

MISSING THE MARK: SCHOOL PERSONNEL SHOULD NOT BE ARMED

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I. INTRODUCTION

"They had their entire lives ahead of them—birthday[s], weddings, kids of their own." President Obama wiped tears from his eyes as he spoke of the twenty slain children, ages five to ten.¹

At approximately 9:30 a.m. on a Friday morning, the Newtown, Connecticut police received a 911 phone call.² Someone had shot his way

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¹ Tamer El-Ghobashy & Devlin Barrett, *Dozens Killed in Conn. School Shooting*, WALL ST. J. (Dec. 17, 2012, 8:12 PM), <http://online.wsj.com/news/articles/SB10001424127887323297104578179271453737596>.

² Tamer El-Ghobashy et al., *Town United by Grief Searches for Answers*, WALL ST. J. (Dec. 17, 2012, 12:01 AM), <http://online.wsj.com/news/articles/SB10001424127887323723104578183530331275590>.

into the town's elementary school, firing right through the glass-plate partition to get around the locked front door.³ The school loudspeaker was flipped on by an employee, broadcasting the screams and cries to warn others in the building.⁴ Teachers blockaded classroom doors with bookshelves and hustled students into bathrooms and closets.⁵ Still, the shooter managed to make his way into two first-grade classrooms with an assault rifle and handguns.⁶ The intruder took the lives of twenty students and six school staff members before turning a gun on himself.⁷

Parents frantically convened at the local firehouse where students were taken after the shooting stopped.⁸ Some were tearfully reunited; others anxiously awaited word of their missing children.⁹ The next day, local authorities began the sorrowful task of returning victims' bodies to their families.¹⁰ December 14, 2012 was not the start of a joyful holiday season. For the small town of Newtown, it was a local 9/11.¹¹

The echoes of the gunfire had barely faded when school districts around the country called for the dramatic measure of arming teachers and other school personnel.¹² The ages and number of victims in the Newtown incident provoked a feeling of desperate need "to prevent such horror from happening again."¹³ Understandably, the tragedy gave schools pause to reevaluate their safety policies. Certain Ohio school districts suggested arming teachers and staff with firearms.¹⁴ Their proposals utilize a state law exemption that allows individual school boards to determine who can carry a gun on school grounds.¹⁵ "School safety experts, [however, caution] against making [drastic] changes to security procedures without thinking [them] through."¹⁶

³ *Id.*

⁴ *Id.*

⁵ *Id.*; El-Ghobashy & Barrett, *supra* note 1.

⁶ El-Ghobashy et al., *supra* note 2.

⁷ *Id.*

⁸ El-Ghobashy & Barrett, *supra* note 1.

⁹ *Id.*

¹⁰ El-Ghobashy et al., *supra* note 2.

¹¹ Newtown residents refer to the Sandy Hook Elementary School massacre as "12/14," their own 9/11. David Kamp, "We'll Never Be Whatever 'Normal' Is": Newtown Residents, One Year Later, VANITY FAIR (Nov. 5, 2013, 12:00 AM), <http://www.vanityfair.com/online/daily/2013/11/newtown-residents-one-year-sandy-hook>.

¹² Nirvi Shah, *Nation*, *Districts Step Up Safety: Some Schools Arming Volunteers, Staff*, 32 EDUC. WK. 12, 12 (2013).

¹³ *Firearms in principals' and teachers' hands might do more harm than good*, NAT'L ASS'N OF ELEMENTARY SCH. PRINCIPALS (Dec. 19, 2012), <http://www.naesp.org/national-principals-groups-oppose-proposals-arm-school-officials>.

¹⁴ John Futtly, *Hundreds of Ohio School Workers Want to Carry Guns*, COLUMBUS DISPATCH, Dec. 28, 2012, http://www.dispatch.com/content/stories/local/2012/12/28/armed_teachers.html; *see also Newark School Committee Discusses Arming Teachers To Improve Security*, 10TV.COM (Feb. 26, 2013, 6:29 PM), <http://www.10tv.com/content/stories/2013/02/26/newark-school-security-arming-teachers-discussed.html>.

¹⁵ OHIO REV. CODE § 2923.122(D)(1) (2006).

¹⁶ Shah, *supra* note 12.

This Comment does not argue for or against Ohio's general concealed carry law. Rather, it focuses on the state law exemption and contends that arming staffers is not in the best interest of schools. Section II provides a brief legal and factual background of gun-free school zones and concealed carry laws in general, as well as the current state of Ohio law specifically. It provides a context for school shootings and demonstrates that schools remain among the safest places for children. Finally, it describes nationwide reaction to the Newtown school shooting as well as Ohio's own response. Section III critiques the proposal to allow school staff to carry firearms and examines whether it is the best means to safer schools. The section also suggests more effective and sensible solutions for the protection of students and school staff.

II. BACKGROUND

Highly publicized tragedies such as the Newtown shooting lead many to reexamine the problem of school violence. The sense of urgency to ensure the safety of school children and staff must be tempered with a realistic look at such incidents.

A. Gun-Free School Zones and Concealed Carry

Congress introduced the Gun-Free School Zones Act of 1990 in response to the growing epidemic of violence in K–12 schools.¹⁷ The law prohibited the knowing possession of a firearm within a school, on school property, or within a one-thousand foot radius around schools.¹⁸ In 1995, the Supreme Court struck down the law as an unconstitutional extension of Congress's power under the Commerce Clause.¹⁹ Congress re-enacted the law in 1996, limiting its application to firearms that had been moved in interstate commerce.²⁰ The firearm ban exempts individuals with state-issued licenses, individuals who have entered into an agreement with a school in a school zone, and "law enforcement officer[s] acting in his or her official capacity."²¹

The Gun-Free School Zones Act does not impose any affirmative obligation upon state or local governments.²² States have adopted a variety

¹⁷ 135 CONG. REC. E 3988 (daily ed. Nov. 20, 1989) (statement of Hon. Edward F. Feighan) (citing several incidents that occurred between May 1988 and November 1989: the shooting of six students in an Illinois school; the rapid open-fire on a California school playground that killed five students and injured thirty others; a Kentucky high school student holding eleven of his classmates hostage for over seven hours; and a New York student shot and killed in his high school cafeteria).

¹⁸ Gun-Free School Zones Act of 1990, 18 U.S.C. §§ 921(a)(25), 922(q)(2)(A) (2012) (defining "school zone" and the ensuing restrictions).

¹⁹ *United States v. Lopez*, 514 U.S. 549, 567–68 (1995).

²⁰ 18 U.S.C. §§ 921(a)(25), 922(q) (2012).

²¹ 18 U.S.C. § 922(q)(2)(B).

²² Sheila A. Mikhail, *Reversing the Tide Under the Commerce Clause*, *United States v. Lopez*, 115 S. Ct. 1624 (1995), 86 J. CRIM. L. & CRIMINOLOGY 1493, 1519 (1996).

of gun policy approaches, such as concealed weapons permits. In “Shall Issue” states, any individual who meets all of the state’s requirements will be issued a concealed weapons permit, as the state does not have the authority to reject the permit if the requirements have been met.²³ This objective standard for permit issuance is used in over forty states, including Ohio.²⁴ In most of these states, such requirements consist of passing a fingerprint-based background check as well as a safety class.²⁵

In contrast, “May Issue” states allow unlimited discretion to issuing authorities, even where individuals have met requirements.²⁶ In “these [nine] states, . . . [concealed weapons] permit issuance [may vary] widely from county to county;” some states make it “essentially impossible for anyone . . . to obtain a permit.”²⁷ While “good cause” provisions of May Issue laws remain at issue,²⁸ the Supreme Court has ruled that states are allowed to restrict guns in “sensitive places such as schools.”²⁹ Some states statutorily exclude K–12 schools from the right to carry firearms, while other states allow school boards to impose their own bans.³⁰

In 2004, Ohio became a Shall Issue state, allowing for the concealed carry of firearms.³¹ A concealed carry permit will be issued to Ohio residents who meet such requirements as being at least twenty-one years of age, passing a background check, and completing a minimum of eight hours of safety training.³² While permit holders may carry a gun into bars and rest areas,³³ these licensed individuals are generally prohibited from possessing a firearm within a school safety zone.³⁴ However, Ohio law may enable teachers to carry weapons on school property. An exemption to the school zone prohibition permits school boards to authorize certain licensed permit

²³ *Concealed Carry Permit Information by State*, USA CARRY, http://www.usacarry.com/concealed_carry_permit_information.html (last visited April 19, 2015).

²⁴ *Id.*; see also Megan Bachman, *Guns and the Village: Guns Abundant in Ohio*, YSNEWS.COM, Feb. 7, 2013, <http://ysnews.com/news/2013/02/guns-abundant-in-ohio>.

²⁵ David B. Kopel, *Pretend “Gun-Free” School Zones: A Deadly Legal Fiction*, 42 CONN. L. REV. 515, 519 (2009).

²⁶ *Id.* at 520.

²⁷ *Id.*; USA CARRY, *supra* note 23. The District of Columbia adopted a “May Issue” law in September 2014. Mike DeBonis, *D.C. Council Votes, Reluctantly, to Allow Public to Carry Concealed Weapons*, WASH. POST, Sept. 23, 2014, http://www.washingtonpost.com/local/dc-politics/dc-council-votes-reluctantly-to-allow-public-to-carry-concealed-weapons/2014/09/23/03e8be1e-4322-11e4-9a15-137aa0153527_story.html.

²⁸ DeBonis, *supra* note 27; see also Maura Dolan, *California Can’t Challenge Ruling on Concealed Guns, Court Says*, L.A. TIMES, Nov. 12, 2014, 7:41 PM, <http://www.latimes.com/local/california/la-me-concealed-weapons-20141113-story.html> (describing reaction to the Ninth Circuit’s decision that “San Diego County’s policy requiring law-abiding gun owners to show a specific need for protection violated the 2nd Amendment’s guarantee of the right to bear arms”).

²⁹ *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008).

³⁰ Kopel, *supra* note 25, at 520–21.

³¹ Bachman, *supra* note 24.

³² OHIO REV. CODE § 2923.125 (2015).

³³ Bachman, *supra* note 24.

³⁴ § 2923.122 (2006). A “school safety zone” includes a school, school building, school premises, school activity, and school bus. § 2901.01(C)(1) (2006).

holders to carry guns on school grounds.³⁵

B. An “Epidemic” of School Shootings

The tragic Newtown shooting reignited the national debate over gun control and led many schools to reexamine their safety policies.³⁶ The incident must be viewed in context, however, to make effective improvements and avoid hasty changes in school safety.

School violence is not a recent development. Mass casualty weapons assaults in schools date back to 1764, when warrior Indians killed ten schoolchildren and their teacher inside a one-room schoolhouse.³⁷ The intentional bombing of a Bath, Michigan school in 1927 killed forty-five people.³⁸ Between 1986 and 1990, sixty-five students and six school employees were killed by firearms at school.³⁹ A string of school shootings across the country during the 1997–1998 and 1998–1999 academic years killed more than two dozen students and teachers, and wounded more than several dozen others.⁴⁰ More recently, in suburban Cleveland a teenager fired ten shots in a high school cafeteria, killing three students and wounding three others.⁴¹ This February 2012 shooting was the worst at a U.S. high school in the previous eleven months and the worst in Ohio since

³⁵ § 2923.122(D)(1) (2006).

³⁶ See, e.g., Shah, *supra* note 12 (detailing school responses across the country); Alex Altman, *Obama Takes a First Step on Gun Control After Sandy Hook*, TIME, Dec. 19, 2012, <http://swampland.time.com/2012/12/19/obama-takes-a-first-step-on-gun-control-after-sandy-hook/> (addressing new gun-control proposals and the surrounding disagreement); see also Jennifer Frederick, *Do As I Say, Not As I Do: Why Teachers Should Not Be Allowed To Carry Guns On School Property*, 28 J.L. & EDUC. 139, 139–40 (1999) (discussing Georgia’s proposed legislation to arm teachers as a way of deterring school violence).

³⁷ Megan D. Strait, *Enoch Brown: A Massacre Unmatched*, PA CTR. FOR THE BOOK (Fall 2010), <http://pabook.libraries.psu.edu/palitmap/Enoch.html>.

³⁸ Dennis Pfaff, *Dynamite Killed 45 People in Bath, Mich., 60 Years Ago: School Board Member’s Deadly Revenge on Town’s Children Recalled*, L.A. TIMES, May 17, 1987, http://articles.latimes.com/1987-05-17/news/mn-836_1_school-board.

³⁹ Carl W. Chamberlin, *Johnny Can’t Read ‘Cause Jane’s Got a Gun: The Effects of Guns in Schools, and Options after Lopez*, 8 CORNELL J.L. & PUB. POL’Y 281, 288 (1999).

⁴⁰ KATHERINE S. NEWMAN, RAMPAGE: THE SOCIAL ROOTS OF SCHOOL SHOOTINGS 47 (2004); *Major School Shootings in the United States Since 1997*, BRADY CAMPAIGN TO PREVENT GUN VIOLENCE 1, 39–41 (Dec. 17, 2012), http://gunviolence.issuelab.org/resource/major_school_shootings_in_the_united_states_since_1997. In October 1997, a high school boy in Mississippi murdered his mother before coming to school and shooting nine classmates, killing two. *Id.* at 41. A couple months later, a fourteen-year-old boy in Kentucky shot and killed three students and wounded five others at his high school before being restrained. *Id.* at 40. In March 1998, two boys fired on their middle school from the nearby woods and killed four students and one teacher and wounded eleven others. *Id.* at 40. Only one month later, a fifteen-year-old boy opened fire at an eighth-grade graduation dance in Pennsylvania and killed one teacher. *Id.* at 40. In May 1998, an Oregon high school freshman first murdered his parents, then brought his gun to school where he killed two students and wounded more than twenty others. *Id.* at 40. The tragedies culminated with Columbine in April 1999, when two teenage boys entered the school with guns and bombs and killed twelve students and a teacher, wounded twenty-three others, and eventually took their own lives. *Id.* at 39.

⁴¹ *Chardon Teen Pleads Not Guilty to School Shooting*, COLUMBUS DISPATCH, June 8, 2012, 4:28 PM, <http://www.dispatch.com/content/stories/local/2012/06/08/chardon-teen-pleads-not-guilty-to-school-shooting.html>.

late 2007.⁴²

Intense media coverage of such attacks generates fear and panic of a possible school shootings “epidemic.”⁴³ However, these are isolated incidents that remain incredibly rare.⁴⁴ Even during the 1998–1999 school year that seemed particularly deadly in the U.S., “the chances of dying in school from homicide or suicide were less than one in 2 million. The rate of *out-of-school* homicides alone was about forty times higher.”⁴⁵

The National School Safety Center identified an average of forty-eight violent deaths at school per academic year between the 1992–1993 and 1996–1997 school years.⁴⁶ This average decreased to thirty-two violent deaths per academic year from the 1997–1998 through 2000–2001 school years.⁴⁷ During the 2009–2010 academic year, there were seventeen homicides of school-age youth at school.⁴⁸ The odds of a child between the ages of five and eighteen years old being the victim of a school-associated violent death was one in 2.5 million for the school year 2009–2010.⁴⁹ Between 1992 and 2011, “[t]he percentage of youth homicides occurring at school remained at less than 2 percent of the total number of youth homicides” in general.⁵⁰ In fact, “schools remain among the safest places for children”⁵¹

⁴² Kim Palmer, *1 Student Killed, 4 Injured in Shooting at Chardon High School in Northeast Ohio*, COLUMBUS DISPATCH, Feb. 27, 2012, 8:40 AM, <http://www.dispatch.com/content/stories/local/2012/02/27/27-chardon-shooting.html>.

⁴³ In the year after the Columbine massacre, “the nation’s fifty largest newspapers printed nearly 10,000 stories related to the event and its aftermath, averaging about one story per newspaper every other day.” NEWMAN, *supra* note 40, at 49; *see also* JOEL BEST, *THE MEDIA EXAGGERATE THE SCHOOL-SHOOTING PROBLEM*, in *SCHOOL SHOOTINGS 21* (2006) (describing how “[o]versaturated media coverage can portray a few isolated incidents as a national trend”).

⁴⁴ Press Release, Nat’l Ass’n of Sch. Psychologists, *NASP Cautions Against Arming School Personnel to Improve School Safety 1*, 1 (Jan. 16, 2013), http://www.nasponline.org/communications/press-release/NASP_Statement_on_Increasing_Armed_Security.pdf [hereinafter *NASP*].

⁴⁵ NEWMAN, *supra* note 40, at 49–50.

⁴⁶ BEST, *supra* note 43, at 21.

⁴⁷ *Id.*

⁴⁸ National Center for Education Statistics, U.S. Department of Education, *Indicators of School Crime and Safety: 2011 - Indicator 1: Violent Deaths at School and Away From School*, NAT’L CTR. FOR EDUC. STAT. (Feb. 2012), http://nces.ed.gov/programs/crimeindicators/crimeindicators2011/ind_01.asp [hereinafter *NCES 2012*].

⁴⁹ *NASP*, *supra* note 44, at 1. In determining these statistics, “school-associated” includes at school, on the child’s way to school, or at a school-sponsored event. *See id.*

⁵⁰ *NCES 2012*, *supra* note 48. The most recent official data available is for the 2010–2011 school year, during which there were 11 homicides of school-age youth at school. National Center for Education Statistics, U.S. Department of Education, *Indicators of School Crime and Safety: 2011 - Indicator 1: Violent Deaths at School and Away From School*, NAT’L CTR. FOR EDUC. STAT. (June 2014), http://nces.ed.gov/programs/crimeindicators/crimeindicators2013/ind_01.asp [hereinafter *NCES 2014*]. This data maintains the statistic that less than two percent of total youth homicides occurred at school. *Id.*

⁵¹ *NASP*, *supra* note 44, at 1. A single event, such as the Newtown shooting, with a large number of deaths of school-age youth at school may influence perception of the prevalence of school-associated violent deaths. However, after Newtown, between December 15, 2012, and November 14, 2013, preliminary estimates based on media reports count six school-age victims of school-associated violent deaths. *NCES 2014*, *supra* note 50.

C. Nationwide Response to the Newtown, Connecticut Shooting

In the wake of the Sandy Hook Elementary tragedy, President Obama called for “meaningful action” to prevent future similar incidents.⁵² President Obama appointed an anti-violence task force, led by Vice President Joe Biden and including U.S. Secretary of Education Arne Duncan, to make recommendations for keeping children safe and preventing future mass shootings.⁵³ The task force’s recommendations led to proposals that included a call for stricter federal gun laws, a ban on military-style assault weapons and high-capacity magazines, and a requirement of universal background checks for all gun sales.⁵⁴ The plan also included proposals to fund school safety and mental-health programs.⁵⁵

Other lawmakers also put forth ideas on how to head off similar violence. Dianne Feinstein, United States Senator for California, introduced legislation that would ban the sale of more than 150 types of military-style assault weapons and high-capacity ammunition.⁵⁶ United States Senators Barbara Boxer of California and Susan Collins of Maine proposed legislation that would increase funding to schools and communities to make safety improvements, allow better coordination between schools and local law enforcement, and appoint a task force to develop new safety guidelines for schools.⁵⁷

Texas Congressman Stockman introduced legislation that would repeal the Gun-Free School Zones Act in order “to restore safety to America's schools by allowing staff, teachers, and administrators to defend the children and themselves.”⁵⁸ The National Rifle Association (NRA) issued a statement of its belief that the only guaranteed protective measure is

⁵² Press Release, President Barack Obama, Statement by the President on the School Shooting in Newtown, CT (Dec. 14, 2012, 3:15 PM), <http://www.whitehouse.gov/the-press-office/2012/12/14/state-ment-president-school-shooting-newtown-ct>.

⁵³ Alyson Klein, *Obama Presses School Safety, Mental-Health Efforts*, EDUC. WK., Jan. 23, 2013, at 12.

⁵⁴ *Id.*

⁵⁵ *Id.* The package asked Congress for \$150 million for schools to employ resource officers and mental-health professionals, \$50 million to train new social workers, \$30 million to help school districts revamp their emergency-preparedness plans, and \$15 million to train teachers to better identify students with mental illness. *Id.*

⁵⁶ Alyson Klein, *Gun-Control Measure Introduced in Senate*, EDUC. WK., Jan. 30, 2013, at 4; see also *Assault Weapons Ban of 2013*, DIANNE FEINSTEIN, UNITED STATES SENATOR FOR CALIFORNIA, <http://www.feinstein.senate.gov/public/index.cfm/assault-weapons-ban-summary> (last visited March 20, 2015) (summarizing the effects of the proposed bill).

⁵⁷ Press Release, Barbara Boxer, United States Senator California, Boxer, Collins Praise Judiciary Committee Approval of Their School Safety Legislation (Mar. 12, 2013), <http://www.boxer.senate.gov/press/release/boxer-collins-praise-judiciary-committee-approval-of-their-school-safety-legislation/>.

⁵⁸ H.R. 35, 113th Cong. (2013); see also Steve Stockman, *Stockman introduces Safe Schools Act to repeal “Gun Free School Zones”*, PROJECT VOTE SMART (Jan. 9, 2013) <https://votesmart.org/public-statement/766634/stockman-introduces-safe-schools-act-to-repeal-gun-free-school-zones#.VSRcUOEmGlk> (stating his belief that gun-free schools create dangerous situations for children and that armed citizens will save lives).

the installation of armed security officers in every school.⁵⁹ At the state level, schools across the country implemented dramatic changes they believed would better protect their students.⁶⁰

D. Ohio's Response

Reactions in Ohio have been mixed as to whether to take advantage of its state law exemption that allows school boards to authorize individuals to carry guns on school grounds. Ohio Attorney General Mike DeWine stated that school boards should “seriously consider” permitting trained teachers and administrators to have access to a gun in school.⁶¹ Ohio Governor John Kasich is waiting for experts—groups such as law enforcement, mental-health experts, and school officials—to examine the situation and make recommendations regarding best solutions for school safety.⁶² Ohio State Senator Peggy Lehner emphasized the importance of relying on expert opinions so time, money, and effort would not be wasted on ineffective, “knee-jerk” measures.⁶³

In an effort to have an impact on gun violence, Ohio democratic state senators introduced an extensive assault weapons ban bill that would also create a government database to track all gun and ammunition purchases in the state.⁶⁴ Another senate bill proposed a tax levy specifically for school safety and security measures, including the hiring of resource

⁵⁹ NRA Press Conference, NRA (Dec. 21, 2012), home.nra.org/pdf/Transcript_PDF.pdf. The NRA has also funded the National School Shield Emergency Response Program task force of security experts to survey and make recommendations in the area of school safety. *Id.*

⁶⁰ For example, the sheriff of Maricopa County, Arizona, stationed 500 armed volunteers outside schools in and around Phoenix to deter potential gunmen. Shah, *supra* note 12. Orange County, Florida commissioners authorized the spending of up to \$3 million through the end of the school year to cover the cost of installing full-time school resource officers in each of its seventy-eight elementary schools. *Id.* At least four Texas school districts have adopted policies that allow some staff members to carry concealed firearms on school property. Nirvi Shah, *Two More Texas Districts Allow Some Staff to Conceal Weapons*, EDUC. WK., Feb. 5, 2013, <http://www.edweek.org/ew/articles/2013/02/06/20brief-b2.h32.html>. A South Dakota law takes effect July 1, 2013, allowing school boards to permit school employees, volunteers, and hired security personnel to carry guns in schools and on school grounds. *New Law lets South Dakota Schools Arm Teachers, Volunteers*, CNN, Mar. 8, 2013, 4:30 PM, <http://www.cnn.com/2013/03/08/us/south-dakota-guns-schools>.

⁶¹ Catherine Candisky, *Armed Staffer may be Option for Schools, DeWine says*, COLUMBUS DISPATCH, Dec. 20, 2012, 8:18 AM, <http://www.dispatch.com/content/stories/local/2012/12/20/armed-staffer-may-be-option-dewine-says.html>.

⁶² Marc Kovac, *Kasich Remains Mum on Right-to-Work Initiatives*, VINDY.COM, Dec. 31, 2012, 12:02 AM, <http://www.vindy.com/news/2012/dec/31/kasich-keeps-mum-on-right-to-work-gun-vi/mobile>.

⁶³ Jim Siegel, *School Safety High on Legislators' List*, COLUMBUS DISPATCH, Jan. 31, 2013, 6:57 AM, <http://www.dispatch.com/content/stories/local/2013/01/31/school-safety-high-on-legislators-list.html>.

⁶⁴ Jesse Hathaway, *Ohio Democrats Introduce Sweeping “Assault Weapons” Ban*, MEDIA TRACKERS (Feb. 20, 2013), <http://ohio.mediatrackers.org/2013/02/20/ohio-democrats-propose-assault-weapons-ban-statewide-ammo-registr/>. As of the close of the 130th General Assembly in December 2014, the bill died in the Senate Committee. S.B. 18, STATUS REPORT OF LEGISLATION, 130TH GEN. ASSEMB., <http://lsc.state.oh.us/coderev/sen130.nsf/Senate+Bill+Number/0018?OpenDocument> (last visited March 20, 2015).

officers.⁶⁵

While the state government reviews its expert findings and debates the passage of bills, some Ohio school districts have already begun to take action. The school board in Montpelier unanimously voted to allow the carrying of handguns by its school janitors who possess concealed carry permits.⁶⁶ The sheriff of Butler County introduced a plan to put armed and trained, retired police officers to work in schools as substitute teachers: officials at two public school districts and at one private school have agreed to the plan.⁶⁷ In Shelby County, school staff members received firearms training by the county sheriff's office and will have access to guns located throughout the school buildings.⁶⁸ Orville City School Board unanimously voted to allow a firearm to be carried by one particular high school teacher who is also a trained law officer.⁶⁹ In rural eastern Ohio, the Newcomerstown Exempted Village School District approved a policy allowing employees with concealed carry permits and specialized training to tote guns to school.⁷⁰

Many Ohio teachers are preparing for the possibility of carrying a gun in school. More than 1,400 educators applied to attend the first-ever Armed Teacher Training Program, organized by the Buckeye Firearms Association.⁷¹ The Buckeye Firearms Foundation paid \$30,000 for twenty-four of these applicants to receive the training.⁷² The teachers were taught

⁶⁵ Sara Jerde, *Bill would allow school safety levies*, COLUMBUS DISPATCH, Mar. 20, 2013, 4:19 AM, <http://www.dispatch.com/content/stories/local/2013/03/19/Bill-would-allow-school-safety-levies.html>.

⁶⁶ "The bill is supported by the Ohio Association of School Business Officials, Fraternal Order of Police of Ohio and the Ohio Education Association." *Id.* Senate Bill 42 passed the Ohio General Assembly and was signed into law on December 19, 2014 to become effective March 23, 2015. Status Report of Legislation, S.B. 42, 130th Ohio Gen. Assemb., <http://lsc.state.oh.us/coderev/sen130.nsf/Senate+Bill+Number/0042?OpenDocument> (last visited March 20, 2015). See OHIO REV. CODE § 5705.21 (2015) (allowing school districts to submit to its electors at a special election an additional tax levy deemed necessary to provide for school safety and security).

⁶⁷ *Montpelier School Board Approves Carrying of Handguns by Custodial Staff*, BLADE, Jan. 1, 2013, <http://www.toledoblade.com/Education/2013/01/10/Montpelier-school-board-approves-carrying-of-handguns-by-custodial-staff.html>.

⁶⁸ Michael D. Clark, *Sheriff: Place Armed Ex-Cops in Schools*, CINCINNATI ENQUIRER, Jan. 18, 2013, available at 2013 WLNR 1405277.

⁶⁹ Jackie Sprague, *Security Upgrades Aimed at Keeping Kids Safe in Sidney*, 2 NEWS WDTN.COM (Apr. 15, 2014, 7:02 PM), <http://wdtn.com/2014/04/15/security-upgrades-aimed-at-keeping-kids-safe-in-sidney/>.

⁷⁰ *Ohio School Board Votes to Arm Science Teacher after Newtown, Conn., School Shooting*, WCPO CINCINNATI (Jan. 17, 2013, 8:01 AM), <http://www.wcpo.com/dpp/news/state/ohio-school-board-votes-to-arm-science-teacher-after-newtown-conn-school-shooting>.

⁷¹ Kim Severson, *Guns at School? If There's a Will, There Are Ways*, N.Y. TIMES, Sept. 27, 2013, http://www.nytimes.com/2013/09/28/us/guns-at-school-if-theres-a-will-there-are-ways.html?_r=0. One year after the Newtown shooting, at least 20 Ohio school districts had authorized school personnel to carry firearms in schools. Jim Irvine, *Survey Shows Nearly Two Dozen Ohio Schools Authorize Carrying of Guns to Improve Kids' Safety*, BUCKEYE FIREARMS ASS'N (Dec. 11, 2013, 9:41 AM), <http://www.buckeyefirearms.org/node/9240>.

⁷² Joshua Jamerson, *Teachers Pack Heat at Gun School*, COLUMBUS DISPATCH, Mar. 28, 2013, 9:00 AM, <http://www.dispatch.com/content/stories/local/2013/03/27/Teachers-learn-to-shoot-in-the-classroom.html>.

⁷² *Id.*

how to react to an active school shooter through use of role-play scenarios and plastic pellet guns.⁷³ The three-day training aimed to equip school personnel with the appropriate “skills, tools, and mindset to stop an active killer.”⁷⁴

The Newtown shooting rattled the nation and many began searching for ways to avoid future senseless violence. Parents, school districts, and legislators called for teachers and other school personnel to be armed. Yet, amid the sorrow, it is necessary to keep the tragedy in perspective. School-associated violent deaths are heartbreaking, but rare events despite the media attention they receive.⁷⁵ Schools continue to be safe places for school children.

III. ANALYSIS

School districts across Ohio should be commended for being proactive, revamping their safety plans, and making improvements in emergency preparedness. However, as they consider taking advantage of the exemption to the school zone firearm prohibition, it must be examined whether arming teachers and school staff is the best means of keeping students safe.

A. Arming Teachers and School Staff

Arming school personnel has been presented as a viable solution to the problem of school violence.⁷⁶ To some, training teachers and school staff in the use of firearms is no different than teaching them how to operate a fire extinguisher or to provide CPR.⁷⁷ However, due to the significant risks and unintended consequences that arise with equipping school personnel with guns, the proposal is not in the best interest of schools or their students.

⁷³ *Id.*

⁷⁴ Jim Irvine, *Buckeye Firearms Foundation commissions six more teacher classes*, BUCKEYE FIREARMS ASS'N (June 11, 2013, 7:00 AM), <http://www.buckeyefirearms.org/buckeye-firearms-foundation-commissions-six-more-teacher-classes>.

⁷⁵ See *supra* notes 46–51 and accompanying text.

⁷⁶ Massad Ayoob, *Arm Teachers To Stop Shootings*, WALL ST. J., May 21, 1999, <http://online.wsj.com/article/SB927233749927433053.html>. But see Nick Bechtel, *The Gun Debate Continues*, MARION STAR, Apr. 19, 2013, <https://www.marionstar.com/article/20130406/NEWS01/304060020/> (stating that in an Ohio Association of Secondary School Administrators' poll of 213 administrators, 39% believed only a trained individual, such as a resource officer, should be armed on school grounds, while 29% did not support any armed individuals or firearms in schools); *Ohio Schools Approve Arming Teacher*, EDUC. NEWS, Jan. 26, 2013, <http://educationviews.org/ohio-schools-approve-arming-teacher/> (discussing that the Ohio Education Association disagrees with the decision to arm teachers or other school employees).

⁷⁷ Ayoob, *supra* note 76 (stating that arming teachers is not a drastic measure and is only a “small step” from learning how to operate a fire extinguishers and provide basic first aid).

1. Not Law Enforcement Officers

Arming teachers and school staff with guns goes beyond an individual's right to carry a concealed weapon.⁷⁸ Anyone, including school personnel may, if trained and licensed under Ohio law, "carry a firearm for personal protection [in] their [own] home or on the streets."⁷⁹ However, school districts cross a line when they permit teachers and school staff to carry guns on school campuses. They are "in essence deploying those school employees in a public safety capacity to protect the masses with the expectation and assumption that they can and will provide a firearms-related level of public safety protection services to students and other staff."⁸⁰

Providing public safety is a law enforcement function.⁸¹ Such a task is beyond the expertise of teachers, who enter the profession not to be cops, but to nurture and educate children.⁸² Proponents of arming school staff maintain that such school personnel will be licensed and receive firearm training.⁸³ However, the notion that school employees provided "with 8, 16, 40, or even 60 hours of firearms training on firing, handling, and holstering a gun somehow makes a non-law enforcement officer suddenly qualified to provide public safety services is an insult to our highly trained police professionals."⁸⁴ It is not reasonable to believe that a modicum of training will prepare school personnel to handle a firearm in an emergency situation as a trained law enforcement officer would.

Prior to firearm training, teachers and school staff may be unfamiliar with handling a gun. They may learn to shoot accurately and safely in a controlled environment, like a shooting range. They may also attend training programs where they role-play gunmen scenarios and exchange fire with plastic pellet guns.⁸⁵ However, such training is unrealistic and insufficient. Significant training is needed to be able to appropriately respond to a real-life crisis such as an armed shooter within a school building.⁸⁶ Law enforcement officers spend many hours in practice and on the job in real criminal situations to develop a sense of how and when to shoot.⁸⁷ Further, it takes many years of training to overcome the

⁷⁸ *Arming Teachers and School Staff*, NAT'L SCH. SAFETY & SEC. SERVS., <http://www.schoolsecurity.org/trends/arming-teachers-and-school-staff/> (last visited March 21, 2015) [hereinafter NSSS].

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *See id.* (critiquing the idea to arm teachers as opposed to allowing law enforcement to take care of the issue).

⁸² *Id.*

⁸³ *See* BLADE, *supra* note 66 (providing a two-day training class for licensed gun carriers); Sprague, *supra* note 68 (requiring armed teachers and staff to be trained by the county sheriff's office).

⁸⁴ NSSS, *supra* note 78.

⁸⁵ Jamerson, *supra* note 71.

⁸⁶ *NASP*, *supra* note 44, at 2.

⁸⁷ Bechtel, *supra* note 76.

imbalance of firepower between a handgun and an assault weapon.⁸⁸

Moreover, it is difficult to train and prepare for “physiological and psychological reactions [which] can impede [one’s] ability to respond appropriately.”⁸⁹ It is unlikely that educators, even trained ones, “could abruptly kick into the mindset to kill someone in a second’s notice.”⁹⁰ Many school shooters are students themselves.⁹¹ Teachers must be mentally prepared to fire at, and even kill, a child shooter whom the teacher knows well.⁹² Firearm training must also be intensive and ongoing to maintain and improve one’s reflexes and judgment.⁹³ However, this necessary, continued training may be difficult to provide because of teachers’ already overwhelmed schedules⁹⁴ and school districts’ budget cuts.⁹⁵ But without it, “it would be irresponsible to arm school teachers or administrators”⁹⁶

Several hours of training with mock scenarios and fake bullets in a controlled environment will not turn educators into trained law enforcement officers. Despite good intentions, such training is insufficient. Professional law enforcement officers require years of intensive practice and experience to be successful. It is dangerous to expect and assume that educators will obtain the physical and mental firearm skills needed to protect students and other staff.

2. Ineffectiveness

Inexperienced teachers and school staff are unlikely to effectively respond to a school shooter. “The entire episode can take a matter of seconds and your body is fighting against you: Under extreme stress, reaction time slows, heart rate increases and fine motor skills deteriorate.”⁹⁷ To try to combat such a reaction, police officers train vigorously for crisis

⁸⁸ Andrew Ujifusa, *Debate Stirred on Arming Teachers, School Staff*, EDUC. WK., Dec. 19, 2012, <http://www.edweek.org/ew/articles/2012/12/19/15newtown-arms.h32.html>.

⁸⁹ *NASP*, *supra* note 44, at 2.

⁹⁰ *NSSS*, *supra* note 78.

⁹¹ *No Gun Left Behind: The Gun Lobby's Campaign to Push Guns Into Colleges and Schools*, BRADY CENT. TO PREVENT GUN VIOLENCE 1, 10 (May 2007), <http://dev.keepgunsoffcampus.org/wp-content/uploads/2013/06/no-gun-left-behind.pdf> [hereinafter BRADY].

⁹² *See id.*

⁹³ *NASP*, *supra* note 44, at 3.

⁹⁴ Kopel, *supra* note 25, at 554.

⁹⁵ *See* Stephen Dyer, *Budget Cuts Lead to 1.6 Billion in New School Money on Ohio Ballots*, INNOVATION OHIO (Oct. 21, 2013), <http://innovationohio.org/2013/10/21/budget-cuts-lead-to-1-6-billion-in-new-school-money-on-ohio-ballots/> (discussing how school districts must operate with fewer resources than in previous years); Marilou Johaneck, *Ohio Schools' Coping with Fund Cuts is a Mission Impossible*, BLADE, July 13, 2013, <https://www.toledoblade.com/MarilouJohaneck/2013/07/13/Ohio-schools-coping-with-fund-cuts-is-a-mission-impossible-1.html> (explaining how school districts are dealing with budget cuts, such that they “are forced to live with cutbacks, layoffs, larger classes, reduced course offerings, less classroom material, and more pay-to-play activities”).

⁹⁶ *NASP*, *supra* note 44, at 3.

⁹⁷ Alex Seitz-Wald, *The Answer is Not More Guns*, SALON.COM, Dec. 17, 2012, 7:30 PM, http://www.salon.com/2012/12/18/the_answer_is_not_more_guns/.

situations.⁹⁸ Yet, they still make mistakes and shoot the wrong person.⁹⁹ In fact, a trained officer hits his “intended target less than 20% of the time.”¹⁰⁰ Minimally-trained school employees, in confusing and terrifying situations surrounded by panicked children, can hardly be expected to do better.

In 2009, television network ABC’s *20/20* conducted an experiment to demonstrate how one’s reaction time slows when under extreme stress.¹⁰¹ About half a dozen college students were provided gun training—training more extensive than that required to obtain a concealed carry permit—and then handed real guns filled with paintball bullets.¹⁰² The students were told “they would have to fend off a shooter later [in the] day.”¹⁰³ The students were separated and placed in real classrooms, surrounded by other “students” (ABC employees), to listen to a lecture on protective gear.¹⁰⁴ In the middle of the lecture, “shooters” burst into each classroom and started firing.¹⁰⁵ While the mock students ran around and screamed, each trained student tried to respond by drawing his gun.¹⁰⁶ Each trained student—even those with years of experience shooting guns—failed.¹⁰⁷ Every single one was shot by the attackers’ paintball bullets.¹⁰⁸

Further, permitting teachers and school employees to carry firearms inhibits the effectiveness of trained officers. Law enforcement officers dislike armed civilians getting involved in active crime scenes, as it makes their jobs more difficult.¹⁰⁹ There is a definite “need for speed” when responding to active shooters. However, when law enforcement officers respond to an incident at a school, they may not recognize an armed teacher defending her students.¹¹⁰ Time would be wasted challenging the wrong person with a gun, rather than looking for the attacker.¹¹¹ Similarly, police may arrive and see two adults pointing weapons at each other.¹¹² Time is lost discerning the good guy from the bad. Armed school personnel can interfere with trained officers doing their jobs and potentially cause greater

⁹⁸ *Id.*

⁹⁹ Kopel, *supra* note 25, at 562. During a standoff with a gunman at the Empire State Building, officers shot all nine innocent bystanders. Seitz-Wald, *supra* note 97.

¹⁰⁰ BRADY, *supra* note 91, at 10.

¹⁰¹ ‘If I Only Had a Gun’ (ABC news television broadcast Apr. 10, 2009), <http://abcnews.go.com/2020/video/defend-gun-7312540>; Seitz-Wald, *supra* note 97.

¹⁰² ABC News, *supra* note 101; Seitz-Wald, *supra* note 97.

¹⁰³ Seitz-Wald, *supra* note 97; ABC News, *supra* note 101.

¹⁰⁴ ABC News, *supra* note 101; Seitz-Wald, *supra* note 97.

¹⁰⁵ ABC News, *supra* note 101; Seitz-Wald, *supra* note 97.

¹⁰⁶ ABC News, *supra* note 101; Seitz-Wald, *supra* note 97.

¹⁰⁷ ABC News, *supra* note 101; Seitz-Wald, *supra* note 97.

¹⁰⁸ ABC News, *supra* note 101; Seitz-Wald, *supra* note 97.

¹⁰⁹ Mark Follman, *The NRA Myth of Arming the Good Guys*, MOTHER JONES, Dec. 28, 2012, 4:11 PM, <http://www.motherjones.com/politics/2012/12/nra-mass-shootings-myth>.

¹¹⁰ Ujifusa, *supra* note 88.

¹¹¹ *Id.*

¹¹² Charles J. Russo, *3 Reasons Giving Guns to Teachers is a Bad Idea*, DAYTON DAILY NEWS, Dec. 30, 2012, http://nl.newsbank.com/nl-search/we/Archives?p_action=doc&p_docid=143801D8DE1FDA60&p_docnum=2.

harm to result.¹¹³

The logistics of school districts' proposals present another impediment to effectiveness. One district voted to allow all school janitors to carry firearms; another permitted only one high school teacher.¹¹⁴ These select employees cannot spend their days waiting for an intruder and guarding children, nor can their limited number be expected to protect all of the children in the school. As the armed personnel go about their daily tasks, the odds of being in the right place at the right time are low. Each school must determine a procedure to alert, and make effective use of, an armed staff member.

As Ohio school districts attempt to determine careful and effective policies for arming staff, some have proposed keeping the guns under lock and key or in centralized locations.¹¹⁵ However, it must be questioned how "instantly" a firearm can be accessed when it is locked or stored in another part of the school building. Further, it must be determined who will have a key to access the locked case and where the key will be safely kept. While good-intentioned, these suggested policies render the weapons ineffective in needed situations.

Moreover, none of the school shootings in recent years have been stopped by a civilian using a firearm.¹¹⁶ Proponents of arming citizens often point to instances in which regular people stopped the massacre.¹¹⁷ However, these arguments do not hold up under scrutiny. "Either they didn't involve ordinary citizens taking action—those who intervened were actually cops, trained security officers, or military personnel—or the citizens

¹¹³ *Id.*

¹¹⁴ Joe Vardon, *State public-safety chief rejects arming teachers*, COLUMBUS DISPATCH, May 16, 2013, <http://www.dispatch.com/content/stories/local/2013/05/16/state-public-safety-chief-rejects-arming-teachers.html>.

¹¹⁵ See Candisky, *supra* note 61 (proposing guns in schools would be best kept locked in offices); Sprague, *supra* note 68 (stating that guns would be located in biometric safes throughout the school building).

¹¹⁶ Mark Follman, *More Guns, More Mass Shootings—Coincidence?* MOTHER JONES, Dec. 15, 2012, 10:35 PM, <http://www.motherjones.com/politics/2012/09/mass-shootings-investigation>.

¹¹⁷ For example, it is argued that the Pearl, Mississippi, shooter was stopped by the school's vice principal who sprinted to the parking lot, grabbed an automatic pistol from his truck, and forced the gunman to surrender by pointing the gun at his head. Ayoob, *supra* note 76. However, the shooter had already stopped and was outside the school, near the parking lot, when the vice principal—who was also a member of the Army Reserve—grabbed his gun and held him at gunpoint until authorities arrived. Mark Follman, *Do Armed Civilians Stop Mass Shooters? Actually, No.*, MOTHER JONES, Dec. 19, 2012, 3:01 AM, <http://www.motherjones.com/politics/2012/12/armed-civilians-do-not-stop-mass-shootings>. It is also contended that the teenager who opened fire on a middle school graduation dance was stopped by the owner of the banquet hall who grabbed his gun. Ayoob, *supra* note 76. It appears, however, that the student left the dance venue of his own will and was followed outside by the owner, who kept his gun trained on him until the police arrived. Follman, *supra* note 117. Another two school shootings, in Jonesboro, Arkansas and Bethel, Alaska, "ended with no further bloodshed after armed police arrived and confronted the killers at gunpoint . . . Finally, it should be noted that the Columbine killers turned their guns on themselves almost as soon as they realized a SWAT team was in the building and closing in on them." Ayoob, *supra* note 76. The armed school officer who engaged in gunfire to hold off the Columbine killers long enough to reduce the death toll was also a deputy sheriff. Ayoob, *supra* note 76.

took action after the shooting rampages appeared to have already ended. (Or in some cases, both.)”¹¹⁸ School staff members are civilians; they are not cops, trained security officers, or military personnel. There is no evidence to indicate that armed school personnel will be effective in stopping school shooters.

3. Liability

Arming teachers is presented as a simple solution, when in fact, it offers considerable liability issues. School safety expert and President of National School Safety and Security Services Kenneth S. Trump warns, “[s]chool districts considering arming teachers and school staff with guns would take on significant responsibility and potential liabilities . . . beyond the expertise, knowledge-base, experience, and professional capabilities of most school boards and administrators”¹¹⁹

A school district that asks its employees to carry guns and be responsible for protecting students must also accept “responsibility and potential liability for implementation of such policies.”¹²⁰ Much thought and planning must go into the policies and procedures that detail the carrying and use of firearms.¹²¹ A school board must address the specific types of firearms permitted, who will supply them, and if school staff will be allowed to carry their personal weapons into the school building.¹²² The policies must further describe the school district’s duties to regularly inspect the firearms, and to provide the armed staff with ongoing training, as well as strict psychological testing.¹²³ It must be decided who has the appropriate expertise to be responsible for such assessments.¹²⁴ Additionally, a “use of force policy” must be put in place.¹²⁵ It may be difficult to determine when an armed teacher is too aggressive, or not aggressive enough.¹²⁶ A school district’s policy must protect its students as well as its staff.

Although Ohio law entitles school districts and employees to broad immunity for acts done within the scope of the employee’s duties, it is unclear who would be liable if the gun-carrying employee acted negligently.¹²⁷ The mere presence of a firearm within a concentrated group

¹¹⁸ Follman, *supra* note 109.

¹¹⁹ NSSS, *supra* note 78.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ Bechtel, *supra* note 76.

¹²⁶ *Id.*

¹²⁷ OHIO REV. CODE §§ 2744.01(F), (C)(2)(c), (G)(1)(b); §§ 2744.02(A)(1), (B)(2) (2006). An Ohio House bill proposes to protect a non-negligent gun-carrying school employee and his school board “from a civil lawsuit in the event [his] weapon causes harm.” Jim Provance, *Ohio Concealed-Carry for Teachers Advances: House OKs Bill with Bipartisan Support*, BLADE, Jan. 23, 2014, <http://www.toledoblade.com/State/2014/01/23/Ohio-concealed-carry-for-teachers-advances.html>. The

of students could be deemed sufficiently negligent, if not reckless, on the part of the gun-carrying school staff member.¹²⁸ Other negligent conduct not envisioned by school districts may present opportunity for incidents.¹²⁹ Schools must also consider liability regarding injuries to the carrying employee himself.¹³⁰ Further, concealed carry poses a great financial risk for insurance companies. School districts' insurance carriers may not be willing to provide coverage for the various risks associated with the decision to arm school personnel, or they may announce new expensive premiums for each carrying staff member.¹³¹

The heavy responsibility and business realities of arming school personnel cannot be overshadowed by an emotional and seemingly simple proposal to protect students. School districts must carefully consider the inherent risks, potential liability, and insurance ramifications of the decision to equip teachers and other school employees with firearms.

bill passed the House, but died in the Senate committee at the end of the 130th General Assembly. Status Report of Legislation, H.B. 8, 130th Ohio Gen. Assemb., <http://lsc.state.oh.us/coderev/hou130.nsf/House+Bill+Number/0008?OpenDocument> (last visited March 22, 2015).

¹²⁸ The number of nearby students multiplies if the armed employee is in the school cafeteria or on the playground. Thus, for an armed teacher, ordinary duties can carry a substantial risk of harm. For example, if an armed teacher has to break up a fight between students, the firearm may inadvertently escape his control and discharge into the crowd of students. See *State Profiles*, NAT'L CTR. FOR EDUC. STATISTICS, <http://nces.ed.gov/nationsreportcard/states/> (last visited March 22, 2015) (follow the "OH" hyperlink) (reporting the average class size in Ohio as 16.1 students per teacher); Press Release, Policy Matters Ohio, State Funding Cuts are Shrinking Ohio Schools (Apr. 29, 2013), available at <http://www.policymattersohio.org/district-surveypr-apr2013> (reporting that many Ohio school districts have increased class sizes due to cuts in school funding).

¹²⁹ For example, an Ohio high school resource officer's gun accidentally discharged while he was cleaning it during school hours. Phil Trexler, *Brimfield Police Officers Disciplined after Gun Discharges at High School*, OHIO.COM, Jan. 17, 2014, 12:21 PM, <http://www.ohio.com/news/break-news/brimfield-police-officers-disciplined-after-gun-discharges-at-high-school-1.459965>. The round entered a cinder block wall and no students were harmed. *Id.* A security officer at a Michigan elementary school left his unloaded weapon unattended in a school bathroom "for a few moments." Blake Thorne, *Security guard leaves gun unattended in restroom at Lapeer charter school*, MLIVE, Jan. 16, 2013, 6:15 PM, http://www.mlive.com/news/flint/index.ssf/2013/01/security_guard_leaves_gun_unat.html. Fortunately, no students happened upon the gun. *Id.*

¹³⁰ A Utah elementary school teacher accidentally shot herself in the leg while using the school's faculty restroom. Michele Richinick, *Utah Teacher Shoots Herself in the Leg while at School*, MSNBC (Sept. 12, 2014, 3:55 PM), <http://www.msnbc.com/msnbc/utah-teacher-shoots-herself-the-leg-while-school>. An Idaho university professor shot himself in the foot when his gun accidentally discharged during a lecture. Jameson Parker, *School Arms Teachers; Teacher Shoots Himself In Foot On First Week Of Classes*, IACKNOWLEDGE (Sept. 3, 2014), <http://www.iacknowledge.net/school-arms-teachers-teacher-shoots-himself-in-foot-on-first-week-of-classes/>. A Texas public school employee was accidentally shot during a school district-sponsored firearm safety class. Alana Horowitz, *Glenn Geddie, Texas School Employee, Accidentally Shot During District-Sponsored Gun Training*, HUFFINGTON POST, Feb. 28, 2013, 4:04 PM, http://www.huffingtonpost.com/2013/02/28/glenn-geddie-texas-school-employee-shot_n_2781762.html.

¹³¹ The liability insurer for 90% of Kansas's school districts declined to cover schools permitting employees to carry firearms. Steven Yaccino, *Schools Seeking to Arm Employees Hit Hurdle on Insurance*, N.Y. TIMES, July 7, 2013, <http://www.nytimes.com/2013/07/08/us/schools-seeking-to-arm-employees-hit-hurdle-on-insurance.html?pagewanted=all>. An Indiana insurer refused to provide worker's compensation to schools with gun-carrying employees. *Id.* The largest insurer of Oregon school districts announced a decision to charge an extra \$2500 annual premium for each school employee carrying a firearm at school. *Id.* In response to this additional expense of arming school personnel, an Oregon school administrator said, "Pretty much every last bit of our money is budgeted To me, that could be quite an impediment to putting this forward." *Id.*

4. Deterrence

It cannot be said with certainty that armed school staff will deter school shooters.¹³² Nor can schools' gun-free zones be blamed for the bloodshed.¹³³ Admittedly, a school is generally a softer target than a police station, hunting club meeting, or NRA office.¹³⁴ However, some killers are motivated to "attack . . . school[s] because of personal animosity toward students or teachers."¹³⁵ Others are after the "considerable and immediate media attention" and "significant national and international reactions" that such child-related incidents generate.¹³⁶

Further, many school shooters are "obsessed with weapons and planning."¹³⁷ These killers often demonstrate great determination and calculation in planning the details of their attacks.¹³⁸ It is hard to imagine they would be deterred by the possibility of encountering the handgun of an armed school employee. If the attacker is aware of the prospect that someone at the school may be carrying a concealed weapon, he will bring heavier weaponry: "They'll adjust their weaponry to handle that, expecting teachers to have weapons even if they don't . . ." ¹³⁹ Many shooters already plan for resistance and enter the schools wearing body armor and helmets, as well as carrying hundreds of rounds of ammunition.¹⁴⁰ School shooters have an agenda that will not be deterred by the possibility of encountering armed school personnel.

Arming educators to defend screaming children in a mass shooting situation is an emotionally compelling argument. It is not, however, a reasonable or guaranteed solution. It is reckless to expect school personnel

¹³² Evidence is inconclusive as to whether concealed carry of firearms is consistent with a theory of deterrence or leads to a decreased crime rate. Glenn Kessler, *Do Concealed-Weapon Laws Result in Less Crime?*, WASH. POST, Dec. 17, 2012, 6:02 AM, http://www.washingtonpost.com/blogs/fact-checker/post/do-concealed-weapon-laws-result-in-less-crime/2012/12/16/e80a5d7e-47c9-11e2-ad54-580638ede391_blog.html.

¹³³ Follman, *supra* note 109.

¹³⁴ Kopel, *supra* note 25, at 540.

¹³⁵ *Id.* at 539.

¹³⁶ DR. JO CAMPBELL, *ANTICIPATING AND MANAGING CRIME, CRISIS AND VIOLENCE IN OUR SCHOOLS* 15 (2007).

¹³⁷ JONATHAN FAST, *CEREMONIAL VIOLENCE: A PSYCHOLOGICAL EXPLANATION OF SCHOOL SHOOTINGS*, 12–13 (2008).

¹³⁸ Kopel, *supra* note 25, at 539. "For example, the murderer at Virginia Tech planned the killing over many months, and among the tools he brought for his murder spree was a heavy chain lock for doors, which significantly increased the time it took for the police to get into the part of the building where the killer was active. Likewise, the Columbine murderers planned their crime for at least a year, and successfully executed a plan to use explosives and fire alarms to create confusion among the victims . . ." *Id.*

¹³⁹ *Desiree J. Hanford, Does Concealed Carry Make Sense In Schools and On Campus?*, FACILITIES NET (Nov. 2008), <http://www.facilitiesnet.com/educationalfacilities/article/Does-Concealed-Carry-Make-Sense-In-Schools-And-On-Campus--10070>.

¹⁴⁰ Greg Ellifritz, *A Parent's Guide to School Shootings*, BUCKEYE FIREARMS ASS'N (Mar. 2, 2012, 3:00 PM), <http://www.buckeyefirearms.org/node/8240>. "Kip Kinkel had over 1,100 rounds on his person during his shooting at Thurston High School in Oregon. Seung-Hui Cho had over 800 unfired rounds on his person when he died at Virginia Tech." *Id.*

to assume the duty of trained law enforcement officers. The inexperienced staff and the logistics of proposed school plans will prove ineffective in real-life crisis situations. Further, arming school personnel incurs great risk and liability without the likelihood of deterring determined shooters. Therefore, equipping teachers and staff with firearms is not in the school's best interest.

B. Alternative Suggestions

While it is true that school districts need to take responsibility for students' safety, it is an illogical and oversimplified solution to suggest gun violence can be combatted with more guns.¹⁴¹ Instead, school districts should focus on a more comprehensive approach that gets to the root of the problem and addresses prevention of, and safety during, crises such as school shootings.

1. Prevention

School districts need to create supportive and effective schools that address the social and emotional needs of their students. “[E]fforts to safeguard students must occur long before [someone] is on the premises with intent to harm others”¹⁴² Such efforts require the collaboration of schools, mental health professionals, and students' families.

a. School Environment

Administrators should begin by evaluating their school's culture.¹⁴³ The prevalence of bullying or social cliques can contribute to the possible threat of gun violence.¹⁴⁴ After the 1999 Columbine massacre, the U.S. Secret Service conducted a study of thirty-seven targeted school violence incidents that occurred between 1974 and 2000.¹⁴⁵ The study showed that almost seventy-five percent of the students who committed the attacks felt bullied or disliked by “mainstream students” and about sixty percent lacked friends.¹⁴⁶ There is a “chain of causation” that often results for such socially marginalized students—“from bullying to humiliation to rage to revenge.”¹⁴⁷

Schools districts can implement anti-bullying and extended day programs to teach conflict resolution, improve socialization, build

¹⁴¹ The National Rifle Association Executive Vice President has stated that, “The only thing that stops a bad guy with a gun is a good guy with a gun [.]” Mark Memmott, *Only ‘A Good Guy With A Gun’ Can Stop School Shootings, NRA Says*, THE TWO-WAY: NPR (Dec. 21, 2012, 11:35 AM), <http://www.npr.org/blogs/thetwo-way/2012/12/21/167785169/live-blog-nra-news-conference>. .

¹⁴² *NASP*, *supra* note 44, at 3.

¹⁴³ James Garbarino et al., *12 Mitigating the Effects of Gun Violence on Children and Youth*, FUTURE OF CHILDREN 73, 82 (Summer, Fall 2002), http://futureofchildren.org/futureofchildren/publications/docs/12_02_05.pdf.

¹⁴⁴ *Id.*

¹⁴⁵ DEWEY G. CORNELL, *SCHOOL VIOLENCE: FEAR VERSUS FACTS* 33 (2006).

¹⁴⁶ *Id.* at 34.

¹⁴⁷ FAST, *supra* note 137, at 239.

community, and allow students to create mentor-type relationships with adults.¹⁴⁸ Administrators should focus on creating a caring community in which students feel supported and connected.¹⁴⁹ An atmosphere of trust encourages students to share their problems with one another and with school staff, as well as to feel comfortable reporting any safety concerns.¹⁵⁰ Creating a safe school begins by creating an emotionally safe environment.

i. Mental Health Services

A common condition of school shooters is that they suffer from psychosocial problems, ranging from learning conditions to dysfunctional families to psychiatric disorders.¹⁵¹ Because children spend the majority of their time at school, schools offer a unique opportunity to address students' mental health needs.¹⁵² Therefore, school districts have a responsibility to train school personnel to recognize warning signs of psychosocial problems, like a student's "low tolerance for frustration, depression, lack of empathy, exaggerated sense of entitlement, excessive need for attention, inappropriate humor, rigid views, fascination with violent entertainment."¹⁵³ Teachers may be able to identify troubled students, but they are not usually equipped to treat the problems.

For this reason, schools must be able to connect identified students with mental health programs. A mental health professional is needed to evaluate the student and recommend appropriate solutions.¹⁵⁴ These professionals can conduct counseling or conflict resolution, as well as provide a confidential space for troubled children to be heard.¹⁵⁵ Students deserve more than just an initial assessment; mental health experts can provide ongoing treatment and follow-up monitoring.¹⁵⁶

School-based mental health programs in particular, as compared to community-based services, are more likely to provide students with the treatment they need.¹⁵⁷ The on-site location of the programs allows "clinicians . . . unparalleled access to children in need of mental health

¹⁴⁸ FAST, *supra* note 137, at 241–42.

¹⁴⁹ NASP, *supra* note 44, at 3.

¹⁵⁰ *Id.*

¹⁵¹ FAST, *supra* note 137, at 13.

¹⁵² Angela Volz et al., *Why We Need School Mental Health Programs and Services*, OHIO MENTAL HEALTH NETWORK FOR SCH. SUCCESS 1, 1 (Apr. 2006), http://www.units.muohio.edu/csbnhp/network/why_SMH.pdf.

¹⁵³ Garbarino et al., *supra* note 143, at 82.

¹⁵⁴ Dewey Cornell & Farah Williams, *Student Threat Assessment as a Strategy to Reduce School Violence*, in HANDBOOK OF SCH. VIOLENCE & SCH. SAFETY 505 (Shane R. Jimerson et al. eds., 2d ed. 2012).

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 504–05.

¹⁵⁷ *Outcomes of Expanded School Mental Health Programs*, CTR. FOR SCH. MENTAL HEALTH ASSISTANCE 1, 2 (2003), <http://www.schoolmentalhealth.org/Resources/ESMH/ESMHoutcomes.pdf>.

services.”¹⁵⁸ Hamilton County, Ohio implemented school-based mental health programs that served thirteen schools and more than 8,000 students over the 2000-2001 academic year.¹⁵⁹ Students who received support services from these clinicians exhibited improved academic performance, learned positive coping skills, and displayed less disruptive behaviors.¹⁶⁰ Sixty percent of the schools with school-based mental health programs had lower suspension rates and one school “noted that the percentage of students who reported they had been in three or more fights in the past year decreased from 32.1% to 18.5%.”¹⁶¹

School districts should be focused on providing students with a nurturing environment that teaches methods of conflict resolution. Personnel should be equipped to identify students’ mental, emotional, and behavioral needs. Investments should be made in school-based mental health programs with on-site clinicians to address student needs and to help make positive changes in students’ lives.

b. Parents

School districts also need to partner with and provide guidance to students’ parents.¹⁶² Administrators should encourage parents to be actively involved in their children’s lives in order to develop supportive relationships and strong communication.¹⁶³ Parents should not provide their children with excessive amounts of privacy, but be aware of their activities and peer groups.¹⁶⁴ Further, administrators should advise parents on the importance of restricting their children’s exposure to violent media.¹⁶⁵

Schools should maintain communication with families and aid them in finding help if they express concern about a child’s troubling behavior. Teachers and administrators should provide non-intimidating opportunities for parents to contribute or volunteer at school. Schools can also establish parenting networks for families to share information—particularly that which children may withhold—and be of support to one another.¹⁶⁶ The connection between schools and families allows for the exchange of information as well as better identification and response to student needs.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at 3.

¹⁶⁰ *Id.* at 3–4.

¹⁶¹ *Id.* at 4.

¹⁶² Garbarino et al., *supra* note 143, at 82.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ Gregory M. Fosco et al., *Coercion and Contagion in Family and School Environments*, in HANDBOOK OF SCH. VIOLENCE & SCH. SAFETY 77 (Shane R. Jimerson et al. eds., 2d ed. 2012).

2. Safety Plans

Of course, even with such efforts to meet students' needs, violence and crises can occur. Therefore, schools need to adopt reasonable security measures and emergency plans that do not foster a climate of fear. Appropriate measures include "secure[d] doors, lighted and monitored hallways and check in-check out systems for visitors."¹⁶⁷ Extreme security measures, such as increased armed security and metal detectors or fences erected around schools, should be avoided. Such measures are an inefficient use of resources and personnel, and may evoke a sense of "prison,"¹⁶⁸ actually making students feel less safe and less trusted.¹⁶⁹

Schools also need to strengthen their emergency management plans. For many years, Ohio law maintained vague safety plan requirements,¹⁷⁰ had minimal revision standards,¹⁷¹ and offered no penalty for schools which failed to file plans. Compliance with the lax safety plan law did not produce plans of useful quality.¹⁷² Since changes to the safety plan law became effective in September 2014, school administrators have a duty to review their emergency procedures to create sustainable safety plans for their schools.¹⁷³

In developing an emergency management plan, administrators should assemble a team of parents, teachers, and first responders that is small enough to allow for effective involvement but large enough to represent the school and its community.¹⁷⁴ In order to determine procedures for responding to emergency events,¹⁷⁵ time must first be spent thoroughly identifying and analyzing possible threats and risks to the school environment.¹⁷⁶ It is important to utilize the knowledge of the planning team and to collaborate with local agencies and organizations to develop a complete understanding of past and potential hazardous situations.¹⁷⁷

Administrators must take seriously their duty to continually

¹⁶⁷ *NASP*, *supra* note 44, at 1.

¹⁶⁸ *FAST*, *supra* note 137, at 242.

¹⁶⁹ *NASP*, *supra* note 44, at 2.

¹⁷⁰ *See* Ohio Rev. Code § 3313.536(A)(1)–(2) (2006).

¹⁷¹ *Id.* § 3313.536(B) (requiring updates only once every three years unless there was a major building modification).

¹⁷² Alan Johnson, *DeWine: Some school safety plans are "useless"*, COLUMBUS DISPATCH (Aug. 20, 2013, 5:12 AM), <http://www.dispatch.com/content/stories/public/2013/08/19/dewine-school-safety-plans.html>. Ohio Attorney General DeWine reported that many school safety plans were incomplete or of such length to be rendered useless in an emergency. *Id.*

¹⁷³ Ohio Rev. Code § 3313.536 (2014).

¹⁷⁴ *Id.* § 3313.536(B)(1). *Guide For Developing High-Quality School Emergency Operations Plans – K-12 Guide*, U.S. DEP'T OF EDUC., OFFICE OF ELEM. & SECONDARY EDUC., OFFICE OF SAFE & HEALTHY STUDENTS 1, 6 (June 2013), <https://saferschools.ohio.gov/sites/default/files/K-12%20Guide.pdf> [hereinafter *Guide*].

¹⁷⁵ § 3313.536(B)(2)–(3).

¹⁷⁶ *Guide*, *supra* note 174, at 7.

¹⁷⁷ *Id.*

practice, evaluate, review, and revise their schools' emergency management plans. They must familiarize students and staff with safety procedures, an effort that may entail more than the required annual emergency management test.¹⁷⁸ Administrators should also hold annual stakeholder meetings to remind local agencies of their roles in the plans and to reevaluate evacuation sites.¹⁷⁹ They must further take care to share the management plan only with those who have a responsibility to it, and to protect the plan from those not authorized to have it.¹⁸⁰ Administrators have a duty to go beyond mere compliance with the law in order to produce and maintain the most useful and effective emergency management plans possible.

As school districts discuss options to protect students, approaches should focus more on prevention and safety procedures than arming school personnel. Equipping teachers and school staff with firearms is a near-term, ineffective solution that does not get to the root of the problem. In the meantime, it creates a tremendous amount of risk and responsibility that school personnel and districts would be unwise to accept. Instead, school districts have a responsibility to develop an emotionally safe and constructive school environment as well as partnerships with families and mental health services to better identify and meet student needs.

IV. CONCLUSION

There is no debate over the desire to keep school children safe. However, Ohio school districts should reconsider inclinations to arm school personnel. It is impractical to expect teachers to develop the skills and mindset necessary to effectively stop active school shooters. Armed personnel only create a substantial risk of unintended consequences and serious liability issues for school districts. Further, there is no conclusive evidence that bringing firearms into schools will deter or reduce school shootings. Students are better served through preventative, comprehensive approaches that partner schools, families, mental health resources, and law enforcement agencies.

“Sandy Hook Elementary School probably did everything right.”¹⁸¹ The school environment promoted kindness over bullying, lockdown drills were in place, and a security system required visitors to ring in.¹⁸² Yet, twenty of its students fell victim to senseless tragedy. There are no guarantees. Efforts to protect students must be reasonable and trust that schools are still safe places. Focusing on student needs is the best line of

¹⁷⁸ § 3313.536(E)(1).

¹⁷⁹ *Guide*, *supra* note 174, at 20.

¹⁸⁰ *Id.*; § 3313.536(C).

¹⁸¹ Jamie Gumbrecht, *What Really Makes Schools Safer?*, CNN, Dec. 13, 2013, 3:21 PM, <http://www.cnn.com/2012/12/15/us/connecticut-school-safety/>.

¹⁸² *Id.*

defense. As Connecticut Governor Dannel Malloy stated only one month after the Newtown shootings, “More guns are not the answer.”¹⁸³

¹⁸³ Jaclyn Zubrzycki, *Conn. Governor Focuses on Safety, Ed. Funding*, EDUC. WK., Jan. 16, 2013, <http://www.edweek.org/ew/articles/2013/01/16/17brief-b1.h32.html>.

