
Judiciary Committee

SB 5618

Title: An act relating to the school warrantless search exception.

Brief Description: Including searches by school resource officers and local police school liaison officers within the warrantless school search exception.

Sponsors: Senators Carrell, Padden, Pearson and Harper.

Brief Summary of Bill

- Extends statutory authority to school resource officers and local police school liaison officers to search:
 - A student, the student's possessions, and the student's locker if there are reasonable grounds to suspect that the search will yield evidence of the student's violation of the law or school rules.
 - All student lockers at any time without prior notice and without a reasonable suspicion that the search will yield evidence of any particular student's violation of the law or school rule.
 - A container found in a search of all student lockers, so long as there is a reasonable suspicion that it contains evidence of a student's violation of the law or school rule.

Hearing Date: 3/14/13

Staff: Cece Clynch (786-7195).

Background:

Statutes Governing School Searches.

There are a handful of statutes pertaining to school searches:

Searches Predicated on Reasonable, Individualized Suspicion. A principal, vice principal, or principal's designee may search a student, the student's possessions, and the student's locker if

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that person has reasonable grounds to suspect that the search will yield evidence of the student's violation of the law or school rules. Such a search is mandatory if there are reasonable grounds to suspect a student has possessed a firearm on school grounds in violation of the criminal statute that makes it unlawful, in most cases, for a student to possess a firearm on school premises.

The scope of the search is proper if:

- the methods used are reasonably related to the objective of the search; and
- the search is not excessively intrusive in light of the age and sex of the student and the nature of the suspected infraction.

Prohibition on Strip Searches. Neither a principal, a vice principal, nor a principal's designee may subject a student to a strip search or body cavity search.

General Locker Searches. No right nor expectation of privacy exists for any student as to the use of any locker issued or assigned to a student by a school, and the locker is subject to search for illegal drugs, weapons, and contraband. Searches of all student lockers, by a principal, vice principal, or principal's designee, are authorized at any time, and without prior notice.

Reasonable suspicion that the search will yield evidence of any particular student's violation of the law or school rule is not required.

If, as a result of such a search, reasonable suspicion is developed that a certain container contains evidence of a student's violation of the law or school rule, the principal, vice principal, or principal's designee may search the container as long as the methods used are reasonably related to the objective of the search and the search is not excessively intrusive in light of the age and sex of the student and the nature of the suspected infraction.

Case Law on School Searches.

- The Fourth Amendment to the United States Constitution provides that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."
- Under Washington Constitution Article I, section 7, "no person shall be disturbed in his private affairs, or his home invaded, without authority of law."

Generally, under these constitutional provisions, a government actor needs a warrant supported by probable cause to conduct a search unless an exception applies. One such exception, the "school search exception," is predicated on the rationale that school personnel have a substantial interest in maintaining discipline in the classroom and on school grounds which frequently requires swift action, rendering the warrant requirement unsuitable to the school environment.

The "school search exception" to the warrant requirement was first recognized in Washington in *State v. McKinnon*, 88 Wn. 2d 75 (1977). Decided under the Fourth Amendment, *McKinnon* involved searches, by a principal, of the outer clothing of two students. These searches occurred following receipt of information by the principal that the two students were selling "speed" and had the drugs on their persons at school. The Washington Supreme Court held that search of a student's person is reasonable and does not violate his Fourth Amendment rights, if the school

official has reasonable grounds to believe the search is necessary in the aid of maintaining school discipline and order. The factors to be judged in determining whether a school official has reasonable grounds are:

- the student's age, history, and school record;
- the prevalence and seriousness of the problem in the school to which the search was directed;
- the exigency to make the search without delay; and
- the probative value and reliability of the information used as a justification for the search.

In 1985 the United States Supreme Court (Court) recognized the "school search exception" in *New Jersey v. T.L.O.*, 469 U.S. 325 (1985). That case involved the search of a student's purse by the vice principal after the student had been caught smoking in the lavatory by a teacher and then denied that she smoked at all. In addition to cigarettes, rolling papers, a marijuana pipe, and marijuana were found in the purse. Recognizing that schools present a special environment, the Court held that a school search is reasonable when it:

- is justified at its inception, meaning that there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school; and
- reasonably relates in scope to the circumstances which justified the interference in the first place. A search is reasonable in scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.

Neither *McKinnon* nor *T.L.O.* delineated which individuals are school officials for purposes of the "school search exception." In *T.L.O.*, the court expressly noted in footnote 7 that "We here consider only searches carried out by school authorities acting alone and on their own authority. This case does not present the question of the appropriate standard for assessing the legality of searches conducted by school officials in conjunction with or at the behest of law enforcement agencies, and we express no opinion on that question."

In the recent case of *State v. Meneese*, 174 Wn. 2d 937 (2012), a 7-2 majority of the Washington Supreme Court held that the "school search exception" did *not* apply to a school resource officer (SRO) and that a warrant was required. In that case, a SRO conducted a routine check of the boys' restroom in the high school, looking for truants and smokers, and discovered Meneese standing at the sink holding a bag of marijuana and a medicine vial. At Meneese's feet was his locked backpack. The SRO took Meneese to the dean's office where he placed Meneese under arrest. While waiting on police backup to arrive, the SRO searched Meneese for the key, unlocked the backpack, and discovered a replica Beretta air pistol. Meneese was charged with unlawfully carrying a dangerous weapon on school premises, and argued that since the evidence was seized in an unlawful search it should have been suppressed.

In holding that the "school search exception" did not apply to the search by the SRO and suppressing the evidence, the majority focused upon the following:

- that the SRO was a fully commissioned, uniformed, law enforcement officer employed by the Bellevue Police Department (pursuant to an agreement between the police department and the school district, the district paid \$90,000 per year to the department for the services of six SROs), with no authority to administer school discipline, suspensions, or expulsions, and available to assist other officers with non-school related matters;

- that the SRO had arrested and handcuffed Meneese before searching his backpack and there was, thus, no exigency to the search; and
- that, after arresting Meneese, the focus of the investigation was no longer on informal school discipline which is the underpinning of the "school search exception."

Responding to the assertion by the dissent that its holding was "out of sync with the great weight of decisions since T.L.O. that have considered whether searches conducted by school resource officers or school liaison officers fall within T.L.O.'s exception," the majority stated that even if the Fourth Amendment would allow the school search exception in Meneese, the Washington Constitution would not.

Summary of Bill:

Intent.

Intent is expressed "to allow for the school search exception to the warrant requirement by providing clear authorization for school police officers and school resource officers to conduct searches of students on school grounds to enforce school rules and create a safe learning environment for students and school employees."

Searches by School Resource Officers and Local Police School Liaison Officers.

Statutory authority is explicitly extended to school resource officers and local police school liaison officers to search:

- A student, the student's possessions, and the student's locker if there are reasonable grounds to suspect that the search will yield evidence of the student's violation of the law or school rules.
- All student lockers at any time without prior notice and without a reasonable suspicion that the search will yield evidence of any particular student's violation of the law or school rule.
- A container found in any student locker during a search of all student lockers, so long as there is a reasonable suspicion that it contains evidence of a student's violation of the law or school rule.

The express statutory prohibition on strip searches and body cavity searches is extended to explicitly apply to school resource officers and local police school liaison officers.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.