school shootings and the statistical data showing that schools generally remain a safe place for teachers and students,<sup>181</sup> are the costs involved with these responses justified?<sup>182</sup> And, if our goal is to save lives, could the funding being used to increase school safety measures actually save more lives if it were devoted in other ways? Perhaps, but saving lives is not the sole focus of school safety legislation. As discussed previously in this Note, school safety encompasses more than just an avoidance of school shootings.<sup>183</sup> A safe and welcoming learning environment is crucial to educational progress and some states have recognized this as a legal right.<sup>184</sup>

The increased media attention given to episodes of school violence in recent years has likely incited fear in the minds of many students. A research study of middle school students, conducted by doctoral candidates at the Graduate School of Education at Harvard University, found that students’ perception of their school environment influenced their academic achievement both directly and indirectly through school engagement.<sup>185</sup> The authors note that engaged students, among other

179. *Id.*

180. *Id.* (“While more than 9 in 10 sampled school administrators and law enforcement personnel would recommend that their schools hire SROS, fewer than 3 in 10 indicated positions actually would be created in the future, given funding concerns.”).

181. *See supra* notes 38–43 and accompanying text.

182. Jennie Rabinowitz, Note, *Leaving Homeroom in Handcuffs: Why an Over-Reliance on Law Enforcement to Ensure School Safety is Detrimental to Children*, 4 *CARDOZO PUB. L. POL’Y & ETHICS J.* 153, 153 (2006) (“[P]olicies that rely heavily upon law enforcement are often expensive, and alternatives exist that will not only make children less violent and schools safer, but that will save taxpayers money.”).

183. *See supra* Part III.

184. *See id.*

185. *See* Ming-Te Wang & Rebecca Holcombe, *Adolescents’ Perceptions of School Environment, Engagement, and Academic Achievement in Middle School*, 47 *AM. EDUC. RES. J.* 633 (2010).

things, attend school more regularly and focus on learning.<sup>186</sup> Although the study did not focus on safety within the school environment, one could easily conclude that students who do not feel safe at school are likely less engaged in school. Consequently, increasing students' perceptions of safety within the school environment is likely to increase their overall academic achievement.

Issues of school violence also affect parents' perceptions of school safety and comfort. After highly publicized episodes of school violence, parents are hesitant to send their children to school without some reassurance of school safety measures.<sup>187</sup> In addition to individual school measures, a state legislative response will go a long way in decreasing parents' anxiety. Requirements for school resource officer programs and individual school safety plans, along with increased funding for school safety measures, will likely increase the comfort of students, parents, and school employees. Admittedly, the value of comfort is difficult to quantify. Nevertheless, the increased comfort resulting from school safety legislation should be included when engaging in a cost-benefit analysis.

### ***B. Broader Legislative Focus is More Appropriate***

Some may doubt the need for legislation focused solely upon school safety and prefer to attack the issue on two fronts: gun control and school safety. Like Connecticut,<sup>188</sup> other states may believe they need both gun-control legislation and school safety infrastructure funding to address the problem of school shootings. As mentioned previously in Part II.B.2, though, the effectiveness of gun-control legislation itself is questionable. Especially ineffective is legislation focused on the cosmetics of guns rather than the guns themselves.<sup>189</sup> Because of the Second Amendment and recent case law interpreting it, it is unlikely that strict gun control would ever be successful in the United States.<sup>190</sup> Assuming for purposes of argument that gun-control legislation would help to increase school safety, gun control measures should not be included in school safety legislation. The issue of gun control is controversial.<sup>191</sup> Including measures pertaining to gun control in bills aimed at increasing school safety will undoubtedly slow down the legislative

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186. *Id.* at 633.

187. *See* AP, *Nervous Parents Send Kids to School as Districts Review Security Plans*, PENN LIVE (Dec. 17, 2012, 11:34 AM), [http://www.pennlive.com/midstate/index.ssf/2012/12/nervous\\_parents\\_send\\_kids\\_to\\_s.html](http://www.pennlive.com/midstate/index.ssf/2012/12/nervous_parents_send_kids_to_s.html). After the Sandy Hook shooting, one mother in Chicago was very worried about sending her children back to school noting, "I actually was going to keep them home today and make further calls to the school to make sure what the school is doing to protect people from coming in and out of the school and making sure the doors are locked at all times." *Id.*

188. *See supra* Part III.B.

189. *See supra* notes 96–101 and accompanying text.

190. *See supra* notes 103–106 and accompanying text.

191. The topic of gun control attracts enough attention to receive its own pages on news sites. *See, e.g.*, GUN CONTROL, BLOOMBERG, <http://topics.bloomberg.com/gun-control/> (last visited April 16, 2014); GUN CONTROL, HUFFINGTON POST, <http://www.huffingtonpost.com/news/gun-control/> (last visited April 16, 2014); Mark O'Mara, *Gun Debate? What Gun Debate?*, CNN (June 11, 2014, 5:28 PM), <http://www.cnn.com/2014/06/11/opinion/omara-oregon-shooting/>.

process.<sup>192</sup> Consequently, it is better to advance school-centered legislation in response to the school safety debate and keep gun-control legislation separate.

### *C. Arming Teachers is More Cost Effective*

Another criticism to the advanced legislative solution focuses on the costs involved in the choice between arming teachers and employing a school resource officer. Indiana's legislation included a provision that indemnifies public schools against a loss resulting from any injury caused to a person by a school resource officer if the loss was the result of misfeasance, malfeasance, or nonfeasance in connection with the use of the officer's weapon.<sup>193</sup> If increased liability is one of the major reasons for not arming teachers, one may argue that school districts could get the best of both worlds, as far as costs are concerned, if the state included a similar statutory provision that indemnified public schools for injury caused by teachers in connection with a firearm. Through an immunity provision similar to Indiana's, school districts could avoid hiring the more costly resource officers but still receive the benefits of insurance and liability protection.

Liability is not the only concern of arming teachers. The concerns for *safety* are very real,<sup>194</sup> and the likelihood of a teacher being able to deter an active shooter without formal training is doubtful. An investigation conducted by ABC News concluded that average individuals are not prepared to handle a gun in emergency situations.<sup>195</sup> Police investigator Chris Benton explains the intensity involved in an active-shooter situation is much more than an average individual can handle, "[r]ounds are coming back at you. You've got outside environments, people are screaming, running. It's too much for a normal person who's never been trained to deal with. It's overwhelming."<sup>196</sup> If states are concerned about costs and wish to utilize an indemnity provision, an alternative to the solution advanced in this Note is to indemnify teachers with a minimum level of specialized experience. Similar to Indiana's statutory requirements for school resource officers discussed previously in Part III.A.2, state lawmakers could include statutory criteria for teachers covered by the provision. Possibilities for these criteria include former military members or law enforcement officers, or teachers who have received specialized training. The

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192. Gun owners are more politically active than are their non-owner counterparts. See Peyton Craighill & Chris Cillizza, *Why Gun Laws are So Hard to Pass*, WASH. POST (April 16, 2013, 2:55 PM), <http://www.washingtonpost.com/blogs/the-fix/wp/2013/04/16/why-gun-control-laws-are-so-hard-to-pass/>. Politicians react to passionate voters and "passion is strongly on the side of those who want to keep any new gun laws off the books." *Id.*

193. IND. CODE § 34-31-10.2-2 (2014) (as amended by 2013 Ind. Acts 1744).

194. In September of 2014, at a Utah elementary school, a teacher with a concealed carry permit accidentally shot herself in the leg while alone in a faculty bathroom. See Dennis Romboy, *Do Guns Belong in the Hands of Teachers? The Debate is Renewed*, DESERET NEWS (Sept. 11, 2014, 5:30 PM), <http://www.deseretnews.com/article/865610764/Do-guns-belong-in-the-hands-of-teachers-The-debate-is-renewed.html?pg=all>. The state of Utah's law is unique in that schools *must* allow properly licensed employees to carry firearms under the state's concealed weapons permit. *See id.*

195. Eamon McNiff, *Carrying a Gun Wouldn't Necessarily Get You Out of Shooting*, ABC NEWS (Apr. 10, 2009), <http://abcnews.go.com/2020/story?id=7298996>.

196. *Id.*

idea being only teachers with a certain level of training and familiarity with firearms would be covered by the indemnity provision.

#### *D. School Resource Officers Criminalize Students*

Some scholars believe that relying on law enforcement to ensure the safety of public schools will have a negative outcome on children.<sup>197</sup> Under this theory, state lawmakers should avoid any legislation that promotes the use of school resource officers. Critics of school resource officers believe that their involvement in school disciplinary measures “criminalizes students.”<sup>198</sup> As discussed previously, school resource officers play a much wider role than that of just a rule enforcer.<sup>199</sup> Unlike community police, school resource officers primarily play a proactive role within the school environment. Much evidence exists proving that school resource officers have a positive impact on the overall safety of the school environment and actually improve the image of police among juveniles.<sup>200</sup>

### CONCLUSION

Debate involving school safety is once again at the forefront of American politics. With the intense media coverage serious school violence receives, the issue of school safety, understandably, may incite emotional responses from legislatures, school districts, and parents. However, school safety encompasses more than just mass shootings. And emotionally charged legislation focused upon firearms is not the answer. Legislation in the area of *school* safety needs to be *school*-centered.

As explained in this Note, school resource officers have a positive impact on the overall safety of the school environment.<sup>201</sup> Schools with written safety plans—along with students, faculty, and support staff who are familiar with these plans—are better equipped to mitigate the damage from serious acts of violence.<sup>202</sup> Many schools lack the funding necessary to implement increased security measures and school safety programs.<sup>203</sup> Thus, legislation that increases access to funds already available to schools or creates new sources of funding for these measures is necessary. In the current debate surrounding guns in schools, this Note proposes that the proper way to address school safety is through state legislation setting forth requirements for school resource officer programs and individual school safety plans, while also creating a source of financial support for schools needing assistance with funding these increased safety measures. Recent legislation from Indiana and Connecticut serves as a model for state policymakers wishing to respond to the issue of school safety through this type of legislation.

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197. Rabinowitz, *supra* note 182, at 153 (noting “policy-makers who craft school safety strategies should keep in mind that arresting children for infractions committed at school can have negative repercussions on those children’s futures”).

198. *See id.*

199. *See supra* notes 109–118 and accompanying text.

200. *See id.*

201. *See supra* Part III.

202. *Id.*

203. *Id.*