

Dear Hennepin County Chiefs of Police:

Thank you for your patience as we worked through how to reconcile your legitimate request for guidance with our lack of authority to issue binding opinions on statutory changes and the reality that we cannot give your departments legal advice.

I am grateful for the collaborative relationship that we have built this past year. Through our regular monthly meetings and open, transparent lines of communication we have effectively partnered to address community safety concerns. Our youth auto theft initiative is an innovative collaboration which is showing early promising signs of success. The attorney I assigned to be your liaison has trained officers on the new marijuana laws and has responded to your questions and concerns effectively and quickly. And we have continued collaborative efforts to more effectively prosecute sexual assault cases.

I know that you want clarity on the potential legal consequences for school resource officers and contracted law enforcement (“SROs”) for their actions taken at schools.

During our last meeting, some of you expressed significant frustration with different interpretations of the new school restraints legislation.

Even after the Attorney General’s latest opinion, many of you have asked to hear directly from me. For that reason, and in furtherance of our ongoing collaborative partnership, I am sharing with you our office’s interpretation of the new statutory language in Minnesota Statutes section 121A.58 and Ch. 121A.582.

I want to reiterate that you should contact your city attorney for specific legal advice. While we can share our interpretation of the law with your officers for training purposes, we cannot give your departments or individual officers legal advice.

I also want to be clear that our office’s interpretation of these statutory changes is not legally binding. Only the Attorney General has the authority to issue binding opinions in this context. Even the Attorney General’s opinions are binding only until reviewed by a court, which could occur in the context of a criminal prosecution. Given our office’s jurisdiction to review cases and make charging decisions in Hennepin County, we do think it important to provide insight on our interpretation of this new statutory language.

First, nothing in the new legislation bars SROs from working in schools. Further, Minnesota Statutes section 121A.582 authorizes reasonable force where it is necessary to prevent bodily harm or death to a child or another person. The test for reasonable force under this section remains highly fact specific.

Prior to these legislative changes, school personnel and agents, which had not been interpreted to include SROs, were not allowed to use prone restraints when engaging with special education students. These statutory changes establish that SROs and contracted law enforcement *are* agents of the school district and expand the protections related to restraints beyond special education to

all students. Specifically, the legislature passed, and the Governor signed, legislation banning prone restraints and other physical holds that impair a child's ability to breathe or communicate distress, unless such physical holds are "reasonable force" to prevent bodily harm or death.

Additionally, there is relevant language in Minnesota Statutes section 121A.582, subdivision 3, which was unchanged, but is relevant to your inquiry. Specifically, this section states:

(b) A school employee, bus driver, or other agent of a district who, in the exercise of the person's lawful authority, *uses reasonable force under the standard in subdivision 1*, paragraph (b), has a defense against a criminal prosecution under section 609.06, subdivision 1.

This is important because although there was not a statutory change to Minnesota Statutes section 609.06, the defense to a criminal prosecution in this subdivision is tied to the use of reasonable force standard defined in subdivision 1, which was changed to only allow reasonable force when there is a risk of bodily harm or death.

I know from speaking with many of you that you see the key role of your SROs as building relationships with youth in schools to help ensure safety. In other words, they have a different role than officers outside schools whose primary role is to enforce the law. This statutory change indicates that the legislature wants SROs aligned with school personnel in terms of the tools used to interact with youth in schools. This may require a shift in training and policy to bring SROs' youth engagement practices in line with that of school personnel. I am aware of federal funding for technical assistance for exactly this type of support.

My hope is this message brings some clarity to your consideration of these issues. I also understand there will be hearings on this issue in the next legislative session. I look forward to those thoughtful discussions, as well as continued transparent collaboration and engagement with you.

Mary

Mary F. Moriarty

Hennepin County Attorney
She/her