Guns, Violence, and Schools: Policies to Prevent and Respond to School Shootings

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Abstract

The United States continues to deal with school shootings. The most recent massacre occurred in 2012 at the Sandy Hook Elementary School in Newtown, Connecticut. Several strategies have been used to try and prevent such tragedies from happening. These strategies have included tough gun laws, gun-free school zones, and updating school policies and infrastructure. However, despite these, and other, strategies, school shootings continue to occur. Unfortunately, when a school shooting occurs, school personnel and children are left helpless until the police arrive or the shooter decides to end the rampage. During this time many lives may be lost. Therefore, it is suggested that one other possible strategy, arming teachers, be considered and implemented in order to help prevent school shootings and allow school personnel to defend school children. This Comment reviews some of the school shootings that have occurred over the past forty years, reviews federal gun laws, California gun laws, and the strategies that have often been implemented to prevent school shootings. The article ends by recommending one additional policy that schools should consider and adopt—arming certain teachers and school personnel.

Introduction

On a Friday, December 14 at 9:30am, 20 year old Adam Lanza walked onto the Sandy Hook Elementary School campus in Newtown, Connecticut, armed with an assault rifle and two handguns. Over the next 20 minutes, he shot and killed 20 students and 6 adults. Less than a month later, on Thursday, January 10, 2013 at 9:00 am a 16 year old student walked onto a high school campus in Taft, California armed with a shotgun. The student shot and killed one student and injured a second. These are the two most recent U.S. school shootings that have occurred over the past several decades.

The possession and use of firearms by children and adolescents is a problem confronting society. Various studies have focused on the use of firearms by adolescents, and the results are startling. For example, in a 1997 national survey of over 16,000 students in grades 9-12, 18% said they had carried a weapon outside their homes within the past 30 days. Perhaps even more disturbing is that 22% of inner city high school students said they had carried a weapon at some point during the past 30 days.

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2 Id.
4 Id.
6 See id., e.g., (describing the Rochester Study, Boston Gun Initiative, and the Baton Rouge Operation).
7 Id.
8 Id.
Gun violence continues to be an increasing concern in America because thousands of people are shot or killed each year. On average, almost 100,000 people in America are shot or killed with a gun each year. Since 1968 when John F. Kennedy and Dr. Martin Luther King, Jr. were assassinated, there have been over 1.2 million people killed with guns in the United States. In 1995, almost 16,000 people were killed in the United States as a result of being shot.

Although gun related violence affects society in general, school shootings shock the conscience and strike fear in students, parents, and school employees. Perhaps what is most concerning about school shootings is the young age of the shooters, the large numbers of innocent victims, and the randomness of the killings. How to prevent and respond to school shootings must be analyzed further because they continue to occur. In fact, school shootings continue despite the different strategies used to prevent them, such as tightening school security, increasing penalties for offenders, and increasing public awareness.

One popular response to school shootings is to tighten restrictions on guns and assault weapons. After the Sandy Hook school massacre, President Obama said he supported the reinstatement of the federal ban on assault weapons. But, polls have shown the nation is divided about gun restrictions and ownership. For example, a 2011 Pew Poll conducted after the shooting of Rep. Giffords found that 49% of Americans felt it was “more important to protect the rights of Americans to own guns,” while 46% believed that it was “more important to control

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9 See Brady Center to Prevent Gun Violence, Major School Shootings in the United States Since 1997, Washington, DC, http://bradycampaign.org/facts/gunviolence; See also Don Babwin, Chicago Takes Leading Role In National Gun Debate, ASSOCIATED PRESS, February 1, 2013, http://news.yahoo.com/chicago-takes-leading-role-national-gun-debate-192530717.html (stating that in 2012 over 500 people were killed by guns in City of Chicago, and during January of 2013 more than one person per day has died as a result of being shot).
10 See id. (citing National Center for Injury Prevention and Control, Web-based Injury Statistics Query and Reporting System 2008 (2008 (deaths) and 2009 (injuries)). Calculations by Brady Center to Prevent Gun Violence.
15 Timothy L. Jacobs, School Violence: An Incurable Social Ill That Should Not Lead to the Unconstitutional Compromise of Students' Rights, 38 DUQ. L. REV. 617, 617 (2000) (stating that “Shootings have riddled our schools in recent years.”).
16 Id.
18 See id. The prohibition did not ban all assault weapons but it did restrict some of their features such as limiting the capacity of magazines, and regulating attachments such as pistol grips and flash suppressors. But see Dan Frosch, Some Sheriffs Object to Call for Tougher Gun Laws, N.Y. TIMES, January 31, 2013, http://www.nytimes.com/2013/02/01/us/some-sheriffs-object-to-call-for-tougher-gun-laws.html?ref=us& r=0 (stating that Sheriffs from Colorado, Utah, Arizona, Kentucky, Oregon, and Wisconsin oppose President Obama’s proposal for stiffer gun laws).
gun ownership.” Overall, a majority of Americans support some type of restrictions on gun ownership.

Even discussions about how to make schools safer can be difficult. Before the deadly shooting at Columbine High School in Littleton, Colorado, parents and others were taking strong positions in the debate over school safety and how to prevent school shootings. One side of the debate argued for more school safety officers, metal detectors, and zero tolerance for weapons at school. Others argued that, even in the matter of increasing school safety, children still have constitutional rights to privacy and expression that should not be infringed upon.

After a school shooting, it is common for schools to review their policies and implement strategies to prevent another school shooting. For example, such strategies have included tightening gun laws, creating gun-free school zones, and changing the infrastructure of schools. But even with the numerous preventative strategies to prevent school shootings, school shootings continue to occur and children continue to be murdered.

This Comment argues that current laws and policies are not sufficient to prevent school shootings or, when there is another school shooting, to minimize the number of people killed and injured. The time has come to overcome the fear of guns and seriously consider arming certain teachers and school officials so they can protect school children. Section I reviews some of the school shootings that have occurred over the past 40 years, giving special attention to the shootings at Virginia Tech, Columbine, and Sandy Hook. Section II reviews the Second Amendment to the Constitution- the right to bear arms. Section III reviews the Federal Assault Weapons Ban of 1994. Section IV analyzes firearms laws in California. Section V looks at gun laws and initiatives as they pertain to schools. Section VI reviews the Safe School Initiative, a study of why there are school shootings and what can be done to prevent them. Section VII reviews President Obama’s 2013 recommendations for reducing gun violence. Section VIII recommends strategies that school districts should consider to prevent school shootings. Section IX proposes that school officials and parents consider a controversial strategy to prevent and
respond to school shootings—arming certain teachers and school personnel. Section X provides a conclusion.

I. School Shootings in the United States

For many decades the public has been a witness to school shootings in colleges, high schools, and elementary schools. Many lists of school shootings have been compiled over the years. The following summary is a brief overview of some of the school shootings that have occurred throughout the nation.

On January 31, 2013 a 15 year old student walked onto Price Middle School in Atlanta, Georgia and shot another student in the back of the neck. The shooter was arrested by police.

On January 10, 2013 a 16 year old high school student in Taft, California, arrived onto the school’s campus with a 12-gauge shotgun. He then walked into his first period class and shot one student. The shooter called out another student’s name and shot at him, but missed. School officials talked the student into putting the gun down and the police arrested him.

On February 27, 2012 a 17 year old student took a .22 caliber pistol to his high school in Chardon, Ohio. Once he was at the school, he fired ten shots into a group of students sitting at a cafeteria table. Three students were killed.

On April 2, 2012 a 43 year old former student walked onto the school campus of Oikos University in California. Once he arrived on campus he randomly shot at students in one of the classrooms, killing seven people.

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28 See, e.g., Boksenbaum, supra note 23, at 126-27 (describing the shooting at Columbine High school).
31 The purpose of this summary is to provide a broader perspective of the locations, ages, and magnitude of the shootings.
33 Id.
34 See Stableford, supra note 3.
35 Id.
36 Id.
38 See Id. The police arrested the shooter.
39 Id.
40 Id. The police arrested the shooter.
On March 21, 2005 a 17 year old student at Red Lake High School in Minnesota walked onto the school campus with a gun.\textsuperscript{41} The student shot and killed nine people, wounded five others, and ultimately killed himself.\textsuperscript{42}

On January 16, 2002 a disgruntled law student on the verge of failing law school, walked onto campus and shot and killed three people.\textsuperscript{43} Among those killed were the Appalachian law school dean, and a professor, both of whom were shot at point blank range.\textsuperscript{44} Additionally, a law school student was killed when the gunman opened fire on students outside the dean’s office.\textsuperscript{45}

On March 15, 2001 a 15 year old student in Santee, California walked onto a high school campus with a firearm.\textsuperscript{46} He shot and killed two students and wounded 11 other students and two adults, one being a security guard.\textsuperscript{47}

On August 28, 2000 a student at the University of Arkansas drove to a local Walmart and purchased 50 rounds of .38 caliber ammunition.\textsuperscript{48} The college student had just failed out of a graduate program at the University.\textsuperscript{49} The student walked into his advisor’s office and shot her three times.\textsuperscript{50}

On May 20, 1999 a sophomore at Heritage High School in Georgia walked onto campus with at least one weapon, a .22 caliber rifle.\textsuperscript{51} The student opened fire, critically shooting one student before being disarmed by the assistant principle.\textsuperscript{52}

On May 21, 1998 a freshman at Thurston High School in Springfield, Oregon walked onto campus with several firearms.\textsuperscript{53} After he entered the campus he opened fire on his classmates killing one and wounding 23 others.\textsuperscript{54}

On March 24, 1998 two students from Westside Middle School in Jonesboro, Arkansas, set off a fire alarm during school hours.\textsuperscript{55} The two boys hid outside and shot their classmates as

\textsuperscript{41} Id.
\textsuperscript{42} Id.
\textsuperscript{43} Scott Wallace, \textit{Gunman Kills Three at Virginia School}, \textit{TIME}, January 16, 2002, \url{http://www.time.com/time/nation/article/0,8599,194552,00.html}. The gunman was wrestled to the ground by students and held until the police arrived.
\textsuperscript{44} Id.
\textsuperscript{45} Id.
\textsuperscript{47} Id. at 490-91. The shooter surrendered to police.
\textsuperscript{48} Grad Student, \textit{Professor Fatally Shot}. ABC NEWS, August 28, 2000, \url{http://abcnews.go.com/US/story?id=95994&page=1}.
\textsuperscript{49} Id.
\textsuperscript{50} Id. The gunman killed himself.
\textsuperscript{52} Id.
\textsuperscript{53} Teen Jailed After Oregon High School Shooting Spree, CNN, May 21, 1998, \url{http://www.cnn.com/US/9805/21/school.shooting.pm.2/} (describing the firearms as a .22 caliber rifle, a .22 caliber handgun, and a 9mm semi automatic Glock pistol).
\textsuperscript{54} Id. The shooter was subdued by his classmates.
they streamed out of the classrooms.\textsuperscript{56} It was later determined that the students hid ten guns in the bushes next to the classroom.\textsuperscript{57} The shooters killed 4 students and a teacher and wounded 10 others.\textsuperscript{58}

On February 2, 1996 a school shooting took place at Frontier Junior High School in the state of Washington.\textsuperscript{59} During this shooting, a 14 year old student entered his fifth period algebra class armed with three guns and killed 4 people.\textsuperscript{60} His principle weapon was a .30-30 lever action rifle.\textsuperscript{61}

On November 1, 1991 a 27 year old University of Iowa graduate student walked onto campus with a .38 caliber revolver.\textsuperscript{62} He shot and killed five people and then killed himself.\textsuperscript{63}

On January 17, 1989 a 24 year old drifter walked onto a Stockton schoolyard and opened fire with a semiautomatic rifle.\textsuperscript{64} He killed 5 students and wounded 30 others (1 teacher and 29 students).\textsuperscript{65} He committed suicide rather than being arrested.\textsuperscript{66}

On August 1, 1966 a 25 year old college student killed his wife and then he took a rifle with him to the University of Texas at Austin.\textsuperscript{67} For the 96 minutes he went on a shooting rampage and killed 14 people before police shot and killed him.\textsuperscript{68}

A. Virginia Tech University- Blacksburg, Virginia

On April 16, 2007 Seung Hui Cho walked into a dorm room on the Virginia Tech campus, occupied by Emily Hilscher, and shot her.\textsuperscript{69} Shortly thereafter, another student, Ryan Christopher Clark, entered the room and Cho shot him also.\textsuperscript{70} Both students died at the scene as a result of their gunshot wounds.\textsuperscript{71} At approximately 7:17 am, Cho returned to his dorm room and changed out of his bloody clothing.\textsuperscript{72} At approximately 7:25 am, Cho logged on to his University

\textsuperscript{56} Id.
\textsuperscript{58} See Williams, supra note 55. Both shooters were arrested by police.
\textsuperscript{60} Alex Tizon, Scarred By Killings, Moses Lake Asks: “What Has This Town Become?,” THE SEATTLE TIMES, February,23, 1997, http://community.seattletimes.nwsource.com/archive/?date=19970223&amp;slug=2525360.
\textsuperscript{61} Id. The shooter was arrested by police.
\textsuperscript{62} See U.S. School Shootings, supra note 37.
\textsuperscript{63} See id.
\textsuperscript{64} See id.
\textsuperscript{65} See id.
\textsuperscript{66} See id.
\textsuperscript{67} See id.
\textsuperscript{68} See id.
\textsuperscript{70} Id.
\textsuperscript{71} Id.
computer account, erased his computer files and deleted his account.\textsuperscript{73} Between 9:15 am and 9:30 am, Cho was seen both inside and outside the University’s Norris Hall and, after going inside, he chained the doors to three main entrances shut.\textsuperscript{74} At approximately 9:40 am, Cho started his shooting rampage in Norris Hall, beginning in room 206.\textsuperscript{75} After shooting up room 206, Cho went across the hall to room 207 and started shooting.\textsuperscript{76} Cho then tried to enter room 205, but the students already heard the gunshots and barricaded the door shut.\textsuperscript{77} Cho then left room 205 and entered room 211 even though the door was partially barricaded.\textsuperscript{78} After entering room 205 he started shooting students.\textsuperscript{79} While in room 205, he heard the instructor, Madame Jocelyne Couture-Nowak, talking on her cell phone.\textsuperscript{80} He shot at her, hitting her twice in the head.\textsuperscript{81} Cho then returned to room 207 and, since the door had been barricaded by the students, tried to shoot the door open.\textsuperscript{82} Unable to get in, Cho left room 207 and tried to re-enter room 211.\textsuperscript{83} After getting in to room 211, Cho shot a student twice.\textsuperscript{84} Cho then walked to room 204 and tried to enter the classroom.\textsuperscript{85} The professor, Mr. Librescu, used his body to keep the door closed.\textsuperscript{86} While instructing the students to escape through the windows, he was shot through the door.\textsuperscript{87} Cho then entered the room and shot two of the students fleeing through the windows.\textsuperscript{88} At that point, Cho returned to room 206 and shot more students.\textsuperscript{89} At approximately 9:50 am, police were able to enter Norris Hall.\textsuperscript{90} At 9:51 am, Cho shot himself in the head and died.\textsuperscript{91} Cho’s shooting spree lasted approximately 11 minutes, during which he killed 30 people and wounded 17 people.\textsuperscript{92}

B. Columbine High School- Littleton, Colorado

On April 20, 1999 between 11:14 am and 11:22 am, two students, Dylan Klebold and Eric Harris, walked onto the Columbine High School campus carrying two large duffel bags with enough explosives to kill a majority of the students.\textsuperscript{93} They placed the duffel bags near two

\textsuperscript{72} Id.
\textsuperscript{73} Id.
\textsuperscript{74} Id. at 36 (nobody reported Cho chaining the doors shut).
\textsuperscript{75} Id. at 27 (stating that in room 206 Cho killed Professor G.V. Loganathan, and other students in class, killing 9 and wounding 3 of the thirteen students).
\textsuperscript{76} Id. (stating that in room 207 Cho shot Professor Christopher James Bishop, and then started shooting students in the classroom).
\textsuperscript{77} Id.
\textsuperscript{78} Id.
\textsuperscript{79} Id. (stating three students who pretended to be dead survived).
\textsuperscript{80} Id.
\textsuperscript{81} Id. (stating Madame Jocelyne Couture-Nowak pretended to be dead and survived).
\textsuperscript{82} Id.
\textsuperscript{83} Id.
\textsuperscript{84} Id.
\textsuperscript{85} Id.
\textsuperscript{86} Id.
\textsuperscript{87} Id.
\textsuperscript{88} Id.
\textsuperscript{89} Id.
\textsuperscript{90} Id.
\textsuperscript{91} Id.
\textsuperscript{92} Id.
different lunch tables in the school’s cafeteria and walked away. Each duffel bag contained a 20 pound propane bomb, set to explode at 11:17 am. Klebold and Harris, who were both wearing black trench coats, walked to the top of an exterior staircase and waited. At approximately 11:19 am, from their position at the top of the stairs, they started randomly shooting at students. According to one witness, they heard one of the gunman state, “This is what we always wanted to do. This is awesome!” At approximately 12:08 pm, Klebold and Harris killed themselves. The Columbine shooting sent a sense of fear throughout the country and placed “school violence under a nationwide magnifying glass.” This shooting rampage lasted approximately 49 minutes and the two shooters killed 13 people.

C. Sandy Hook Elementary School- Newtown, Connecticut

On December 14, 2012 at approximately 9:30 am, a 20 year old gunman, Adam Lanza, arrived at the Sandy Hook Elementary School armed with three guns: a semi-automatic AR-15 assault rifle, and two semi-automatic handguns. He was wearing black fatigues and a military style vest for protection.

As part of a new security system, all of the classroom doors were already locked when Lanza arrived. When Lanza could not enter one of the rooms because the door was locked, he used one of his guns to “literally (shoot) an entrance into the building.” After entering the building, Lanza shot and killed the school psychologist, Mary Sherlach. Lanza then walked towards two classrooms of kindergartners and first graders. Once inside the first classroom, he shot the substitute teacher and all of the 14 students. Lanza then went to a second classroom and shot the teacher and 6 students.

The police department started receiving emergency calls from the school at approximately 9:30 am. Police and other first responders arrived at the school approximately 20 minutes after they received the first 911 emergency call. Once on scene, the police found that Lanza had shot and killed numerous students and adults. In total, during this incident the gunman was able to shoot and kill twenty students and six adults before taking his own life.
Lanza dead as a result of a self inflicted gunshot wound.\textsuperscript{112} In the end, 26 people (20 students and 6 adults) were killed as a result of Lanza’s shooting rampage.\textsuperscript{113}

Perhaps what made this shooting incredibly devastating was that most of the victims were young, innocent children.\textsuperscript{114} On the night of December 16, 2012 President Obama addressed the nation at an interfaith vigil in Newtown, Connecticut.\textsuperscript{115} The following comments made by President Obama highlighted just how emotional and devastating this incident was:\textsuperscript{116}

- “I know there’s not a parent in America who doesn’t feel the same overwhelming grief that I do."
- “They had their entire lives ahead of them. Birthdays, graduation, wedding. Kids of their own.”
- “This evening, Michelle and I will…hug our children a little tighter, and we will tell them that we love them.”

As a result of the Sandy Hook School massacre, lawmakers will undoubtedly debate new laws regulating guns and permits to carry concealed weapons.\textsuperscript{117} The debate will also likely include other topics such as assault weapons and high capacity magazines.\textsuperscript{118} Additionally, President Obama has already created an inter-agency panel and tasked with creating new proposals for reducing gun violence.\textsuperscript{119} During President Obama’s address at the vigil, he asked Vice President Biden to lead the panel and come up with “a set of concrete proposals by January 1.”\textsuperscript{120}

It is typical that after any mass shooting, and especially after a school shooting, for gun control advocates and gun rights groups to argue their perspectives.\textsuperscript{121} Gun control advocates assert that there should be tighter gun restrictions.\textsuperscript{122} For example, they argue that eliminating multiple gun sales and ending loopholes in the gun laws will reduce gun violence.\textsuperscript{123} However, gun rights advocates argue that legislation should not violate the right to bear arms, and laws

\textsuperscript{112} Id.  
\textsuperscript{113} Id.  
\textsuperscript{115} Id.  
\textsuperscript{116} Id.  
\textsuperscript{117} See, e.g., Kurt Erickson, Legislators say school shootings will shape new Illinois gun laws. HERALD REVIEW, December 18, 2012, http://herald-review.com/news/state-and-regional/legislators-say-school-shootings-will-shape-new-illinois-gun-law/article_a9a6ae48d7-11e2-8a12-001a4bc887a.html (stating that as a result of the Sandy Hook school massacre lawmakers may have to debate laws allowing its residents to carry concealed weapons).  
\textsuperscript{119} Id. This inter-agency panel would include members of the cabinet, Congress and other stakeholders.  
\textsuperscript{120} Id.  
\textsuperscript{122} Id.  
\textsuperscript{123} Id.
should be passed that will allow citizens to carry concealed weapons in public places. Their rationale is that if citizens are armed, it would deter criminals from carrying out violence and reduce the gun violence death toll.

II. The United States Constitution

A. Second Amendment

The second amendment to the United States Constitution states:

A well regulated militia, being necessary to the security of a free state,
the right of the people to keep and bear arms, shall not be infringed.

Although there is an ongoing disagreement about the meaning of the actual words contained in the second amendment, the focus here is to understand the current status of the second amendment as applied by the courts. Even though the second amendment is only one sentence, the courts have failed to give a definitive answer as to what the second amendment actually protects. But, throughout the years, the courts have provided some guidance.

1. Federal Regulation of Firearms

In 1939, the Supreme Court ruled in United States v. Miller that some federal laws regulating firearms are valid. In Miller, the defendants were charged with unlawfully transporting a firearm in interstate commerce, not having the firearm registered, and not having a stamp-affixed written order for the firearm, in violation of the National Firearms Laws. Specifically, federal law required that the defendant’s double barrel 12-gauge shotgun be registered. The district court agreed with Miller that the laws violated the second amendment. The Supreme Court reversed the district court’s decision, and ruled that the laws did not violate the second amendment. The Court reasoned that, “[i]n the absence of any evidence tending to show that possession or use of a ‘shotgun having a barrel of less than 18 inches in length’ at this time has some reasonable relationship to the preservation or efficiency of a well-regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an

\[124\] Id.
\[125\] Id.
\[126\] U.S. Const. amend. II.
\[131\] Id. at 174.
\[132\] Id. at 183.
instrument.” Since the Miller decision, Congress has continued to pass federal laws to regulate firearms.

In 2008 landmark second amendment case, District of Columbia v. Heller, was decided. In Heller, the District of Columbia made it a crime to carry an unregistered firearm, prohibited the registration of handguns, and required gun owners to keep their firearms inoperable. These laws were challenged by Heller who stated that they violated the second amendment. The district court dismissed the suit, but the D.C. Circuit court reversed the lower court’s decision. The D.C. Circuit court held that the city’s total ban on handguns, and the requirement that firearms be kept non-functional at home violated the second amendment. The defendants petitioned the U.S. Supreme Court to hear the case.

On March 18, 2008, the U.S. Supreme Court heard the case and affirmed the D.C. Circuit’s decision. The Court held that the second amendment protects a person’s right to possess a firearm even if it is unconnected with militia service. The Court also stated that it was legal for a person to use a firearm for traditionally lawful purposes such as self defense. Finally, the Court held that the handgun ban and the law requiring handguns be inoperable at home violated the second amendment.

The Court also held that the second amendment right is not unlimited, and that federal law can place restrictions on gun ownership. The Court suggested that sensible gun regulations may be constitutionally permitted. The Court reasoned that the second amendment did not provide a person the right to carry any weapon, in any manner, for whatever purpose. Rather, that it is permissible to enforce restrictions relating to gun possession. For example, the Court said it was legal to prohibit the mentally ill from possessing firearms and that laws could forbid the “carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.”

133 Id. at 178.
134 See Lewis v. United States 445 U.S. 55, 64 (1980) (holding that laws may prohibit felons from possessing firearms); Barrett v. United States 423 U.S. 212, 224-25 (1976) (holding valid a provision making it unlawful for a convicted felon to receive any firearm or ammunition shipped through interstate or foreign commerce).
135 See Heller, supra note 129.
136 See id.
137 See id.
138 See id.
139 See id.
140 See id.
141 See id.
142 See id. at 662.
143 See id. at 609.
144 See id. at 630.
145 See id. at 626.
147 See Heller, supra note 129.
148 See id. at 626-27.
149 McDonald v. City of Chicago, Ill., 130 S.Ct. 3020, 3047 (U.S.,2010).
2. **State Regulation of Firearms**

In 1886 the Supreme Court held in *Presser v. Illinois* that the second amendment also applies to states.\(^{150}\) In *Presser*, the defendant participated in a parade in Chicago where the parade participants were armed.\(^{151}\) Presser was indicted because he was not part of a regular organized militia, and did not have a license from the governor to possess a firearm. Presser was later convicted.\(^{152}\) Presser filed a writ of error stating that the statute was invalid because it was passed by the Illinois state legislature and, therefore, violated his second amendment rights.\(^{153}\) In ruling against Presser, the Court reasoned that, “the [second] amendment is a limitation only upon the power of congress and the national government, and not upon that of the state.”\(^{154}\)

This was reiterated in the 2010 case of *McDonald v. Chicago*.\(^{155}\) In *McDonald*, the City of Chicago, Illinois had two laws that effectively banned handgun possession by virtually all private citizens.\(^{156}\) The Petitioners challenged the laws by claiming the laws violated the second amendment.\(^{157}\) The Court ruled that the City’s ban on handguns was unconstitutional.\(^{158}\) The Court agreed with precedent and stated that the second amendment applies to the states because it is incorporated through the Fourteenth Amendment.\(^{159}\)

**III. Federal Firearms Laws**

The Bureau of Alcohol, Tobacco, and Firearms enforces federal firearms laws, issues firearms licenses, and performs compliance inspections on federal firearms licensees.\(^{160}\) Federal gun laws are codified under the Gun Control Act of 1968,\(^{161}\) the National Firearms Act,\(^{162}\) and the Arms Export Control Act.\(^{163}\) The federal laws include regulating the possession of firearms,\(^{164}\) disposing of firearms,\(^{165}\) and carrying firearms.\(^{166}\) Rather than focus on the federal

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\(^{150}\) *See* *Presser v. Illinois*, 116 U.S. 252, 265 (1886).

\(^{151}\) *Id.* at 253.

\(^{152}\) *Id.* at 254.

\(^{153}\) *Id.*

\(^{154}\) *Id.* at 265; *see also* *Miller v. Texas*, 152 U.S. 353 (1894) (stating that “The Supreme Court ruled that the Second Amendment did not apply to state laws such as the Texas law.”); *see also* United States v. Cruikshank, 92 U.S. 542 (1875) (stating “[t]he Second Amendment...has no other effect than to restrict the powers of the national government....”); *McDonald v. Chicago* 130 S. Ct. 3020 (2010).

\(^{155}\) *Id.* at 3021. *McDonald v. Chicago* involved a case where the City of Chicago had a law requiring all handguns be registered yet refused to register handguns after 1982 when a citywide handgun ban was passed.

\(^{156}\) *Id.*

\(^{157}\) *Id.* at 3021.

\(^{158}\) *Id.*

\(^{159}\) *Id.* at 3024.


\(^{164}\) *See* 18 U.S.C. §§ 922(g) and 922(n) (1968)

\(^{165}\) *Id.* § 922(d).

\(^{166}\) *Id.* § 922(c).
regulation of firearms in general, this section focuses specifically on the federal regulation of assault weapons.

A. Federal Assault Weapons Ban of 1994

In 1989, a shooter in his twenties entered a California elementary school yard filled with students and opened fire with a semi-automatic rifle, killing 5 children ages from six to nine. Additionally, twenty-nine others were wounded, including one teacher. The gunman was able to shoot more than 100 rounds in one minute before killing himself. After this school shooting, Congress entered into a debate about whether to ban military style assault weapons. However, during the debate, defining what constituted an “assault weapon” proved to be an almost impossible task.

On September 13, 1994, Title XI of the Federal Violent Crime Control and Law Enforcement Act of 1994 took effect. This act banned “the manufacture, transfer, and possession of certain semiautomatic firearms designated as assault weapons and ‘large capacity’ ammunition magazines.” The ban specifically prohibited nine categories of pistols, rifles, and shotguns. The ban also prohibited semiautomatic firearms with multiple militaristic features, such as detachable magazines, flash suppressors, and folding rifle stocks. Finally, the ban prohibited “large capacity magazines,” defined holding more than 10 rounds of ammunition.

In arguing against the effectiveness of the 1994 Federal Assault Weapons Ban, gun advocates may point to a 2004 study by the University of Pennsylvania that found the federal ban on ammunition magazines that could hold more than ten rounds, had only a minimum impact on gun crime. However, in analyzing the results, one must keep in mind the effect of “loop holes” in the ban. For example, large capacity magazines made before 1994 were exempt from the ban.

168 Id.
170 See Lou, supra note 167 (quoting Ohio Democrat Senator Howard M. Metzenbaum, “The American People are fed up with the death and violence brought on by these assault weapons.”).
171 See Josh Richman, Defining What is an Assault Weapon, DAILY BREEZE, January 18, 2013, A10, http://www.dailybreeze.com/latestnews/ci_22396050/assault-weapons-what-are-they-and-should-they (stating it is difficult because some M-16 lookalikes are less dangerous than a pistol and some hunting rifles can do just as much damage as an assault rifle).
172 See Roth, supra note 169.
173 Id.
174 Id.
175 Id.
176 Id.
177 See Lou, supra note 167.
178 See id.
179 See id.
A provision in the 1994 ban provided that the federal assault weapons ban would expire in 2004. With the recent shooting at Sandy Hook elementary school, the Obama Administration is working on a new set of gun control proposals. In fact, some in Washington are calling for the revival of an assault weapons ban.

With the expiration of the 1994 ban, state laws govern the field of firearms. To date, slightly more than half a dozen states have laws banning assault weapons. Rather than examine every state’s laws pertaining to firearms regulations, the following section will examine California’s law regarding firearms in general, with a specific emphasis on assault weapons.

IV. California Firearms Laws

A. Firearms in General

California has some of the strictest gun laws in the nation. California’s gun laws are listed and described in the California Penal Code (hereinafter “CPC”) Part 6, titled Control of Deadly Weapons. Title 1, Division 2 provides basic definitions used throughout the chapter, including those defining firearms and other dangerous weapons. Exemptions to the gun laws are listed under Division 2, Chapter 1. Other deadly or dangerous weapons are listed in Title 2, Division 5 through Title 3, Division 11 and includes such weapons as hand grenades, blowguns, cane swords, metal knuckles and wooden clubs.

The laws pertaining to the sale, lease or transfer of firearms is listed in Division 6. In order to sell, lease, or transfer a firearm in California, the person must be licensed. In fact,
anyone who sells, leases, or transfers a firearm, and is not licensed, is guilty of a misdemeanor. 196

B. Assault Weapons

In 1989, after a shooting at a Stockton, California school yard, California lawmakers adopted the nation’s first assault weapons ban. 197 California regulates firearms classified as assault weapons under CPC Division 10, Chapter 2, titled Assault Weapons and .50 BMG rifles. 198 As stated by the California Legislature:

(a) The Legislature hereby finds and declares that the proliferation and use of assault weapons poses a threat to the health, safety, and security of all citizens of this state. The Legislature has restricted the assault weapons specified in Section 30510 based upon finding that each firearm has such a high rate of fire and capacity for firepower that its function as a legitimate sports or recreational firearm is substantially outweighed by the danger that it can be used to kill and injure human beings. It is the intent of the Legislature in enacting this chapter to place restrictions on the use of assault weapons and to establish a registration and permit procedure for their lawful sale and possession. It is not, however, the intent of the Legislature by this chapter to place restrictions on the use of those weapons which are primarily designed and intended for hunting, target practice, or other legitimate sports or recreational activities.

(b) The Legislature hereby finds and declares that the proliferation and use of .50 BMG rifles poses a clear and present terrorist threat to the health, safety, and security of all residents of, and visitors to, this state, based upon findings that those firearms have such a high capacity for long distance and highly destructive firepower that they pose an unacceptable risk to the death and serious injury of human beings, destruction or serious damage of vital public and private buildings, civilian, police and military vehicles, power generation and transmission facilities, petrochemical production and storage facilities, and transportation infrastructure. It is the intent of the Legislature in enacting this chapter to place restrictions on the use of these rifles and to establish a registration and permit procedure for their lawful sale and possession. 199

At first, California’s ban specifically named the different types of assault weapons that were prohibited. 200 In order to get around this ban, gun manufacturers simply renamed the guns or changed the model numbers on the weapons and continued to sell them. 201 Since then, California defines an assault weapon in three different ways. 202

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196 Id. § 26500(b) (stating, “Any person violating this article is guilty of a misdemeanor.”).
197 See, Richman, supra note 171.
198 Id. § 30500 et seq.
199 Id. § 30505(a)(b).
200 Id.
201 Id.
202 See CAL. PENAL CODE. § 30510, § 30515(a)(1), and § 30525.
The first designation is in CPC section 30510 which specifically lists semiautomatic firearms that are designated as assault weapons.\textsuperscript{203} For example, the following are all considered assault weapons: the AK series,\textsuperscript{204} the Colt AR-15 series,\textsuperscript{205} and the UZI.\textsuperscript{206}

The second assault weapons designation lists certain characteristics that a weapon must have in order to be considered an assault weapon.\textsuperscript{207} Section 30515 of the CPC defines an assault weapon as a “semiautomatic, centerfire rifle” that can accept a detachable magazine and any one of a series of additional characteristics.\textsuperscript{208} The section lists several characteristics that will qualify as that one additional characteristic.\textsuperscript{209} For example, a semiautomatic, centerfire rifle that can accept a detachable magazine will be considered an assault weapon if it has a flash suppressor,\textsuperscript{210} a forward pistol grip,\textsuperscript{211} or if the rifle has an overall length of less than 30 inches.\textsuperscript{212}

Finally, a firearm can be considered an assault weapon by being classified as a firearm that is able to fire a .50 BMG cartridge,\textsuperscript{213} or being a .50 BMG rifle.\textsuperscript{214} According to CPC section 30525, a firearm will be considered an assault weapon if it can fire a .50 caliber round, and the bullet and cartridge, have specific measurements.\textsuperscript{215} Also, CPC section 30530 states that if a weapon is not already classified as an assault weapon, but can fire a .50 caliber round, then it will be deemed an assault weapon.\textsuperscript{216}

C. Sentencing Enhancements

In addition to laws pertaining to guns, California has also passed other tough laws that target people who use guns during the commission of a crime.\textsuperscript{217} For example, shooting someone during the commission of a crime can add an additional 25 years to life to the sentence.\textsuperscript{218} Also, if a person simply fires a gun during the commission of a crime it can add an additional 20 years to life to the sentence.\textsuperscript{219} Finally, just showing a gun during the commission of a crime can add an additional 20 years to life to the sentence.\textsuperscript{220}

Every year members of the Senate and House of Representatives propose gun restrictions, such as how to store privately owned guns.\textsuperscript{221} As a result of the Sandy Hook
shooting many state representatives, are considering tightening their assault weapon gun laws.\textsuperscript{222} Although gun control and gun rights advocates disagree about tightening laws regarding assault weapons,\textsuperscript{223} it is likely that changes are imminent. For example, Rep. Adam Schiff, D-Glendale said, “Reinstituting and improving the Assault Weapons Ban should be one of the first issues Congress takes up next year.”\textsuperscript{224}

V. California Gun Laws and Schools

The following section discusses two legal strategies California has instituted to make schools safer by keeping guns off of school grounds. The first is the California Gun-Free Zone Act of 1995 that makes it a crime to have a firearm on or near school grounds. The second is California’s Zero Tolerance that requires schools to suspend students who possess a firearm on campus and notify the authorities.

A. California Gun-Free Zone Act of 1995

In 1994, President Clinton signed into law the Gun-Free Schools Act of 1994.\textsuperscript{225} This Act required states, that wanted to receive federal funds, to enact a state law requiring local schools expel, for a minimum of one year, any student “who is determined to have brought a firearm to school.”\textsuperscript{226} The Act also contained additional requirements such as mandatory referral to the justice system any juvenile who brings a gun to school.\textsuperscript{227} Beginning in 1994, most states


\textsuperscript{223} \textit{See} Richman, \textit{supra note} 171 (stating that gun control advocates assault weapons encourage mentally unstable people to go on shooting sprees while gun rights advocates argue that assault weapon are misunderstood and the term is used to scare people).


\textsuperscript{226} \textit{id.} § 8921 (b)(1).

\textsuperscript{227} \textit{id.} § 8922 (a).
adopted Gun-Free Schools Zone laws that mirrored the federal law regarding punishment and expulsion of students found to be in possession of a gun while on school grounds.\textsuperscript{228}

The California Gun-Free School Zone Act of 1995\textsuperscript{229} is codified in CPC section 626.9.\textsuperscript{230} The following sections are the essence of California’s Gun-Free Zone Act:

Section 626.9(b) states that:

Any person who possesses a firearm in a place that the person knows, or reasonably should know, is a school zone, as defined in paragraph (1) of subdivision (e), unless it is with the written permission of the school district superintendent, his or her designee, or equivalent school authority, shall be punished as specified in subdivision (f).\textsuperscript{231}

Section 626.9 (d) states:

Except as provided in subdivision (b), it shall be unlawful for any person, with reckless disregard for the safety of another, to discharge, or attempt to discharge, a firearm in a school zone, as defined in paragraph (1) of subdivision (e).\textsuperscript{232}

Section 626.9 (e) defines as school zone as the following:

1) "School zone" means an area in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, or within a distance of 1,000 feet from the grounds of the public or private school.\textsuperscript{233}

Section 626.9(f) provides the punishment for violating the Gun Free Zone as follows:

(1) Any person who violates subdivision (b) by possessing a firearm in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or five years.

(2) Any person who violates subdivision (b) by possessing a firearm within a distance of 1,000 feet from the grounds of a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, shall be punished as follows:

(A) By imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or five years, if any of the following circumstances apply….\textsuperscript{234}

\textsuperscript{229} \textit{See} \textit{CAL. PENAL CODE} §626.9(k)(1) listing individuals this section does not pertain to, including police officers, peace officers of another state or federal government carrying out official duties, and any person summoned to assist a officer.
\textsuperscript{230} Id. § 626.9.
\textsuperscript{231} Id. § 626.9(b).
\textsuperscript{232} Id.§ 626.9(d)
\textsuperscript{233} Id.§ 626.9(e).
\textsuperscript{234} Id.§626.9(f).
Taken in its entirety, the Gun-Free School Zone Act of 1995 makes it a crime for anyone to be on school grounds, or within a 1,000 foot radius of a school, while possessing a firearm. Supporters of California’s Gun-Free School Zone Act state that it makes schools safer by giving schools the ability to ban firearms on campus. But, some have argued that labeling a campus as “weapon-free” or “violence free” may be misleading. The problem with such descriptions is that it tells criminals “weapons free” really means, “free of weapons carried by law-abiding persons.” They also point out that allowing certain teachers or school personnel to carry a concealed weapon may deter future violence. For example, in a survey of criminals, many said that if they knew their intended victim was armed, it would deter them from committing the intended offense.

B. California’s Zero Tolerance

In order to comply with the Federal Gun-Free Schools Act, the California state legislature amended Education Code Section 48915(c). In section 48915(c) (1), California added the requirement for a mandatory suspension and recommendation for expulsion of students who “Possess, sell, or otherwise furnish a firearm.” California Education Code section 48906 requires school officials to refer any student found with a firearm to the police.

In providing a rationale for establishing the zero tolerance policies, the Department of Education stated, “Given public concern about escalating incidences of school violence, and in the wake of school shootings, school district governing boards adopted zero tolerance policies to send a ‘get tough’ message to the community that violent behavior, incidents and crime would not be tolerated.”

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235 Id. 626.9 et seq. But see §§ 626.9(l)(1) and 626.9(m) (listing exceptions to this Act including peace officers security guards respectively).
238 Id.
239 Id.
240 Id. at 538 (stating that in a National Institute of Justice survey it was determined in a survey of criminals that 40% decided not commit a crime because they thought the intended victim was armed, 59% said that they would not attack a potential victim if the they though the victim had a gun, and 74% said that burglars avoided houses where people were still home due to fear of being shot).
241 See CAL. EDUC. CODE §48915(C)(1).
243 See id.
244 See id.
Ever since it was implemented, California’s Zero Tolerance laws have received mixed reviews.\(^{245}\) Most of the controversy of the zero tolerance policy centers on the method being used to implement the policy rather than the goals of having such policies.\(^{246}\) Three main criticisms have been cited.\(^{247}\) First, media attention can make it appear as if the zero tolerance policies are being used beyond its original intent of applying only to students who posses firearms.\(^{248}\) Second, school officials are being told that zero tolerance policies will not stop school shootings.\(^{249}\) Finally, the policy does not give school officials discretion when dealing with students with firearms.\(^{250}\)

VI. Safe School Initiative

America has been witness to many horrific school shootings.\(^{251}\) In June of 1999, after the Columbine High School shooting, the U.S. Secret Service and the U.S. Department of Education worked together to answer two questions.\(^{252}\) The first was, “Could we have known that these attacks were being planned?”\(^{253}\) The second question was, “What can be done to prevent future attacks?”\(^{254}\)

In an attempt to answer these questions, both agencies conducted a study known as the Safe School Initiative.\(^{255}\) They examined 37 incidents of school shootings that occurred in the United States between December 1974 and May 2000.\(^{256}\) The goal of the Safe School Initiative “was to attempt to identify information that could be obtainable, or ‘knowable,’ prior to an attack.”\(^{257}\)

The findings of the Safe School Initiative suggested that educators, law enforcement officers, and others should take proactive actions in response to the problem of school shootings.\(^{258}\) The initiative published 10 findings, implications of the findings, and provided how to develop strategies in an effort to prevent future school shootings.\(^{259}\) Specifically, the Initiative made the following 10 key findings, implications and strategies:\(^{260}\)

\(^{245}\) See id.; see also Lisa Thurau-Gray, The Trend Towards Turning Public Education into A Gated Community, 11 CORNELL J.L. & PUB. POL’Y 665, 667 (2002) (stating that “Zero tolerance policies in Massachusetts, by many accounts, employ a highly energetic, arrest first, ‘take no prisoners’ and talk-later approach.”).

\(^{246}\) See Department of Education, supra note 242.

\(^{247}\) See id.

\(^{248}\) See id.

\(^{249}\) See id.

\(^{250}\) See id.


\(^{252}\) Id.

\(^{253}\) Id.

\(^{254}\) Id.

\(^{255}\) Id.

\(^{256}\) Id.

\(^{257}\) Id.

\(^{258}\) Id. at 11.

\(^{259}\) Id. at 31.

\(^{260}\) Id. at 31-37.
Key Finding #1- Incidents of targeted school violence were rarely sudden, impulsive acts.
Implication- School shootings appear to be the result of a comprehensive process of thinking and behavior. The process usually starts with plan, then development of the plan, securing means to carry out the plan, and ending with a school attack.
Strategy- Information about the plan may be known before the incident. If information about a threat of a school attack arises, school officials and law enforcement must act quickly.

Key Finding #2- Prior to most incidents, other people knew about the attacker’s idea/plan to attack.
Implication- Students can be an important part of prevention efforts.
Strategy- Schools should encourage other students to report potential attacks by breaking down barriers in the school that may inadvertently discourage students from coming forward.

Key Finding #3- Most attackers did not threaten their targets directly prior to the attack.
Implication- Schools should not wait for a threat before beginning an inquiry. Instead, a student’s behavior and communications may prompt concern.
Strategy- School officials should distinguish between someone who makes a threat and someone who poses a threat. Officials should focus on those who pose a threat even if no threat has been made.

Key Finding #4- There was no accurate “profile” of students who engage in targeted school violence.
Implication- The use of a “profile” is not an effective approach to determine which students may pose a threat.
Strategy- Inquiries should not be made on a “type” of student. Rather inquiries should be made based on a student’s behaviors and communications that indicate the student is planning or preparing for an attack.

Key Finding #5- Most attackers engaged in some behavior prior to the incident that caused others concern or indicated a need for help.
Implication- Prior to a school attack it is likely the student will engage in behavior that causes concern to at least one person.
Strategy- Educators and other adults should learn how to spot warning signals in student behavior and notify the appropriate authority.

Key Finding #6- Most attackers had difficulty dealing with significant losses or personal failures and many had considered or attempted suicide.
Implication- Students suffering or having trouble dealing with a loss or difficult situation may need to be referred to appropriate services or resources.

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261 See id. at 13. Making a threat is defined as someone who tells another they intend to harm someone.
262 See id. at 13. Poses a threat is defined as someone who engages in behaviors that indicate an intent, planning or preparation for an attack.
Strategy- If there is concern that a student may engage in violent school behavior, special attention should be given to the possibility that the student has suffered a loss, failures and if the student is experiencing feelings of desperation or helplessness.

Key Finding #7 - Many attackers felt bullied, persecuted or injured prior to the attack.

Implication- Attackers often have been bullied to the point that the experience approached torment.

Strategy- There should be an ongoing effort to reduce bullying in schools.

Key Finding #8- Most attackers had access to the weapons they used prior to the attack.

Implication- Student questioning should include attention to weapon access, prior use of weapons, and communication with others about weapons.

Strategy- Schools and law enforcement should work together on policies and procedures for dealing with situations where a student is thought to have a firearm in school.

Key Finding #9- Often, other students were involved in some capacity.

Implication- It is important to consider the prompting or encouragement a student may receive from others in his life.

Strategy- Investigations into a possible school attack should include the role that a student’s friends or peers may play in the planning and preparation of an attack.

Key Finding #10- Most shooting incidents were stopped by means other than law enforcement intervention.

Implication- It is important to develop preventative measures and emergency planning for schools.

Strategy- Preventative measures should include policies and procedures for responding to threats and other behaviors of concern.

Taken it its totality, the Safe Schools Initiative suggests that future school shootings may be preventable. In most of the school shootings that were analyzed, the attack was planned in advance, the shooter’s peers knew the attack was going to occur, and least one person was concerned about the student’s actions and behavior prior to the shooting.

The Safe Schools Initiative provides findings that suggest “the use of a threat assessment approach may be a promising strategy for preventing a school-based attack.” School officials, law enforcement, and those with public safety responsibilities may be able to prevent future school shootings if they know what information to look for and what they specifically should do with the information. In sum, the Safe Schools Initiative suggested formulating the following two strategies for preventing future school attacks:

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263 Id. at 41.
264 Id.
265 Id.
266 Id.
267 Id.
1. Develop the capacity to pick up on and evaluate available or knowable information that might indicate that there is a risk of a targeted school attack; and,  
2. Employing the results of these risk evaluations or “threat assessment” in developing strategies to prevent potential school attacks from occurring.

B. Recommendations of the Safe School Initiative

Threat assessment is a fact based investigation and analytical approach that looks at what a student is doing or saying and not the student’s appearance.\(^{268}\) The threat assessment method emphasizes the importance of student behavior and communication for identifying and evaluating risks that students pose.\(^{269}\) This means that law enforcement, school officials, and others involved in a student’s assessment must have the tools and training to gather and properly analyze information regarding a student’s behavior and communications.\(^{270}\) Finally, educators must create a school environment where students feel comfortable in coming forward whenever they hear about someone planning an attack.\(^{271}\)

VII. President Obama’s 2013 Solution to Gun Violence

On January 16, 2013 President Obama released a number of legislative proposals and executive actions in an attempt to reduce gun violence.\(^{272}\) President Obama said the proposals address four goals: “keeping guns out of the wrong hands, keeping ‘weapons of war’ off the streets, making schools safer, and improving mental health services.”\(^{273}\) His proposals will include federal funding that will allow communities to hire 1,000 school resource officers and counselors.\(^{274}\) Additionally, the President’s plan will push to ban assault weapons, require a 10-round limit on gun magazines, and expand background checks for those who want to purchase guns.\(^{275}\)

President Obama also outlined 23 executive actions to help reduce gun violence.\(^{276}\) The President stated that starting on January 16, 2013 that his Administration will take specific actions to reduce gun violence, such as:\(^{277}\)

- Issue a Presidential Memorandum to require federal agencies to make relevant data available to federal background check system.
- Improve incentives for states to share information with the background check system.

\(^{268}\) Id.  
\(^{269}\) Id.  
\(^{270}\) Id.  
\(^{271}\) Id.  
\(^{273}\) Id.  
\(^{274}\) Id.  
\(^{275}\) Id.  
\(^{277}\) Id.
- Provide law enforcement, first responders, and school officials with proper training for active shooter situations.
- Maximize enforcement efforts to prevent gun violence and prosecute gun crime.
- Provide incentives for schools to hire school resource officers.
- Commit to finalizing mental health parity regulations.

Although the President’s Executive Actions will take affect quickly, his legislative proposals will be more difficult to institute into law.\textsuperscript{278} Unfortunately, the President’s proposals would have done very little to prevent the Sandy Hook Elementary School Shooting.\textsuperscript{279} For example, the semi-automatic rifle used by Lanza complied with all laws and he was not the person who bought the gun.\textsuperscript{280} Even the President’s banning of high capacity magazines would have only slowed Lanza’s shooting rampage.\textsuperscript{281}

While President Obama’s Executive Actions are a step in the right direction, Congress also needs to act and pass laws that will reduce gun violence and the prevalence of school shootings. The following section recommends strategies to help prevent and respond to school shootings.

VIII. **Recommended Strategies to Prevent School Shootings**\textsuperscript{282}

School shootings are horrific and deserve a swift response from school officials, police and legislators. But rash policy decisions should not be made “in such an emotionally charged environment [because they] may be ineffective or disproportionate to the actual danger posed.”\textsuperscript{283} Decisions made in the midst of misunderstanding or fear could be based on misconceptions that school violence is on the rise or that school children are not safe.\textsuperscript{284} In responding to school shootings, policymakers, parents and school officials need to “have time for reasoned prudence in crafting responses to school violence.”\textsuperscript{285}

Historically, school officials and legislators respond to school violence using a variety of strategies.\textsuperscript{286} These strategies commonly include a combination of deterrence, prevention and punishment.\textsuperscript{287} Some schools have focused on prevention by instituting some sort of anti-

\textsuperscript{278} See Memoli, *supra* note 272 (stating “The administration proposals face an uphill climb in congress, particularly with the Republican-controlled House, but also in the Senate.”).


\textsuperscript{280} Id.

\textsuperscript{281} Id.

\textsuperscript{282} Id.

\textsuperscript{283} See Schwartz et al., *supra* note 13.

\textsuperscript{284} Id.

\textsuperscript{285} Id.

\textsuperscript{286} Id.

\textsuperscript{287} Id.
violence program. Other schools have focused on punishment and try to punish the juvenile shooters and adult offenders.

Unfortunately, even after the Sandy Hook school massacre, law enforcement and school officials will continue to create strategies on how to respond to school emergencies as they have done in the past. As stated by the Orland Unified School District Superintendent Chris von Kleist, “We view our safety, response plans as living documents that are continuously reviewed and adjusted so that we can confidently respond to school crisis, and/or prevent crises from occurring in the first place.” The problem is that changing the words of the policies is not enough; there needs to be a fundamental change in the thinking behind the words.

After a school shooting, the public can expect the usual heightened security, an increase in searches, and an array of legislative bills in an attempt to deter future school shootings. Along with these possible solutions, the public can also expect a number of constitutional challenges, especially in the areas of gun control, student privacy and student rights.

The current laws, policies, and procedures do not provide the best possible solution to school shootings. They were drafted at a time when school shootings were an isolated phenomenon located in specific urban settings. However, present day school shootings are surprise attacks that are difficult to predict, and can occur at any school.

The laws and policies need to be updated in order to keep up with the evolution of school shootings. Therefore, it is suggested that a new set of laws and policies are needed to help combat school shootings. The response to school shootings should not revolve around just gun laws and restrictions. Rather it should be a multifaceted response. As stated by Dr. Carl Bell of the Community Mental Health Council in Chicago, “you can’t blame [school shootings] on the

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288 See Cerrone, supra note 228, at 154. (describing how New Jersey Passaic High School instituted their own anti-violence program which includes peer meditation and leadership programs).

289 See Hemenway, supra note 14, at 268; See also, Patrick Richard McKinney II, On the School Board's Hit List: Community Involvement in Protecting the First and Fourth Amendment Rights of Public School Students, 52 HASTINGS L.J. 1323, 1323 (2001) (stating that most schools respond to antisocial behavior with disciplinary action against the assailant).

290 See Meeker, supra note 26 (describing how in the wake of the Sandy Hook massacre parents, police, and school officials at the Orland Unified School District are reviewing their safety plan, including fencing in their school).

291 See id.

292 Id. (describing how traditionally threats to schools have been seen as coming in from the outside rather than the threat originating on campus).

293 See Jacobs, supra note 15, at 618.

294 See id.

295 See id.

296 See id.

297 See id. at 618-19.

298 See, e.g., see also CAL PENAL CODE §626.9 et seq. (stating that it is against the law to bring a gun onto or near school property); Id. §30510 et seq.(stating California’s assault weapon ban); see also Jim Steinberg, Fontana School Police Acquire 14 Colt Military-style, Semi-Automatic Rifles, DAILY BREEZE, January 24, 2013, http://www.dailybreeze.com/latestnews/ci_22433498/fontana-school-police-purchase-14-military-style-rifles (stating that although the Fontana school police acquired these weapons so they can better respond to school shootings, some school board members are infuriated because it is a change in past policy).

school, you can’t blame it on the family, the breakdown of religion or the availability of guns. It is not that simple. It is usually a combination of things. Behavior is multidetermined.”

This sentiment was reiterated by Vice President Biden who, when asked how to battle gun violence, stated “there’s no silver bullet.”

Since school shootings will continue to occur, two actions must be taken. The first is to review and update current preventative strategies. The second is to adopt a new policy, namely arming certain school teachers and officials so they can minimize the causalities of the next school shooting. The recommended strategies are as follows.

A. Understand the Influence of Violence in the Media

It has been alleged that violence in the media encourages and/or influences violent behavior children. Take, for example, the shooting at Frontier Junior High School in the State of Washington, where a fourteen year old boy went on a shooting spree. After the shooting the boy’s background was analyzed. It turned out that guns and violent video games were prevalent in his house. Additionally, “he picked up a pose from the Oliver Stone movie ‘Natural Born Killers,’ telling a friend it would be ‘pretty cool’ to go on a killing spree just like the two lead characters in the film.” According to court records, as the boy stood over one victim who was choking on his own blood he said, "This sure beats algebra, doesn't it?"

It has also been alleged that violence in music can cause children to act in a violent manner. For example, in the Jonesbro attack, the shooter was a fan of gangster rap. People close to the shooter said that the shooter’s favorite song was “Crept and We Came” which was about committing killings in a massacre-like way. The shooter’s mother said her son also liked playing Mortal Kombat, a video game which involved the graphic killing of opponents.

Rev. Chris Perry, a youth minister for the Jonesbro shooter, said, “There are many cultural forces predisposing kids to violent behavior.” Perry went on to state that, “There is a

300 See Cerrone, supra note 228, at 153; see also Waldron, supra note 299.
302 This Comment is not recommending that schools adopt all of these strategies. But, the more schools adopt, the safer the school will be.
303 See Egan, supra note 59.
304 See id.
305 See id.
306 See id.
307 See id.
308 See id.
309 See id.; see also Dee, supra note 30, at 732 (stating that violent video games such as Doom, Quake, and Mortal Kombat influence the shooters in the Columbine High School shooting).
310 See Egan, supra note 59.
311 See id.
312 See id.
313 See id.
profound cultural influence, like gravity, pulling kids into a world where violence is a perfectly normal way to handle our emotions."\(^ {314} \)

However, not everyone blames culture and media for violent behavior.\(^ {315} \) There are millions of children who listen to gangster rap, and are exposed to violence through culture and media and do not become murderers.\(^ {316} \) Dr Unis, a psychiatrist who analyzed the Frontier shooting, "is reluctant to blame violent cultural influences."\(^ {317} \) But, Dr. Unis and others agree there is a syndrome at work where a child sees a shootout on the news and may be inspired to do something similar.\(^ {318} \) As stated by Renee Erb, an Alaskan prosecutor, "The media or violent videos do not by themselves make the event happen…but it shows them a way."\(^ {319} \)

B. Parents Involvement with Their Children

When it comes to preventing school shootings, some argue that "The best preventive measure for parents is to know their children."\(^ {320} \) For example, parents should communicate with their children, get to know their children’s friends and maintain an interest in their child’s life.\(^ {321} \) Parents should "React warmly when [their] child reaches out, pay attention, make eye contact, and interact [with them]."\(^ {322} \)

Boys accused of committing school shootings are often described as regular children.\(^ {323} \) However, if the parents looked in their children’s bedroom, journals, or listened to discussions with their children’s friends, they could find many clues that trouble is forth coming.\(^ {324} \) In fact, many school shooters were suicidal and wrote notes before the shootings where they assumed they would die in the massacre.\(^ {325} \) Additionally, one shooter told his peers that “something big was going to happen.”\(^ {326} \)

An analysis in 2002, performed by David Hemenway, showed that school shooters shared some common characteristics.\(^ {327} \) Generally, school shooters have been male, they usually felt

\(^ {314} \) See id.
\(^ {315} \) See id.
\(^ {316} \) See id.
\(^ {317} \) See id.
\(^ {318} \) See id.
\(^ {319} \) See id.
\(^ {320} \) See McKinney, supra note 289, at 1361.
\(^ {321} \) See id.
\(^ {322} \) See id., at 1362.
\(^ {323} \) See Egan, supra note 59.
\(^ {324} \) See id.; see also Sarah E. Redfield, Threats Made, Threats Posed School and Judicial Analysis in Need of Redirection, 2003 B.Y.U. EDUC. & L.J. 663, 668 (2003) (stating that the Frontier Middle School shooter wrote a violent poem that foreshadowed his plans).
\(^ {325} \) See Egan, supra note 59; see also Cerrone, supra note 228, at 148 (describing additional shooter characteristics including being deeply troubled, have unresolved grievances, unable to handle anger, and a breakdown of parental supervision.”); see also Redfield, supra note 324 (stating that the Frontier Middle School shooter told a friend that it would be cool to go on a shooting spree just like in “Natural Born Killers”).
\(^ {326} \) See Egan, supra note 59 (describing that three other boys involved in different school shootings made similar statements to class mates).
\(^ {327} \) See Hemenway, supra note 14.
inferior or picked on, and they usually had a grudge against other students or teachers.\textsuperscript{328} The shooters typically listened to violent pop culture including violent movies, music, and video games.\textsuperscript{329} Also, shooters gave warning signs, such as writings, verbal threats and physical assaults.\textsuperscript{330} Finally, many of the shooters were suicidal and saw the killings as a way to end their tortured life.\textsuperscript{331}

C. Tighten Gun Loopholes

Another strategy to reduce gun violence is to close the loopholes that circumvent the current gun laws.\textsuperscript{332} For example, the “gun show loophole” allows unlicensed gun dealers to sell guns without performing a background check on buyers if the sale is made at places such as someone’s back yard, a gun shows or at flea markets.\textsuperscript{333} Additionally, there is a loophole that lets gun manufacturers and owners get around regulations governing the types of guns a person can own.\textsuperscript{334} Finally, once these loopholes are closed, then there needs to be effective enforcement of all gun laws.\textsuperscript{335}

1. Background Check Loophole

On November 30, 1993 President Clinton signed into law the “Brady Handgun Violence Protection Act” (hereinafter, the “Brady Bill”).\textsuperscript{336} The Brady Bill became effective February 28, 1994 and required that every licensed gun dealer must perform a background check on the buyer before a sale could be made.\textsuperscript{337} According to the Brady Campaign to Prevent Gun Violence, the background requirement “has successfully blocked over 1.9 million purchase attempts by dangerous people from a gun dealer.”\textsuperscript{338}

The National Instant Criminal Background Check System (hereinafter, “NICS”) was created to determine whether a person can purchase certain types of guns.\textsuperscript{339} According to the Federal Bureau of Investigation (hereinafter, “FBI”), the NICS is about saving lives and protecting people from harm by not letting certain individuals purchase firearms.\textsuperscript{340} As required by the Brady Bill, and implemented by the FBI on November 30, 1998, the NICS requires

\textsuperscript{328} Id.
\textsuperscript{329} Id.
\textsuperscript{330} Id.
\textsuperscript{331} Id.
\textsuperscript{333} Id. (stating that 40% of gun sales occur at gun shows, flea markets, and backyards).
\textsuperscript{334} See Lou, supra note 167.
\textsuperscript{335} See Darlene Superville, \textit{Obama Skeet-Shooting Photo Released}, \textit{DAILY BREEZE}, February 3, 2013, at A13 (stating the National Rifle Association believes the current administration is not doing enough to enforce the existing gun law).
\textsuperscript{337} Id.
\textsuperscript{338} Id.
Federal Firearms Licensees (hereinafter, “FFL”)) to instantly determine if a prospective gun buyer is eligible to purchase a gun.\footnote{Id.} Before making the sale the FFL must contact the FBI, or other designated agency, to determine if the applicant has a criminal record or is otherwise disqualified.\footnote{Id.} Over 100 million of these checks have been made in the last decade and there over 700,000 people failed the background check.\footnote{Id.}

However, the problem is that the current federal law only requires FFLs to perform background checks on applicants, which accounts for approximately 60% of gun sales in the United States.\footnote{Id.} The loophole allows anyone who is not “engaged in the business” of selling firearms to sell a gun without first performing a background check on the applicant.\footnote{Id.} This means that people can use the “Gun Show Loophole” and “private sales” exceptions to sell guns out of the back of their cars at gun shows, through a newspaper ads or the internet. By taking advantage of these loopholes, the sellers are not required to perform a background check on the buyers.\footnote{Id.}

Only six states have state laws that require background checks on all private firearms sales, including gun shows.\footnote{Id.} Three states require background checks only on handgun sales at gun shows.\footnote{Id.} Seven states require the purchaser get a permit and undergo a background check before buying a handgun at a gun show.\footnote{Id.} But, 33 states have not taken any action to regulate the private sales of guns at gun shows.\footnote{Id.}

This debate should not be about pro-gun rights vs. anti-gun rights; the debate should focus on keeping guns out of the hands of people who should not have them in the first place.\footnote{Id.} There are laws in place that require background checks for a reason. That reason is to keep guns out of the hands of criminals, mentally ill people, and others who should not access to guns.\footnote{Id.} There should not be a loophole in the gun laws that allow any person to buy a gun. One way to help keep guns out of the hands of people who should not have them is by ending the exception to the background check requirement. State lawmakers should pass legislation that closes the loophole and adopt a requirement (similar to California’s law) that anyone purchasing a handgun and assault rifles must pass a background check.

\footnote{Id.}{See Coalition to Stop Gun Violence, supra note 339.}
\footnote{Id.}{See Brady Campaign to Prevent Gun Violence, supra note 336 (stating, “Because guns are especially lethal weapons, it makes sense that before someone can own one, he or she meet the legal requirements for ownership.”).}
\footnote{Id.}{Id. (stating, “These potentially dangerous or high-risk people included felons, youth, and the dangerously mentally ill, among others.”).}
2. Gun Regulation Loopholes

California has one of the strictest prohibitions on assault rifles in the nation. The assault weapon ban was passed in 1989 after California prohibited the sale of guns with certain militaristic style features. Additionally, other guns and gun parts were banned by name.

However, due to gaps in the original law, successful legal challenges, and the ingenuity of manufacturers and gun owners, have made the original assault rifle ban all but obsolete. For example, the Federal Assault Weapons Ban of 1994 outlawed large-capacity magazines. The loophole in this ban is that large-capacity magazines, manufactured before 1994, were exempted from the ban. Additionally, California bans “semiautomatic rifles and pistols with easy-to-reload, detachable magazines, if they also have just one other military-style accessory.” But, manufacturers can get around the ban by using what is known as a “bullet button.” A bullet button allows a shooter to pop out their magazine by “inserting the tip of a bullet or some other small tool into a button on the side of their weapon.” Since the shooter has to release the magazine with some sort of tool, and not by hand, California law does not consider it “detachable,” so that weapon can have additional military type features.

These types of gun loopholes must be closed so that dangerous assault weapons cannot be possessed by members of the public. The White House said that President Obama “supports reinstatement of a federal ban on assault weapons.” However, supporting the 1994 federal ban on assault weapons is not enough. The President needs fight for tough federal laws that bans assault weapons without any loopholes.

However, the fight to put restrictions on guns is made difficult and lengthy due to the influence of the National Rifle Association (NRA). The NRA has rigorously defended the
rights of people to bear arms and opposed almost any legislative effort for any type of gun control.\textsuperscript{366}

D. Security and Police on Campus

One possible strategy to reduce school shootings is to place security guards or police on every school campus.\textsuperscript{367} In 2000, data revealed that 65\% of school districts in the U.S. used some form of security personnel on their school campuses.\textsuperscript{368} Some schools that did not have security before the Sandy Hook Elementary School shooting are now evaluating the pros and cons of hiring armed security guards.\textsuperscript{369} Even schools that cannot afford hiring security guards are finding creative ways to pay for them.\textsuperscript{370} For example, the superintendent of schools in Stamford, Connecticut is hiring security guards and paying for them using the money budgeted for school supplies.\textsuperscript{371}

If schools do not want security guards on campus, another possible strategy to protect students is to have a police officer on campus during school hours.\textsuperscript{372} This strategy and has been around since the mid-1990’s.\textsuperscript{373} Data from 2000 reveals that 19\% of schools had a police officer or some other law enforcement representative present on a full time basis.\textsuperscript{374} In fact, in 2002 it was found that 80\% of schools in Texas had a partnership with their local police department to have a police officer present on campus.\textsuperscript{375} Of the 80\%, over half of the partnerships were formed since 1997, apparently as a result of school shootings.\textsuperscript{376}

This is a strategy that is already used by school throughout the nation.\textsuperscript{377} For example, in Las Vegas, the Clark County School District Police Department has armed police officers at each

\textsuperscript{366} Id. (stating that “Every year the NRA’s powerful lobbying efforts prevent numerous gun control proposals…from being enacted.”).

\textsuperscript{367} Randall R. Berger, Expansion of police power in public schools and the vanishing rights of students, Social Justice 29(2), 119-131.

\textsuperscript{368} Id.


\textsuperscript{371} Id.


\textsuperscript{373} See, e.g., Larry Margasak, Experts: Trained police needed for schools, DAILY BREEZE, December, 29, 2012, at A11 (stating that in Madison, Wisconsin, armed police officers have worked at the district’s high schools since the mid-1990s).

\textsuperscript{374} See Berger, supra note 367.


\textsuperscript{376} Id.

of its 49 high school campuses. Also, in Milwaukee, there are a dozen police officers that cover the schools in the Milwaukee School District. In Los Angeles, as a direct result of the Sandy Hook Elementary School shootings, police officers and sheriff’s deputies will not only be driving by schools more often, but will be attempting to make a visit to every school in the Los Angeles Unified School District.

Some school administrators at the Los Angeles Unified School District welcome this preventative measure to keep their schools safe. These police officers are not only armed, but have special training in violence protection, conflict mediation, counseling, and are able to act immediately in response to anonymous tips by other students. However, other school officials are hesitant to invite police into their schools. One of their concerns is that the expense of placing a police officer at schools may become overwhelming.

E. School Involvement

Schools must be involved with their students and be on the lookout for clues that usually precede school violence. As stated by the Center for Disease Control, one of the most important things schools can do to improve safety is to be aware of behavior that might precede violent outbursts, such as watching for threats, and responding to bullying behavior. It is important that school officials respond to threats, and allegations of threats, quickly and appropriately.

As pointed out in the Safe Schools Initiative in Section VI, teachers and other school officials play a large role in identifying warning signs that a student may be planning an attack. The teachers and school officials must know the students well enough to spot behavior changes that could indicate that a student is considering or planning a school attack. For example, in the Jonesboro, Arkansas School shooting, one of the students stated before the shooting that, “I have a lot of killing to do.” Additionally, the shooter at the Thurston High

378 See Margasak, supra note 373.
379 See id.
381 See Cerrone, supra note 228, at 155.
382 Id.
384 See Margasak, supra note 373 (explaining how the Snohomish School District in Seattle had to stop providing schools with officers because it was too costly).
385 See Redfield, supra note 324, at 665-66.
386 Id. at 666.
387 Id. at 670.
389 Id. at 3.
School shooting said he was going to do “something stupid” before the shooting. This student had also been voted “Most Likely to Start World War III” by his classmates.\(^{391}\)

In fact, such school involvement prevented a teenage student in Alabama from executing his school bomb plot to kill numerous students.\(^{392}\) In Russell County, Alabama, a 17 year old student described in his journal a specific plan to kill six students and one teacher with homemade grenades.\(^{393}\) Fortunately, a teacher found his journal and turned it over to the police before the student was able to carry out any of his attacks.\(^{394}\) Police subsequently arrested the student for attempted assault.\(^{395}\)

F. Improving the school facilities

A good strategy to prevent school shootings is for schools to improve their school facilities by adding metal detectors and video surveillance systems.\(^{396}\) Additionally, they can improve the physical layout of their school campuses.\(^{397}\) In the Orland Unified School District, parents, police and school officials are currently reviewing their school safety plan to make sure it is up to date in the wake of recent shootings.\(^{398}\) One suggestion was to erect fences around the entire campus in order to keep possible shooters off of the school grounds.\(^{399}\) Since many schools are often located near streets and highways, they are vulnerable to people walking directly on to the school campus.\(^{400}\) However, two main issues arise even when considering fencing in a school.\(^{401}\) The first issue is how costly associated with putting up fences around schools and where the money would come from.\(^{402}\)

The second issue is that “fencing in” a school to keep people out assumes that that the threat will be coming from outside the school, which is not always the case.\(^{403}\) For example, in many of the school shootings, it was a student who suddenly opened fire on fellow students and teachers.\(^{404}\) Additionally, in 1998 it was a fifteen year old student at Thurston High school in Springfield, Oregon that shot and killed two students and wounded 25 more.\(^{405}\)

\(^{391}\) Id.
\(^{393}\) Id.
\(^{394}\) Id.
\(^{395}\) Id. Although the student said his journal was a work of fiction, after serving a search warrant on the student’s house, police found “dozens of tobacco containers filled with shrapnel” which had holes cut in them for fuses.
\(^{396}\) See Schwartz, supra note 13, at 14.
\(^{397}\) See, e.g., Meeker, supra note 26 (describing how in the wake of the Sandy Hook massacre parents, police, and school officials at the Orland Unified School District are reviewing their safety plan, including fencing in their school).
\(^{398}\) Id. (describing how in the wake of the Sandy Hook massacre parents, police, and school officials at the Orland Unified School District are reviewing their safety plan).
\(^{399}\) Id. (describing how in the wake of the Sandy Hook massacre parents, police, and school officials at the Orland Unified School District are considering fencing in their school).
\(^{400}\) Id.
\(^{401}\) Id.
\(^{402}\) Id.
\(^{403}\) Id.
\(^{404}\) Id.
\(^{405}\) Id.
As stated by Orland Police Chief J.C. Tolle, “We worry so much about the outside threat coming into the school, we build fences, walls and have protocols for people checking in at the office when they come on campus.”\(^{406}\) However, “what if the threat is already in the school as a student or another staff member?”\(^{407}\) New policies need to focus on improving school facilities to ensure that students coming into the schools do not have any weapons on their person or in their backpacks. This could involve measures such as putting into place the use of metal detectors, better door locks, or installing alarm systems.

H. Updating School Policies

In order to reduce the chance of another school shooting, school officials and others must review, revise, and update school policies pertaining to violence and school shootings.\(^{408}\) For example, the superintendent of the Greenwich School District has sent a letter to parents and staff of the schools stating in wake of the Sandy Hook Elementary School shooting they “are in the process of a thoughtful review of all safety and security measures…”\(^{409}\) The superintendent listed several priorities in the review, including:\(^{410}\)

- Assessing the facilities and addressing needs regarding locks, window coverings, and other physical factors essential to safety;
- Conducting fire and lockdown drills;
- Reviewing existing safety and security procedures;
- Reviewing/revising decision making protocols.

On October 31, 2012 the University of Southern California (hereinafter “USC”) had a shooting on their campus that left four people injured.\(^{411}\) The suspect, who was a USC security guard, got into a verbal altercation with the non-USC student who was attending a Halloween party on the USC campus.\(^{412}\) The security guard opened fire, striking his intended target and injuring three other people.\(^{413}\) The security guard was later arrested and charged with four counts of attempted murder.\(^{414}\)

\(^{406}\) Id.
\(^{407}\) Id.; see also Wallace, supra note 43 (stating that the shooter at the Appalachian law school in Grundy, Virginia was a current student).
\(^{408}\) See, e.g., McKersie, supra note 369; see also Benjamin Sharp, Local districts review policies after Newtown school shooting. Whiton Journal Spectator, December 19, 2012, http://www.journal- spectator.com/news/article_5c0b8996-497d-11e2-b666-001a4bcf887a.html (stating that the Wharton Independent School District Superintendent Kay Shoppa has already met with the district’s principals, administrative staff, and the district’s police chief to review current safety procedures).
\(^{409}\) See, e.g., McKersie, supra note 369.
\(^{410}\) Id.
\(^{412}\) Id.
\(^{413}\) Id.
In response to the Halloween shooting, USC President C.L. Max Nikias announced that several steps would be taken to tighten USC campus security. The security changes would include:

- After hour access to the University campus between 9:00 pm and 6:00 am would be restricted to students, faculty, staff and guests;
- Anyone entering the USC campus after 9:00 pm would be required to show appropriate identification prior to entrance, including students, faculty, staff and guests;
- The requirement of showing appropriate identification may extend to weekend hours where the number of access points to the USC campus is limited.

Many of the nation’s strategies for dealing with school shootings may be outdated or just a new twist on an old policy. Some strategies taken by school districts are little more than a band-aid in addressing school shootings. School policies need to evolve so they adequately address the violent nature of school shootings. One such change that needs to be made is arming certain teachers and school personnel.

IX. Proposed Strategy to Prevent and Respond to School Shootings- Arming Teachers

As noted above, school officials have been using many different strategies to prevent school shootings. Some of the strategies focus on laws, some on the school, and others of the parents and children. But, there is one strategy that now must be included in any discussion on school shootings- arming certain teachers and school officials. There are two logical rationales behind this strategy. The first rationale is that if people know a school...
teacher or official may have a gun on campus they will be less likely to attack that campus. The second rationale is that when someone does go on a shooting spree on a school campus, the armed teacher will be able to stop the shooter preventing others from being killed.

A bill in the Columbia, South Carolina House would allow teachers as well as other school employees to carry guns at school as long as they meet certain requirements. As stated by the bill’s sponsor, Rep. Phillip Lowe, “Schools are gun-free zones right now…[s]o the deranged killers know they can go there and wreak the most havoc.” Additionally, Lowe stated that a second benefit to arming school employees is that if there is a gunman at a school, the employee could end the killing spree by shooting the attacker.

The National Rifle Association (hereinafter “NRA”) has responded to the Sandy Hook school massacre by suggesting that schools use trained armed volunteers in every school in the United States. There are two elements to the NRA’s plan. First, each school will have its own emergency plan that it could alter as needed, but would consist of “armed, trained, qualified school security personnel.” The second element would include reducing massive funding issues. To reduce expenses, the plan would use volunteers as the armed security personnel. Although controversial, this is not the first time volunteers have been used as security. In the state of Arkansas, a local group of “Watchdog Dads” volunteers at schools and provide extra security by patrolling the school campuses.

Some gun activists are relying on arming teachers to prevent future school shootings. For example, in the Harrold Independent School District in northwest Texas, certain teachers are allowed to carry firearms in the belief that such a policy may prevent shooting rampages such as the one in Newtown, Connecticut. The Guardian Plan, as it is named, started in 2006 after a schoolhouse shooting in Pennsylvania and the shooting spree at Virginia Tech in 2007, was the first program designed to arm teachers. The teachers in the program who carry firearms must complete training, and be sanctioned by the school board to carry the concealed weapons.

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425 Id.
426 Id.
427 Id. These requirements would include having a permit to carry a concealed weapon, qualify as an expert marksman, have no history of violence, notify the school district they are armed, and they would have to keep their guns concealed while at school.
428 Id.
429 See Margasak, supra note 373.
430 Id.
431 Id.
432 Id.
433 Id.
434 Id.
435 See Fagan, supra note 222; see also Gun Group Offers Training, supra note 372 (stating that gun rights advocates arguing that teachers can act more quickly than law enforcement officers, and if an armed gunman enters the classroom, the teacher has one more option to end the violence).
437 Id.
438 Id.
However, the Harrold Independent School District appears to have a good reason for arming their teachers- the school is thirty minutes from the nearest police department.\(^{339}\) In this school, the teachers are the first responders and need to protect the children.\(^{440}\)

Any move to arming teachers would be one step closer to safety “for students and teachers- not for predators who are legally guaranteed that their victims will be defenseless.”\(^{441}\) In Pennsylvania lawmakers are planning to introduce legislation that “would allow teachers, principals, and other personnel to carry firearms on school property.”\(^{442}\) As stated by Rep. Greg Lucas, "We trust our teachers with our students' minds. However, current law prevents them from defending our children's bodies during an emergency situation."\(^{443}\)

However, not everyone is in favor of arming teachers and school employees.\(^{444}\) For example, Stella Parrish of Columbia, who was a teacher and school administrator for 40 years, stated she believes allowing someone on campus to be armed, besides a school resource officer, would be a terrible idea.\(^{445}\) Additionally, parents may not like the idea of arming teachers, and remove their children from such schools.\(^{446}\) Finally, the leader of the San Francisco teachers union does not support arming teachers.\(^{447}\)

Opponents to arming teachers have cited their concerns about arming teachers.\(^{448}\) For example, Rep. Bakari (D-Denmark) stated he is worried that if there is a shooting at a school and a teacher has a gun, the police will not know who to shoot.\(^{449}\) One school board member in Hamilton County, Tennessee stated that the idea of a teacher being armed “horrified” them but provided no rationale.\(^{450}\) Some argue that teachers should not be armed because they do not have a locking drawer or secure place to keep the gun.\(^{451}\) Finally, others argue that teachers should not be put into a position where they are making “life ending” decisions and it “could cost more lives in the long run.”\(^{452}\)

Even with such opposition to arming teachers, some law makers in Southeast Tennessee are introducing legislation that will allow school districts to opt into a program that would allow educators to voluntarily receive specialized training to carry a concealed firearm at school.\(^{453}\)

The legislative bill has several provisions that may quell some of the criticisms of allowing

\(^{339}\) Id.

\(^{440}\) Id.

\(^{441}\) See Kopel, supra note 237, at 584.


\(^{443}\) Id. (stating that current Pennsylvania law prohibits guns on school property.)

\(^{444}\) See Kittle, supra note 423; see also Gun Group Offers Training, supra note 372 (stating that a chief lawyer for the Utah Office of Education stated that arming teachers is a horrible, rotten idea).

\(^{445}\) See Kittle, supra note 423 (quoting Rep. Bakari Sellers, D-Denmark, stating that arming teachers, “is an asinine idea.”).

\(^{446}\) Id.

\(^{447}\) See, e.g., Carol Barker, Guns on Campus, Op Ed, DAILY BREEZE, January 7, 2013, at A9 (stating “If teachers carried guns, I would pull my kids out of that school so fast it would make their heads spin.”).

\(^{448}\) See Fagan, supra note 222 (stating that arming teachers would only invite more violence).

\(^{449}\) Many of these concerns can be addressed through training and policies. See, e.g., Hardy, supra note 417.

\(^{450}\) See Kittle, supra note 423.

\(^{451}\) Id.

\(^{452}\) Id.

\(^{453}\) See Hardy, supra note 417 (stating the training would be law enforcement type training).
teachers carry firearms.\footnote{Id.} For example, the bill would require teachers who have firearm permits to take 40 hours of hostile crisis management training, and would require teachers to pay for the associated costs of training.\footnote{Id.} Additionally, the bill would require that teachers use frangible bullets, and indemnify defendants from civil liability if a student was injured or killed as a result of a teacher firing their weapon.\footnote{Id.} While presenting the bill, Rep. Eric Watson (R-Ohio) recounted the heroic actions that the principal at Sandy Hook Elementary School took to protect the students, stating, “She did everything she could to stop the gunman at the door. She was unarmed. And she gave her life... she really didn’t have a fighting chance.”\footnote{Id.}

To further the goal of arming teachers, gun groups in different states are taking it upon themselves to train teachers in the use of handguns.\footnote{See also Gun Group Offers Training, supra note 372.} For example, a gun rights activist group in Utah is offering 200 teachers a 6 hour course in the handling of concealed weapons in an effort arm teachers so they can confront school assailants directly.\footnote{Id.} Also, a firearms group in Ohio is starting a program to give tactical firearms training for 24 teachers.\footnote{Id.}

There are several other states that are talking about introducing bills to allow school teachers and employees to be armed.\footnote{See Kittle, supra note 423; see also, Gollom, supra note 436 (stating that Republican Congressman Tony Cornish, South Dakota Betty Olso and Oklahoma Senator Ralph Shortey and Oklahoma State Representative Mark McCullough are all pursuing legislation that would allow teachers and school employees to carry firearms).} As stated by Texas Governor Rick Perry (R), teachers with permits to carry concealed weapons should have “access to weapons in their schools.”\footnote{See Kittle, supra note 423. As of the writing of this Comment, nine other states have already enacted, or are contemplating enacting, such legislation; see, e.g., Fagan, supra note 222 (stating that the governor of Michigan considered legislation to allow concealed weapons on school grounds); see also Gollom, supra note 436 (stating that just prior to the Sandy Hook school shooting, Michigan state senators voted to allow people with permits to carry concealed weapons, to carry such weapons on school property).} When asked about the idea of school officials carrying guns, Virginia Governor McDonnell (R) stated, “If people were armed, not just a police officer but other school officials who were trained and chose to have a weapon, certainly there would have been an opportunity to stop aggressors coming into the schools. So I think that’s a reasonable discussion that ought to be had.”\footnote{See Saenz, supra note 236.}

However, even though legislators are pushing bills to arm teachers, some of the bills are being opposed by labor groups,\footnote{See Gollom, supra note 436 (stating that the American Federation of Teachers is trying to get the Michigan governor to veto the new law).} activists,\footnote{See Memmott, Let Teachers Carry Guns? Some State Law Makers Say Yes. NATIONAL PUBLIC RADIO, December 19, 2012, http://www.npr.org/blogs/thetwo-way/2012/12/19/167622812/let-teachers-carry-guns-some-state-lawmakers-say-yes. See also, Liz Goodwin, Blue State Governors Not Waiting on Washington to Pass Gun Laws, YAHOO! NEWS, viewed on 1-14-2013, http://news.yahoo.com/blogs/lookout/blue-state-governors-not-waiting-washington-pass-gun-180028343.html (stating that Texas Lt. Governor Dwehurst “has recommended creating a state-funded program to train teachers and administrators on how to use guns to stop and active shooter.”).} and professionals.\footnote{See Saenz, supra note 236.} Perhaps a compromise could
be reached with between teachers who wish to have some sort of personal protection and those who don’t want any guns on campus.\textsuperscript{467} Such a compromise could involve arming teachers and other school personnel with less-than lethal /non-lethal weapons.\textsuperscript{468} Such weapons include using a bean bag munitions,\textsuperscript{469} the use of Oleoresin Capsicum spray (also known as pepper spray),\textsuperscript{470} and the use of tasers.\textsuperscript{471} With six states planning to introduce legislation in 2013 allowing teachers to be armed, the debate over arming teachers is far from over.\textsuperscript{472}

The strategy of arming teachers is a decision that each school district should be free to make and must be based on a solid foundation of policies and procedures.\textsuperscript{473} Before arming teachers or school personnel, policies and procedures must be in place that addresses, at a minimum, the following areas:\textsuperscript{474}

1. Who is eligible to be armed (minimum requirements);\textsuperscript{475}
2. Detail the background check process;\textsuperscript{476}
3. Explain who will pay for the expenses associated with arming school personnel;\textsuperscript{477}
4. Specify how the gun will be worn or stored;\textsuperscript{478}

\textsuperscript{465} See id. (stating that the president of the Brady Campaign, Dan Gross, said the idea of arming teachers is “insane” and would only cause “more carnage”).
\textsuperscript{466} See id. (stating that Gary Kleck, a criminologist at Florida State University argued that arming teachers goes “too far”).
\textsuperscript{467} See, e.g., U.S. Department of Defense Non-Lethal Weapons Program, \url{http://jnlwp.defense.gov/} (describing several non-lethal weapons).
\textsuperscript{468} Id., at \url{http://jnlwp.defense.gov/about/purpose.html#definition} (defining non-lethal weapons as “weapons, devices and munitions that are explicitly designed and primarily employed to immediately incapacitate targeted personnel or materiel, while minimizing fatalities, permanent injury to personnel, and undesired damage to property in the target area or environment. Non-lethal weapons are intended to have reversible effects on personnel and materiel.”).
\textsuperscript{469} See Department of Defense Non-Lethal Weapons Program, \textit{supra} note 467 at \url{http://jnlwp.defense.gov/current/12-Gauge.html} (stating, “These munitions are shotgun rounds that are designed to deliver blunt trauma effects to individuals.”).
\textsuperscript{470} See Department of Defense Non-Lethal Weapons Program, \textit{supra} note 467 at \url{http://jnlwp.defense.gov/current/OC%20Dispersers.html} (stating, “The Oleoresin Capsicum Dispensers are a hand held dispensers providing variable range, single stream (MK-4) or area fog (MK-46) RCA against single or multiple targets with irritant effects.”).
\textsuperscript{471} See Department of Defense Non-Lethal Weapons Program, \textit{supra} note 467 at \url{http://jnlwp.defense.gov/current/TaserX26.html} (stating, “The X26 TASER\textsuperscript{48} is an electro-muscular incapacitation device that uses a nitrogen air cartridge propulsion system to launch two probes tethered to an electrically charged cartridge. Effective range is 0-35 feet, depending on cartridge type, penetrates up to two inches of clothing.”).
\textsuperscript{472} See Memmott, \textit{supra} note 462 (reporting that the six states are Florida, Minnesota, Oklahoma, Oregon, South Dakota and Tennessee).

The purpose of this paper is not to create a boilerplate policy that schools can adopt when deciding to arm its teachers. Rather, the purpose is to urge schools to arm certain teachers and school personnel as a strategy to dealing to school shootings. The writing of a policy for arming teachers should include school personnel, law enforcement, parents, and lawyers.

\textsuperscript{473} This is not a complete list. School districts must develop policies that they feel are important and that respond to their needs and concerns.
\textsuperscript{474} Those eligible would include individuals with a police or military background, and school employees who volunteer to go through the training, and are able to pass a background check.
\textsuperscript{475} The candidate should pass a Department of Justice background check. This would include, among other things, that the person is not a felon, and that the person does not suffer from a mental illness.
\textsuperscript{477} It is suggested that the individual teachers/school personnel purchase the gun they want to use rather than the school issuing a standard gun.
(5) List required initial and on-going training;\textsuperscript{479} 
(6) Provide guidelines for when firearm can be used;\textsuperscript{480} 
(7) Specify what types of gun(s) and ammunition can be used;\textsuperscript{481} 
(8) Provide procedures so teachers are not mistaken for an attacker;\textsuperscript{482} 
(9) Indemnify school personnel if they shoot a student during an incident.\textsuperscript{483}

Although deciding whether to arm certain school personnel is controversial, it is one strategy that requires immediate attention and consideration. The concerns of arming teachers can be address through background checks, specific guidelines, training, and policies. However, the benefit of (1) preventing school shootings; and (2) quickly ending a school shooting before too many children are killed outweighs the outdated thinking that nobody should have guns on a school campus.\textsuperscript{484}

X. Conclusion

School violence and shootings is an epidemic that has been prevalent for over 40 years in U.S. schools.\textsuperscript{485} Why these types of shootings happen is a topic that is multifaceted and not the result of a single cause.\textsuperscript{486} Several topics have been debated when it comes to preventing another school shooting from happening. These topics include changing the physical layout and structures of schools,\textsuperscript{487} closing gun loopholes,\textsuperscript{488} enforcing tougher gun laws,\textsuperscript{489} examining how

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\textsuperscript{478} It is suggested that either the gun is worn or secured in the classroom in a locked desk drawer / cabinet. Since this may require installing locks in school property, the school district should pay for this expense.
\textsuperscript{479} This training should include different aspects of a shooting including how/when to shoot, how to deal with the stress of shooting, and what to expect after a shooting. Also, teachers should be required to qualify on a regular basis at their own expense. The training should be similar to that done by police where simulated stressful situations are used.
\textsuperscript{480} The policy should specify that the teacher is authorized to use their firearm in the case of an immediate threat to their life or the life of their students. For, example, a teacher would not be allowed to pull their firearm to stop a simple school fight, or if they think they hear gunshots somewhere (in this case they should contact the principal or police). But the teacher would be allowed to use their gun if there is a school shooter threatening the students and the teacher believes immediate action must be taken to save lives.
\textsuperscript{481} There are many guns and calibers that teachers and school officials should be able to choose from. Many guns use a small caliber round and can be easily concealed on a person’s body.
\textsuperscript{482} School officials must work with police to develop a strategy so police officers recognize a teacher with a gun and not mistake them as an attacker. This can include requiring the teacher to wear recognizable vest, or not allowing the teacher to roam the campus in search of a shooter.
\textsuperscript{483} Schools should indemnify teachers who use their gun in the course of protecting lives, even if the teacher accidently shoots a student.
\textsuperscript{484} See Kittle, \textit{supra} note 423 (stating that school fun-free zones don’t mean it is safe, it tells killers they can go there and safely kill because is armed so they can’t defend themselves).
\textsuperscript{485} See, e.g., U.S. School Shootings, \textit{supra} note 37. It was in 1966 when a college student at the University of Texas Austin shot and killed 14 people in 1966.
\textsuperscript{486} See Waldron, \textit{supra} note 299, at 4.
\textsuperscript{487} See, e.g., Meeker, \textit{supra} note 26 (stating possible improvements could be added fencing and a new security system).
\textsuperscript{488} See Howe, \textit{supra} note 353.
\textsuperscript{489} See CAL. PENAL CODE §§30525(a) et seq. (California Gun-Free Zeon); \textit{See also} Department of Education, \textit{supra} note 242 (California’s Zero Tolerance Policy).
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violent media influences children,\textsuperscript{490} and building relationships with students to detect warning signs.\textsuperscript{491} Although many of these strategies have been implemented, still school shootings occur.

Perhaps the most hotly contested issue in regards to preventing and responding to school shootings is that of arming certain teachers and school personnel.\textsuperscript{492} There are two distinct viewpoints to arming teachers- those who do not want guns on campus\textsuperscript{493} versus those who believe arming teachers would make schools safer.\textsuperscript{494} Even though the strategy of arming certain teachers is not yet widely accepted, it is a strategy that needs to be adopted because it offers another way to protect school children.\textsuperscript{495}

Unfortunately, the sad truth is that there will be another school shooting in the United States. It will be sudden, random, and unpredictable.\textsuperscript{496} Chances are it will involve a student, or former student, and will result in the killing many students and adults. Although there will be a very quick police response to any such incident, as stated by David Kopel, “by the time the S.W.A.T. team arrives, it will be too late.”\textsuperscript{497}

The time has come for schools to arm certain teachers. School policies need to prepare teachers and school personnel for when the preventative measures, currently in place, fail. For example, at the Sandy Hook Elementary School, the classes were already locked when the shooter came onto the campus.\textsuperscript{498} But that didn’t stop the shooter because he shot his way through the locked door and started his shooting rampage.\textsuperscript{499} Also, teachers and school personnel are likely to be the ones who can quickly stop the shooter. Just as stated in the Safe School Initiative findings, most school shooters have been stopped by means other than law enforcement involvement.\textsuperscript{500} As past school shootings have shown, it is often a teacher or other school personnel who confronts the shooter before the police arrive.\textsuperscript{501} For example, at Taft High School in California, school personnel were able to talk a student shooter into giving up after he shot a classmate with a shotgun.\textsuperscript{502} But what could the school personnel have done if their words fell on deaf ears and the student continued shooting other students? Nothing.

Taken together, the strategies in sections VIII and IX will help prevent future school shootings and help minimize the devastating carnage that results when a gunman decides to open fire on a school campus. One can only speculate as to what impact arming teachers would have had in past school shootings. Could an armed teacher have been able to minimize the injury and death toll at the Virginia Tech School shooting that lasted 11 minutes and involved the gunman entering almost 10 classrooms? Could it have minimized the death toll at the Columbine High

\textsuperscript{490} See Egan, \textit{supra} note 59.
\textsuperscript{491} See The Final Report and Findings of the Safe School Initiative, \textit{supra} note 251.
\textsuperscript{492} See Saenz, \textit{supra} note 236.
\textsuperscript{493} See Kittle, \textit{supra} note 423.
\textsuperscript{494} See Saenz, \textit{supra} note 236.
\textsuperscript{495} Id. (stating that arming school officials in not the majority opinion in the nation).
\textsuperscript{496} Id. (stating that arming school officials in not the majority opinion in the nation).
\textsuperscript{497} See Fox, \textit{supra} note 121.
\textsuperscript{498} See Kopel, \textit{supra} note 237.
\textsuperscript{499} See Sandy Hook Shooting, \textit{supra} note 1.
\textsuperscript{500} See Sandy Hook Shooting, \textit{supra} note 1.
\textsuperscript{502} Id.
School shooting where the shooting spree lasted approximately 49 minutes and 13 people were killed? Could it have minimized the tragedy at the Sandy Hook Elementary School shooting where the shooter went into several classrooms and killed 26 people? We will never know the answers to these questions. But we do know that had the teachers, or even one teacher, been armed, they would have had a fighting chance to protect innocent lives.

Discussions among legislators, academics, law enforcement, and the general public should seek to improve current laws and policies that are already in place, designed to prevent school shootings. It is recommended, in light of the most recent mass shooting at Sandy Hook Elementary School, officials should adopt appropriate policies and procedures that would arm certain teachers and school personnel so when the current preventative strategies fail to stop the next school shooter, teachers and other school personnel can protect our children and save lives.

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Mark would like to thank his wife and Chris Seide for their invaluable comments in reviewing past drafts of this Comment. Mark Velez earned a Bachelor’s degree in business management from the University of Redlands, a Master’s degree in Public Administration from California State University Dominguez Hills, a Ph.D. in Public Administration from the University of Southern California, and a J.D. from Southwestern Law School. Mark has worked in the law enforcement profession for over 23 years and currently holds the rank of Captain at the Palos Verdes Estates Police Department.