Kids and Schools: Challenging Searches and Confessions

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Part one: Searches

U.S. Supreme Court Law

Searches require reasonable grounds: In carrying out searches and other disciplinary functions pursuant to such policies, school officials act as representatives of the State, not merely as surrogates for the parents, and they cannot claim the parents' immunity from the strictures of the Fourth Amendment; thus School official are agents of the state for purposes of the 4th Amendment. Public school officials may search without warrant upon reasonable grounds when they believe student has violated the law or school policy, *New Jersey v. TLO*, 469 U.S. 325 (1985). However students retain legitimate interest of privacy in personal non-contraband items such as school supplies and items of personal hygiene and one's purse. *TLO*, *Id*.

Undergarment Searches: School officials may not search a student's undergarments when they have reasonable suspicion the student unlawfully possesses prescription or over the counter drugs in violation of school policy when there is no reason to believe these drugs are a danger or are concealed in undergarments, *Safford Unified Sch. Dist. #1 v. Redding*, 129 S. Ct. 2633 (2009).

Drug Testing: School policy of random drug testing for students voluntarily engaged in school athletics does not violate the Fourth Amendment prohibition against unreasonable searches, *Veronia School District 47 v Acton*, 515 U.S. 646 (1995). A three part test balances the interests of the state against the expectation of privacy of the individual by examining these factors: (1) the nature of the privacy interest upon which the state's interest intrudes; (2) the character of the search; and (3) the nature and immediacy of the governmental concern at issue, and the efficacy of the means for meeting it.

Wisconsin Case Law

Reasonable Suspicion Standard:A pre-*TLO* Wisconsin case that essentially upholds the same reasonable suspicion standard as *TLO*: (1) The exclusionary rule applied to juvenile proceedings because the protections of the fourth and fourteenth amendment were not limited to adults, (2) A teacher is a state agent for purposes of the fourteenth amendment, and (3) A teacher's command to a student, who'd previously brought small weapons to school and was misbehaving, to empty pockets, was reasonable. *In the Interest of LL*, 90 Wis. 2d 585, Ct. App 1979.

Locker Searches: When a school has a written policy that a locker is subject to a search at any time and school retains ownership and possessory interest in the locker, then student has no

reasonable expectation of privacy in that locker*, In the Interest of Isiah B*., 176 Wis. 2d 639(1993).

Lifting Student's Shirt: Police called in by school after receiving information student may be carrying a knife.After a patdown of jacket and backpack and search of school locker didn't turn up anything, police officer then lifted her shirt and found knife in her waistband.Court hold when school officials initiate an investigation and conduct it on school grounds in conjunction with police, the school has brought the police into the school-student relationship the TLO reasonable grounds standard applies Court approves search because officer only lifted her shirt high enough to see knife at waistband, *In the Interest of Angelia D.B,* 211 Wis. 2d 140.

Parking Lots: Treated the same as indoor school searches, *State v. Colin Schloegel*, 2009 WI App 85, citing *State v. Best*, 959 A.2d 243 (NJ Super. Ct. App. 2008). Many courts holda search is reasonable where a student is suspected of violating rules *in the school parking lot* or the student received a student handbook regarding vehicle searches parked on school grounds, or consented to a car search as a condition to being allowed to park in the school parking lot. See *Best, Id*.; *In Re:Michael R*., 662 N.W.2d at 634 (Neb.Ct. App. 2003) ;*State v. Shamberg, 762 P.2d at 489* (Alas. App. 1988); *Anders v. Fort Wayne Cmty. Schs*., 124 F. Supp. 2d 618, 620 (N.D. Ind. 2000).

Area for Litigation: School Searches Initiated by police:

Many states hold that when police initiate the search or they bring school official into a search they want to conduct that warrantless searches are still subject to a probable cause standard. Some of the cases are:

State v. Tywayne H., 933 P.2d 251, 254 (N.M. Ct. App. 1997),the "school official exception" to the probable cause requirement does not apply when search is carried out at the direction of police(applying the probable cause standard where two police officers providing security at a school dance conducted a search on their own initiative with only minimal contact with school officials);

F.P. v. State, 528 So. 2d 1253, 1254 (Fla. Dist. Ct. App. 1988), applying the probable cause standard where an outside police officer investigating an auto theft initiated the search of a student at school).

In re Thomas B.D., 486 S.E.2d 498, 499-500 (S.C. Ct. App. 1997), holding that probable cause was required when police conducted a search in furtherance of law enforcement objective, rather than on behalf of school).

R.D.S. v. State, 245 S.W.3d 356 (Tenn. 2008), When a law enforcement officer not associated with the school system searches a student in a school setting, officer is held to the probable cause standard.

Limitations on School Resource Officers under some State Constitutions:*State v. Meneese*, 282 P.3d 83 (Wash. 2012) held that the school search exception did not apply when a law enforcement officer was serving as the school resource officer saw thedefendant holding

a bag of marijuana in the boys' restroom, placed defendant under arrest, opened the backpack, and discovered an air pistol. The Supreme Court of Washington held that, because the officer was employed by the police department, had no ability to discipline students, was seeking evidence for criminal prosecution, not for school discipline, was not to maintain order because defendant was being removed from school, the search was unlawful under the U.S. and Washington State constitutions and should be suppressed. Georgia has a similar holding, *Patman v. State*, 537 S.E.2d 118 (GA 2000).

Part two: Statements

A. Determinations if Student is in Custody for Miranda purposes:

U.S.Supreme Court:

JDB v. North Carolina, 131 S. Ct. 2394,(2011). The U.S. Supreme Court held that a child's age "properly informs the Miranda custody analysis". *Id*. at ___. JDB was a 13 year old seventh grader who was called out of a class and interrogated by a police officer in a school conference room in the presence of another officer, the school principal and another school administrator. He was not informed of his Miranda rights, given an opportunity to contact his grandmother (who had custody of him), or told he was free to leave. The court took note of numerous cases in which it had ruled that children were less mature and responsible than adults (citing *Eddings v. Oklahoma*, 445 U.S. 104, 115-116 (1982)); often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them (citing *Bellotti* v. *Baird,* 443 U.S. 622, 635(1979)); and "are more vulnerable or susceptible to … outside pressures", (citing *Roper v. Simmons*, 543 U.S. 551,569 (2005).

Wisconsin:

State v. Colin Schloegel, 2009 WI App 85 found no custody when student questioned by police in school parking lot next to his car even though he was not free to leave, because there was not the degree of restraint associated with formal arrest. The court held that if juvenile was in custody, it was in the custody of the school, not police because school official had given the directions about where to go and what would happen and done most of the questioning up until this point. This is a pre-*JDB* case but it is doubtful that a court would have found custody under the *JDB* standard because of Schloegel's age.

Other Jurisdictions- Pre *JDB* Cases:

Questioning by School Personnel: When a juvenile is questioned at school, courts generally do not require Miranda warnings if the questioning is done by school personnel and their actions are not at the request of police. Courts recognize that school principals, teachers and other personnel haveresponsibility for school safety and discipline and the scope of their employments authorizes then to question a student. See for example *Matter of Navajo County Juvenile Action No. JV91000058*, 901 P.2d 1247, 1249 (Ariz. 1995); *Commonwealth v. Ira I.,*

791 N.E.2d 894 (Mass. 2003). This is true even if when school personnel intended to turn over evidence or inform police about what was statedduring questioning. *Commonwealthv. Snyder*, 597 N.E.2d 1363 (Mass. 1992).Some states have held the mere presence of a school assigned police officer during questionings of a student by school officials didn't require Mirandawarnings. See for example *M.H. v. State*, 851 So.2d 233 (Fla. App. 2003); *J.D. v. Commonwealth.,* 591 S.E.2d 721 (Va. App. 2004) and *In re L.A.*, 21 P.3d 952 (Kan. 2001).

States ruling in favor of custody: In *State v. D.R.,* 930 P.2d. 350 (Wash. App. 1997), a fourteen-year-old boy was found to be in custody for *Miranda* purposes when he was interviewed by a police officer in the presence of the assistant principal and a school social worker in the assistant principal's office. The Court found that an accusatory interview in principal's office creates a coercive atmosphere for fourteen year old; a child that age would reasonably think he was not free to leave when the police officer failed to inform him he was free to go. Similarly when a ten year old fifth grader was told to leave class and report to a faculty room where he had been disciplined before, a court held that the child was effectively in custody because he wasn't told until after questioning that he was free to go. *State v. Doe*, 948 P.2d 166 (Idaho 1997). In *In re Welfare of G.S.P.,* 610 N.W.2d 651 (Minn. Ct. App. 2000), the court held Miranda warnings were required when a twelve year old seventh grader was taken to the assistant principal's office where he was questioned by the principal in the presence of a police officer about a BB gun found in his backpack . The court noted that the principal told G.S.P. he had to answer questions and the officer said nothing to contradict that or inform G.S.P. that he was free to leave.

B. Recordation Requirements

*State v. Jerrell C.J.*2005 WI 105 requires that all custodial interrogations of juvenile be recorded where feasible, and without exception when questioning occurs at a place of detention.

Wis. Stats. Sec. 938.195(1),enacted after*Jerrell*, defines place of detention as "a juvenile detention facility, jail, municipal lockup facility, or juvenile correctional facility, or a police or sheriff's office or other building under the control of a law enforcement agency, at which juveniles are held in custody in connection with an investigation of a delinquent act". Wis. Stats. 938.195 (2) (b) statesIf feasible, a law enforcement agency shall make an audio or audio and visual recording of any custodial interrogation of a juvenile that is conducted at a place other than a place of detention unless one of the exceptions below apply.

Wis. Stats. 938.31(3) (b) and(c) state that juvenile statements are not admissible into evidence unless the recordation requirement was followed unless one of the following exceptions applies:

- The juvenile refused to cooperate and make a statement unless there was no recording. The refusal must be recorded.
- Routine booking exception

- Equipment malfunction or good faith operator error
- The statement was made spontaneously and not in response to questioning.
- An exigent public safety exception made recording infeasible.

In the Interest of Dionicia M., 2010 WI App 134, interpreted *Jerrell* and suppressed a statement due to a recording violation. Police were asked to bring juvenile back to school to be questioned about a battery and transported her in the rear of locked squad, where she was questioned without being recorded.The court determined to this constituted custody and recordation was feasible, notwithstanding the lack of a recordation device in the squad. The court noted feasible does not equate to effortless and police were 5-10 minutes from the school and could have waited to question the juvenile. Since the custodial interrogation began in the squad, the recorded Mirandized statement at the school was suppressed because statements per *Jerrell* must be recorded in their entirety or are inadmissible.