

Fall 1993

Are Metal Detectors the Answer to Handguns in Public Schools Chalk Talk

Anne McMillin Milton

Follow this and additional works at: <https://scholarcommons.sc.edu/jled>



Part of the [Law Commons](#)

Recommended Citation

Anne Milton McMillin, Are Metal Detectors the Answer to Handguns in Public Schools, 22 J.L. & EDUC. 584 (Fall 1993).

This Article is brought to you by the Law Reviews and Journals at Scholar Commons. It has been accepted for inclusion in The Journal of Law and Education by an authorized editor of Scholar Commons. For more information, please contact digres@mailbox.sc.edu.

Chalk Talk

Are Metal Detectors the Answer to Handguns in Public Schools?

The prevalence of handguns in public schools is one of the most urgent problems facing educators today. According to a 1990 survey by the National Center for Disease Control, one in five high school students carries a weapon to school at least once a month for protection or use in a fight. 139 Cong. Rec. 38,504 (1993). Additionally, United States Department of Justice statistics demonstrate that approximately 100,000 student nationwide bring guns to school everyday. *Id.* During the 1986-1990 school years, The Center to Prevent Handgun Violence found that shootings or hostage situations had occurred in schools in thirty-five states and Washington, D.C. *Id.*

Unfortunately, Kentucky is not immune to this growing problem. While the Kentucky Education Department does not keep records on guns confiscated in public schools, recently students have been found with guns in schools in Bardstown, Covington, and Lexington. Andrew Wolfson, *Federal Law Prohibits Loaded Guns at Schools, But It's Seldom Applied*, THE COURIER JOURNAL, Apr. 2, 1993, at B5. In 1989, eleven students at Jackson County High School were held hostage for nine hours by a student carrying three guns. Richard Wilson, *Violence in Schools Classroom Safety No Longer Taken for Granted*, THE COURIER JOURNAL, Mar. 1, 1993, at A1. Additionally, in January of 1993 a student fatally shot his high school English teacher and a janitor at East Carter High School. *Id.*

What can be done to curb handgun possession in public schools? The answers to this challenging question are not easily arrived at and are certainly controversial. One measure directed at eliminating the problem is the use of metal detectors. Congress, recognizing the problem of handguns in schools, has recently introduced legislation which includes provision for the use of metal detectors in public schools. The Gun Free Schools Act of 1993, sponsored by Representative George Miller of California, seeks to amend the Elementary and Secondary Education Act of 1965 to require all states, as a prerequisite to receiving federal school funding to implement a gun control program in their schools. H.R. REP. No. 987, 103rd Cong., 1st Sess. (1993). As a part of each state's gun control program this resolution directs the state to suspend for at least a year any student who brings a gun or other weapon to school. More importantly, this resolution calls for appropriations of 100 million dollars for each of the

next six fiscal years to establish grants for local educational agencies to purchase metal detectors and other security equipment as well as hire additional security personnel. While this bill is a laudable attempt to deal with weapons in public schools we should take a closer look at the use of metal detectors in public schools.

New York City Public Schools were among the first in the nation to implement the use of metal detectors for random student searches. After confiscating nearly 2000 weapons from New York City schoolchildren in 1989, the city established a pilot program using hand-held metal detectors in five of their 117 high schools. Marianne Yen, *New York Fires First Shots in Academic War on Guns*, WASH. POST, Apr. 22, 1989, at A3. This program, while successfully reducing the number of handguns in public schools, has cost the city over five million dollars to implement. Seth Agulnick, *Where the Subject Is Fear Detectors Now a Part of School Life*, NEWSDAY, Mar. 1, 1992, at 18. Although the metal detectors have been in use for over five years, they have recently come under attack in courts in New York State.

Neither the United States Supreme Court nor any lower federal court has ruled on the validity of student searches conducted with metal detectors. Federal courts have approved searches of students based on reasonable cause or suspicion that the search will turn up evidence that the student being searched has violated law or school rules. *New Jersey v. T.L.O.*, 469 U.S. 325 (1984). The lack of a federal decision on the validity of school metal detector searches will soon cease to exist as more and more school systems begin to conduct such searches.

In May of 1991, a female high school student in Manhattan was arrested for possession of a switchblade after a metal detector had alerted school authorities. The student claimed she was carrying the weapon for her own protection. In her subsequent criminal trial, she moved to suppress the switchblade, claiming that her Fourth Amendment rights had been violated. *People v. Dukes*, 580 N.Y.S. 2d 850 (1992). The court held that the search by means of a hand-held scanner was not an unreasonable search in violation of the Fourth Amendment. *Dukes* at 852. School use of metal detectors was likened to administrative searches conducted at courthouses and airports. *Id.* The main difference between the use of a metal detector at an airport and its use at a school is that in the airport the individual has the choice to walk away from the search. *Id.* However, the fact that students have no choice but to consent to the search because they are compelled by law to attend school does not render the detectors unconstitutional. *Id.*

While school boards may find metal detectors are the only alternative in some schools, their use may actually present more problems than they prevent. In March of 1992 there was filed against the New York Board of

Education a twenty million-dollar lawsuit claiming that a high school failed to protect a student because the metal detectors were not in operation on the day the student was fatally shot. Marcia Chambers, *Sua Sponte*. NAT'L L.J., Mar. 23, 1992, at 13. Plaintiffs in this type of suit would attempt to recover from school systems on two theories: negligent supervision and that the use of metal detectors established a "special duty."

A negligent supervision case would be the easiest for the plaintiff to prove. Plaintiffs would demonstrate that the school system owed them a common law duty of custodial care to protect students from the foreseeable acts of negligent third parties. See *Logan v. City of New York*, 543 N.Y.S. 2d 661 (1989). In this type of suit a court would determine whether the school and the individual injured had notice of the risk of injury. *Id.* It would focus upon whether the assailant had a history of violence. *Id.* It would determine if the school was notified of the potential for violence by the individual that was injured. *Id.* While the plaintiff has the burden of proving these elements, the use of metal detectors in the school could be taken by the court to mean that the school system had both actual and constructive notice of the risk of injury. A plaintiff would argue that metal detectors would not have been installed at a particular school if the school board had not determined that there was a risk of student or faculty injury. Ironically, the use of metal detectors originally installed to protect the student could enable the student to meet her burden of proof in a negligent supervision case.

A lawsuit brought under a "special duty" theory would have a tougher time in the courts but could succeed under the right fact pattern. Normally, municipalities are not liable for injuries suffered due to lack of or inadequate police protection. *LeRose v. City of Zion/Police Dep't*, 696 F. Supp. 1222 (N.D. Ill. 1988). However, the municipality can be held liable where the plaintiff can show a "special duty." To establish this duty a plaintiff must show: that the municipality assumed through its actions to act for the injured party, that there was knowledge on the municipality's part that its inaction would lead to harm, that there was direct contact between the municipality and the injured person, and that the injured person had placed justifiable reliance on the acts of the municipality. *Id.*

A plaintiff would have a difficult time establishing the existence of a special duty of protection on the part of the school. Most cases trying to establish this duty have been resolved as merely inadequate police protection cases and, therefore, no liability has fallen on any municipality. Harry Lipsig, *The Torts Trends Liability for Injury from Weapons in Public Schools*, N.Y. L.J., June 3, 1992, at 3. To succeed in a special duty case the plaintiff must establish that the school or school board took

specific action to protect the injured individual and that the individual relied on that action. While some students may rely on metal detectors in the school for their safety, it would be unusual for the metal detectors to have been installed for the safety of an individual student. Consequently, the assertion of special duty claims will be rare.

Metal detectors in schools will create other problems in addition to potential litigation. Before establishing a system of metal detectors in schools, school boards should consider the detectors' possible damaging effects on public relations. Schools will have to establish explanatory programs for students and parents alike. These programs would alert the public to the problems of violence in their local schools. Furthermore, these programs may divert funds that should be directed to student education. Additionally, school boards considering metal detectors should carefully document school violence to justify their decision to install detectors. Such documentation could, however, possibly be used to establish notice of the risk of injury and violence in a subsequent negligent supervision lawsuit. A final consideration is deciding whether to install metal detectors is that their use causes much delay and additional paperwork for both students and administrators.

Until further litigation defines the scope of permissible uses of metal detectors in public schools, metal detectors should only be used in situations of desperate need. Before trying metal detectors, schools should consider every alternative. For example, school systems could establish police stations outside their schools, as has been done in Chicago and Los Angeles. School boards should implement anti-gun programs in elementary schools to educate children as to the danger of guns. School boards should call for tougher enforcement of state and federal weapons possession laws. Laws such as the Gun Free School Zones Act are rarely enforced, thus rendering them essentially useless in protecting students and teachers. Although the use of metal detectors in schools is an unfortunate indictment of the state of our schools, some school boards will choose to use them for the sake of student safety. Let us hope that these schools are rewarded, rather than penalized, for taking the chance.

JONATHAN W. YARBROUGH