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Review of the Lubbock Independent School District
Police Department's Policy on Transporting Students

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ABSTRACT

The role of the school-based law enforcement officer has changed since its inception in the 1950's. The basic concept has always been to provide guidance and promote a safe and secure learning environment for students and staff. However, with today's events including homicide, suicide, and accidental or natural death, law enforcement officers within the scholastic setting have been asked to assume a greater role in the provision of intervention services.

The term "crisis intervention" is a relatively new term in our language. Students in our high speed, high tech, and materialistic society face a different variety of challenges than did their parents and grandparents. As a result, the school has become a "pressure-point" for these students, and we often are in the center of these crises. During this period, school-based officers may be presented with unique situations that require safe transportation of these students from school to a mental health facility at the request of a parent or guardian.

This paper examines the legality of this practice, and assesses whether or not it falls within the lawful parameters of law enforcement within the scholastic setting of a school police officer. The intended outcome of this paper is to provide the Lubbock Independent School District Police Chief information regarding the adaptability of this practice while operating within departmental policy and civil liability.

It is determined that Lubbock ISD Police Department policy does not clearly cover these type situations, and must be amended. The information in this project was accumulated from various sources, including Texas and Federal law, books, journals, departmental policy manuals, and personal interviews.

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INTRODUCTION

This paper examines our current policy on transporting students, and its capability to meet the needs of the student who is emotionally traumatized yet has not quite met the criteria for an Emergency Commitment. This trauma can be in the form of depression, aggressive behavior, substance abuse, or suicidal tendencies.

Tragedy in schools is traced to October 1, 1997 when a 16 year old boy in Pearl, Mississippi killed his mother, then went to his high school and shot nine students, two fatally. In recent years, seven more such instances would occur with the latest ending in the massacre at Columbine High in Littleton, Colorado.

Violence is a major concern to parents, students, teachers, and the administration of any school. We have found that our best plan starts with prevention and awareness. Along with parents and school officials, law enforcement must step forward and play a role in this crisis intervention process. Over the past three years parents have been confronted with this dilemma and have asked Lubbock ISD police officers to assist them in obtaining help for their child in the form of transporting the student from the school setting to a mental health facility. Traditionally police have not been involved unless there was a clear and immediate danger requiring the student to be taken into custody. Parents responding to the needs of their children are sometimes hesitant to attempt transport by themselves fearing an explosive response from the child.

The school police can be the community's greatest asset in effectively preventing and responding to school violence. Building a relationship with law enforcement strengthens the school's ability to ensure safety.

The intended result of this research paper is to provide the Lubbock ISD Chief of Police with information regarding the legality and compatibility of the current policy on transporting students to encompass crisis intervention at the request of a parent or legal guardian. Through careful examination of the current policy and the legal issues involved it is determined that the policy on transporting students can and should be amended.

The information in this project was accumulated from various sources, including Texas and Federal law, books, journals, departmental policy manuals, and personal interviews.

HISTORICAL AND LEGAL CONTEXT

Whether acting in their capacity as protectors of public safety or providing care and protection to those who are unable to do so for themselves (*parens patriae*), the police are placed in a role variously described as "psychiatric medics" or "forensic gatekeepers" (Menzies, 1987), "street corner psychiatrists" (Teplin, 1984), and "amateur social workers" (Cumming, Cumming, & Edell, 1965). In this role as frontline mental health workers, police exercise a tremendous amount of discretion (Green, 1997).

Within the past 15 years, the dominant paradigm in American policing has shifted from a traditional enforcement model to a community policing model. This model places a greater emphasis on order maintenance and non-emergency services, in addition to, and often as a part of the fundamental mission of crime control (Moore, 1991). One implication of this shift has been that many agencies are reconsidering their role in the community, particularly as it relates to more service oriented calls.

The question facing us today is not that of the need for a policy involving the transportation of these students, but the legal issues surrounding the rights of the child. The term "children's rights" is generally applied to all the protections and privileges needed for a safe and healthy childhood. The legal definition is much narrower. A child's legal rights include only those laws-constitutional laws, federal and state laws, and common laws (court decision) that give minors specific rights and protections enforceable in a court of law. These include the right to an education, their right to inherit property, and the right to a fair trial.

From British Colonial times in the 1600's until the late Nineteen Century, the concept of children's rights was virtually nonexistent. In the eyes of the law, children were viewed as possessions of their parents. Parents had the exclusive authority to decide how to raise their children. The state observed a hands-off policy believing that the interests of the parents and children were one and the same.

The issue of medical treatment for minors also involves the area on mental health. In 1979, the Supreme Court ruled that minors were not entitled to the same recommitment procedural safeguards as adults. The Court's decision was based on the reasoning that a parent can usually be relied on to make this decision in the minor's best interests (*Parham v. R.* 442 U.S. 584). The Court did require that before a child is "voluntarily admitted" into a mental institution by their parents, a staff physician must make an independent decision that the child is in need of this care. The court also ruled that a neutral fact-finder must inquire into the child's background before voluntary admission. (This procedure is categorized as a "voluntary admission" since the decision

is made voluntarily by the parents.) The Court added another "safeguard," periodic evaluations of the minor are required to determine the need for continued commitment.

An earlier ruling by the Supreme Court established the right of sixteen year olds, who have been voluntarily admitted into mental institutions, to enter or leave these facilities over the objections of the parents (*Bartly v. Kremens* US. 964, 1976).

Although the minor is not protected under the Constitution in this matter, state laws may offer more protective procedures.

Under the Texas Penal Code, Section 9.61, 1998: 16,9.62 the definitions and responsibilities of "Parent-Child- Educator-Student," and "guardian-incompetent" are clearly outlined.

The Health and Safety Code, State of Texas, outlines the Limitation of Liability (Chapter 76,571.01) imposed on an Officer while transporting a child from school to a mental health facility. The section clearly holds the officer acting within its guidelines not criminally or civilly liable for that action. Also found under the Texas Family Code 262.104, a Peace Officer may take possession of a child based on personal knowledge of facts that would lead a person of ordinary prudence and caution to believe that there is immediate danger to the physical health or safety of a child.

Further limitation of liability can be found under 571.019 of the Health and Safety code under Mental health. Subsection (a) states that a person who participates in the examination, certification, apprehension, custody, transportation, detention, treatment, or discharge of any person or in the performance of any other act required or authorized by this subtitle and who acts in good faith, reasonably, and without negligence is not criminally or civilly liable for that action.

Based on all the information gathered, the legal aspects of transporting a child in crisis at the request of a parent or guardian to a mental facility appears to offer no civil or criminal ramification if strict adherence to guidelines are met.

REVIEW OF LITERATURE OR PRACTICE

"To ensure a safe and secure environment for teaching and learning." This is the mission statement for Lubbock Independent School District. Schools must be open and objective in the examination of circumstances that are potentially dangerous for students and staff and situation where members of the school community feel threatened or intimidated. Safe schools continually assess progress by identifying problems and striving for solutions.

Mental health problems affect one in every five young people at any given time and as many as one in every 33 children may have clinical depression. Suicide is the third leading cause of death for 15-25 year olds and the sixth leading cause of death of one in five 15 year olds (American Academy of Child & Adolescent Psychiatry, 1998). Too frequently interventions are not made available until the student becomes violent or is adjudicated as a youthful offender. Early identification of an at-risk student and combined efforts of parents and school counselors in seeking treatment for these individuals can be critical in ending the cycle of violence.

While the law provides the structure for and legitimizes police intervention, it *does not dictate the police officer's particular response in any given situation. Police use* discretion when managing a situation involving a mentally ill person (Goldstein, 1979;

Manning, 1977; Wilson, 1978). Presumably, the more serious the situation, the less discretion can be exercised.

In general, police agencies transport mental patients under an emergency commitment by a Police Officer or a court order commitment. There are no existing procedures or guidelines that accommodate a request by a parent to law enforcement to assist in the transport of their child from a school setting to a mental health facility. Traditionally an ambulance service would be called, with the expense being charged to the family. In most cases, the families of these individuals do not have the funds or an alternative mode of transportation available. It is in these cases that the School District Police can provide an invaluable service to the family and the community as well in assisting in the transport of these individuals.

A survey form requesting information on transport policy was sent to eight large school district police departments in Texas, inquiring as to their current policy and procedures on transporting students. Most departments had the standard policy reference non-arrested student transportation:

"Any non-arrested student needing transportation to a campus or a parent/guardian location, will be placed in the back seat of the patrol vehicle. If camera equipped, the officer will position his in-car camera on the subject(s) and activate the same, when transporting members of the opposite sex and violent individual. The officer will notify dispatch of his starting location, starting mileage and distention. The vehicle will not be placed in motion until all occupants have properly secured their seat belts.

Upon arriving at the destination, the officer will notify dispatch and give ending mileage" (Midland ISD Police Department).

Currently Lubbock ISD Police Procedures manual addresses handling mentally ill persons under Emergency Admission (Tex.Rev.Civ.Stat.Ann.art 5547-A26 through AA3O) and transport when in custody. These procedures provide a vague guideline for the officer, but do not offer clear cut guidelines to be followed in the case of a voluntary commitment, thereby leaving the officer with the most expedient way of handling the request in placing the responsibility once again back in the hands of the parents.

Times are changing and in order to keep up with the many tasks and situations now faced people must change. What may work on the street may not be enough in the classroom setting. Departments must have formal and informal guidelines on the use of discretion, and the liability associated with exceeding that authority by either wrongful arrest or failure to act. With these policies in place, law enforcement can share responsibility by establishing a partnership with the child, school, home, and community in this time of "Crisis on Campus."

DISCUSSION OF RELEVANT ISSUES

Violence is a major concern to parents, students, teachers, and the administration of any school. The best plan starts with prevention and awareness. Children who show dangerous patterns and a potential for more serious violence usually require more intensive interventions that involve multiple agencies, community based service providers, and intense family support. By working with families and community services, schools can comprehensively and effectively intervene. Despite our best efforts,

unfortunate incidents do occur. When they do, it is our responsibility to provide appropriate support to meet the needs of every child.

Violence prevention and response plans should consider both prevention and intervention. Plans also should provide all staff easy access to a team of specialist to evaluate serious behavioral problems and an effective means of expediting immediate treatment for the child. It must also be recognized that America's public schools are doing many things to help young people stay connected. School districts have peer counseling and character education courses, and they go out of their way to help young people who are struggling with real life issues; divorced parents, alcoholism, drugs, just to name a few. Law enforcement now can play a vital role in intervention by supplying the means of transportation for those children caught in crisis. This is a very difficult task given the enormous number of young people in our schools.

The creation of written policy will provide protocol for the transportation of students who are being taken in a police car, not under arrest, to an approved mental health facility, at the request of a parent or guardian. Law enforcement officers must determine by investigation or observation whether a person needs to be transported. A written policy gives the officer guidelines to follow in evaluating and determining the proper solution in meeting the request of the parent while safeguarding the rights of the child.

The definition of a mentally ill person is found in the following form.

“A person who displays symptoms of substantially impaired mental health and who is in danger of causing injury to himself or to the person or

property of others or is in danger of being injured by others." Chapter Six, Section 5, Lubbock ISD Procedures Manual.

The officer may gain further insight as to the child's condition from past history kept by the school counselor that has worked with the child and his or her parent or guardian.

The creation of a written policy is a two fold process:

- 1) The needs and rights of children cannot be ignored. Legal as well as safety issues must be addressed in the contents of the written policy.
- 2) Proper procedures must be in place to ensure the safety of the officer as well as that of the parent and child being transported.

Administrators share great concern in the amount of time that will be consumed in performing this task. All of America has grieved and our hearts continue to go out to the families who have lost loved ones and the injured students whom we hope and pray are healing. In this time of tragedy, and as people seek to make sense of what has happened, let us remember what price has already been paid. The answer is complex; there are no quick and easy solutions.. But collaboration between doctors and law enforcement is essential. Many things can be done to prevent school violence, this is a small price to pay to ensure the safety of our children.

Effective and safe schools are places where there is strong leadership, caring faculty, parent and community involvement, including law enforcement officials and students. American's schools are among the safest places to be on a day to day basis, due to the strong commitment of educators, parents, and communities to their children.

Nevertheless, the tragic acts of sudden violence in our nation's schools remind us that no community can be complacent in its efforts to make its schools even safer,

CONCLUSIONS/RECOMMENDATIONS

"Our children deserve to have mental health facilities in schools. The cost to not do so is simply too great." (Feninchel, 1999)

As stated in the introduction, the purpose of this research paper examines our current policy on transporting students, and its capability to meet the needs of the student who is emotionally traumatized yet has not quite met the criteria for an Emergency Commitment.

This research answers the questions of the legal issues surrounding a policy on transporting these students that require mental health treatment. 'Whereas mankind owes to the child the best it has' (UN Declaration), we must not violate his rights. Law enforcement is a school's greatest community asset when effectively preventing and responding to school violence,

Through careful examination of the current policy and the legal issues involved, the policy on transporting students has been amended and is reflected in the attached Appendix. If we as a society are to end the cycle of violence, we must first strive to provide the intervention desperately needed by forming a partnership between parents, school and law enforcement to ensure a brighter future for our children.

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APPENDIX 1

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3. Not deceive the mentally ill person (Deception often thwarts the chance for trust and endangers the subject's potential for recovery. Trust enhances the opportunity for controlling the situation).

SECTION 7

PROCEDURES

- A **TWO OFFICERS.** Whenever possible if it appears likely that a situation involving a mentally ill person will require immediate police intervention in order to prevent personal injury or extensive property damage, two officers should be dispatched initially. A lone officer who encounters such a situation should, whenever possible, request a back-up officer.
- B **USE OF FORCE.** If an officer must control and restrain a mentally ill person, the officer shall use the least amount of force necessary in accordance with the rules in Chapter Five on the Use of Force.
- C **ESCAPE FROM INSTITUTION.** If the officer has reason to believe that a person may be a mental patient who has left institutional care without authorization, the officer should investigate and notify the institution and let the institution arrange for the patient's return.
- D **PROCEDURES.** An officer should handle a mentally ill person who needs attention in the following manner:
 1. Attempt to locate responsible relatives or friends attend to the needs of the mentally ill person;
 2. If asked for advice, the officer may provide information about the availability of voluntary hospitalization; or,
 3. If the mentally ill person has no friends or relatives who will take responsibility for him and he will not apply for voluntary hospitalization, the officer should refer the matter to the proper health authorities or to a magistrate.
- E **EMERGENCY DETENTION WITHOUT WARRANT.** Any peace officer. who has reason to believe and does believe upon the representation of a credible person. or upon the basis of the conduct of a person. or the circumstances under which the person is found. that the person is mentally ill and becomes a danger to himself or others, may use

of such mental illness represents a substantial risk of harm to himself or others unless immediately restrained, which harm may be demonstrated either by the person's behavior or by evidence of severe emotional distress and deterioration in his mental condition to the extent that the person cannot remain at liberty, and who believes there is not sufficient time to obtain a warrant, may, without first obtaining a warrant, take such person into custody and immediately transport the person to the nearest appropriate inpatient mental health facility or other suitable detention facility and shall immediately file application with the facility for the person's detention. In no case shall a jailor other similar detention facility be deemed suitable except in an extreme emergency. Persons detained in a jailor other non-medical facility shall be kept separate from those persons charged with or convicted of a crime.

The Application To Facility For Emergency Detention Without a Warrant And Acceptance For Preliminary Examination is to be filled in and signed by a peace officer and also to be signed by a representative of the facility accepting the patient. (The Preliminary Examination form is merely for the brief detention period until an application for commitment can be filed in COUII.)

The application for Emergency Detention shall contain the following information:

1. That the officer has reason to believe and does believe that the person evidences mental illness.
2. That the officer has reason to believe that the person has reason to behave and does believe that the person evidences a substantial risk of serious harm to himself or others, which risk of harm shall be specified and described;
3. That the officer has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;
4. That the officer's beliefs are based on specific recent behavior over acts, attempts, or threats observed by or reliably reported to the officer, which behavior, acts, attempts, or threats shall be described in specific detail; and.
5. The names and relationship to the person. if any, of persons reporting or observing such recent behavior, acts, attempts, or threats.

Upon presentation of the application, the facility shall temporarily accept the person for the purpose of conducting a preliminary examination by a physician.

F **WARRANT OF COMMITMENT.** When seeking a warrant of commitment, an officer shall, by affidavit or in person before the magistrate, indicate those specific facts and circumstances which would lead a reasonable person to believe that the subject suffers from mental illness and requires observation and treatment in a mental hospital for his own protection or the protection of others.

G **REPORTING LUBBOCK STATE SCHOOL RESIDENTS AS VICTIMS.** In order to ensure the confidentiality of the name of the resident as prescribed by State law, the name of the victim will be placed in a supplement report rather than on the offense report.

H **REPORTED RUNAWAYS FROM THE LUBBOCK STATE SCHOOL.** Under Section 593.012 of the Mental Health and Mental Retardation Law, the Director of the Lubbock State School may immediately issue an order authorizing any peace officer to detain a resident of the facility who is absent without permission from the proper authority. An Incident Report will be made on reported runaways from the Lubbock State School.

I **SPECIAL EDUCATION TRANSPORTATION.** After a school has exhausted all reasonable methods to control the behavior of a special education student, school district police are authorized to transport the student to a location and person that has been pre-arranged by school staff. The receiving person must be a parent, guardian, certified staff member or mental health worker.

The transporting officer must be accompanied by a certified educator, counselor or diagnostician.

The student shall be transported in the back seat of a screened unit.

The officer shall determine whether or not to handcuff the student to protect the student or others from injury.

- J **PARENT/GUARDIAN REQUEST FOR TRANSPORT.** Upon credible presentation by a parent or guardian, and with the concurrence of a school district mental health or health services professional, an officer may transport a student younger than sixteen years old from school property to a mental health facility without the child's consent. A student sixteen or older may be transported with the student's consent.

STOPS AND SEARCHES

SECTION 8 DEFINITIONS - STOP AND FRISK

- A **ACCESS AREA.** The area (also known as the "area of immediate control") into which a person might readily reach in order to grab a weapon.
- B **ARMED.** Carrying a weapon or other object capable of inflicting death or serious bodily injury.
- C **FRISK.** Jargon referring to a weapons search of a person generally limited to a pat down of his outer clothing to ensure the safety of the officer and others.
- D **NON-SUSPECT.** A person who an officer has no reasonable suspicion to believe is involved in any criminal activity.
- E **PROBABLE CAUSE.** That total set of apparent facts and circumstances based on reasonably trustworthy information which would warrant a prudent person (in the position of and with the knowledge of the particular peace officer) to believe something, for example, that a particular person has committed some offense against the law.
- F **REASONABLE SUSPICION.** An officer's rational belief; based on credible and articulable information and circumstances, that something may be true (for example, that an offense may have occurred or that a particular person may have committed an offense).
- G **STOP.** A temporary investigative detention, generally including limited field questioning of a suspect.
- H **SUSPECT.** A person who an officer reasonably suspects of involvement in criminal activity.