

A Historical Analysis of the Development of Gun-Free Schools Act Legislation in Virginia

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## ABSTRACT

In response to an increase of school shootings, America has seen public outcry for safer schools and the implementation of *get-tough* discipline policies that remove students who pose threats of violence to the safe school environment. One response to the increased rate of violence was the implementation of the *Gun-Free Schools Act (GFSA)*. Criticism of these policies grew, unintended outcomes undermined their implementation, and research data supporting their effectiveness were lacking. The legislature sought to address issues relating to discretion in implementation, due process rights, mandatory expulsion language, and alternative education placement.

This study sought to trace the evolution of GFSA legislation in Virginia. Selected sponsors of GFSA and patrons were identified and interviewed to learn their perceptions of goals and outcomes of legislation prohibiting the possession of weapons on school grounds. Interview questions sought to identify key factors that were considered throughout the legislative process. Interviews were recorded and transcribed. Interview data were analyzed using *QSR NVIVO 9*, data analysis software.

The research design incorporated the collection and analysis of extant information, as well as the use of open-ended interviews with selected policymakers in the Commonwealth of Virginia. Emerging themes were described, categorized, and analyzed within the structure of a historical timeline of the GFSA legislation. Non-legislative documents were analyzed to add support to the interview findings and legislative analysis.

Twelve themes emerged, which were supported in the review of non-legislative documents and in legislative documents. The legislative intent was reinforced in the literature and in the interviews. A review of these data led this researcher to conclude that the *General Assembly* came full circle and virtually reversed the initial requirements for zero-tolerance discipline policies. Continued study is recommended to trace how the *General Assembly* ameliorates racial inequity, increased drop-out rates, increased criminalization, and other harsh and unintended consequences of GFSA legislation in the Commonwealth.

## **DEDICATION**

I thank God and my family for enabling this work to come to fruition.

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## CHAPTER ONE

### INTRODUCTION TO THE RESEARCH

#### Introduction

School disciplinary practice in the United States has changed over time and never more than from 1990 to the present. According to Skiba and Peterson, in response to the perceived increase in the numbers and rates of school violence incidents during the 1990s, policymakers implemented a series of new *get-tough* or *zero-tolerance* discipline policies. Zero-tolerance policy is defined commonly as . . . *predetermined and prescribed penalties that punish all offenses severely, no matter how minor*. According to the authors, the *zero-tolerance* concept, originating from federal drug policy, was extended to public K-12 students for the prohibited possession of weapons on school grounds and was intended to send a clear message that this offense would not be tolerated. Ironically and simultaneously, as federal agencies began to discontinue use of zero-tolerance policies for the possession and use of illegal drugs, public school systems began to implement zero-tolerance discipline policies that focused initially on the possession of weapons by students.<sup>1</sup>

The *Gun-Free Schools Act* (hereafter referred to as the *GFSA*), enacted in October of 1994,<sup>2</sup> required the removal of students who were found to possess weapons and were ruled a threat to the safe school environment. The *GFSA* is part of the re-authorization of the *Elementary and Secondary Education Act (ESEA)*, now part of the *No Child Left Behind Act of 2001*.<sup>3</sup> The *GFSA*, which was signed initially by President William Clinton, mandated a 365-day expulsion for students who were found to possess weapons on school grounds.<sup>4</sup> All states and territories of the United States, including the Commonwealth of Virginia<sup>5</sup> that received federal funds under the *ESEA*, enacted provisions in order to comply with the *GFSA*. According to Gray-Adams and Sinclair, the *GFSA* mandated that each state authorize the chief administering officers of their local educational agencies (LEAs) to review each expulsion on a case-by-case basis. Also, the *GFSA* required that the state legislation be aligned with the Individuals with Disabilities

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<sup>1</sup> Russell Skiba and Reece Peterson, "The Dark Side of Zero-tolerance: Can Punishment Lead to Safe Schools?" (*Phi Delta Kappan*, Vol. 80: No. 5, January, 1999), pp. 372-376.

<sup>2</sup> Title 20, Chapter 70 Subchapter IV, Part A, Subpart 3, §7151 *et. seq.*

<sup>3</sup> Public Law 89-10.79 Stat. 27, Chapter 70. 20 U.S.C. 6301 *et. seq.*

<sup>4</sup> Russell Skiba, "Fast Facts about Zero-tolerance," Bloomington, Indiana: *Phi Delta International*, 2000.

<sup>5</sup> Code of Virginia, *Gun Free Schools Act*, §22.1-277.01

Education Act (IDEA) and required states and territories to report annually information pursuant to implementation of the GFSA to the United States Secretary of Education. Information contained within the annual report included: (1) the number of students expelled (by type of weapon and school level); (2) the number of expulsions that were modified on a case-by-case basis; (3) the number of modified cases, excluding expulsion of students with disabilities; and (4) the number of expelled students who were referred to an alternative school or program.<sup>6</sup>

The majority of the fifty states, including the Commonwealth of Virginia, quickly enacted laws pursuant to the mandate; and many states expanded their zero-tolerance legislation to include the following items brought to public schools: alcohol, illegal drugs, tobacco, and other objects classified as weapons. See Appendix I.

Section §22.1-277.07,<sup>7</sup> *Code of Virginia*, enacted in 1995, authorized local school boards to expel students who brought weapons to school in violation of the GFSA and §22.1-277.06,<sup>8</sup> *Code of Virginia*, enacted in 2004, authorized school boards to consider factors pursuant to determining *special circumstances* that would justify imposing alternative disciplinary actions. The Virginia Board of Education was required by law to establish guidelines and to develop model policies for codes of student conduct in order to aid local school boards develop appropriate policies. The guidelines and model policy required the inclusion of the following components: (1) criteria for expulsion; (2) standards consistent with state, federal, and case law pursuant to various substance and violence-related incidents; (3) the dissemination of promulgated policies to students, their parents, and school personnel; and (4) standards for in-service training of school personnel relative to the management of student conduct and violations of school board policies.

### **Purpose of the Study**

The purpose of this study was to trace the evolution of the GFSA in Virginia, inclusive for 1995 through 2014 *General Assembly* sessions. Legislative data prohibiting possession of weapons on public school grounds were obtained from the *General Assembly Legislative Information System (LIS)*. State statutes relative to the GFSA were categorized and analyzed.

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<sup>6</sup> Karen Gray-Adams and Beth Sinclair, *Report on the State/Territory Implementation of the Gun-Free Schools Act, School Year 1999-2000.* (Rockville, Maryland: Westat, Incorporated, U.S. Department of Education, Washington, D.C., 2002).

<sup>7</sup> *Code of Virginia, Gun Free Schools Act, §22.1-277.07.*

<sup>8</sup> *Code of Virginia, Gun Free Schools Act, §22.1-277.06, Expulsions; procedures; readmission.*

## **Significance of the Study**

All states complied with the federal mandate to adopt zero-tolerance rules for student possession of weapons on public school grounds. The *zero-tolerance movement* has affected the school environment throughout the country by the required inclusion of expulsion requirements for students who bring weapons onto school grounds. The federal mandate also required that any student who is found to possess a weapon on public school grounds is referred automatically to appropriate law enforcement authorities. Specified reporting data are required from all states. The federal mandate does not require that students who were expelled, including those expelled for 365 days, be placed in alternative education settings.

Both state and local boards of education have provided guidance to school personnel, students, parents, and the public regarding implementation of GFSA policies. Local school boards specifically are required by the GFSA to provide information to parents and students on the interpretation and implementation of the GFSA and related disciplinary policies. Local school boards have been challenged to balance the need for a safe educational environment against the need to provide educational services for those expelled, including both regular and special education students.

This study has been designed to assist local school boards and school administrators in gaining an understanding of the historical development and legislative intent of the GFSA. Further, an understanding of the intentions of this legislation will guide the formulation of model policy statements.

## **Research Questions**

From the initial federal Gun-Free Schools Act in 1994, to its parallel enactment by the *Virginia General Assembly* in 1995, the actual implementation of the zero-tolerance policy contained in the GFSA by local school districts has been gradual. This study sought to trace the legislative process, including the several amendments, by answering the following research questions:

1. What are the purposes, descriptions, and requirements of the GFSA as legislated by the Virginia General Assembly?
2. What changes did GFSA legislation undergo in the Commonwealth following its initial implementation?

3. As gained from interviews, what were the expectations of the selected policymakers who sponsored the GFSA legislation?
4. What, if anything, either internal or external to the *Virginia General Assembly*, influenced the enactment of GFSA?
5. Does the enacted GFSA meet the expectations of the selected policymakers who were interviewed?
6. Are the selected policymakers who were interviewed satisfied with the current legislation?

### **Limitations**

Due to the passage of time, the accuracy of actual events will be limited partially to the memory and recall of the participants. The legislative drafting process and subsequent refinement began in Virginia over nineteen years ago, immediately following passage of the GFSA. All legislators who were involved in the enactment of the GFSA were not interviewed. Some legislators relocated to other states, others declined to be interviewed, and two are deceased.

### **Definition of Terms**

**Alternative placement** is clearly distinguishable from the student's regular school placement. The GFSA neither requires nor prohibits the provision of alternative educational services to students who have been expelled. Other federal, state, or local laws may, however, require that students receive alternative educational services in certain circumstances.

**Chief Administering Officer (CAO)** has the authority to modify the expulsion requirement on a case-by-case basis; not formally defined by the GFSA.

**Due Process** is a federal, constitutional protection of an individual based on the Fifth Amendment and made applicable to the states by the Fourteenth Amendment, that as a minimum, wherein a person is served with a notice of charges and/or loss of property has an opportunity to be heard, and to enforce and protect his rights before a court having the power to hear and determine his case.<sup>9</sup>

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<sup>9</sup> *Kazubowski V. Kazubowski*, 45 Ill.2d 405, 259, N.E.2d 282, 290.

**Expulsion** is defined as the exclusion of a student from school for 365 days or more at one time. Only the school board can expel a student.<sup>10</sup>

**Firearm** is defined as any destructive device, which includes: (a) any explosive, incendiary, or poison gas, including the following: (1) bomb; (2) grenade; (3) rocket having a propellant charge of more than four ounces; (4) missile having an explosive or incendiary charge of more than one-quarter ounce; (5) mine, and (6) similar device. Any firearm that will, or that may be readily converted to: (1) expel a projectile by the action of an explosive or other propellant; (2) has any barrel with a bore of more than one-half inch in diameter; (3) any combination or parts either designed or intended for use in converting any device into any destructive device described in the two immediately preceding examples; and (4) from which a destructive device may be readily assembled.<sup>11</sup>

**Gun-Free Schools Act**<sup>12</sup> was enacted on October 20, 1994 as part of the Improving America's Schools Act of 1994 (the reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA), Public Law 103-382, required a calendar year or 365-day suspension for firearm possession, modified on a case-by-case basis, and contained a mandated referral to law-enforcement and the criminal or juvenile justice system.<sup>13</sup>

**Hearing** has been interpreted by the courts as an orderly proceeding during which a person is served notice and states his side of the issue, as cited in the *Due Process Clause* of the Fourteenth Amendment.<sup>14</sup>

**High school** is defined as a school offering the final years of school work necessary for graduation, usually including Grades 10, 11, and 12; or Grades 9, 10, 11, and 12. Combined junior and senior high schools are classified as high schools for the purpose of this study; combined elementary and secondary schools (i.e., K-12 grades) are classified as high schools.<sup>15</sup>

**LEA** is the federal acronym for local educational agency.

**Middle school** is a public school with grades 6 through 8.<sup>16</sup>

**SEA** is the federal acronym for state educational agency.

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<sup>10</sup> Reyes, *op. cit.*

<sup>11</sup> 18 U.S.C. § 921 : U.S. Code - Section 921: Definitions.

<sup>12</sup> *Gun-Free Schools Act of 1994*, 20 USC Chapter 70, 20 U.S.C. § 7151 (Supp. 2003).

<sup>13</sup> Skiba, *op. cit.*

<sup>14</sup> *Goss v. Lopez*, 419 U.S. 565, 95 S. Ct. 729, 42 L. Ed. 2d 725(1975).

<sup>15</sup> Gray-Adams and Sinclair, *op. cit.*

<sup>16</sup> Virginia Department of Education, Accessed June, 2013. See: <http://www.doe.virginia.gov/glossaries/glossary.pdf>.

**Weapon** is defined, pursuant to the GFSA, as (a) any weapon (including a starter gun) which will, or is designed to, or may readily be converted to; expel a projectile by the action of an explosive; (b) the frame or receiver of any such weapon; (c) any firearm muffler or firearm silencer; or (d) any destructive device. Such term does not include an antique firearm.<sup>17</sup>

**Zero-tolerance** refers to public school discipline policy that applied automatic, prescribed, mandatory sanctions for student discipline infractions with little, if any, consideration to the conditions, circumstances, intent, or understanding of the individual committing the offense. Zero-tolerance policies mandated expulsion and suspension for specific discipline infractions.<sup>18</sup>

### **Organization of the Study**

The study is organized into five chapters, plus the references, and appendices. Contained in Chapter One are the introduction, purpose, and overview of the study. Provided in Chapter Two is a comprehensive review of related literature, examines the development of *GFSA* legislation, both at the federal and local levels, and reviews related case law. Outlined in Chapter Three are: (1) the methodology and design of the research study; (2) a description of the instruments used to gather the data; (3) the procedures followed; and (4) a description of the individuals selected to interview.<sup>19</sup> Included in Chapter Four are: (1) presentation of data; (2) results of the data analysis; and (3) discussion of the findings of the research. Presented in Chapter Five are: (1) conclusions; and (2) recommendations for potential follow-up studies. A graphic presentation of the organization of the study is displayed in Figure 1.

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<sup>17</sup> *Gun-Free Schools Act of 1994 op. cit.*

<sup>18</sup> Augustina H. Reyes, *Discipline, Achievement, and Race: Is Zero-tolerance the Answer?* (Lanham, MD: Rowman & Littlefield Publishers, Inc., 2006).

<sup>19</sup> Carol M. Roberts, *The Dissertation Journey: A Practical and Comprehensive Guide to Planning, Writing, and Defending Your Dissertation.* (Thousand Oaks, California: Corwin Press - A Sage Publication Company, 2004).

## Organization of the Study

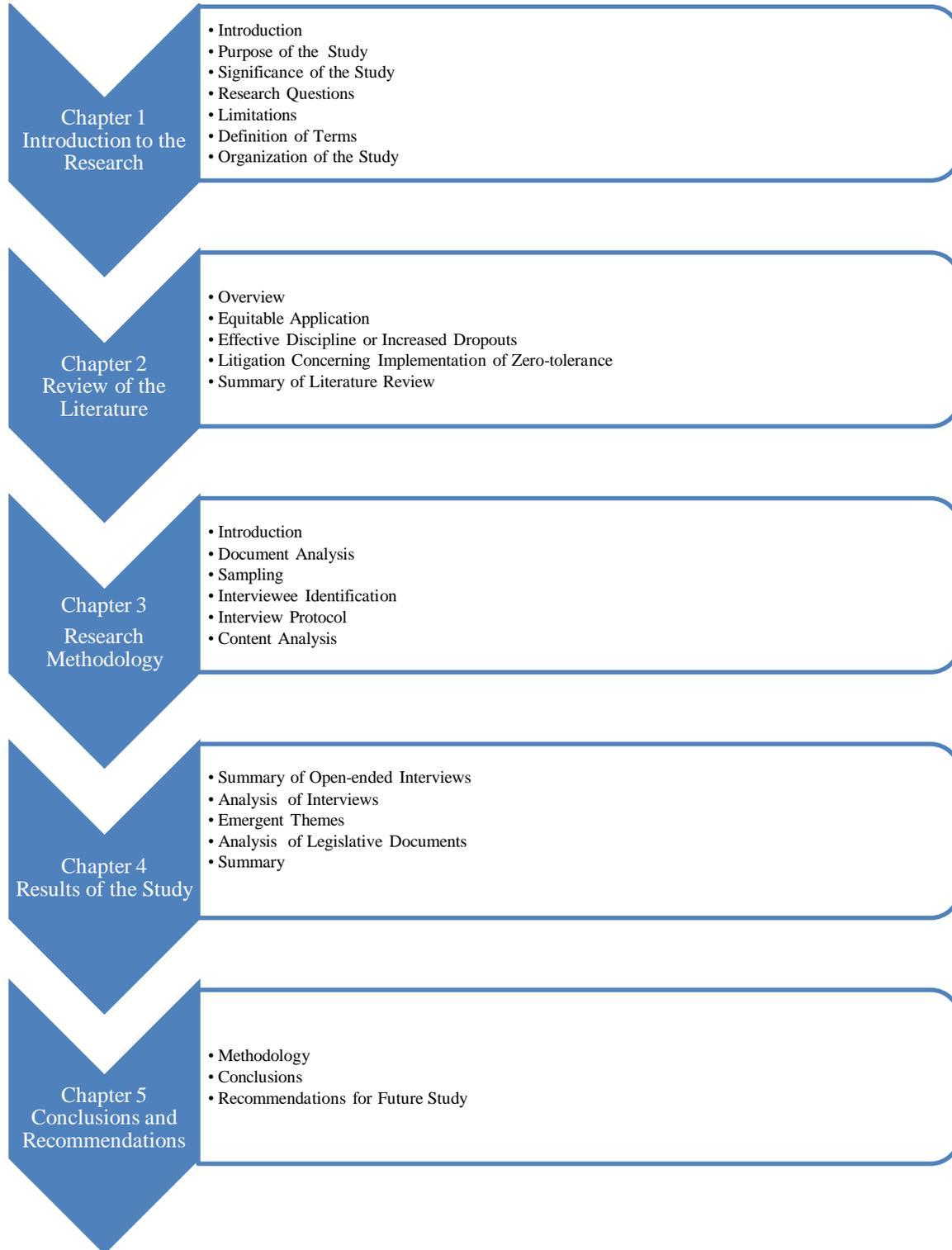


Figure 1. Chapter by chapter organization of the study.

## CHAPTER TWO

### Literature Review

The review of literature began with a search of various databases, including *ProQuest*, *Google*, *ERIC*, and *Vivisimo*, under the topics of the *GFSA* and zero-tolerance discipline policies. The search yielded numerous journal articles, projects, documents, and technical reports regarding issues related to the *GFSA* and its derivative zero-tolerance discipline policies. Research bibliographies were prepared and identified additional resources relating to zero-tolerance discipline policies. One prolific author emerged – Professor Russell Skiba.

Skiba advises schools in the areas of management of disruptive behavior, school discipline, and school violence. Skiba, Professor of Counseling and Educational Psychology at Indiana University at Bloomington, Indiana, has served on the *Safe and Responsive Schools Project*, the *Equity Project*, and the *American Psychological Association's Task Force on Zero-tolerance*. He also is a member of the Center for Evaluation and Education Policy at Indiana University, and he has collaborated with several other authors on discipline and equity-related issues, including the following researchers: Reece Petersen, Gail Morrison, and M. Karega Rausch. Skiba has focused his research on the following: (1) special education disproportionality; (2) equity and effectiveness of school discipline policies; and (3) school violence prevention. He indicated that schools need to provide discipline to maintain a safe environment for learning, but has disagreed with policies that required exclusionary consequences, i.e., zero-tolerance, as an effective policy. Skiba has challenged zero-tolerance policies, particularly as they relate to equity, and he has offered several alternatives.<sup>20</sup>

Conversely, Ronnie Casella, Assistant Professor of Education at Central Connecticut State University, New Britain, Connecticut, a proponent of zero-tolerance policies, has focused his research on education and social welfare policy, youth violence, and public use of security technology. Casella has examined the implementation of zero-tolerance discipline policies, the development of surveillance and metal detection technologies, theories of juvenile delinquency, and crime and incarceration. According to Casella, the severe consequences required by the

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<sup>20</sup> Russell Skiba, "About Me." (*Profile*. January 1, 2014).

*GFSA* have the potential to convince students that the consequences are not worth the risk of committing the crime.<sup>21</sup>

The late Albert Shanker, former president of the American Federation of Teachers (AFT) and founding president of Education International, supported the concept of zero-tolerance discipline policies without using the term specifically. In a 1995 address before the School Safety Conference, he acknowledged that . . . *nobody has ever learned if they were in a classroom with one or two kids who took up 90 percent of the time through disruption, violence, or threats of violence.* According to Shanker . . . *you deprive children of an opportunity to learn if you do not first provide an orderly situation within the classroom and within the school.* He challenged schools not only to teach English and mathematics and reading and writing, but also to teach that there are ways of behaving in society that are unacceptable.<sup>22</sup>

Shanker noted that the striking change in American schools over the past twenty-five years has been the breakdown of order, and he attributed this change to violent and disruptive students who comprised less than 10% of total enrollment. This small percentage has destroyed the educational opportunities for the other 90% of students. Shanker has recommended that these violent and disruptive students receive their education in alternative settings.<sup>23</sup>

Patrick Ewing, a Professor of law and psychology at the State University of New York at Buffalo, has taught criminal law, evidence, juvenile law, and psychology, psychiatry, and law since 1983. An author of five books, including *When Children Kill: The Dynamics of Juvenile Homicide*, Ewing serves as senior editor of *Behavioral Sciences and the Law Journal*. Like Shanker, Patrick Ewing, in *Sensible Zero-tolerance Protects Kids*, indicated that sensible zero-tolerance policy provides a means to make schools safer and more secure. According to Ewing, zero-tolerance serves to: (1) separate dangerous or potentially dangerous students from the rest of the student population; (2) denounce violent student behavior; (3) deter future behavior by sending the clear message that acts will not be tolerated; and (4) provide schools and law enforcement the opportunity to conduct thorough threat assessment.<sup>24</sup>

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<sup>21</sup> Ronnie Casella, "Zero-tolerance Policy in Schools: Rationale, Consequences, and Alternatives." (*Teacher College Record*: Vol. 105, No. 5, 872-92).

<sup>22</sup> Albert Shanker, *School Safety Conference*. (Washington, D. C.: Lecture, February 3, 1995) .

<sup>23</sup> Albert Shanker, "Competing Rights: Student vs. student." (*The Responsive Community - Rights and Responsibilities*: Vol. 6, No. 1, 1995).

<sup>24</sup> Charles Ewing. "Sensible Zero-tolerance Protects Students" In "The Pros and Cons of Zero-tolerance." (*Harvard Education Letter*: Vol. January/February. Cambridge, Massachusetts: Harvard Education Publishing Group, 2000).

Susan Black in *Beyond Zero-tolerance*, observed that Ewing has asserted that zero-tolerance policies protect law-abiding students, allow the swift and easy removal of dangerous students, and deter bad behavior. She also indicated that Ewing has recognized that some schools were guilty of *wild overreactions* and acknowledged that there were imperfections inherent in zero-tolerance discipline policies.<sup>25</sup> Also in *Beyond Zero-tolerance*, Gerald Tirozzi, Executive Director of the National Association of Secondary School Principals, agreed with Ewing regarding *overreactions* and attributed the excessive penalties to the imperfect policies that some school districts have adopted. In light of these flawed policies, Tirozzi recommended a cautious and balanced approach.<sup>26</sup>

### **Equitable Application**

In *Equity or Exclusion*, Eskenazi, Eddins, and Beam explored the equitable application of zero-tolerance discipline policies in New York City public schools relative to such variables as constitutional impact (i.e., *due process* and *equal protection guarantees*, gender, socio-economic class, race and ethnicity, and federal legislation, including Individuals with Disabilities Education Act). Their study focused on two questions: (1) what is the relationship between school resources and student behavior; and (2) are resources that consistently relate to student behavior distributed equitably across race and poverty lines? The data analysis produced the following findings: (1) there is a correlation between resources and positive behavior regardless of race and socio-economic class; (2) there was inequitable distribution of resources in terms of race and ethnicity and socio-economic class; (3) there was systemic variation in administrative action in response to student behaviors along racial and poverty lines; and (4) there was a high correlation in the distribution of behavior along racial and poverty lines and the distribution of resources.<sup>27</sup>

Skiba, et al., in *The Color of Discipline*, focused on why there were higher percentages of African-American students consistently identified for discipline purposes, including suspensions and expulsions. Several factors were examined that appeared to contribute to the disparities. Specifically, they found that: (1) disproportionality of African-American students suspended and

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<sup>25</sup> Susan Black, "Beyond Zero-tolerance," (*American School Board Journal*: Vol. 191, No. 09, 2004).

<sup>26</sup> *Ibid.*

<sup>27</sup> Michael Eskenazi, Gillian Eddins, and John Beam, *Equity or Exclusion: The Dynamics of Resources, Demographics, and Behavior in the New York City Public Schools*, (New York City: National Center for Schools and Communities Fordham University, 2003).

expelled was linked to the disproportional rate of their referral to the principal's office; and (2) the African-American students were more frequently referred to the office, often for less serious infractions and for more subjective reasons. They concluded that disproportionate office referrals that were linked to suspension and expulsion actions provided evidence of bias inherent in the use of exclusionary disciplinary practices.<sup>28</sup>

Morrison and D'Incau in *The Web of Zero-Tolerance: Characteristics of Students Who are Recommended for Expulsion from School* conveyed concern regarding the increased use of suspension and expulsion and its permanence in denying students access to public education and services. Their study in the United States replicated research conducted in Australia and Great Britain regarding the characteristics of expelled students. They described the following characteristics of the expelled and suspended students: (1) demographics; (2) special education status; (3) a range of behavioral, emotional, academic indicators of risk and resilience indicators; and (4) trends among students who were recommended for expulsion. They examined 158 expulsion cases, consisting of 143 males and 15 females over a two-year study period, and found that students described as non-dangerous committed the majority of offenses. The expelled students were typically males in grades eight through twelve, represented a minority racial population, and had identified disabilities. The expelled students tended to have below average grades and academic scores, possessed family and truancy issues, and were more likely to receive special education services.<sup>29</sup> Rausch and Skiba have documented similar findings and reported a higher incidence of out-of-school suspension and a lower rate of expulsion for IDEA students.<sup>30</sup>

In *Racial Profiling and Punishment in U. S. Public Schools: How Zero-tolerance Policies and High Stakes Testing subvert Academic Excellence and Racial Equity*, Tammy Johnson, et al., for the Allied Research Center (ARC) reported that students of color were singled-out for disparate treatment. According to the researchers, educational policy trends that affected students of color were analyzed and several action steps were recommended in order to achieve racial justice and academic excellence in public schools. Specific recommendations included the

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<sup>28</sup> Russell Skiba, Robert Michael, Abra Nardo, and Reece Peterson, *The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment*, (Bloomington: Indiana Education Policy Center, 2002).

<sup>29</sup> Gail Morrison, and Barbara D'Incau, "The Web of Zero-Tolerance: Characteristics of Students Who Are Recommended for Expulsion from School." (*Education and Treatment of Children: Vol. 20, No. 3, 1997*).

<sup>30</sup> M. Karega Rausch and Russell Skiba, "Discipline, Disability, and Race: Disproportionality in Indiana Schools," (*Center for Evaluation and Education Policy - Education Policy Brief: Vol. 4, No. 10, Fall 2006*).

following: (1) eliminate exit exams; (2) repeal zero-tolerance discipline policies; (3) re-order priorities; and (4) issue racial equity report cards. The report concluded that zero-tolerance policies should comply with the original federal guidelines without modification and suggested that resources and funding are vital for high-need populations in order to secure highly qualified teachers, to lower pupil-teacher ratios, and to provide relevant staff development for effectively teaching and understanding these students.<sup>31</sup> Similarly, Townsend suggested that schools were sending the wrong message to African-American students when their suspension rates were two and three times the percentage of the school population as a whole. When the majority of school exclusions are meted-out to African-American students who comprise the minority of the school population, the message has been interpreted by the minority students as rejection and wields a blow to their self-esteem.<sup>32</sup>

Browne, et al. reported that while African-American students comprise 17% of all U.S. students, they account for 33% of all out-of-school suspensions and 31% of all expulsions. They reported, by contrast, 63% of White students account for only 50% of out-of-school suspensions.<sup>33</sup>

A national report, the first conducted jointly by the *Civil Rights Project* at Harvard University and the *Advancement Project*, scrutinized the impact that zero-tolerance discipline policies have upon African-American children and found that: (1) the policy is unfair; (2) is contrary to the developmental needs of children; (3) denies them educational opportunities; and (4) often results in their criminalization. Despite considerable political support for zero-tolerance discipline policies, this national report indicated that its inherent weaknesses have undermined its effectiveness.<sup>34</sup> According to Skiba in *The Color of Discipline*, there are data that support the conclusion that zero-tolerance discipline policies lack equity in application.<sup>35</sup> Morrison and

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<sup>31</sup> Tammy Johnson, Jennifer Boyden, and William Pitts, "Racial Profiling and Punishment in U. S. Public Schools: How Zero-tolerance Policies and High Stakes Testing Subvert Academic Excellence and Racial Equity." *ERASE Initiative*, (New York: Applied Research Center, 2001).

<sup>32</sup> Brenda Townsend, "Disproportionate Discipline of African-American Children and Youth: Culturally-Responsive Strategies for Reducing School Suspension and Expulsions," (*Exceptional Children: Vol. 66, No. 3, 2000*).

<sup>33</sup> Judith Browne, D. Losen, and J. Wald, "Zero-tolerance: Unfair, with Little Recourse." In R. J Skiba & G. G. Noam (Eds.), *New Directions for Youth Development (No.92: Zero-tolerance: Can Suspension and Expulsion Keep Schools Safe?* (San Francisco: Jossey-Bass, 2002).

<sup>34</sup> Advancement Project and Civil Rights Project, *Opportunities Suspended: The Devastating Consequences of Zero-tolerance and School Discipline*. (Washington, D.C.: ARC, 2000).

<sup>35</sup> Skiba et al., "The Color of Discipline" *op. cit.*

D’Incau found that minority students, poor academic achievers, and some students who otherwise would not be expelled are frequently caught in the web of zero-tolerance.<sup>36</sup>

In New Haven, Connecticut Public Schools, Sanneh and Jacobs conducted a case study in 2008 concerning how the involvement of the criminal justice system in school discipline policies and practices caused deprivation of human rights for children in the following four areas: (1) the right to be free from discrimination; (2) the right to education; (3) the right to proportionality in punishment; and (4) the right to freedom of expression. They described the school-to-prison pipeline process in which discipline policies resulted in students dropping-out of school and into the criminal justice system. Their recommendations were not limited to the reform of zero-tolerance policies, but also addressed expulsion without placement into alternative settings.<sup>37</sup>

In 2003, Potts and Njie for the Tennessee Office of Education Accountability, examined zero-tolerance disciplinary data collected by the Tennessee Department of Education for school years 1999-2000, 2000-2001 and 2001-2002. They concluded that most zero-tolerance offenders were male, that African-American students and special education students continued to be disproportionately represented among zero-tolerance offenders, and that almost one-half of all zero-tolerance offenses occurred in grades 8, 9, and 10. Their recommendations were twofold: (1) the Tennessee General Assembly should encourage LEAs to implement more alternatives to expulsion and to increase violence prevention programs (i.e., Life Skills Training, No Bullying Implementation Training, and Peaceable Schools); and (2) the Tennessee Department of Education should collect information from school officials on how they are using their zero-tolerance discipline data to drive policy decisions pursuant to school safety.<sup>38</sup>

Skiba, et al., in *African-American Disproportionality in School Discipline: The Divide Between Best Evidence and Legal Remedy*, reviewed the status of case law and research regarding school discipline racial/ethnic disparities in public schools. Also included in their study was an examination of how federal reporting guidelines often affect student discipline cases involving students of color. They reviewed the historical development and current status of the doctrine of *Colorblind Constitutionalism* and conducted a literature review to explore the extent to which suspension and expulsion achieve the desired purposes. Finally, they reviewed

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<sup>36</sup> Gail Morrison and Barbara D’Incau, *op. cit.*

<sup>37</sup> Sia Sanneh and Samantha Jacobs, "Dignity Denied: The Effect of "Zero-tolerance" Policies on Students' Human Rights: a Case Study of New Haven, Connecticut, Public Schools, (New Haven, CT: ACLU, 2008).

<sup>38</sup> K. Potts and B. Njie, *Zero-tolerance in Tennessee: An Update*, (Nashville, TN: Office of Education Accountability, 2003).

case law concerning the extent to which the courts were willing to limit the use of zero-tolerance policies, pursuant to suspension and expulsion as school disciplinary methods. A key finding of their study was that the courts have given schools latitude when promoting effective strategies for a safe educational environment. However, their research did not support that expulsion from school is an effective strategy. They reported that exclusionary strategies, such as suspension and expulsion, are rife with inherent risks. Among these risks are: (1) repeat offenses; (2) higher rates of drop-outs or the *push-out phenomenon*; (3) higher rates of exclusion that result in lower achievement outcomes; and (4) a disproportionate rate of suspensions and expulsions among minorities.<sup>39</sup>

In *Race is Not Neutral*, another study by Skiba, et al., investigated 364 elementary and middle schools during 2005-2006 academic year and found that students from African-American families were 2.19 (elementary) and 3.78 (middle) times as likely to be referred to the principal's office for problematic behavior than their White peers. An analysis of data indicated that students from African-American and Latino families were more likely than their White peers to receive expulsion or out-of-school suspensions for the same or similar problematic behaviors.<sup>40</sup>

On March 6, 2012, Russlyn Ali, Assistant Secretary for Civil Rights, announced the release of *Part II of the 2009-10 Civil Rights Data Collection (CRDC) report*. These data included approximately 85% of total students enrolled in more than 72,000 schools and were disaggregated by race, ethnicity, English learner status, gender, and disability under *IDEA* and *Section 504 of the Americans with Disabilities Act (ADA)*. The CRDC report contained information not previously reported, such as access to and success in college- and career-ready courses, teacher equity, retention, and access to pre-K programs, incidents of bullying and harassment, and discipline infractions. The key finding of the report indicated that African-American and Hispanic students faced harsher discipline, had less access to vigorous high school curricula, and were taught by less experienced, lower paid teachers. With respect to discipline, an examination of the CRDC report data showed that African-American students, particularly males, were more likely to be suspended or expelled from school than their peers. African-

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<sup>39</sup> Russell Skiba, Suzanne Eckes, and Kevin Brown. "African-American Disproportionality in School Discipline: The Divide Between Best Evidence and Legal Remedy." (*New York Law School Law Review*: Vol. 54, No. 4, 1071-1112).

<sup>40</sup> Russell Skiba, Robert Horner, Choong-Geun Chung, M. Rausch, Seth May, and Tary Tobin. "Race is Not Neutral: A National Investigation of African-American and Latino Disproportionality in School Discipline." (*School Psychology Review*. Vol. 40, No. 1, 2011), pp. 85-107.

American students made up 18% of the students in the sample, but comprised 35% of the students suspended once, and 39% of the students expelled. She said that,

These new data categories are a powerful tool to aid schools and districts in crafting policy, and can unleash the power of research to advance reform in schools.<sup>41</sup>

According to the CRDC report, the undeniable truth is that the everyday educational experience for many students of color violates the principle of equity at the heart of the American promise. Education Secretary Arne Duncan indicated that the CRDC findings provided a wake-up call to educators at every level and issued a broad challenge to work together to address educational inequities,

The power of the data is not only in the numbers themselves, but in the impact it can have when married with the courage and the will to change. The undeniable truth is that the everyday educational experience for many students of color violates the principle of equity at the heart of the American promise. It is our collective duty to change that.<sup>42</sup>

On January 9, 2014, as a collaborative effort, the U. S. Departments of Education and Justice released a *School Discipline Guidance Package*, based upon the beliefs that: (1) fair and equitable discipline policies are an important component of creating an environment where all students feel safe and welcome and (2) schools must take effective steps to eliminate all racial discrimination in discipline referrals.<sup>43</sup> The package was developed in response to President Obama's, *Now is the Time Proposal*,<sup>44</sup> that was intended to reduce gun violence and called on the U. S. Department of Education to collect and disseminate best practices for developing and implementing equitable discipline policies. According to the project authors, the goals of the package were to assist educators with the development of strategies and practices to enhance school climate and to ensure that these strategies and practices are compliant with state and federal law. This guidance package provided recommendations to help schools and districts identify and remedy discriminatory discipline practices, and it offered alternatives for exclusionary practices and the school to prison pipeline. The *School Discipline Guidance Package* contained four components: (1) the Dear Colleague Letter that described the legal

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<sup>41</sup> Russlynn Ali, *Press Conference on Civil Rights Data Collection, Part II*. (Washington, D.C.: March 6, 2012).

<sup>42</sup> Arne Duncan, *New Data from U.S. Department of Education Highlights Educational Inequities Around Teacher Experience, Discipline and High School Rigor*. (Washington D.C.: U.S. Department of Education, March 6, 2012).

<sup>43</sup> U.S. Department of Justice and U.S. Department of Education, *School Discipline Guidance Package*. (Washington, D.C.: Office of Justice Programs, January 9, 2014). See: <http://www2.ed.gov/policy/gen/guid/school-discipline/index.html>.

<sup>44</sup> President Barack Obama, *Now is the Time: The President's Plan to Protect our Children and our Communities by Reducing Gun Violence*. (Washington, D.C.: The Whitehouse, January 16, 2013).

obligations of public schools for equitable application of discipline, without discrimination, based upon race, color, or ethnicity; (2) the Guiding Principles which provided best practices that undergirded three key principles and outlined action steps for the improvement of school climate and school discipline; (3) the Directory of Federal School Climate and Discipline Resources that contains resources, including but not limited to technical assistance, to assist schools, school districts, and states with the implementation of the Guiding Principles; and (4) the Compendium of School Discipline Laws and Regulations that served as a resource of the laws and regulations related to school discipline, which was catalogued by state or territory.<sup>45</sup>

According to the package authors, federal law, Titles IV and VI, served as the legal framework to assist public elementary and secondary schools meet their legal obligations to administer discipline without discriminating on the basis of race, color, or national origin. The package included flowcharts that provided guidance for administrators to evaluate whether or not discrimination had occurred. These crucial questions enabled schools and school districts to determine whether unlawful discrimination was the result of different treatment (intentional discrimination) or disparate impact (misapplication). According to the project authors, seven examples were provided as evidence of unlawful discrimination. Further, the guidance package included information that the departments used to: (1) evaluate unlawful discrimination; (2) stress the importance of appropriate record-keeping; (3) underscore the importance of cooperating with Federal investigations; and (4) list appropriate remedies for non-compliance.<sup>46</sup>

### **Effective Discipline or Increased Drop-Outs**

Kentucky school boards implemented zero-tolerance discipline policies for students who possessed virtually any object that could be considered a weapon, plus illegal drugs, prescription drugs, and several over the counter (OTC) drugs. The implementation of these sweeping zero-tolerance policies had significant consequences, some of them unintended, which have been documented by Richart, et al. Their 2003 report focused on three guiding questions: (1) what is the scope of the juvenile crime problem in the state's public schools; (2) how have its public schools reacted; and (3) have any particular groups been disproportionately affected by the adoption of the zero-tolerance discipline policies? Contained within the report was a review of national and state literature, student discipline referrals from school officials to local juvenile

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<sup>45</sup> U.S. Department of Justice and U.S. Department of Education, *op. cit.*

<sup>46</sup> *Ibid.*

courts, and incidents of student offenses resulting in their expulsions and suspensions. Also included were anecdotal data derived from juvenile justice and child welfare professionals that were collected during four forums conducted in 2001 and 2002. Various electronic search engines were employed in order to survey national reports relating to juvenile crime, zero-tolerance policies, and other exclusionary policies. They reviewed archival records of two Kentucky newspapers and data that were obtained from the Administrative Office of the Court (AOC) and the Kentucky Center for School Safety (KCSS).<sup>47</sup>

This Kentucky-based report concluded that the two top referrals to the juvenile court resulted from the following actions by students: (1) habitually absent from school; and (2) beyond the reasonable control of the school, i.e., child status offenses. Interestingly, the report revealed that if the offenders were considered adults, their actions would not have been illegal. However, the use of the *child status label* made the behavior unlawful. The overwhelming response to student misconduct was the use of out-of-school suspension (OSS) rather than expulsion. The authors reported defiance, fighting, class disruption, skipping detention, inappropriate sexual behavior, profanity or vulgarity, and tobacco use comprised the offense groupings for suspensions. The rate of suspensions for African-American students led that of White students, as well as law violations. The authors found the rate of disparity in Jefferson County, Kentucky, was 17 times as great for African-American students than for Whites, which led to a conclusion that school officials had unlocked the back doors of public schools and sent the African-American children away.<sup>48</sup>

Finally, the researchers found that the implementation of exclusionary policies shifted responsibility for young people from the educational system to the courts. This practice, in turn, created a situation in which the courts were overwhelmed and ill-equipped to resolve the learning and behavioral issues of those referred to them by the school systems, according to the report. The authors recommended that the following six distinct groups act as change agents: (1) parents and students; (2) principals; (3) local school superintendents; (4) members of local school boards; (5) key personnel from Kentucky Department of Education; and (6) representatives of the Juvenile Justice System.<sup>49</sup>

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<sup>47</sup> David Richart, Kim Brooks, and Mark Soler, *Unintended Consequences: The Impact of Zero-tolerance and Other Exclusionary Policies on Kentucky Students*. (Louisville, Kentucky: Spalding University, 2003).

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

Townsend cited the long-established, documented disparate administration of exclusionary and punitive discipline practices applied to African-American students and noted that the harsh consequences of suspension and expulsion denies them access to learning opportunities. When excluded from school, students spend unsupervised time on the streets, further jeopardizing their social and educational status and thereby increasing their opportunities to engage in illegal behaviors, all of which contribute to dropping-out of school.<sup>50</sup>

Judith Browne examined the effect of zero-tolerance policies on youth entering the juvenile system for minor offenses that once were handled solely by schools and parents. Browne made the following recommendations: (1) provide prevention programs for minor offenses; (2) improve data collection; (3) monitor referrals to law enforcement; and (4) provide education/training in adolescent development and behavioral management.<sup>51</sup>

Skiba, et al., tested the assumptions that zero-tolerance is an effective response to disruption that contributes to improved student behavior and improved learning climate. Not only did the authors reveal racial disproportionality across thirty-seven states regarding incarceration, out-of-school suspension (OSS), and expulsion, but they also found that states with higher rates of OSS had higher rates of juvenile incarceration; that racial disproportionality in OSS was associated with similar disproportionality in juvenile incarceration; and that higher rates of OSS were associated with lower rates of achievement in reading, mathematics, and writing. From a positive perspective, the study identified the following attitudes held by principals of schools with low suspension rates and a higher use of alternative prevention strategies: (1) suspension is the last resort; (2) schools should adapt discipline practices to meet the needs of students; (3) parents should be included in the disciplinary process; and (4) schools have a responsibility to teach appropriate social skills.<sup>52</sup>

According to Harb, the most harmful, yet subtle effect of zero-tolerance policies is its denial of education. As students are removed from their educational settings, they typically fall behind in their schoolwork, thereby increasing the likelihood that they will drop-out and engage in other delinquent behavior. Harb concluded that even short-term suspensions have negative

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<sup>50</sup> Brenda Townsend, *op. cit.*

<sup>51</sup> Judith A. Browne, "Derailed: The Schoolhouse to Jailhouse Track." *The Advancement Project*, 2003 Retrieved from: <http://www.buildingblocksforyouth.org/issues/zerotolerance/studies.html>.

<sup>52</sup> Russell Skiba, Ada Simmons, Lori Staudinger, Marcus Rausch, Gayle Dow, and Renae Feggins., *Consistent Removal: Contributions of School Discipline to the School-Prison Pipeline*. (Bloomington, IN: Indiana Education Policy Center, 2003).

consequences on academic performance, and school performance is one of the strongest predictors of whether a youth will drink, smoke, use weapons, or attempt suicide. He found that when students fall behind in their classes, they encounter increased difficulty transferring to full-time work, and the average earnings of drop-outs are significantly less than those of high school graduates. Additionally, he noted that dropping-out is correlated to a higher rate of criminalization and increased negative health factors. Without question, the cumulative denial of education negatively affects the national economy.<sup>53</sup>

According to Judith Browne, studies show that the *pipeline to prison* begins with chronic absences and suspensions or expulsions from school. She found that the use of expulsion and overuse of suspension increases the likelihood that students will drop-out of school. During periods when the students are expelled or suspended, the lack of supervision has adverse effects on both students and their communities.<sup>54</sup>

Molsbee explored the effectiveness of zero-tolerance discipline policies including the amendments to the Texas zero-tolerance policies. She found that Texas legislation prohibiting weapons in schools underwent five amendments, the latest of which occurred in 2005. Molsbee cited the existing debate over whether the latest amendment provided school administrators with an option for increased discretion when considering a student's intentions, student's disciplinary history, and/or student's disability. She noted that the new legislation has failed because many school districts have interpreted the option as voluntary and has chosen to ignore it. Molsbee concluded that not only did zero-tolerance discipline policies fail to cure the incidents of increased school violence in Texas schools, but the policies created additional problems. The author attributed zero-tolerance discipline policies to the following: (1) increased suspension and expulsion rates; (2) reinforced bad behavior and recidivism; (3) increased use of arrests and citations to address schools' disciplinary infractions; (4) disproportionately disciplined minority, low-income and learning-disabled students; (5) diminished education for students; (6) increased the warehousing of unwanted students in alternative educational placements; and (7) increased societal burden of school drop-outs. She advocated against the elimination of zero-tolerance policies and proposed a policy that included a combination of punishments and programs. These

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<sup>53</sup> Nova Harb, *From Classrooms to Courtrooms: Zero-tolerance Unveiled*. (Atlanta, Georgia: Emory University, 2004).

<sup>54</sup> Browne, *op. cit.*

programs should work together to uncover the reasons students are misbehaving and provide support for student's educational and overall development.<sup>55</sup>

Wilka indicated that in a *Policy Analysis Exercise (PAE)* prepared in 2011 for the *Children's Defense Fund* and the *Massachusetts Coalition to Dismantle the Cradle to Prison Pipeline*, zero-tolerance school discipline policies were analyzed for 2009-2010, and strategic opportunities for intervention were identified. Several serious and unintended consequences of zero-tolerance policies were identified, among them the increased use of suspension and expulsion of students who were deemed a threat to school safety. She indicated that the path to prison was characterized as both jarring and subtle. Not only were students who committed acts of heinous violence ending in prison, but also the students who were suspended only for disruptive behavior. The ensuing disconnect from school due to suspension and expulsion often led to increased behavioral infractions once the students returned to school; leading her to the conclusion that the cycle continued, thus, contributing to the *cradle to prison pipeline*. The Massachusetts school discipline data from 2009-2010 analyzed by Wilka showed that 199,056 days were missed as a result of disciplinary exclusion, 31,000 days for relatively minor offenses. The use of out-of-school suspensions was consistently shown to punish both serious and non-serious offenses. Specifically, 67% of out-of-school suspensions were awarded for non-serious offenses. She recommended the use of exclusion in incidents that posed threats to student safety and suggested employment of the following traffic light coding system: (1) green-light for non-serious offenses; (2) yellow-light for serious offenses in name, but situations that were unlikely to pose a threat to safety; and (3) red-light for offenses that pose threats to safety. She also recommended interventions at the school, school district, and state levels for policy advocacy and policy reform.<sup>56</sup>

In an issue brief by the *Ohio Children's Defense Fund*, in collaboration with the *Ohio Poverty Law Center*, the impact of zero-tolerance discipline exclusions on disparate groups and the harm to students and communities were analyzed. Disability, economic, and racial disparities all increased since the implementation of zero-tolerance policies. During 2010-2011, Ohio students with emotional disturbances were 7.2 times more likely to be suspended than students

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<sup>55</sup> Sheena Molsbee, "Zeroing out Zero-tolerance: Eliminating Zero-tolerance Policies in Texas Schools," (*Texas Tech Law Review*: Vol. 40, No. 2, 2008) pp. 325-363.

<sup>56</sup> Jennifer Wilka, *Dismantling the Cradle to Prison Pipeline: Analyzing Zero-tolerance School Discipline Policies and Identifying Strategic Opportunities for Intervention*. (Cambridge, Massachusetts: Harvard Kennedy School, 2011).

without disabilities. African-American students were 5.2 times more likely to be suspended than White students, and African-American students with emotional disturbances were 10 times more likely to be suspended. According to Ohio Department of Education, only 6% of out-of-school suspensions involved weapons or drugs, while 64% of total out-of-school suspensions were for disobedient or disruptive behaviors. These data mirrors the national trend of 5% out-of-school suspensions for weapons or drugs and 95% of out-of-school suspensions or disruptive behavior. Zero-tolerance discipline policies were characterized as treating the symptoms and failed to consider the underlying reasons for student behavior. Expulsion has taken the place of discipline strategies designed to teach students to respond appropriately to challenges. There are immediate and lasting harm to students along the following continuum: (1) a loss of learning opportunities; (2) staying at home unsupervised; (3) increased chances of behavior that can lead to the juvenile justice system; (4) increased likelihood of becoming a victim of a crime; (5) higher risk of lower achievement scores; (6) increased likelihood for further discipline upon return to school after exclusion; (7) increased likelihood of dropping-out of school; and (8) an increased risk of becoming trapped in the pipeline to prison. Preventive approaches, informed by research and child development principles, were recommended to address the inadequacies of zero-tolerance and exclusionary school discipline policies. *Positive Behavioral Interventions and Supports (PBIS)*, a process for improving a school's ability to teach behavioral expectations and to support positive behavior, was recommended. Restorative practices, which hold students accountable without removing them from school, also were recommended, and revisions to the *Ohio Code* that removed language mandating zero-tolerance policies were recommended.<sup>57</sup>

The effects of school exclusion in Virginia were studied by Ciolfi, et al. in a report published by the *Legal Aid Justice Center's JustChildren Program*. They focused on long-term suspensions and expulsions and reported that long-term deprivation of educational services was counterproductive and deprived students of a fundamental right. Analysis of data drawn from AY 2009-2010 showed that the top four incidents reported as disruptive were: (1) defiance; (2) classroom misbehavior; (3) inappropriate language and gestures; and (4) general disrespect. The following AY 2010-2011, Virginia schools administered 708 expulsions, whereby students of color, particularly males, were disciplined at greater and harsher rates than White students who

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<sup>57</sup> The Children's Defense Fund-Ohio and The Ohio Poverty Law Center, *Zero-tolerance and Exclusionary School Discipline Policies Harm Students and Contribute to Cradle to Prison Pipeline*. (Columbus, Ohio: Children's Defense Fund-Ohio, November, 2012).

exhibited similar behaviors. Minorities comprised 24% of the student enrollment, yet accounted for 57% of students who were suspended and expelled.<sup>58</sup>

Ciolfi, et al., commented on the data collection methodology used to obtain relevant information and how it has challenged its usefulness to researchers and policymakers. For example, data regarding disciplinary incidents and outcomes collected for the *Safe Schools Information Resource (SSIR)* and dedicated to making discipline data accessible to the public, were collected but were not reported by race/ethnicity, disability status, or gender. Restrictions for the release of data drawn from fewer than ten students presented challenges for improvement strategies and formation of best practices. The Virginia Department of Education does not collect: (1) the number of students in each school district who were suspended or expelled without receiving educational services; (2) the number of students who were placed in local alternative educational programs the length of their placement, their performance on Standards of Learning (SOL) tests, or their graduation rates; (3) the disciplinary incidents and outcomes for economically disadvantaged students and those qualifying as limited English proficiency; and (4) the data for students who were arrested or referred to juvenile court for school-based misconduct, the authors reported. As a consequence, absence of these data inhibits policymakers from addressing many areas. In summary, the authors cited four reasons why school suspension and expulsion are harmful. Each reason presents a challenge to the effectiveness of zero-tolerance discipline policies, including the following: (1) excluding students from school does not improve their behavior; (2) suspended and expelled youth are more likely to become dropouts; (3) poor school climate leads to lower student achievement and increased teacher turnover; and (4) harsh penalties for minor misbehaviors do not make local communities safer.<sup>59</sup>

Heilbrun, et al., of the Curry School of Education, University of Virginia, investigated the correlation between principals' attitudes toward zero-tolerance and racial disparities to the suspension practices in the Commonwealth, in which 306 principals completed a mandatory *Safety Audit Survey* that included a *Zero-tolerance Attitudes Scale*. They found that statistical and regression analyses showed differences between short- and long-term suspension rates between White and Black students. Black students were suspended at higher rates than White students and principals' endorsements of zero-tolerance legislation were significantly and

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<sup>58</sup> Angela Ciolfi, C. Shin, and J. Harris, *Educate Every Child: Promoting Positive Solutions to School Discipline in Virginia*. (Charlottesville, Virginia: Legal Aid Justice Center, 2011).

<sup>59</sup> *Ibid.*

positively associated with short-term suspensions, when the school-level demographic factors were controlled.<sup>60</sup>

In an *Education Week* article, Nirvi Shah described a policy shift that aims to assure safety while keeping students in school. Zero-tolerance discipline policies, initially applied for the most serious offenses such as the possession of weapons, have applied harsh consequences for lower level offenses such as disrespect and fighting. This failed solution has yielded millions of suspensions and expulsions. Psychologists, physicians, and teachers' unions have denounced these practices as academically and socially harmful to students, ineffective as preventive tools, and a source of inequitable application to minorities. Supporters of exclusionary zero-tolerance school discipline practices claim that students have become more disruptive and combative, and they attribute this change to the deterioration of students' home lives. Conversely, out-of-school punishment has shifted the responsibility for disciplining students to parents and has excluded those students disproportionately whose academic achievement historically has lagged. Shah noted that the analysis of data by the Education Department's Office for Civil Rights from 2009-10 indicated that while African-American students comprise 18% of students in the data set, they accounted for nearly 50% of students suspended out-of-school more than once. According to Shah, other analyses of the federal data show that one in six African-American students, one in fourteen Latino students, and one in twenty White students of those in the data set were suspended at least once from school. Shah pointed to several new options including the *Elev8 Model* that has been used in New Mexico and several other states. The model used school-based health centers to provide mental health and behavioral support for students, provided after-school activities, made referrals for families to medical and social services, and offered academic support. New federal initiatives have been employed in Hawaii, South Carolina, and Michigan, in which funds were provided for teacher training in classroom management and for the development of positive behavioral interventions. The Chicago school board voted to eliminate the automatic 10-day suspension, and Baltimore and Philadelphia school districts rewrote their

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<sup>60</sup> Anna Heilbrun, Dewey Cornell, and Peter Lovegrove, "Principal Attitudes Regarding Zero-tolerance and Racial Disparities in School Suspension," *Virginia Youth Violence Project*, Curry School of Education, University of Virginia, Charlottesville, Virginia, 2013.

codes of student conduct which relied heavily on exclusionary zero-tolerance discipline policies.<sup>61</sup>

### **Student Achievement**

As stated previously, removal of students from the educational setting not only damages student achievement but also negatively affects the national economy. Specifically, Polakow-Suransky studied the effects of the *GFSA* on the Michigan public schools. The purpose of his study was two-fold: (1) to explore the implications of Michigan's zero-tolerance policy for educational equity and equal opportunity, and (2) to analyze the effects of the state legislation upon the lives of expelled students and their families. According to the author, school districts selected for analysis were based on geographic location, diversity of population, and the annual per-pupil expenditures. The researcher obtained expulsion data for AYs 1995-1996 and 1996-1997 from one hundred districts, disaggregated by race, gender, special education status, and free and reduced price lunch eligibility. The response rate with varying degrees of compliance was 64%. Interviews were conducted with expelled students and their families and consultations held with school personnel, civil rights officials, and law enforcement personnel. An analysis of these interviews and consultations quantified their perceptions about the state's zero-tolerance policy and suggested that zero-tolerance actions often were applied in an arbitrary and capricious manner by local school officials, with little or no provision for constitutionally protected *due process* rights. Exclusion from school often led to increased student apathy, lowered self-esteem, increased family turmoil, and distrust of school officials, who were viewed as unfair and prone to misuse their power. It is notable that all interviewees expressed their dismay regarding the school districts' lack of commitment to provide alternative education for students once they were expelled.<sup>62</sup>

### **Safe Schools**

Skiba reported that there is a scarcity of research to support the effectiveness of zero-tolerance discipline policies in making schools safer; and despite the enactment of the federal legislation and the wide-spread adoption of zero-tolerance discipline policies, school shootings

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<sup>61</sup> Nirvi Shah, "Discipline Policies Shift with Views on What Works," (*Education Week*, Vol. 32, No. 16 (2013): 4-5, 7, 9-11.

<sup>62</sup> Sasha Polakow-Suransky, *Access Denied: Mandatory Expulsion Requirements and the Erosion of Educational Opportunity in Michigan*. (Ann Arbor: Student Advocacy Center of Michigan, 1999).

have remained prevalent.<sup>63</sup> Depicted in *Figure 2* are the numbers of school shootings by state from 1996-2012.<sup>64</sup>

As reported by James Barron, an extraordinarily tragic shooting occurred on December 14, 2012, at Sandy Hook Elementary School in Newtown, Connecticut. A deranged gunman took the lives of 20 children, 6 adults, and himself. All of the children were six- or seven-years old, and all of the victims at the school were shot multiple times with a high-powered rifle. The ammunition used by the shooter was designed to inflict maximum damage by disintegrating once inside the victims, tearing apart bone and tissue, and making the identification extremely difficult.<sup>65</sup> According to Michael Cooper, this mass tragedy focused national attention on school shootings and rekindled the debate over gun control, specifically, the assault weapon ban, limiting access to high quantity magazines, and restricting gun access to the mentally ill. The media were flooded with images of frantic family members reporting to the shooting site to claim to their surviving children or to be briefed on the condition of others who were wounded or Deceased. Because of its heinousness and the use of high volume ammunition clips, the shooting has been compared to the Columbine High School shooting in Jefferson County, Colorado; the Aurora theater shooting in Colorado; and the shooting involving former Representative Gabrielle Giffords in Tucson, Arizona.<sup>66</sup>

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<sup>63</sup> Russell Skiba, *Zero-tolerance, Zero Evidence: An Analysis of School Disciplinary Practice*. (Indiana Education Policy Center, 2000).

<sup>64</sup> Information Please Database, (Boston, MA: Pearson Education, Inc., 2012).

<sup>65</sup> James Barron, "Nation Reels After Gunman Massacres 20 Children at School in Connecticut." (*New York Times*: December 12, 2012).

<sup>66</sup> Michael Cooper, "Debate on Gun Control is Revived, Amid a Trend Toward Fewer Restrictions." (*New York Times*, December 15, 2012).

## School Shootings from 1996-2012

<b>States</b>	<b>Shootings</b>	<b>States</b>	<b>Shootings</b>
Alabama	1	Montana	0
Alaska	1	Nebraska	0
Arizona	0	Nevada	1
Arkansas	2	New Hampshire	2
California	3	New Jersey	0
Colorado	2	New Mexico	0
Connecticut	0	New York	1
Delaware	0	North Carolina	0
District of Columbia	0	North Dakota	0
Florida	3	Ohio	2
Georgia	2	Oklahoma	1
Hawaii	0	Oregon	1
Idaho	0	Pennsylvania	5
Illinois	0	Rhode Island	0
Indiana	1	South Carolina	0
Iowa	0	South Dakota	0
Kansas	0	Tennessee	3
Kentucky	1	Texas	1
Louisiana	2	Utah	0
Maine	0	Vermont	1
Maryland	1	Virginia	1
Massachusetts	0	Washington	3
Michigan	2	West Virginia	0
Minnesota	2	Wisconsin	1
Mississippi	1	Wyoming	0
Missouri	0		

*Figure 2.* Number of school shootings by state from 1996-2012.

*ABC News Nightline* newsmagazine, reported by Jake Tapper, et al., broadcasted *President Obama Launches Gun Violence Task Force* on December 19, 2012. President Barack Obama named Vice-President Joe Biden, an advocate of anti-crime measures, to spearhead a task-force to examine the causes behind gun violence, to consult with various officials and groups, and to submit recommendations by the end of the January 2013.<sup>67</sup> On January 15, 2013, Duke Chen, Legislative Analyst in the Office of Legislative Research, reported that Vice President Biden's task-force submitted the following recommendations to President Barack Obama: (1) employ universal background checks; and (2) impose a ban on assault weapons, high capacity magazines that hold 10 or more rounds, and armor-piercing bullet possession.<sup>68</sup> These recommendations were the federal government's response in the wake of the school shootings in Newtown, Connecticut.

By mid-March, Sen. Harry Reid excluded Sen. Diane Feinstein's assault gun ban from the legislation in an effort to put forth a bill more likely to gain bipartisan support. According to Steinhauer in an article in the *New York Times*, Senators Joe Manchin and Pat Toomey teamed up to sponsor the *Manchin-Toomey Amendment*, also known as the *Public Safety and Second Amendment Rights Protection Act*, and proposed the following: (1) expand the existing background check system to include commercial sales; (2) strengthen the existing instant check system by encouraging states to put all available records into the *National Instant Criminal Background Check System (NICS)*; and (3) establish a *National Commission on Mass Violence* to study the causes of mass gun violence in the country.<sup>69</sup>

J. DeVoe et al. indicated that vital to ensuring safer schools is the establishment, monitoring, and updating of good indicators of the current state of school crime and safety across the nation. A joint 2004 publication of the *Bureau of Justice Statistics* and the *National Center for Education Statistics*, entitled *Indicators of School Crime and Safety*, provided a snapshot of specific crime and safety indicators, including possession of weapons and a chronicle of student perceptions about school safety. The indicators were drawn from surveys of students, teachers, and parents; and data collected from federal departments and agencies. Key findings of the

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<sup>67</sup>Jake Tapper, Devin Dwyer, and Mary Bruce, "President Obama Launches Gun-Violence Task Force." (Washington, D.C.: *ABC Nightline*, December 19, 2012).

<sup>68</sup>Duke Chen, "Summary of President Obama's Gun Control Proposals," (Washington, D.C.: *OLR Research Report*, No. 2013-R-0052, January 18, 2013) pp. 1-8.

<sup>69</sup>Jennifer Steinhauer, "Senator is Angry over Bill's Exclusion of Assault Gun Ban." (New York: *New York Times*, March 19, 2013).

*Bureau of Justice Statistics* and the *National Center for Education Statistics Study* included a data component containing the number of violent deaths at school, indicating that there were thirty-two school-associated deaths; twenty-four homicides, and eight suicides from July 1, 1999, to June 30, 2003, which involved school-aged children. However, the victimization rate for students ages 12-18 declined both at school and away from school. The percentage of students who had been threatened or injured with a weapon on school property fluctuated between 1993 and 2003, but no clear trend emerged. The percent of students in grades 9-12 who reported carrying a weapon such as a gun, knife, or club onto school property within the previous 30 days declined from 12% to 6% between the years 1993 and 2003.<sup>70</sup>

Gray-Adams and Sinclair prepared a report for the U. S. Department of Education based upon 2002-2003 data provided by each state and outlying areas of the country that summarized overall findings, and presented comparative data obtained from previous reported data years. Unfortunately, this report contained incomparable data among states, and should be interpreted with caution. According to Gray and Sinclair, the report was not designed to provide information regarding the rates that students carried firearms to school; instead, the report focused on the actions taken pursuant to the number of students who brought firearms to schools. All fifty states and outlying areas reported that under the *GFSA* for the AY 2001-2002, a total of 2,554 students were expelled from school. A breakdown of expulsions by school level revealed that 57% of expulsions were high school students, 30% were junior high school students, and 13% were elementary school students, according to the report. Fifty percent of the expulsions resulted from possession of a handgun on school property; 38% for another type of firearm or other destructive device; and 12% were expelled for bringing a rifle or shotgun to school. Thirty-seven percent of expulsions ultimately were shortened to less than one year, and 77% of students who were granted shortened expulsions were non-disabled. Unfortunately, only 38% of students expelled were referred to an alternative school or placement.<sup>71</sup>

Miller and Chandler prepared a report on school crime by asking school principals to comment about the characteristics of their school policies relating to school violence prevention programs and practices, the number and rate of violent deaths at school and elsewhere, frequency of crimes, and other school characteristics that have been associated with school crime. The

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<sup>70</sup> DeVoe, J.F., Peter, K., Kaufman, P., Miller, A., Noonan, M., Snyder, T.D., and Baum, K., *Indicators of School Crime and Safety*, (Washington, D.C.: U.S. Departments of Education and Justice, 2004).

<sup>71</sup> Karen Gray-Adams and Beth Sinclair, *op. cit.*

focus of their report centered on the presence and severity of violence that occurs in American public schools. The reported incidents of violence included rape, sexual battery other than rape, physical attacks or fights with and without a weapon, threats of physical attack with and without a weapon, and robberies with and without a weapon. Key findings of this report also included the following: (1) seventy-one percent of public elementary and secondary schools experienced at least one violent incident during AY 1999-2000; (2) one or more violent incidents occurred in 20% of public schools; (3) secondary schools were more likely than elementary schools to report a violent incident; (4) larger schools were more likely than smaller schools to report both violent and serious violent incidents; (5) city schools were more likely than suburban schools to report an occurrence of at least one violent incident; and (6) principals reporting that their students live in neighborhoods with high or mixed levels of crime were more likely to report violent or serious incidents than those principals who had students who lived in neighborhoods with low levels of crime.<sup>72</sup>

According to Miller and Chandler, several patterns of school violence have emerged: seven percent of public schools account for 50% of the total violent incidents. Characteristics of those schools with a high rate of incidents were contrasted to those with no incidents or a low-to-moderate rate of incidents, and found a positive relationship between school level, enrollment size, urbanity, instances of crime where students live, number of classroom changes, number of serious discipline problems, and number of school-wide disruptions. When compared to schools that recorded no incidents or a low-to-moderate rate of incidents, schools with high rates of incidents varied positively by enrollment size, percent of students scoring below the 15<sup>th</sup> percentile on standardized tests, student-to-teacher ratios, number of serious discipline problems, number of students transferring schools, and the number of school-wide disruptions.<sup>73</sup>

### **Prevention Alternatives**

Despite the overwhelming popularity of expulsions and out-of-school suspensions among educators, Bumbarger and Jennifer Brooks reported that there is little scientific research to show that zero-tolerance or other *get tough* measures have proved effective for reducing school

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<sup>72</sup> Amanda Miller and Kathryn Chandler, *Violence in U. S. Public Schools 2000 School Survey on Crime and Safety Statistical Analysis Report*. (Washington, D. C.: National Center for Education Statistics, School Survey on Crime and Safety, and U. S. Department of Education, 2003).

<sup>73</sup> *Ibid.*

violence and/or increasing school safety. Instead, there is a growing body of research showing a clear association between disciplinary exclusions and suspension and undesirable outcomes, including higher rates of juvenile delinquency, substance abuse, and increased dropout rates.<sup>74</sup>

According to Skiba and Peterson, strict adherence to zero-tolerance discipline policies is believed to broaden the achievement gap by failing to provide appropriate alternatives and by failing to utilize infractions as teaching opportunities. In contrast, a growing number of alternative prevention programs have shown to reduce aggression, violence, and weapon possession in schools. Research has identified the types and characteristics of programs that have proved effective for reducing recidivism among violent and chronic juvenile offenders. Specifically, school-based prevention programs have increased appropriate behavior and decreased the frequency and intensity of inappropriate behavior. *Universal Primary Prevention Programs* that promote social-emotional competence and cognitive problem-solving have demonstrated significant reductions in student conduct problems, aggression, and physical violence. Other programs, such as *Responding in Peaceful and Positive Ways*, have shown reductions for weapon possession among students. However, even the most effective prevention programs do not prevent all student violence or misconduct. Educators need a sufficient variety of options to provide a continuum of responses appropriate to the level of misbehavior. Options, such as in-school suspension, individual and group counseling, and Saturday or lunchtime detention coupled with remedial support and social-emotional cognitive skill-building, address misbehavior while recognizing the underlying causes.<sup>75</sup>

As explained by Ciolfi et al., *Positive Behavioral Intervention and Support (PBIS)* is a behavior modification model that emphasizes teaching and rewarding positive behavior on a school-wide, classroom, and individual basis. *PBIS*, as administered in Virginia, is entitled *Effective School-Wide Discipline (ESD)* and Virginia schools implementing *ESD* have decreased office referrals by 29% for general education students and 51% for special education students, decreased in-school suspensions by 45.3% for general education students and 64.8% for special education students and out-of-school suspensions by 75% for general education students and by 85.6% for special education students. Virginia has saved 9.2 hours of administrative time and 4.6

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<sup>74</sup> Brian Bumbarger and Jennifer Brooks, *School Violence: Disciplinary Exclusion, Prevention and Alternatives*. (Office of Child Development and Prevention Research Center, 1999).

<sup>75</sup> Russell Skiba and Reece Peterson, "School Discipline at a Crossroad: From Zero-tolerance to Early Response," (*Exceptional Children*: Vol. 66, No. 3, 2000).

hours of instructional time weekly. The authors strongly suggest that school boards and school administrators should increase participation in *ESD*, limit expulsions, and improve reporting.<sup>76</sup>

According to Skiba and Rausch, although an effective school discipline system is vital in maintaining a safe school environment that is conducive to learning, evidence has failed to show that exclusionary discipline as an intervention is capable of delivering such an environment. Exclusionary discipline practices, such as out-of-school suspension and expulsion, lack treatment fidelity. These practices are linked to negative outcomes in terms of school climate, student behavior, student achievement, higher dropout rates, and racially disparities. Emerging school reform strategies such as *Positive Behavioral Support* and *Safe and Responsive Schools* are effective in maintaining school safety without removing students from school.<sup>77</sup>

### **Litigation Concerning Implementation of Zero-tolerance**

Case law has guided the implementation of *GFSA* legislation in the Commonwealth. Two cases are cited as examples. The first case, *Seal v. Morgan*, reflects the adherence to zero-tolerance discipline policy despite Seal's unknowing possession of a weapon.<sup>78</sup> The second case, *Ratner v. Loudoun County Public Schools*, demonstrates school administrators' over-reliance on zero-tolerance policy and their absence of judgment and discretion.<sup>79</sup>

In the first case, a student, Dustin Seal, enrolled in a Tennessee public school, possessed a knife that exceeded a specified length, thus violated of Knox County School District's zero-tolerance discipline policy. Unknown to Seal, the knife had been placed by another student into the glove compartment of the car owned by his mother. The assistant principal searched Seal's vehicle that was parked on school grounds and informed the principal that he had found two crumpled cigarettes, several antibiotic pills, and the knife. The principal immediately suspended Seal for possession of a weapon on school grounds, pending the expected expulsion by the local school board. Seal, accompanied by his mother, unsuccessfully appealed his suspension to the school district's hearing officer. Following the denial by the hearing officer, Seal appealed the decision to the local school board, which validated the suspension and then expelled him based

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<sup>76</sup> Angela A. Ciolfi, Crystal Shin, and Jeree Harris, *op. cit.*,

<sup>77</sup> Russell Skiba and M. Karega Rausch, "Zero-tolerance, Suspension, and Expulsion: Questions of Equity and Effectiveness," In *Handbook of Classroom Management: Research, Practice, and Contemporary Issues*, ed. Carolyn Everton and Carol Weinstein (Rutgers: The State University of New Jersey, 2006).

<sup>78</sup> *Seal v. Morgan*, 2000 U. S. App. LEXIS 24939; *FED App. 0358P* (6th Cir. 2000).

<sup>79</sup> *Ratner v. Loudoun County Public Schools*, 16 Fed. App. 140 (4th Cir. 2001).

upon the evidence presented in the prior two hearings. In April of 1997, Seal's father initiated action on behalf of his son in United States District Court for the Eastern District of Tennessee, claiming that the expulsion violated the *Equal Protection* and *Due Process clauses* of the Fourteenth Amendment, and that the search also violated the Fourth Amendment, which protected Seal from unlawful *search and seizure*. The case turned largely on two points: (1) that Seal had no knowledge that the knife was present and did not knowingly violate the Knox County zero-tolerance discipline policy; and (2) the local school board relied too heavily on the zero-tolerance discipline policy rather than to determine specific facts on a case-by-case basis.

The federal district court opined,

. . . that the local school board violated Seal's rights in its over-zealous implementation of zero-tolerance discipline policy, that *due process* rights must be zealously protected consistent with the students' and teachers' rights to be safe at school, that the one-year expulsion was too severe for "unknowingly possessing" the knife, that this was an appropriate test case for establishing to what extent students be held responsible for items contained in their vehicles, lockers, and backpacks, and that local school boards and superintendents must take responsibility to reverse lower decisions and avoid court involvement.<sup>80</sup>

In January 2000, the Board sought and received permission from the district court and district court of appeals to make an interim appeal. Dustin Seal sought damages to compensate for the Knox County Board's decision to expel him from high school and argued that action by the school board was irrational and violated his right to *due process* of law. In October 2000, Judge Gilman of the United States Court of Appeals delivered the opinion of the court that,

. . . suspending or expelling a student for weapons possession, pursuant to a zero-tolerance policy, even if the student did not knowingly possess any weapon, would not be rationally related to any legitimate state interest, so as to survive *due process* challenge; absence of any evidence about what the board of education concluded regarding student's knowledge precluded summary judgment; and superintendent was entitled to qualified immunity.<sup>81</sup>

Judge Gillman cautioned that the Board must not absolve itself of its obligation to determine whether students intentionally committed the acts for which their expulsions were sought by hiding behind a zero-tolerance policy that was intended to make the students' knowledge a non-issue. The court affirmed the judgment of the district court to the extent that it denied the Board's motion for summary judgment; reversed the judgment of the district court,

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<sup>80</sup> *Seal v. Morgan, op cit.*

<sup>81</sup> *Ibid.*

entered summary judgment in Seal's favor on the issue of liability and remanded this case for further proceedings consistent with his opinion. With regard to Superintendent Morgan's appeal, the court reversed the judgment of the district court and remanded the case with instructions to enter summary judgment in his favor.<sup>82</sup>

In the second case, a student, Benjamin Ratner, enrolled in Blue Ridge Middle School, in Loudoun County, Virginia, took a binder containing a knife from a friend that Ratner perceived was suicidal. The facts of the case reveal that Ratner placed the binder in his locker but did not tell the school authorities about the knife. His intention was to tell both his and her parents after school. However, before he had the opportunity to inform either set of parents, the school assistant principal learned that the friend had given the knife to Ratner. When confronted by the Dean of the school, Fanny Kellogg, Ratner admitted that he was in possession of the knife. He went to his locker, unescorted, retrieved the knife, and surrendered it to the Dean. The Dean acknowledged that she believed that Ratner acted in his friend's best interest and that he posed no threat of harm to anyone with the knife. Despite Dean Kellogg's acknowledgement that Ratner acted reasonably, the assistant principal, Roberta Griffith, suspended Ratner for ten (10) days for violating school board policy by possessing a knife on school property; the suspension was subsequently upheld by the principal. The school district superintendent informed Ratner that he was being suspended indefinitely, pending action by the school board. The school board then extended the suspension to four (4) months. Ratner's mother unsuccessfully appealed to the Loudoun County School Division Discipline Committee, where the committee unanimously approved the long-term suspension.<sup>83</sup>

The court voiced its concern over the harshness of zero-tolerance, but ruled that the federal court was not called upon to judge the wisdom of zero-tolerance policy or its application and upheld the constitutionality of the expulsion. Senior Circuit Judge Hamilton, who concurred and wrote separately to express his compassion for Ratner, his family, and common sense, opined as follows,

Each is the victim of good intentions run amuck. Ratner's complaint alleges that school suspensions for possession of a weapon on Loudoun County school property are imposed automatically, pursuant to a zero-tolerance policy that precludes consideration of the facts and circumstances of a particular student's conduct in determining a violation of stated policy and the resulting student punishment. There is no doubt that this zero-

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<sup>82</sup>*Ibid.*

<sup>83</sup>*Ratner v. Loudoun County Public Schools, op. cit.*

tolerance/automatic suspension policy, and others like it adopted by school officials throughout our nation, were adopted in response to the tragic school shootings that have plagued our nation's schools over the past several years. Also, no doubt exists that in adopting these zero-tolerance/automatic suspension policies, school officials had the noble intention of protecting the health and safety of our nation's school children and those adults charged with the profound responsibility of educating them. However, as the oft repeated old English maxim recognizes, 'the road to hell is paved with good intentions.' The panic over school violence and the intent to stop it has caused school officials to jettison the common sense idea that a person's punishment should fit his crime in favor of a single harsh punishment, namely, mandatory school suspension. Such a policy has stripped away judgment and discretion on the part of those administering it; refuting the well-established precept that judgment is the better part of wisdom.

Here, a young man, Ratner, took a binder containing a knife from a suicidal fellow student in an effort to save her life. He put the binder in his locker without even opening it. Indeed, at all times, Ratner never saw the knife. Further, the facts do not offer even the hint of a suggestion that Ratner ever intended to personally possess the knife or harm anyone with it. In fact, the first school official on the scene reported that at no time did Ratner intend to harm anyone with the knife. Yet, based on the school's zero-tolerance/automatic suspension policy, Ratner was suspended from school for nearly four months.

School officials should, without doubt, punish a student for knowingly and intentionally bringing a dangerous weapon on school property. But the question raised by the facts of Ratner's case is one of degree and the law must be flexible enough so that school officials may intrude upon the right to a free appropriate public education *only* in the most justifiable circumstances. Under a facts/circumstances-sensitive examination of this case, Ratner's nearly four-month suspension from middle school is not justifiable. Indeed, it is a calculated overkill when the punishment is considered in light of Ratner's good-faith intentions and his, at best, if at all, technical violation of the school's policy. Suffice it to say that the degree of Ratner's violation of school policy does not correlate with the degree of his punishment. Certainly, the oft repeated maxim, "there is no justice without mercy" has been defiled by the results obtained here. But alas, as the opinion for the court explains, this is not a federal constitutional problem.<sup>84</sup>

Vacca wrote that,

[c]ourts have long recognized that if schools are to be properly conducted, then teachers and principals must be given the authority to maintain an orderly and responsible learning environment. Undoubtedly, disruption of the school social setting will have harmful effects on the quality of the educational program. Recognizing this, courts have uniformly held that student conduct is under the reasonable control of school officials.<sup>85</sup>

Beginning with the United States Supreme Court's landmark *Goss v. Lopez* decision, a majority of federal and state judges have granted considerable discretion to local school boards

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<sup>84</sup> *Ibid.*

<sup>85</sup> Vacca, Richard S., "Student discipline 2006-2007: Violence in schools." (*CEPI Education law Newsletter* 2006), quoting Kern Alexander and M. David Alexander, *The Law of Schools, Students, and Teachers*, 2<sup>nd</sup> Ed. (West Group 1995).

and administrators to do what is necessary to maintain order in schools, provided that students are granted basic *procedural due process*. In subsequent decisions, the United States Supreme Court stated that disciplinary authority of public school administrators and teachers must not be unduly burdened by judicial decree. In the Court's view, principals and classroom teachers must be free to take swift and informal disciplinary measures to protect students and staff and to maintain a healthy and non-disrupted school environment in which learning can take place. According to Elbert Aull, courts have been unreceptive to complaints that zero-tolerance policies violate students' *due process* rights when suspension or expulsion is the punishment at hand.<sup>86</sup>

### Summary

Zero-tolerance discipline policies arose as a response to the perceived increase in school violence across the nation. Support for zero-tolerance discipline policies was mixed. According to Susan Black, Ewing asserted that zero-tolerance policies protect law-abiding students, allow the swift and easy removal of dangerous students, and deter bad behavior. Critics of zero-tolerance policies disapproved of the policies because of the wild overreactions to seemingly innocent mistakes, the lack of research supporting their effectiveness, and the unintended consequences. Skiba, a notable critic, has found fault with zero-tolerance discipline policies based upon their lack of equity, effectiveness, and preventive alternatives.

Overwhelmingly, the literature documents the disproportionate rate of zero-tolerance discipline meted out to African-American and Hispanic males at two and three times those of their white counterparts. A wealth of literature has been written on the counter-productive nature of zero-tolerance policies. Expulsion interrupts the educational process for students removed from school, often leading to dropping-out of school. The use of exclusionary practices weakens the academic environment for the students who remain. Schools using exclusionary practices as their chief means of handling disruption are proven to be less safe than schools with prevention and intervention programs. Over-reliance on the courts to punish poor behavior overwhelms the juvenile justice system.

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<sup>86</sup> Elbert Aull, "Zero-tolerance, Frivolous Juvenile Court Referrals, and the School-to-prison Pipeline: Using Arbitration as a Screening-out Method to Help Plug the Pipeline." (*Ohio State Journal on Dispute Resolution*: Vol. 27 No. 1, 2012), p.179.

## **CHAPTER THREE**

### **RESEARCH METHODOLOGY**

#### **Introduction**

The purpose of this chapter is to present the methodology and design of the research study. This study was based primarily on a qualitative design that describes and chronicles the development of Gun-Free Schools Legislation in the Commonwealth based on content analysis of documents and on interviews with key legislators.

Two types of data analysis were used: document analysis and content analysis. In order to conduct this study, the following tasks were completed: relevant documents were analyzed, a sampling process was developed to select the interviewees, the interview protocol was constructed and refined, interviews were conducted, and interview data were analyzed.

#### **Document Analysis**

In order to accomplish this phase of the study, documents from the *Legislative Information System (LIS)* that documented the *GFSA* over a 19 year span, 1995 to 2014, inclusive, were analyzed. The legislative record, as it related to the *GFSA* in the Commonwealth, was reviewed for bills originating in the House or Senate. Bills, thus identified, were tracked pursuant to the actions by the *Senate and House of Delegates of the General Assembly* (i.e., first and second readings, engrossment, and third reading; passage or lack thereof (passed by indefinitely or stricken); communication to the other body and cross-over; first, second, and third readings again; passage or lack thereof; enrollment, if passed; examination and signature by the presiding officers of both bodies; Governor's approval, and receipt of chapter number for compilation in the Acts of the Assembly). In addition to the chronological discussion which followed, a table was prepared in order to show the legislative actions relative to the *GFSA* in the Commonwealth. See Table 1, page 171.

Other non-legislative documents were analyzed to enhance the interview findings and the legislative analysis. These documents include House and Senate documents, issue briefs, recommendations for action, and position statements; and the analyses are included in Chapter Four.

According to Richards, triangulation is the use a multi-method approach to investigate of a research question and was used in this study to enhance confidence in the resulting findings. Because much social research is founded on the use of a single research method, and as such may suffer from limitations associated with that method or from the specific application of it, triangulation offers the prospect of enhanced confidence.<sup>87</sup>

### **Sampling**

The process of interviewing was utilized in this research project to acquire the needed information. The interviews were considered *elite interviewing* since a small sample of the population of elite or influential people (i.e., senators and delegates) were interviewed.<sup>88</sup> Richards defined the elite as a group of individuals who hold a privileged position in society and who were likely to exert more influence on political outcomes than members of the general public.<sup>89</sup>

Lilleker noted that interviews occupy a place in policy research that analyzes both motivations and activities of those within the political process. He stated that interviews provide immense amounts of information that cannot be gleaned from official published documents or contemporary media accounts. Additionally, elite interviewing often yields insight into the events about which little is known, the activities that take place out of the public eye or media spotlight, and behind closed doors.<sup>90</sup>

In an article entitled, *Atlanta: Floyd Hunter was Right*, Domhoff explained that Floyd Hunter studied individuals (leaders) who formed local community power structures and how these leaders operated with one another.<sup>91</sup> Domhoff noted that Hunter's elite policymakers comprised small groups who established policy for the masses and found that Hunter's primary concern remained the origins of policy initiatives. Thus, he opened his book in this manner,

It has been evident to the writer for some years that policies on vital matters affecting community life seem to appear suddenly. They are acted upon, but with no precise

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<sup>87</sup> David Richards, "Elite Interviewing: Approaches and Pitfalls." (*Politics*: Vol. 16, No. 3, 1996).

<sup>88</sup> Terry Arbogast, *An Historical Analysis of the Development of Charter Schools Legislation in Virginia*. (Doctoral dissertation, Virginia Polytechnic and State University, 2000).

<sup>89</sup> David Richards, *op. cit.*

<sup>90</sup> Darren G. Lilleker, "Interviewing the Political Elite: Navigating a Potential Minefield," (*Politics*: Vol. 23, No. 3 2003).

<sup>91</sup> G. William Domhoff, *Atlanta: Floyd Hunter Was Right*. (Santa Cruz, California: University of Santa Cruz, October, 2005)

knowledge on the part of the majority of the citizenry as to how these policies originated or by whom they are really sponsored.<sup>92</sup>

The Institute for Global Health indicated that combining elite interviewing with the analysis of multiple sources corroborates findings across data sets<sup>93</sup> and Davies suggested that this approach minimized the inherent weaknesses in elite interviewing.<sup>94</sup> According to Richards, elite interviews provided perspectives of the major players in the event and provided insight into what motivated them to think and act in the way they did.<sup>95</sup> Interviews were employed with selected members of the Virginia General Assembly who played vital roles in development and implementation of legislation in compliance to the directives contained in the GFSA.

### **Interviewee Identification**

Merriam recommended that interviewees should be identified through purposeful sampling by creating a list of attributes or experiences essential to the study participants. A list was developed, which contained key legislators and their respective roles pertaining to the original legislation. Those key legislators included the sponsors and patrons of the bill. Subsequent to the establishment of the criteria, snowball or chain sampling was employed. This strategy consisted of a referral process whereby participants were asked to refer the researcher to other well-informed participants.<sup>96</sup> Patton said this strategy involved the identification of participants *from people who knew people who knew people*.<sup>97</sup>

The following summary contains a list of these attributes or experiences; however, identifiable characteristics of the participants as indicated in the request submitted to the IRB were held confidential. However, without violating the IRB rules and to provide a portrait of interviewees, there were certain commonalities of the group as a whole. There were commonalities among their political affiliation as well as their roles in the General Assembly. The average term in office was nineteen years. Six of the seven selected interviewees served as Delegates in the General Assembly and all six delegates were affiliated with the Democratic

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<sup>92</sup> *Ibid.*

<sup>93</sup> Institute for Global Health, *Triangulation*. (University of California, San Francisco, 2007, (cited April 1 2008).

<sup>94</sup> Philip H. J. Davies, "Spies as Informants: Triangulation and the Interpretation of Elite Interview Data in the Study of the Intelligence and Security Services," (*Politics*: Vol. 21, No. 1, 2001).

<sup>95</sup> David Richards, *op. cit.*

<sup>96</sup> Sharan B. Merriam, "Qualitative Research and Case Study Applications in Education," (San Francisco, California: Jossey-Bass Inc., 1998).

<sup>97</sup> M. Q. Patton, *Qualitative Research and Evaluation Options*, 3rd ed. (Thousand Oaks, California: Sage Publications, 2002).

Party. Their dates of service spanned more than forty-three years. Their committee assignments were diverse: Agriculture (2), Finance (2), General Laws (3), Mining and Mineral Resources (1), Rules (2), Corporations (3), Insurance and Banking (3), Courts of Justice (3), Education (1), Militia and Police (1), Nominations and Confirmations (1), Privileges and Lectures (1), Conservation and Natural Resources (1), Claims (1), and Cities and Counties (1).

The geographic areas that they represented were diverse. The areas they represented varied from rural to suburban to urban. These areas spanned the southwest, central, and eastern regions of the Commonwealth.

### **Interview Protocol**

The interview protocol (See Appendix D) was developed utilizing the methods outlined by Creswell. Creswell recommended use of an ice-breaker question at the beginning, followed by four to five questions, followed then by some concluding statement or a question. Specifically, the following question was asked: Who should I visit with to learn more about my questions?<sup>98</sup> Checklists for interview researchers, interview protocol, sample faculty interview protocols, and a set of interviewing tips from the National Center for Postsecondary Improvement also were utilized.<sup>99</sup>

For this study and following the lead of Seidman, the purpose of interviewing elites was not to obtain answers to questions, such as the specific mandates of the legislation, nor to test hypotheses, and not to evaluate.<sup>100</sup> Instead, the purpose was to understand the motivation and/or intent of the legislators. For example, had a concerned or grieved constituent impressed upon the legislators the need to draft or amend this legislation? What egregious wrong was a legislator trying to right? What recent school shooting had prompted legislators to guard school children from weapons on school grounds? Elite interviews provided perspectives of the major players in this event and provided insight into what motivated them to think and act in the way they did. At the root of elite interviewing was an interest in understanding the experience of other people and the meaning they assigned to that experience. Seidman said, *Social abstractions like education*

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<sup>98</sup>John W. Creswell, *Research Design: Qualitative, Quantitative and Mixed Methods Approaches*, 3rd ed. (Thousand Oaks, California: Sage Publications, Inc., 2009).

<sup>99</sup>National Center for Post-Secondary Improvement, *Interviewing Tips*. (New York: Teacher's College, Columbia University, 2015).

<sup>100</sup>Irving Seidman, *Interviewing as Qualitative Research: A Guide for Researchers in Education and the Social Sciences*. 2nd ed. (New York: Teachers College Press, 1998).

*were best understood through the experiences of the individuals whose work and lives were the stuff upon which the abstractions were built.*<sup>101</sup>

Interviews were sought from individuals who were identified as elite players and who sponsored or supported the gun-free schools legislation. Contact was made by mail, telephone, and email to potential interviewees. Several did not respond while others responded but declined to participate. Fortunately, a number of the elite players did respond and agreed to participate.

Selected interviewees were asked to participate by telephone during the introductory call. During this call, their mailing addresses were confirmed and introductions were made to participants' aides. Subsequently, packets containing the Interview Protocol, Introductory Letter, and the Informed Consent form were mailed to the selected interviewees.

A week later, follow-up calls were placed to potential interviewees to ensure that each selected interviewee had received a packet and to ascertain whether the participants would continue to participate. Those who agreed to be interviewed were asked to sign and return the Informed Consent form via a self-addressed, stamped envelope. The researcher scheduled interviews at mutually convenient times for both parties during this second call. The anticipated length of the interview (i.e., 45 minutes) was restated during this call.

The telephone calls, during which the interviews were recorded, were initiated from the private residence of the interviewer, who used a voice-actuated, digital recorder and a telephone with speaker mode. The interviews were conducted between May 2010 and September 2010, audio-taped, and forwarded to a transcriptionist, who entered the completed interviews into a Word document. Considerable time was required to record the transcriptions, especially for two sections of the audio-tape in which audio recordings of the interviewees' responses were very faint. It was apparent that the transcriptionist required a painstaking effort in order to accurately interpret the recordings. Upon the return of the transcripts in November, 2010, the researcher reviewed the transcriptions for accuracy.

Following the completion and review of the transcriptions, recurring responses were identified. The literature review was re-read to ascertain whether there were commonalities among the literature and recurring responses in the interviews. These commonalities lay the foundation for the initial topics for nodes. These initial topics for nodes were used to set-up

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<sup>101</sup> *Ibid.*

folders in advance in *NVivo* into which the interview texts were dragged and dropped. The Topics for Nodes are enumerated in Figure 3.

### **Content Analysis**

Following the lead of Busch, et al., the research decisions involved in the content analysis of interview data were as follows: (1) classification of the level of analysis; (2) identification of concepts for coding, (3) whether to code for existence or frequency of a concept; (4) how to distinguish among/between concepts; (5) development of rules for coding; (6) disposal procedures for irrelevant information; (7) codification of the texts; and (8) analysis of the results.<sup>102</sup> This level of content analysis focused on codification of the text. The decision to code the responses as texts was based upon the confidential nature of the research. Although the analytic workspace of the software had the capability to classify nodes with descriptors and demographics for each participant, identifiable characteristics of the participants as indicated in the request submitted to the IRB was held confidential.

The review of the transcriptions and the review of relevant literature yielded a list of concepts and respective frequencies that were identified by the placement of hash marks beside each concept as they recurred. At the conclusion of this process, totals were tabulated, and the concepts that had the highest totals constituted the initial nodes, into which the interview texts were imported.

As indicated above, the existence of each concept gave way to the frequency of its occurrence. Concepts were utilized based upon the frequency of their use, not their mere existence. Concepts that did not recur frequently were either collapsed into parent nodes or discarded. The analytic workspace enabled the researcher to aggregate nodes, showing parent-child nodes or relationships among concepts. This process facilitated the establishment of the relationships both between and among concepts and facilitated consideration to collapse related nodes.

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<sup>102</sup> Carol Busch, Paul S. De Maret, Teresa Flynn, Rachel Kellum, Sheri Le, Brad Meyers, Matt Saunders, Robert White, and Mike Palmquist. *Content Analysis*. Writing@CSU. Colorado State University, (1994 - 2012). See: <http://writing.colostate.edu/guides/guide.cfm?guideid=61>.

## Topics for Nodes

1. Application
  - Inequitable application
  - Overrepresentation of minority males, SPED
  - Inherent bias in exclusionary practices
  - Academic, family, and truancy issues
  - High exclusion/lower level offenses
  - High exclusion to minority population
  - Unfair; anti-developmental needs of adolescents
  - Arbitrary and capricious
  - Inconsistent
  - Disparity
2. Exclusionary practices
  - Access denied
  - Drop-outs
  - Educational access
  - Suspension/expulsion
3. Drop-outs
  - Criminalization
  - Juvenile justice/court system
  - Unsupervised time on the streets
  - Pipeline to Prison
  - Courts overwhelmed and ill-prepared
  - Recidivism
  - Lower educational/academic achievement
  - Negative health factors
  - Substance abuse
  - Lower income
  - Difficult transition to employment
4. Unintended Outcomes
  - Pipeline to prison
  - Drop-outs
  - Extreme application
  - Disproportionate application
  - Negative Student Achievement
5. Alternatives to expulsion
  - Prevention
  - Education and training of staff in adolescent development and behavior
  - Alternative education
6. School Safety
  - Environmental situations (Crime in the community creeping into school)
  - Student Conduct
  - School violence
  - Safe schools
  - Crime and violence reporting data
  - Effectiveness
  - GFSA
  - Gun safety
  - Campus safety
  - Safe and Gun-free schools
  - Medication exchange
  - Student Achievement
  - Conducive Learning environment
7. Legislation
  - Legislative studies/Subcommittees
  - Proponents/Opponents
  - GFSA legislation
  - Legislative process
  - Amendments (Close loopholes, perfect laws, address nuances)
  - Case law

Figure 3. Topics for Nodes

The following rules for coding were developed: (1) drag and drop broad contexts (whole phrases or responses of interview text) into nodes; (2) import contexts into multiple nodes; (3) do not import single words or phrases; (4) do not import polite conversation into nodes. Irrelevant information, such as casual conversation, inquiries about the progress of the study, side comments, that did not pertain either directly or indirectly to the concepts in the research were discarded.

The *QSR NVivo 9* was utilized, which is a qualitative data analysis software package that facilitates the analysis of transcribed interviews. The analytic workspace, contained in the software, was used to study the interview transcripts by the following: (1) creating nodes or folders to contain common topics and subtopics from the interview responses; and (2) naming the nodes according to those common topics.

This software permitted the importation of the interview texts into the analytic workspace by dragging and dropping text from each interview into the corresponding nodes, thus providing support for the emergent themes. The node summary - analysis of interviews contained a list of all nodes and inclusive texts, which showed the frequency and level of supported concepts/nodes. The node summary - analysis of interviews was generated that listed each node topic (37), the number of sources or interviews (0-7), the number of references or cited texts from interviews (0-142), the number of words coded (0-15,612), and the number of paragraphs coded (0-159). For example, the node summary for safe and drug-free schools contained 7 sources, 142 coding references, 15,612 words coded, and 159 paragraphs coded. Whereas, the node summary – analysis of interviews for drop-outs contained 0 sources, 0 coding references, 0 words coded, and 0 paragraphs coded.

A coding summary - analysis of interviews was generated that gave the percentage of node coverage and the number of coding references. These data formed the basis for determining and refining emergent themes. The resulting 9 themes contained supporting text from no fewer than 4 of the 7 sources, which represented more than 57% of the 7 interviews or sources. These themes are summarized among the emergent themes in Chapter 4, and the supporting text from interviews is included. Themes containing the supporting text from 3 or fewer of the 7 sources, which represented less than 42.8% of the 7 interviews or sources included the following: (1) Alternatives to expulsion (Prevention); (2) Application equity; (3) Extreme Interpretations; (4) Over-representation (gender, racial and SPED); (5) Referral to Law enforcement; (6) review of

case law; (7) legislative studies; (8) student achievement (positive or negative); (9) dropouts (residual factors); (10) pipeline to prison; and (11) expanded zero-tolerance. These themes are not included among the emergent themes summarized in Chapter 4 because they represented less than 50% of the interviews or sources.

## **CHAPTER FOUR**

### **RESULTS OF THE STUDY**

The purpose of this study was to trace the historical development of the GFSA<sup>103</sup> legislation in the Commonwealth of Virginia. The findings are presented in three sections. Provided in the first section, excerpts from the open-ended interviews that support the emergent themes from the interviews were identified and summarized. Contained in Section two is the summary of legislative records from 1995 through the 2014. Presented in the third and final section are non-legislative documents such as House and Senate documents, issue briefs, recommendations for action, position statements, and newspaper articles which were analyzed to further support the interview findings and legislative analyses.

#### **Methodology**

Two types of analysis were employed in the context of the study. First, documents from the Legislative Information System (LIS) that reported chronologically the GFSA legislation over a nineteen-year span, 1995 to 2014, inclusive, was analyzed. The legislative record, as it related to the GFSA in the Commonwealth of Virginia, was reviewed pursuant to bills originating in both House of Delegates and the Senate. These bills were tracked relative to the actions taken by the House of Delegates and Senate and are displayed in Table 1, page 171. Second, interviews were conducted with selected legislators, utilizing an interview protocol, and the resulting transcriptions were analyzed through use of *QSR NVIVO 9*. Drawn from the interviews, nine themes emerged: (1) safety; (2) learning environment; (3) effectiveness; (4) in-state legislation; (5) the legislative process; (6) amendments; (7) influences; (8) specific roles; and (9) unintended outcomes.

Third, non-legislative documents, which contained but were not limited to house documents, included the following: (1) senate documents; (2) recommendations for action; (3) policy briefs; (5) discipline policy and practice guides; and (6) position statements/papers. These documents were analyzed in order to triangulate and support the interview findings.

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<sup>103</sup> *Gun-Free Schools Act of 1994, op. cit.*

## Analysis of Interviews

The interviews were conducted and audio-taped and then sent to a transcriptionist who entered them into a Word document. The *QSR NVivo 9* was utilized, which is a qualitative data analysis software package that facilitates the analysis of transcribed interviews. The analytic workspace, contained in the software, was used to analyze the interview transcripts by the following: (1) creating nodes or folders containing common topics and subtopics from the interview responses; and (2) naming the nodes according to the common topics. The selected nodes contained supporting text from no fewer than 4 of the 7 sources, which represented more than 50% of the interviews. Nine emergent themes were then summarized: (1) safety; (2) learning environment; (3) effectiveness; (4) in-state legislation; (5) the legislative process; (6) amendments; (7) influences; (8) specific roles; and (9) unintended outcomes. A discussion of each theme is presented below. Based upon stipulations in the Informed Consent for Participants in Research Projects Involving Human Subjects, the anonymity of participants has been maintained at all times through the use of pseudonyms. Colors are being used to identify the different interviewees.

### Safety

Several interviewees had difficulty recalling whether the school shooting at either Jonesboro or Columbine incidents had prompted legislation or whether the Virginia General Assembly was reacting to the federal mandate for states to promulgate legislation consistent with the GFSA. Most remembered with clarity that they supported the legislation because it provided reasonable restriction of guns on school grounds and would make school environments safer.

Senator White recalled that incidents of gun violence in the Hampton Roads areas during the 1980s and 1990s had prompted discussion about the restriction of guns on school property. Senator White noted that he did not recall the specific dates of the various shootings in schools, but he did recall that public awareness was very high and that the concerns and anxieties of parents were of great concern. He said that something had to be done and the General Assembly had to act within the constraints of the *United States Constitution* and specifically, the *Second Amendment*.<sup>104</sup> Since the issue dealt with special rules, there was justification for legislation that

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<sup>104</sup> *U.S. Const. Amend. I*

contained special restrictions that did not apply to others but would apply to students who attended public schools.

Senator White expressed concern over the one-year expulsion mandated within the GFSA, noting that it worried him because children are capable of making mistakes, which you correct and then bring the children along. He added that a year was a long time in the life of a child. Yet, on the other hand, he acknowledged the need to be harsh and to set examples. Ultimately, he said he did not know what to expect following enactment of the GFSA, but he hoped for a safer school environment. He stated, *We need to create as safe an environment as possible*; and he indicated that the legislation had that goal and was an important tool to protect children.

Delegate Green noted that his Democratic party was in the majority in the early 1990s. They later lost the majority in the mid-1990s; but during the time that they held the majority, one goal was to improve the safety in the public schools, and in particular, having the schools operate in a gun-free environment.

Senator White recounted that in some of the rural communities that he represented, farms and gardens adjoined the school property. One of his constituents whose property line was within the prescribed prohibition for possession of guns asked, *What am I going to do about ground hogs eating my green beans? Am I not going to be able to shoot them?* To wit, the legislator responded,

You have got to use common sense. We have to do whatever we can to assure that we provide an environment as safe as possible in schools and certainly the Columbine-like situation brought that home.

He acknowledged that there have been a number of incidents across the country where there has been the misuse of guns in schools, and we are not going to be able to assure absolute safety for all situations. Further, there are always things that can happen when bad people do bad things. When it comes to protecting children in our schools, everything within our means must be done to assure the public, parents, and children are served by schools that operate in safe environments. In his view, ensuring that there are no guns in schools has enhanced the educational environment.

## **Learning Environment**

Senator Brown stated that schools are institutions of learning. The expectation is that people would conduct themselves with a certain degree of civility. Schools are not places where students have to be looking over their shoulders all of the time wondering if somebody is carrying a firearm.

Delegate Green acknowledged that it has proven difficult to provide our students a learning environment, including buildings, teachers, and the many instructional necessities; but when you have an environment which is infested with fear, in this particular case, the fear of gun violence, it is obviously very detrimental to the educational process. He cited that we need to ensure our students are well-disciplined and possess a concern for the well-being of others. He noted that guns in the schools certainly have just the opposite effect, they create fear and thereby hamper the educational process.

Delegate Blue expressed that if schools are gun-free, then the tension is removed, as well as many other difficulties. Students then will have a greater opportunity to concentrate on their education. Staffer Gray noted that the Virginia General Assembly and the administrators and others employed by the local school districts want to provide an atmosphere in schools that is conducive to learning. Although several interviewees stated that school administrators could better express the benefits of GFSA in the Commonwealth, they agreed that a safe environment made educational activities more productive.

Senator White noted that as policymakers, they are required by the *Virginia Constitution* to offer a free public education to all its students. An essential component of a free public education is to assure to the public, parents, and students that the learning environment is safe and secure. In addition, students should attend schools that provide a nurturing environment in which the students can learn.

## **Effectiveness**

Senator Red noted that the effectiveness of the GFSA was marked by the instillation of a secure feeling into students and school personnel that guns are prohibited on school grounds. He noted that the legislation proved to be beneficial as a calming influence in the schools. Also, the senator indicated that not only did the GFSA result in safer schools, but also provided students, faculty, and parents a feeling of security. He stated that the GFSA inhibited people from bringing

firearms onto school property; and in that respect, the legislation was both successful and effective.

Delegate Green indicated that the GFSA was effective at both federal and state levels and very beneficial for our citizens since the threat of gun violence had been lessened. However, he recognized that while the threat had been reduced, it had not been eliminated. The delegate emphasized that in his opinion, the GFSA had a tremendous beneficial effect and has worked very well. He recognized that the effectiveness of the GFSA was difficult to measure, but he thought that the number of incidents of school violence has been reduced significantly. Delegate Blue indicated that if only a single gun was not brought onto school grounds, that the GFSA should be viewed as successful.

Staffer Gray noted that in Virginia some of the egregious problems that ensued from passage of the GFSA, sprang from how the new legislation was administered, noting that a number of school administrators and local school boards had applied extreme penalties for minor infractions, but the problems associated with implementation procedures have now waned. Further, the staffer evaluated the GFSA as an overall success, and he indicated that the public schools have fewer problems and fewer instances of guns and other weapons finding their way into the classrooms. Such occurrences are infrequent and isolated. Nevertheless, school officials statewide are still confronting challenges, dealing with incidents of school violence. Regardless, most people would agree the GFSA has proven effective and successful.

Senator White acknowledged that the GFSA was effective because,

. . . it laid the marker down and placed the public on notice that certain behaviors would not be tolerated, although the legislation came with a price tag. Violators would pay the penalty by staying out of school for a calendar year.

To that extent, he noted, the GFSA met its goal of protecting children; therefore, it was effective.

### **In-State Legislation**

Legislative Staffer Gray stated that the intention of Commonwealth was not to influence other states or nation as a whole. During the legislative process that enacted the GFSA, other states may have observed Virginia as an example, or even a model, for some of their initiatives or debates underway in their state capitals. However, Virginia was actually reacting to the congressional debates concerning school violence, and more importantly, the General Assembly

was attempting to address the growing problem experienced in the public schools across the Commonwealth. He compared the problem of gun violence in schools to a series of brush fires that the General Assembly wanted to extinguish before they became infernos that would engulf the Commonwealth.

Several interviewees, elected officials and legislative staffers indicated that they would have preferred the legislature to require that alternative schooling for students who were expelled or placed on long-term suspensions. However, the Virginia school funding system requires that localities bear the primary cost of the funding of an educational system. It is difficult to enact a state mandate unless state money follows and supports the mandate, and in this case, there was a lack of political support for the appropriation of additional state funds.

### **Amendments**

Although he did not know how to make the GFSA stricter, Senator White stated that he would support amendments that would toughen the legislation. For example, he noted that the exceptions for starter guns should be restricted to school personnel. The language in the GFSA should permit track coaches to have custody of a starter pistols, but there is no justification for a participant, e.g., a sprinter, to possess such items. Further, he did not see any reason to allow silencers, and he questioned the rationale contained in the Governor's amendment that removed shotguns from the list of banned destructive devices.<sup>105</sup>

Several legislators, including Delegate Green, noted that there continues to be a need for annually fine-tuning the legislation, which results in minor changes to the GFSA. The senator noted that there is an absence of any substantial sentiment to repeal or even weaken the law. To the contrary, the sentiment he obtained from citizens was that the GFSA was working well; and the General Assembly should not make any significant changes, but continue to maintain its strength and reasonable character.

Delegate Green indicated that incidents of gun-related violence, whether on- or off-school grounds, tended to strengthen the support for laws prohibiting guns on school grounds. The public is keenly aware of gun-related acts, now including the latest tragedy at a movie theater in Aurora, Colorado, which resulted in 12 deaths and many injuries. He suggested that

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<sup>105</sup> *Code of Virginia* § 22.1-277.07, *op. cit.*

such incidents continued to point to the need for strengthening the GFSA rather than weaken the legislation.

### **Influences**

Senator Red recalled that Virginians Against Handgun Violence, local and state Parent Teacher Association (PTA) members, if not their organizations, and the Virginia Education Association were among the external supporters. He recalled that a number of parents asked him to support the legislation. He did not recall whether someone representing these organizations asked for his support, but was aware that he possessed a reputation and record supporting reasonable safety restrictions of gun sales and use of firearms. He reported that external opposition came from Gun Owners of America, the Virginia Citizens' Defense League, and the National Rifle Association (NRA). According to the senator, internal opposition was limited; and there was an absence of vigorous opposition. Delegates Thomas G. Baker, Jr. and H. Morgan Griffith opposed the bill in the House Education Committee and on the floor, but it passed easily in the House of Delegates. Senator Red remembered that he had received threatening letters from Gun Owners of America, but not from the NRA or the other organizations. He noted that the political atmosphere in 1995 was much different than it is currently.

Delegate Green anticipated that there would be opposition to the proposed legislation, but it was not as bad as he expected. There was a belief by some members of both parties that something had to be done to control gun-related violence on school grounds. Even those members of the General Assembly who were most passionate about gun rights under the Federal Constitution understood that the proposed legislation was a reasonable restriction, and had the overwhelming support of citizens.

Delegate Green recalled that he supported the GFSA, which occurred early in his legislative career. As his seniority increased, he became more involved in gun laws. He recounted two examples of issues that recurred frequently. Nearly every year, it seemed to him, there were incidents where individuals had a gun in their car or trunk when they came onto school grounds. Also, he noted in more rural areas, students who were planning to go hunting after school, a common practice in rural areas, often had guns in their vehicles. He acknowledged that those types of issues were very difficult. He stated it was a constant battle to comply with

the constitutional right to bear arms, but at the same time, to impose reasonable restrictions on the possession and use of firearms.

He recalled that several external organizations were very concerned about the GFSA. He noted some were opposed, some were not opposed, but all were very concerned. The NRA, he recalled, was the largest lobbying organization that was interested in protecting individuals' right to bear arms under the *Second Amendment* of the *U. S. Constitution*. He noted that the NRA aggressively entered the debate concerning gun legislation and has continued to do so. He indicated that he represents an area comprised of small towns, small cities, and a mix of suburban and rural areas where guns are a way of life. Hunting is commonly practiced and most people own guns, usually long arms, i.e., rifles, or shotguns. He thought that in the past it was a bit unusual to own small arms, but recently, ownership of pistols has increased significantly among both men and women. Currently, some women keep pistols in their purses. This is a practice that was unheard of in rural areas in the past. He acknowledged that there is considerable citizen concern and desire to have a safe society; and if they are concerned that the public safety provided by the police may is not sufficient, they often acquire weapons. They obtain concealed firearms permits for self-protection. Sometimes, the acquisition of concealed permits and handguns is effective and sometimes it does not work. Ultimately, we have more than enough people who have weapons in their homes. Occasionally, the media will report that someone did not properly maintain security of their firearms in his home, and a child finds it and someone is killed.

He added that gun regulation evokes a lot of emotion from our citizens. He wished that the debate over gun legislation was less emotional not only among the legislators; but also among ordinary citizens who come to speak, either in favor or in opposition to proposed regulations and legislation.

### **Specific Roles**

Senator Red supported the passage of the GFSA, but he had sketchy recollection of the specific role he played or with whom he spoke. He noted that since the proposed legislation was referred to the House Education Committee in the House of Delegates, it faced a committee that generally favored this type of legislation. He did not recall whether he discussed the committee assignment with Speaker Thomas W. Moss, Jr. who made the decision to refer it to the House

Education Committee rather than the Committee on Militia and Police or the Committee on Courts of Justice. Regardless, Senator Red agreed with Speaker Moss because he too, favored passage of the proposed legislation and thought that the referral of the bill to the House Education Committee would result in a favorable outcome. Subsequently, the bill was reported out (18 to 2 vote), he recalled. He did not recall whether he spoke to this matter during floor debates, although he strongly supported the legislation.

Several legislators remembered their level of support for the legislation, although fewer recalled their specific actions. For example, Senator Red stated, *I do not recall how active I was. I do know I voted for it, supported it, but I do not know or recall how active I was.* However, Senator Red, like several interviewees, recalled the patrons of the GFSA, their views, and their positions on committees.

Staffer Gray recalled that his role was simply to draft the proposed legislation, to codify and adapt it to the federal legislation. He noted that laws of each state are different in style, as are the federal statutes. His role was to use the federal legislation as a base and mirror it appropriately within the structure of the Virginia system of codification.

Staffer Gray remembered that two delegates joined forces regarding passage of the GFSA and ancillary bills. One delegate was interested in school violence, a student conduct issue, while the other delegate was interested in the exclusionary consequences of student suspensions and expulsions. Their efforts ultimately led to legislation concerning alternative education<sup>106</sup> which became an outgrowth of their collaboration. Additionally, he credited their joint efforts to the passage of the *Commonwealth Challenge Program* whereby Virginia collaborates with the National Guard on dropout prevention, suspension, and expulsion issues.

### **Unintended Outcomes**

Delegate Blue expressed the need for acquisition and development of additional skilled competent school personnel, equitable school funding, and implementation of reasonable disciplinary policies. His concern was for students who were affected negatively by school districts that made poor tax effort for their schools, which often mirrored their communities' attitudes toward education. Thus, these students lacked supportive networks or safety-nets that all children need and should be provided.

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<sup>106</sup> *Code of Virginia* § 22.1-209.1:2, Alternative education programs for certain students.

Staffer Gray expressed that the lack of appropriate role models, competent teachers, and sensitive administrators further compromised the success of educational programs. He said that the problem was further compounded by implementation and administration of discipline policies that were arbitrary and capricious which often resulted in some groups of students being adversely affected. The disproportionate administration of suspensions and expulsions particularly, he opined, occurred more frequently among African-American students.

Delegate Black voiced a concern that federal legislation affecting public schools placed responsibility on states and localities to follow federal policies. He indicated that this legislation places localities in a difficult situation. He suggested that policies governing what happens locally should be made by local school boards and the local governmental agencies that have direct responsibility for the oversight of the local public schools.

Senator White raised his concern regarding the mandated expulsion of students for one calendar year due to the violation of gun-free legislation and indicated that students who were guilty of bringing guns to school are exactly those that need the most intervention. He indicated that often, students who are expelled from school means that a student who was on the brink of being lost now becomes completely lost.

### **The Legislative Process**

Delegate Green emphasized the importance of encouraging citizens to observe closely what happens in their schools. If they saw that GFSA was not working, he encouraged them to contact their legislators and make suggestions as to how the law could be improved. He noted that hardly any legislation was intended to be permanent or without amendments. He observed that in daily life we are constantly doing things in different ways to improve our lives. The same is true regarding the GFSA. The key to strengthening legislation is not only to react to disasters that occur, but also to anticipate weaknesses in legislation and how the laws should be improved. Then it becomes the task of convincing the General Assembly to make the necessary improvements.

Staffer Gray recalled that there was a prominent Ad Hoc Joint House and Senate Sub-Committee assigned the responsibility of preparing a report entitled, *Studying Acts of Violence and Crime by Students on School Property*. The Report to the Governor and the General Assembly from the Joint Sub-Committee (Document 61) was prepared pursuant to *HJR 312* in

1989 and continued pursuant to *HJR 132* in 1990. The Sub-committee was charged to: (1) determine the nature and extent of acts of violence and crime by students on school property; (2) assess the impact on learning and school climate; and (3) identify ways in which such acts might be prevented or appropriately handled. The Joint Committee was in existence for 3 years and its recommendations addressed issues dealing with school violence, student conduct, and classroom management and were enacted into the *Code of Virginia*.

Additionally, the Joint Sub-Committee made recommendations to amend the *Code of Virginia* in the following areas: (1) clarifying and strengthening the crime reporting requirements of local school districts; (2) clarifying and extending the definition of school property to include school buses and school-sponsored events; and (3) requiring the review and updating of local school board policies. The General Assembly supported the recommendation that local school boards be required to develop and implement standards and a protocol for responding to school emergencies and crises.

Staffer Gray suggested that school violence legislation was based on a societal issue, noting that society was flawed and that issues related to people were flawed and required revisiting. The issue of school violence has not gone away, and it has merely taken on a different form. Therefore, the GFSA and all other legislation must be amended as the General Assembly seeks ways to perfect what they have done, or sought to close loopholes in certain legislation, or sought to address a nuance of an old problem. He predicted that the legislation likely would evolve into some other topic that needs to be addressed.

Delegate Black indicated that Congress also reached a similar conclusion regarding the control of gun violence near schools and passed legislation that required states and local governments to take prescribed actions or risk losing federal funding for education. Delegate Black described the nature of the General Assembly as a citizen legislature and suggested that the public often forgot that legislators served on a part-time basis in the General Assembly. He explained that the time required to consider the vast amount of research and resources on school violence is very limited. He further explained that ideas to formulate bills originate with constituents, and he noted that the public, including members of local school boards and local school superintendents, do not hesitate to express their views. He shared an example, which underscored his understanding of the legislative process, about one of his constituents who was displeased that the Division of Motor Vehicles (DMV) no longer allowed patrons to smile for

their pictures. If the constituent felt that the DMV's practice was a bad policy, he, in turn, would file a bill at his constituent's request to change the bill.

Delegate Red emphasized that the referral of the bill to the House Education Committee was a boon to its passage and said, *It was sent to the House Education Committee in the House of Delegates, which is generally favorable to that type of legislation.*

### **Analysis of Legislative Documents**

In this analysis, all legislative records pursuant to GFSA legislation, (i.e., expulsions for students who brought guns onto school grounds or to school-sponsored activities), were reviewed for General Assembly sessions 1995 through 2014. These data were retrieved on-line from the *Legislative Information System (LIS)*, then reviewed, and summarized based upon actions taken by the Senate and House of Delegates. These documents were analyzed chronologically pursuant to each session of the General Assembly. Several General Assemblies did not have sponsored legislation relative to the GFSA and were not included in the narrative. In addition to content analysis, contained in Appendix G, is the chronological evolution of the GFSA in the Commonwealth. In addition to content analysis and summary displayed in Appendix G contains the text as it appears in the Acts of the General Assembly.

In the 1995 legislative session, Delegate Shirley F. Cooper (D), member of the House Education Committee, served as chief patron for *HB 1614*.<sup>107</sup> This bill amended and re-enacted §§22.1-257, 22.1-277.1 and 22.1-278<sup>108</sup> of the *Code of Virginia* by adding §22.1-277.01,<sup>109</sup> relating to gun-free schools and the expulsion of students for certain infractions. It required compliance with the federal *Improving America's School Act of 1994 (part F—Gun-Free Schools Act of 1994)* currently codified as *Title 20 Chapter 70 IV(A) 3 §7151*;<sup>110</sup> that required local school boards,

. . . to expel from school attendance for one year, any student who was determined by the school board to have brought a firearm onto school property or to a school-sponsored activity; and that school boards could determine that special circumstances existed and another disciplinary action or term of expulsion was appropriate.

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<sup>107</sup> *HB 1614, Expulsion of students for certain infractions (to Accompany SB 874)*, 1995 session. <http://lis.virginia.gov/cgi-bin/legp604.exe?951+ful+CHAP0724>.

<sup>108</sup> *Code of Virginia §§ 22.1-257, Excusing children who cannot benefit from education or whose parents conscientiously object; excusing children for reasons of health or apprehension for personal safety; school board and court authority to order alternatives.* <http://lis.virginia.gov/cgi-bin/legp604.exe?951+ful+CHAP0724>.

<sup>109</sup> *Title 20 Chapter 70 IV(A) 3 §7151*

<sup>110</sup> *Ibid.*

The Virginia Board of Education was designated as the state education agency to implement the provisions of GFSA, while each local school board was required to revise its standards of student conduct in order to conform to this provision within three months of its effective date. The federally-required certification of compliance and data on the expulsions imposed by this measure was required to be provided to the Virginia Department of Education by every local school board applying for funds apportioned to Virginia through the federal law. Consistent with other federal and state statutes, the terms destructive device and firearm were defined and certain exemptions, such as possession of a firearm as part of the curriculum or a school program, were set forth.

*HB 1614*<sup>111</sup> was referred to the House Education Committee, where it was reported out on January 30, 1995, and (18-Y 2- N). The House vote was (99-Y 0-N), and the Senate vote was (39-Y 1-N) on the Governor's recommendations.

In the 1995 Legislative Session, Delegate William S. Moore, Jr. (D), member of the Courts of Justice Committee, introduced *HB 2140* that also required compliance with the federal *Improving America's School Act of 1994 (Part F—Gun-Free Schools Act 1994)*.<sup>112</sup> This bill contained a provision that gave students with disabilities the rights provided by the *Individuals with Disabilities Education Act of 1991, 20 USC § 1400 et seq.*,<sup>113</sup> including the least restrictive environment, free and appropriate education, and I.E.P. hearings for change in placement. The bill was referred to the Committee on Education, then to the Education sub-committee, and ultimately no action was taken by the committee by voice vote.

In the 1995 Legislative Session, Delegate Frank W. Wagner (R), member of the House Education Committee, introduced *HB 2330*,<sup>114</sup> an administration bill that authorized school boards to require that any student who was expelled pursuant to the provisions of this bill to attend an alternative education program as the board may deem appropriate. This bill was also referred to the House Education Committee, then to the Education sub-committee, and was passed by indefinitely by a vote of (19-Y 1-N).

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<sup>111</sup> *Ibid.*

<sup>112</sup> *Public Law 103-882*, Oct. 20, 1994, *Part F – Gun Possession*.

<sup>113</sup> *Individuals with Disabilities Education Act of 1991, 20 USC §1400 et seq.*,

<sup>114</sup> *HB 2330*, Expulsion of students for firearms possession on school property, 1995 Session. See: <http://lis.virginia.gov/cgi-bin/legp604.exe?ses=951&typ=bil&val=hb2330>.

In the 1995 Legislative Session Senator Thomas K. Norment (R), member of the Courts of Justice Committee, introduced *SB 874*<sup>115</sup> that was identical to *HB 1614*.<sup>116</sup> The bill was referred to the Committee on Education and Health, and ultimately passed the House and Senate, with the Governor's recommendations (97-Y 0-N).

During the 1996 Legislative Session, Delegate George W. Grayson (D) introduced *HB 1530*,<sup>117</sup> which gave clarity to the suspension or expulsion requirement for possession of an object that was not a destructive device or firearm that a reasonable person would consider a toy; and that it was not brandished in a threatening or disruptive manner. The bill was continued to 1997 in the House Education sub-committee. In the 1997 legislative session, *HB 1530*<sup>118</sup> was carried over from Virginia General Assembly Session 1996. The bill did not pass as no action was taken by House Education Committee by voice vote.

In the 1998 General Assembly Session, Delegate Lionell Spruill, Sr. (D), member of the House Education Committee, introduced *HB 1421*,<sup>119</sup> which provided for expulsion from public school attendance for one calendar year those students whom the school board had determined, in accordance with established *due process* procedures, to have brought on to school property or to a school-sponsored activity certain specified weapons, such as a bowie knife, switchblade knife, ballistic knife, razor, slingshot, spring stick, fighting chain, throwing star, or oriental dart. A school board may, however, determine, based on the facts of the particular case that special circumstances exist and another disciplinary action or term of expulsion was appropriate. *HB 1421*<sup>120</sup> was stricken from the docket by the Education Committee (24-Y 0-N).

In the 1999 General Assembly, Delegate Phillip A. Hamilton (R) member of the House Education Committee introduced *HB 1462*<sup>121</sup> that eliminated the exception for possession of an unloaded firearm in a closed container. The Senate amended the engrossed bill to exclude application to licensed hunters during hunting season; however, the Joint Conference Committee

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<sup>115</sup> *SB 874*, Expulsion of students for firearms possession on school property (to Accompany *SB 874*, 1995 session). See: <http://lis.virginia.gov/cgi-bin/legp604.exe?951+sum+SB874>.

<sup>116</sup> *HB 1614*, *op. cit.*

<sup>117</sup> *HB 1530*, Expulsions for weapons offenses; zero-tolerance, 1996 session. See: <http://lis.virginia.gov/cgi-bin/legp604.exe?ses=961&typ=bil&val=hb1530>.

<sup>118</sup> *HB 1530*, Expulsions of weapons offenses; zero-tolerance, 1997 session. See: <http://lis.virginia.gov/cgi-bin/legp604.exe?ses=971&typ=bil&val=hb1530>.

<sup>119</sup> *HB 1421*, Expulsion of students for possession of certain weapons, 1998 session. See: <http://lis.virginia.gov/cgi-bin/legp604.exe?ses=981&typ=bil&val=hb1421>.

<sup>120</sup> *Ibid.*

<sup>121</sup> *HB 1462*, Expulsion of students for firearms possession, 1999 session. See: <http://lis.virginia.gov/cgi-bin/legp604.exe?ses=991&typ=bil&val=hb1462>.

recommended to strike the Senate amendment and the provision that a school board determine, based on the facts of the particular case, that special circumstances exist and another disciplinary action or term of expulsion was appropriate. The Joint Conference Committee recommended that the following phase be inserted:

A school administrator, pursuant to school board policy, or a local school board may, however, determine, based on the facts of a particular situation that special circumstances exist and no disciplinary action or another disciplinary action or another term of expulsion is appropriate. A local school board may promulgate guidelines for determining what constitutes special circumstances.

Senator Janet Howell (D), member of the Education and Health and Courts of Justice committees, introduced *SB 1136*,<sup>122</sup> which modified the zero-tolerance law to authorize the local school superintendent or his/her designee to conduct preliminary reviews to determine what, if any, other action is appropriate. These reviews are intended to ensure that any such other subsequent disciplinary action is to be taken in accordance with the *due process* procedures set forth in §22.1-277.<sup>123</sup> Currently, a local school board may determine that special circumstances exist in these weapons possession cases and that another disciplinary action is more appropriate. *SB 1136* passed unanimously in both chambers. The Governor approved *SB 1136* on April 7, 1999.

During the 2000 legislative session, four bills were introduced; however, only one, *HB 464*<sup>124</sup> passed. Introduced by Delegate Robert Tata (R), a member of the House Education Committee, *HB 464* expanded the term school property to include school-owned or leased property or vehicles, including any vehicles operated on behalf of the school board. As offered on January 2000, *HB 464* defined school and its premises as,

*any public, private or parochial elementary, middle or high school, including buildings and grounds; defined, the period during which the offense might occur as that portion of any property open to the public used for school-sponsored functions or extra-curricular activities while such functions or activities are taking place; extended the physical property beyond the school building and grounds to, any school bus owned or leased or operated by or on behalf of any such school or school board, or any school bus stop; and established the penalty for violating the statute as, he shall be guilty of a Class 6 felony. After referral to the House Committee on Militia and Police, the committee reported out an amendment in the nature of a substitute, which redefined . . . school property as any*

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<sup>122</sup>*HB 1136, Student expulsions*, 1999 session. See: <http://lis.virginia.gov/cgi-bin/legp604.exe?ses=991&typ=bil&val=sb1136>.

<sup>123</sup> *Code of Virginia §22.1-277, op. cit.*

<sup>124</sup>*HB 464, Possession of weapons on school property, school buses, school bus stops, and during school activities*, 2000 session. See: <http://lis.virginia.gov/cgi-bin/legp604.exe?ses=001&typ=bil&val=hb464>.

*real property owned or leased by the school board or any vehicle owned or leased by the school board or operated by or on behalf of the school board.* The bill passed all subsequent votes unanimously. On April 6, 2000, the Governor approved the entire legislation.

*HB 1179*<sup>125</sup> was introduced by Delegate John S. *Jack* Reid (R) and entitled, School Board Disciplinary Procedures. The bill contained the following: (1) provided for definitions of long-term suspension, expulsion, short-term suspension, and alternative education; (2) outlined steps and procedures relating to *due process*; (3) established the requirement for odd-numbered disciplinary committees of school boards to at least three members; (4) clearly stated the responsibilities for zero-tolerance law; and (5) gave clarification and simplicity to provisions for alternative education placements and exclusion and responsibilities for hearing officers. *HB 1179* was continued to 2001 in Education sub-committee (23-Y 0-N). However, in November of 2000, *HB 1179* was stricken at the request of its patron in the House Education Committee.

Delegate Robert Tata (R) introduced *HB 1201*<sup>126</sup> Expulsion of Students for Gun Possession, which altered to the definition of *destructive device*. The bill was referred to the House Education Committee on a 19 to 4 vote; then to the Committee on Militia, where it was tabled (19-Y 0-N).

Senator Janet Howell (D) introduced by *SB 80*,<sup>127</sup> and Senator Madison Marye (D) added the following floor amendment with the consent of the Senate,

Junior ROTC and Senior ROTC program personnel and activities, specifically in relation to the possession or discharge of firearms which existing ROTC programs currently allow, providing said firearms are under the control of the ROTC military personnel and instructors, and providing that when not in use, said firearms are securely stored and maintained, as is currently required.

*SB 80* eliminated the exception for firearms which were used as part of the curriculum or school sponsored activities. Ultimately, *SB 80* was passed by indefinitely in the Militia and Police (14-Y 7-N).

In the 2002 legislative session, Delegate Bradley Marrs (R) introduced *HB 512*<sup>128</sup> that proposed that disciplinary actions could not be imposed in certain cases (i.e., self-defense, food

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<sup>125</sup>*HB 1179*, School board disciplinary procedures, 2000 session. See: <http://lis.virginia.gov/cgi-bin/legp604.exe?ses=001&typ=bil&val=hb1179>.

<sup>126</sup>*HB 1201*, Expulsion of students for gun possession, 2000 session. See: <http://lis.virginia.gov/cgi-bin/legp604.exe?ses=001&typ=bil&val=hb1201>.

<sup>127</sup>*SB 80*, Firearms; exempts certain ROTC program personnel, 2000 session. See: <http://lis.virginia.gov/cgi-bin/legp604.exe?ses=001&typ=bil&val=sb80>.

service utensil, or non-prescription medication) until school administrators conducted a preliminary fact-finding investigation of the aforementioned assertions. The bill was referred to the House Committee on Education, and ultimately, it was passed by indefinitely (13-Y 8-N).

Delegate Dwight C. Jones (D) introduced *HB 971*<sup>129</sup> which proposed revisions to expulsion statutes to require that local school boards establish guidelines for determining when special circumstances exist in gun possession cases. The text of the bill required that

a school board shall promulgate guidelines for determining what constitutes special circumstances. Such guidelines shall include, but shall not be limited to the factors set forth in subsection C of § 22.1-277.06.<sup>130</sup>

This bill, however, was passed by indefinitely by the House Education Committee (13-Y 7-N).

In the 2003 legislative session, Delegate James F. Almand (D), a member of the Courts of Justice Committee, introduced *HB 1907*,<sup>131</sup> which was entitled Student expulsions; Possession of air rifle or BB gun. This bill added, possession of an air rifle or BB gun, to the firearm possession statute. Also, it added specificity to references of other weapons designed to propel a missile of any kind by action of an explosion of any combustible material. *HB 1907* passed the House unanimously. In the Senate, it was referred to the House Education and Health Committee and reported out (14-Y 1-N). Three days later it passed the Senate unanimously (39-Y N-0). William C. Wampler, Jr. did not vote. On March 22, 2003, the legislation was approved by Governor Mark Warner.

Delegate Bradley Marrs (R) introduced *HB 2408*,<sup>132</sup> which amended provisions to prohibit imposing of zero-tolerance disciplinary statutes for possession of eating utensils or personal grooming paraphernalia unless otherwise brandished or used as a weapon. This bill was passed by indefinitely in the Education sub-committee (20-Y 1-N).

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<sup>128</sup> *HB 512*, Student discipline, 2002 session. See: <http://lis.virginia.gov/cgi-bin/legp604.exe?ses=021&typ=bil&val=hb512>.

<sup>129</sup> *HB 971*, Zero-tolerance policies in public schools, 2002 session. See: <http://lis.virginia.gov/cgi-bin/legp604.exe?ses=021&typ=bil&val=hb971>.

<sup>130</sup> *Code of Virginia § 22.1-277.06*, Expulsions; procedures; readmission.

<sup>131</sup> *HB1907*, Student expulsions; possession of air rifle or BB gun, 2003 session. See: <http://lis.virginia.gov/cgi-bin/legp604.exe?ses=031&typ=bil&val=hb1907>.

<sup>132</sup> *HB 2408*, Student discipline, 2003 session. See: <http://lis.virginia.gov/cgi-bin/legp604.exe?ses=031&typ=bil&val=hb2408>.

In the 2005 legislative session, *HB 2202*<sup>133</sup> Student Discipline was introduced by Delegate Bradley P. Marrs (R) which prohibited the imposition of any disciplinary against a student who possessed a *bona fide* eating utensil or grooming device, unless the utensil or device was brandished or used in a threatening or intimidating manner. The bill was referred to the House Education Committee; then assigned to the Education sub-committee. Ultimately, the bill was tabled in Education (21-Y 1-N).

Delegate Thomas Dent Rust (R), a member of the House Education Committee, introduced *HB 2223*<sup>134</sup> Student expulsion; procedures for re-admission. The bill required school boards, school board committees, or superintendents to review petitions for readmission of expelled students. If the student's request was denied by the superintendent or the school board committee, the student may petition the full school board to review the re-admission denial. *HB 2223* passed the General Assembly, was approved by the Governor, and became effective July 1, 2005.

During the 2006 legislative session, *HB 1516*<sup>135</sup> Possession of certain weapons; Expulsion for possession thereof on school property was introduced by Delegate Robert Tata(R). The bill was referred to the House Education Committee, where the language was amended. This bill amended the language from *bringing* weapons onto school to *possessing* certain weapons on school property or at a school-sponsored activity. *HB 1516* passed both houses unanimously (100-Y 0-N; 39-Y 0-N). Senator Jay O'Brien did not vote. *HB 1516* was approved by the Governor on April 5, 2006.

In the 2007 legislative session, *HB 1229* Expulsion of students;<sup>136</sup> offered a procedure for readmission to school as introduced by Delegate Dwight C. Jones (D) in December 2006, but was tabled by voice vote until the 2007 session. The amendment, if granted, would have enabled the expelled student to return to school no later than one calendar year from the date of expulsion.

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<sup>133</sup>*HB 2202*, Students; policy for disciplinary actions, 2005 session. See: <http://lis.virginia.gov/cgi-bin/legp604.exe?ses=051&typ=bil&val=hb2202>.

<sup>134</sup>*HB 2223*, Students; policy for disciplinary actions, 2005 session. See: <http://lis.virginia.gov/cgi-bin/legp604.exe?ses=051&typ=bil&val=hb2223>.

<sup>135</sup>*HB 1516*, Possession of certain weapons on school property; expulsion, 2006 session. See: <http://lis.virginia.gov/cgi-bin/legp604.exe?ses=061&typ=bil&val=hb1516>.

<sup>136</sup>*HB 1229*, Expulsion of students; amends the procedure thereof for readmission to school, 2007 session. See: <http://lis.virginia.gov/cgi-bin/legp604.exe?ses=071&typ=bil&val=hb1229>.

Also in the 2007 legislative session, *HB 1866*<sup>137</sup> was introduced by Delegate Robert J. Wittman, a member of the Police and Public Safety Committee. The bill, entitled Firearms on school property; pneumatic weapons; penalty, made it a Class 6 felony to possess a firearm that expels a projectile by action of pneumatic pressure on school property; subject to certain exemptions. *HB 1866*, having implications for penalties, was referred to the Committee for Courts of Justice, where ultimately it was left.

During the same legislative session, *HB 2853* Stun weapons;<sup>138</sup> eliminated references to tasers throughout the *Code of Virginia*. The bill was introduced by Delegate Brian J. Moran, who served on the Courts of Justice Committee. The bill amended the definition of a stun weapon. Heretofore, the *Code* differentiated between this mechanism and a taser. The bill passed with Senate amendments striking *taser* and defining a stun weapon as,

. . .any device that emits a momentary or pulsed output, which is electrical, audible, optical or electromagnetic in nature and which is designed to temporarily incapacitate a person.

Also in the 2007 legislative session, *HB 3013* Firearms on school property; misdemeanor to possess pneumatic weapons was introduced.<sup>139</sup> In addition to the prohibition of pneumatic weapons, the bill made it a Class I misdemeanor to possess a firearm that expels a projectile by action of pneumatic pressure on school property; subject to certain exemptions. Like *HB 1866*,<sup>140</sup> both were introduced by Delegate Robert J. Wittman. The bill was referred to and left in the Committee on Militia, Police, and Public Safety.

In the 2008 legislative session, *HB 136* School: definition thereof for purposes of prohibiting weapons on school grounds<sup>141</sup> was introduced by Delegate Christopher Peace (R), a member of the *Courts of Justice Committee*. Although left in the Militia, Police, and Public Safety committee, the proposal revised the definition of a school,

. . . as any public school from kindergarten through grade 12 operated under the authority of any locality within the Commonwealth, or any private or religious school that offers

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<sup>137</sup>*HB 1866*, Firearms on school property; pneumatic weapons; penalty, 2007 session. See: <http://lis.virginia.gov/cgi-bin/legp604.exe?ses=071&typ=bil&val=hb1866>.

<sup>138</sup>*HB 2853*, Stun weapons; eliminates references to tasers throughout the Code, 2007 session. See: <http://lis.virginia.gov/cgi-bin/legp604.exe?ses=071&typ=bil&val=hb2853>.

<sup>139</sup>*HB 3013*, Firearms on school property; pneumatic weapons; penalty, 2007 session. See: <http://lis.virginia.gov/cgi-bin/legp604.exe?ses=071&typ=bil&val=hb3013>.

<sup>140</sup>*HB 1866*, *op. cit.*

<sup>141</sup>*HB 136*, School; definition thereof for purposes of prohibiting weapons on school grounds, 2008 session. See: <http://lis.virginia.gov/cgi-bin/legp604.exe?ses=081&typ=bil&val=hb136>.

instruction at any level or grade from kindergarten through grade 12. Heretofore, the definition is limited to any elementary, middle, or secondary school.

In the 2009 legislative session, *HB 1822* Handguns: exempts permit holder from prohibition against carrying onto school property<sup>142</sup> was introduced by Delegate Joseph P. Johnson, a Courts of Justice Committee member. Specifically, the exemption covered concealed handgun permit holders from prohibition against carrying handguns onto public, private, or religious elementary, middle or high school property. The proposed bill was left in Militia, Police and Public Safety Committee.

In the 2010 legislative session, *HB 72*<sup>143</sup> was introduced by Delegate Charles W. Carrico. The proposal, entitled Possession of firearms on school property; penalties, sought to change the penalty from a Class 6 felony to a Class I misdemeanor. This penalty would be the same as the penalties for possessing other weapons on school property. The proposal was left in Militia, Police and Public Safety Committee.

Also in the 2010 legislative session, *HB 1214* Possession of firearm on public school property; penalty,<sup>144</sup> prohibited a person from possessing an unloaded firearm (or shotgun) that is in a closed container in or upon a motor vehicle at a school was introduced by Delegate Kaye Kory. The proposal was left in Militia, Police and Public Safety Committee.

In the 2011 legislative session, *SB 903* Definition of violent felony; penalty<sup>145</sup> was introduced by Senator Creigh Deeds (D), a member of the Courts of Justice Committee. The bill revised by removing the word *and* from the list of violent felonies, clarifying that a person need not commit both §18.2-308.1 and §18.2-308.2 in order for the offense to be classified as violent felony for the purposes of sentencing guidelines. *SB 903* passed.

In the 2012 General Assembly, Jennifer L. McClellan introduced *HB 365*<sup>146</sup> and Kenneth C. Alexander introduced *HB 887*.<sup>147</sup> Both bills, which were identical, required district

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<sup>142</sup>*HB 1822*, Handguns; exempts permit holders from prohibition against carrying onto school property, 2009 session. See: <http://lis.virginia.gov/cgi-bin/legp604.exe?ses=091&typ=bil&val=hb1822>.

<sup>143</sup>*HB 72*, Possession of firearms on school property; penalties, 2010 session. See: <http://lis.virginia.gov/cgi-bin/legp604.exe?ses=101&typ=bil&val=hb72>.

<sup>144</sup>*HB 1214*, Possession of firearm on public school property; penalty, 2010 session. See: <http://lis.virginia.gov/cgi-bin/legp604.exe?ses=101&typ=bil&val=hb1214>.

<sup>145</sup>*SB 903*, Definition of violent felony; penalty, 2011 session. See: <http://lis.virginia.gov/cgi-bin/legp604.exe?ses=111&typ=bil&val=sb903>.

<sup>146</sup>*HB 365*, Student suspension or expulsion from school; requires superintendent to ensure continued education (Identical to *HB 887*), 2012 session. See: <http://lis.virginia.gov/cgi-bin/legp604.exe?ses=121&typ=bil&val=hb365>.

<sup>147</sup>*HB 887*, Student suspension or expulsion from school; requires superintendent to ensure continued education (Identical to *HB 365*), 2012 session. See: <http://lis.virginia.gov/cgi-bin/legp604.exe?ses=121&typ=bil&val=hb887>.

superintendents to ensure continued education for students suspended or expelled from school. Both cited the compulsory public education statute in the *Virginia Constitution* for elementary and secondary students of eligible age as the basis for requiring continued education during suspension or expulsion. Specific means or strategies were not given; however, alternative education for suspended or expelled students, by definition, runs the gamut from home-assigned instruction for individual students to satellite centers and technology-based on-line programs for groups of students. An impact study was conducted involving 10 localities. The proposal, named *Student Suspension or Expulsion from School*; requires district superintendents to provide continued education, but was left in committee.

In the 2013 legislative session, *HB 1866* Public Schools; expulsion of students<sup>148</sup> was introduced by Delegate Roxann L. Robinson. The bill amended the definition by removing certain weapons and making the definition consistent with the federal GFSA legislation; thereby limiting mandatory expulsions. Passage was unanimous in both chambers.

Also in the 2013 legislative session, Delegate Mark L. Cole (R) introduced *HB 2344*,<sup>149</sup> which required school boards to establish threat assessment teams in each school and district-level oversight. *Virginia Student Threat Assessment Guidelines (VSTAG)* research is well-documented. Because short and long-term suspensions are linked to school dropout and delinquency, reducing disparities in suspension rates could help reduce school dropout and delinquency rates for all students, but especially for black males.<sup>150</sup> This bill requires each threat assessment team to: (1) provide guidance to students faculty and staff; (2) identify school community members to whom threatening behavior should be reported; and (3) develop policies and procedures for those who may present a threat. *HB 2344*<sup>151</sup> passed.

In the 2014 legislative session, Delegates R. Steven Landes and Thomas D. Rust and Senator Thomas A. Garrett introduced identical legislation *HB198*,<sup>152</sup> *HB 752*,<sup>153</sup> and *SB 441*

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<sup>148</sup>*HB 1866*, Public schools; mandatory expulsion of students, 2013 session. See: <http://lis.virginia.gov/cgi-bin/legp604.exe?ses=131&typ=bil&val=hb1866>.

<sup>149</sup>*HB 2344*, School safety; threat assessment teams and oversight committees, 2013 session. See: <http://lis.virginia.gov/cgi-bin/legp604.exe?ses=131&typ=bil&val=hb2344>.

<sup>150</sup>Dewey G. Cornell, "The Virginia Model for Student Threat Assessment." (Charlottesville, VA: *Youth Violence Project*, 2010)

<sup>151</sup>*HB 2344*, *op. cit.*

<sup>152</sup>*HB 198*, Student discipline; expulsion due to firearm or drug offenses (Identical to *HB 752 and SB 441*), 2014 session. See: <http://lis.virginia.gov/cgi-bin/legp604.exe?ses=141&typ=bil&val=hb198>.

<sup>153</sup>*HB 752*, Student discipline; expulsion due to firearm or drug offenses (Identical to *HB 198 and SB 441*), 2014 session. See: <http://lis.virginia.gov/cgi-bin/legp604.exe?ses=141&typ=bil&val=hb752>.

Elementary and secondary school students; expulsion.<sup>154</sup> The bill made clear that students who have committed weapons or drug offenses are not required to be expelled regardless of the facts of the situation. These bills eliminated the mandatory penalties consistent with zero-tolerance. *HB 198*,<sup>155</sup> *HB 752*,<sup>156</sup> and *SB 441*<sup>157</sup> were referred to the *Education/Health and Education Committees* where they ultimately passed.

Also, in the 2014 legislative session, *HB 726 Suspension and expulsion of students; continuation of curriculum*<sup>158</sup> was introduced by Delegate Jennifer L. McClellan. The bill required suspended or expelled students be given the opportunity to continue to progress in the curriculum during the period of exclusion. It also required discipline committees, School Boards, and administrators to exercise discretion when considering suspension or expulsion, to consider ways to re-engage the student in the learning process, and to consider alternatives to suspension or expulsion before imposing the consequence. The bill required that any student who is suspended more than ten days cumulatively in a school year to receive a positive behavioral intervention plan, intervention strategies, and supports to address the behavior so that it no longer impedes student learning. The bill was left in *House Appropriations*.

### **Analysis of Other Documents**

In this analysis, a representative sample of other documents relative to school violence and zero-tolerance discipline policies in the Commonwealth of Virginia were reviewed and analyzed based upon their focus, methodology, conclusions, and recommendations. The release and publication of these specific documents spanned from 1991 to 2013.

### **Acts of Violence and Crime by Students on School Property**

The Joint Subcommittee Studying Acts of Violence and Crime by Students on School Property was established to determine the nature and extent of acts of violence and crime by students on school property, to assess the impact on learning and school climate, and to identify

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<sup>154</sup>*SB 441*, Student discipline; expulsion due to firearm or drug offenses (Identical to *HB 752* and *HB 198*), 2014 session. See: <http://lis.virginia.gov/cgi-bin/legp604.exe?ses=141&typ=bil&val=sb441>.

<sup>155</sup>*HB 198*, *op. cit.*

<sup>156</sup>*HB 752*, *op. cit.*

<sup>157</sup>*SB 441*, *op. cit.*

<sup>158</sup>*HB 726*, Suspension and expulsion of students; continuation of curriculum, 2014 session. See: <http://lis.virginia.gov/cgi-bin/legp604.exe?ses=141&typ=bil&val=hb726>.

ways such acts might be prevented or handled appropriately.<sup>159</sup> The Joint Resolution by the Joint Subcommittee Studying Acts of Violence and Crime by Students on School Property is included in Appendix K. The Joint Subcommittee surveyed school superintendents and teachers, and the Virginia Education Association (VEA) facilitated the survey by aiding members who feared retribution from their district's administration. Five of the six VEA *UniServ* geographical regions responded. The joint subcommittee requested and reviewed school board policies from 103 of 141 school districts that responded.<sup>160</sup>

The nature and extent of acts of violence and crime by students on school property were assaults of students by students; violations of drug possession laws; and truancy, trespassing, and vandalism, according to *House Document Number 61*. All areas in the Commonwealth reported problems of crime and violence, but urban school districts reported the most incidents.<sup>161</sup> Respondents' perceptions of leniency of the juvenile justice system in dealing with offenders, students' lack of respect for authority, parents' lack of control of and guidance for their children, lack of community and parental support, the unwillingness of school administrators and school boards to respond in a manner that was firm, fair, consistent, and a lack of support for school staff who reported incidents conveyed the impact of crime and violence by students on school property on the learning and school climate.

As reported in *House Document Number 61*, the subcommittee members recommended amending the *Code of Virginia* as follows: (1) to clarify and strengthen crime reporting requirements for school districts; (2) to clarify and extend the definition of school property to include school buses and school-sponsored activities; and (3) to require review and periodic updating of local school board policies as means to prevent or handle acts of crime and violence by students on school property.

### **Violence in Schools: Recommendations for action by The Education Summit**

The *Virginia Association of School Superintendents (VASS)* called for a summit to formulate recommendations to combat issues of violence in communities and schools.<sup>162</sup> In order

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<sup>159</sup> *Report of the Joint Subcommittee, Acts of Violence and Crime by Students on School Property*. (House Document No. 61, 1991 session).

<sup>160</sup> *Ibid.*

<sup>161</sup> *Ibid.*

<sup>162</sup> Virginia Association of School Superintendents, *Violence in Schools: Recommendations for Action by the Education Summit*, (Charlottesville, Virginia: VASS, 1992).

to conduct this summit, an invitation was extended to seven major organizations, including Virginia Association of School Superintendents (VASS), Virginia Association of Elementary School Principals (VAESP), Virginia Education Association (VEA), Virginia Association of Secondary School Principals (VASSP), Virginia Middle School Association (VMSA), Virginia Congress of Parents and Teachers (VCPT), and the Virginia School Boards Association (VSBA), to help enable schools to become safer environments, according to the Education Summit report. Subsequent to the initial Summit in May 1992, each group chose staff representatives to serve on the fifteen-member working committee, which was led by its chairman, Daniel Norman, Assistant Superintendent of Henrico County Public Schools. The working committee identified key issues and investigated strategies to be considered by the participating organizations. The working Summit Committee formulated a discussion agenda of 300 issues and presented these to the Summit participants on August 5, 1992. Subsequent to this discussion, the working Summit committee drafted recommendations for review, modification and approval. The ensuing report represented steps toward assuring the major goals of the Summit: (1) developing a strong disciplinary response, (2) building and managing a safe educational environment, and (3) developing long-term educational and family prevention programs.

One of the most frequently cited problems for educators in the Summit process was community-based conflict that was brought into the school environment. Other concerns of the Summit participants included: (1) the continuing effects of prejudice; (2) the growing disparity between rich and poor, particularly the increase in the number of children living in poverty; (3) the need for institutions and communities to address cultural diversity and the necessity for young people to respect differences but value our common humanity; and (4) the effects upon children and schools, not only of substance abuse, but of children born to abusers. The Summit process identified three areas of public responsibility, essential to resolving the issue of school violence: (1) schools and their communities are responsible for providing a safe and appropriate school environment; (2) schools and their communities must re-examine their programs to ensure that they support long-term family and educational needs for prevention rather than intervention; and (3) schools and their communities must demand and achieve a strong and consistent disciplinary expectation and application of that expectation for every student. Two other

concerns pervasive throughout the Summit discussion were: (1) the tendency to blame others for the problem and (2) the unwillingness to accept a shared responsibility for solutions.<sup>163</sup>

The Summit offered recommendations grouped under twelve topics and are displayed by topic in Appendix N.

### **Violence in High School Sports**

The safety and well-being of students in public schools in the Commonwealth became an issue of concern that carried over into similar concern for violence in high school sports.<sup>164</sup>

Although the root causes of the violence were not clear, it was clear that violence in high school sports was on the rise. The *Senate Joint Resolution 2000*, approved by the 1993 General Assembly, authorized the Virginia Department of Education to study violence in high school sports among its participants and towards officials and to recommend solutions to this problem. The study findings and recommendations were reported to the Governor and to the 1994 session of the General Assembly and entitled, *Report of the Department of Education on Violence in High School Sports Senate Document Number 29*.

The study was conducted by two groups: a core team and a stakeholder team comprised of representatives of agencies, organizations, and constituents affected by the study. The study was conducted in three phases: (1) a review of literature, (2) a survey to determine how other states were addressing violence in high school sports, and (3) a survey of individuals involved in sports in the Commonwealth. The review of literature relied on resources of the Virginia Department of Education, the Virginia High School League, Virginia Tech, and searched two electronic databases.<sup>165</sup> The review revealed that the occurrence of event-related violence in high school sports was rare, yet there was a perceived potential for violence to occur at high school sporting events, similarly as the potential existed in society.

The state surveys utilized in the study, which had been mailed to 50 athletic associations, received responses from 43 associations. These state surveys revealed that: (1) 63% of state associations believed that violence was perceived to be a problem in the respective states; (2) 76% of the responding associations had developed interventions to prevent/reduce violence in

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<sup>163</sup> *Ibid.*

<sup>164</sup> Report of the Department of Education, *Violence in High School Sports*. (Charlottesville, Virginia: Senate Document Number 29, 1995).

<sup>165</sup> *Ibid.*

high school sports; (3) 74% of the responding associations recommended strategies to prevent/reduce violence in high school sports, and (4) four states had legislation that considered the first incidence of violence towards an official as a misdemeanor, and Montana had legislation that considered the first incidence of violence towards an official as a felony.

In *Violence in High School Sports*, information was obtained from individuals involved in athletic contests in the Commonwealth during a presentation and discussion among participants attending the *Virginia Association of Secondary School Principals Conference* and through surveys distributed to athletic directors, coaches, officials' commissioners, game officials, and players. Twenty-four principals participated in the round-table discussion, and a survey was included in registration packets for the *1993 Virginia High School League (VHSL)* to identify the type and extent of violence observed by athletic directors and coaches. The VHSL commissioners were asked to respond to two questions: (1) whether they had been physically assaulted in the last five years and (2) whether they believed the chance of having been assaulted increased in the last five years. Of the 51 who responded, their responses were 21% and 74%, respectively. Similarly, 39 game officials responded that: (1) 2% had been physically assaulted in the last 5 years; (2) 30% perceived that they had been in physical danger as result of an athletic contest; (3) 52% acknowledged inadequate security for game officials during and after contests; and (4) 98% perceived a greater likelihood of physical assault today and 61 of those respondents anticipated that the source of such assaults was spectators.

The VHSL office prepared a summary report of violent incidents reported from 1991 to 1993 and included that data in the final phase of the study. In the summary report, 12 player-on-player incidents and one player-on-official incident were reported to the VHSL over this two-year period. Given the 20,000 games that were played over this period; the number of reported incidents was minor. The core and stakeholder members concluded the study with these recommendations: (1) establish a fair and consistent definition of violence; (2) develop written guidelines governing violence in sports, including procedures to ensure the safety of game officials; (3) conduct annual workshops to review the aforementioned procedures; (4) communicate through school administrations to parents, staff, and students that interscholastic contests were an extension of the school program and behavioral expectations for school were applicable; (5) develop a strategy for the improvement of the reporting system for incidents of violence; (6) disseminate this report through the VHSL in its publications; and (7) urge the

*General Assembly* to introduce legislation to make it a misdemeanor to commit an act of violence toward a league official.<sup>166</sup>

### **Guidelines for Student Searches in Public Schools**

The *Report of the Board of Education Guidelines for Student Searches in Public Schools* was prepared pursuant to *HB 1489* of the 1999 General Assembly.<sup>167</sup> The Virginia Board of Education was authorized, in consultation with the Attorneys' General Office, to develop guidelines for the conduct of student searches, including random locker searches and strip searches, consistent with relevant state and federal laws and Constitutional principles. The Virginia Department of Education began its work on the study by inviting representatives from local school districts, state agencies, and professional organizations to form an advisory group for the purpose of formulating guidelines. This advisory group met in February, August, and September, 1999 and its intent was to develop guidelines for technical assistance in developing policy and practice rather than displacing local discretion and authority.

The advisory group concluded that policies regarding searches should be linked to the *Code of Conduct* and the school mission. The group added that the publication of such policies should be made available to students and parents. The advisory group acknowledged that a safe environment was a community task, and they noted that parental involvement in the development of such policies was good practice and encouraged proper implementation.<sup>168</sup>

### **Study of School Security Officers**

The 2001 *General Assembly* requested the *Virginia State Crime Commission* pursuant to *HJR 542* to examine the role, responsibilities, training, and authority of school security officers and school safety specialists.<sup>169</sup> The study resolution identified five areas for analysis: (1) the coordination of school security officers and school safety specialists with school resource officers (SROs); (2) the review of employment levels of current school security officers and school safety specialists within school districts in the Commonwealth; (3) the role, responsibility,

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<sup>166</sup> *Ibid.*

<sup>167</sup> Virginia Guidelines for Student Searches in Public Schools. Searches in Public Schools which were adopted by the Board of Education on November 18, 1999.

<sup>168</sup> *Ibid.*

<sup>169</sup> *HJR 542* Requesting the Virginia State Crime Commission to examine the role, responsibilities, training, and authority of school security officers and school safety specialists, February 4, 2001.

and training needs of school security officers and school safety specialists; (4) data regarding school crime and violence in Virginia public schools; and (5) other issues deemed appropriate. The *Virginia Crime Commission* staff began its study of school security officers and school safety specialists in the spring of 2001 by interviewing staff from districts with security officers, staff from the Department of Criminal Justice Services (DCJS), and national experts in the field of school safety. Commission staff also surveyed local school district safety coordinators and secondary principal regarding the activities, authority, and location of school security officers and school safety specialists. The staff reported its findings and recommendations to improve safety, clarify roles, and establish standards for implementing a safety network in secondary schools across the Commonwealth as follows: (1) codify the definitions of school resources (SROs) and school security officers (SSOs); (2) amend the *Code of Virginia* to clarify the roles of SSOs; (3) amend §9.1-102 of the *Code of Virginia* to direct the DCJS in consultation with the Department of Education (DOE), and the Virginia State Crime Commission (VSCC), to develop standards for job entry, training, and certifications; (4) support annual funding for two fulltime equivalents (FTEs) and \$350,000 to achieve full funding for the DCJS Center for School Safety; and (5) support phase-in funding for SROs in all middle and high schools in the Commonwealth to ensure law enforcement and arrest powers essential for the provision of safe schools.<sup>170</sup>

### **Student Discipline Statutes**

The Virginia Commission on Youth was established by § 9-292 of the *Code of Virginia* to study and provide recommendations addressing the needs and required services to the youth and their families of the Commonwealth. The authorizing document, which is included in Appendix L, granted the commission the power to undertake studies and gather information and data in order to accomplish its purpose, and to formulate and present recommendations to the Governor and members of the General Assembly.

The 2000 General Assembly in *Joint Resolution 186*,<sup>171</sup> which is included in Appendix M, requested that the Virginia Commission on Youth study student discipline statutes and report its findings to the 2001 and 2002 sessions of the General Assembly. The Commission refined the study and identified three areas for analysis: (1) classification and streamlining of student disciplinary statutes, (2) standardization of definitions for *exclusion*, *expulsion*, and *suspension*,

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<sup>170</sup> *Ibid.*

<sup>171</sup> *HJR 186 Student Discipline Statutes*, Virginia Commission on Youth, 2000.

and (3) identification of methods for providing educational services to students who have been expelled. The Commission staff began its work in the fall of 2000 by receiving briefings and presentations and narrowed the scope of the study by excluding issues relating to students with disabilities from this study. The staff researched and analyzed federal and state laws, and the staff reviewed and analyzed local codes of student conduct, sought and analyzed input from district superintendents, and convened and facilitated four meetings of the 21-member Advisory Group, and made 17 recommendations that address the concerns and inconsistencies in their findings.<sup>172</sup>

The Commission cited omissions and inconsistencies in definitions of frequently used terms such as suspension, expulsion and exclusion were identified as areas of concern. Language and organization of the *Code of Virginia* were identified as confusing. Consistency in administering student discipline and the readmission of expelled students were both identified as problematic. Notification of the adjudication or the conviction students were identified as problematic because of inconsistent follow-through and the confidential nature of materials. Adequate funding for programs and education and training of all alternative education teachers to provide alternative education to students expelled from school were identified as limited.<sup>173</sup>

The Commission made its recommendations based upon the analysis of existing law, local student codes of conduct, and the input and expertise of the advisory group. The Commission recommended amendments for the *Code of Virginia* to address the following: (1) standard definitions for short-term and long-term suspension, expulsion and exclusion; (2) list of factors to be considered prior to expelling a student; (3) required affirmation of the expulsion by the school board; (4) extension of exclusion period, regardless of the offense; (5) elimination of the one-year maximum on exclusion; (6) waiver of conditions for re-admission by the school board; (7) authority of the school board to require alternative education attendance by the expelled students; (8) expansion of the list of actions for which a student is required to reimburse the school board; (9) inclusion of referenced titles as descriptive phrases in the *Code of Virginia*; and (10) reorganization of *Title 22.1, Chapter 14, Article Three* to improve usability.<sup>174</sup>

The *Commission on Youth* recommended that the Virginia Department of Education implement the following: (1) support education and training programs with an emphasis in

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<sup>172</sup>House Document 32, Student Discipline Statutes.

<sup>173</sup>*Ibid.*

<sup>174</sup>*Ibid.*

alternative education; (2) support and encourage in-service training in alternative education; and (3) explore the development of a state-wide, SOL-based curriculum, using interactive educational software. The Commission recommended that the Virginia Department of Education, the Virginia School Board Association, the Virginia Association of Elementary School Principals, and the Virginia Association of Secondary School Principals provide opportunities for education and training to their constituents on provisions for student discipline and the use of discretion afforded to local districts. Notification of adjudication or conviction emerged as an issue for concern. These issues were not anticipated and representation from the judicial branch was not included in the report. The Commission recommended that the Superintendents-Judges Liaison Committee address: (1) the issues regarding the confidential information conveyed to superintendents in the disclosure of dispositions in certain delinquency cases; and (2) address the gap in communication that exists when an adjudicated or convicted student moves to another district prior to the submission of the report to the superintendent.<sup>175</sup>

### **Zero-tolerance Policies: An issue brief**

During the 2005 session of the *General Assembly*, *HB 2202*<sup>176</sup> was introduced that would have amended the *Code of Virginia* as follows:

No disciplinary action shall be imposed against students for possession of a bona fide eating utensil or personal grooming device, unless such utensil or device is brandished or employed as a weapon or otherwise to effect or to threaten an act of violence or intimidation against another or against property.

The bill did not pass, but the House Committee on Education asked the Board of Education to examine the bill and related issues and report to the General Assembly. Specific concerns included: (1) inappropriateness of harsh penalties being applied to relatively minor offenses; and (2) exercise of discretion by school administrators. At the heart of these concerns was an incident involved a third-grade student disciplined for possession of a butter knife his mother packed with his lunch, as cited by Atkinson.<sup>177</sup> Another incident for consideration was a drug offense in which a student was found to be in possession of an over-the-counter medication that was being taken with the knowledge and consent of parents.

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<sup>175</sup> *Ibid.*

<sup>176</sup> *HB 2202 Students; policy for disciplinary actions.*

<sup>177</sup> Anne Atkinson, "Zero-tolerance Policies: An Issue Brief." PolicyWorks, Ltd., (November 2005).

In response to these concerns, an informational memo was sent from the Superintendent of Public Instruction, Patricia Wright, to district superintendents encouraging the exercise of reasonableness when imposing disciplinary sanctions against students.<sup>178</sup> This memo, displayed in Appendix O, included applicable sections of the *Code of Virginia* and *Student Conduct Policy Guidelines*, which were revised and adopted by the Virginia Board of Education in 2004. Additionally, Atkinson prepared a policy brief for the Virginia Board of Education entitled, *Zero-tolerance policies: An issue brief* was prepared for the Board of Education in response to the request from the House Education Committee. Atkinson examined the intent of zero-tolerance policies and positions of key organizations, summarized issues related to zero-tolerance policies, reviewed laws and guidelines in Virginia, and offered conclusions and recommendations. The author found that zero-tolerance discipline policies emerged with the passage of the GFSA of 1994 and encompassed policies that mandated predetermined consequences for specified offenses. The intent of zero-tolerance policies was to send a clear message that certain disciplinary infractions would not be tolerated.<sup>179</sup>

According to Atkinson, a National Center for Education Statistics Study found that 94% of public schools had zero-tolerance policies for firearms, 91% for other weapons, 88% for drugs, 87% for alcohol, 79% for tobacco, and 79% for violence. A review of literature by Atkinson revealed that no study examining the nature and prevalence of zero-tolerance policies has been conducted in Virginia, but there was no evidence that suggested that Virginia differed from other states. Atkinson searched websites of key organizations to determine their respective positions on zero-tolerance policies, and a 2002 survey of telephone interviews supplemented those findings. The author reported that proponents applauded zero-tolerance policies for declines in crime and weapons. Although the National Association of State Boards of Education (NASBE) had not taken a position on zero-tolerance policies, they expressed that denial of educational opportunities was unacceptable, and they proposed alternatives to expulsion.<sup>180</sup>

Atkinson reported that the National School Board Association (NSBA) issued a statement of intent in 2002 that called for zero-tolerance policies to be: (1) integrated into a comprehensive school safety plan; (2) part of the learning process; (3) applied reasonableness when reviewing

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<sup>178</sup> Wright, Patricia I. *Informational Memo No. 3: Zero-tolerance Policies*. (Richmond, Virginia: Virginia Department of Education, 2006).

<sup>179</sup> Anne Atkinson, *op. cit.*

<sup>180</sup> *Ibid.*

the circumstances of each case; (4) adhered to *due process* and other Constitutionally-protected rights; (5) referred criminal violations to law enforcement agencies; and (6) established an assistance program to address substance abuse, violence, anger management, and bullying. In her report, Atkinson included a 2004 *American School Board Journal* article which concluded that extreme policies were not essential for safe schools. She included the criticisms contained in the article regarding school district policies for their haphazard implementation and their failure to ensure safety or improve student behavior. Atkinson noted that the Education Commission of States (ECS) provided information about zero-tolerance on its site, yet ECS did not take an official position. The Council of Chief State School (CCSS) neither took a position nor provided information on its site. The author added that the American Association of School Administrators (AASA) took no official position, but they supported approaches that went beyond mere get-tough policies. According to Atkinson, the National Association of Elementary School Principals (NAESP) and the National Association of Secondary School Principals (NASSP) supported zero-tolerance policies but emphasized the need for discretion in implementation, supported prevention and intervention, and provided alternative education offerings. An *Education Week* article written by executive directors of both organizations voiced the following position: (1) consider the age and grade level of the offender; (2) ensure that the *punishment fits the crime*; and (3) continue their educational services.<sup>181</sup>

According to *Zero-tolerance policies: An issue brief*, the American Federation of Teachers (AFT), in a position paper supporting suspension or expulsion for weapons or drugs or acts of violence, expressed that zero-tolerance policies should be used only in rare circumstances.<sup>182</sup> The AFT and the NEA expressed that zero-tolerance policy should occupy only a portion of a district's larger discipline policy. According to Atkinson, the NEA had no formal written position, but its resolution for safe and orderly schools called for the following: (1) written policies and procedures that were fair, equitable, and consistently enforced; (2) prevention programs; and (3) alternative education for students excluded from school. The NEA described a need for more child friendly, constructive, and reasonable policies.<sup>183</sup>

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<sup>181</sup> Education Week, *Survey of Key Education Stakeholders*. (Washington, D.C.: Education Week, 2002).

<sup>182</sup> Anne J. Atkinson, "Zero-tolerance policies: An Issue brief." (Richmond, Virginia: *PolicyWorks, Ltd.*, November, 2005).

<sup>183</sup> *Ibid.*

Atkinson analyzed the American Bar Association (ABA) opposition to zero-tolerance policies through an ABA report that was adopted by a resolution that supported general school discipline. The resolution called for schools to have strong policies against gun possession and provide safe environments for learning, encouraged school officials to use discretion consistent with principles of due process, and advocated alternatives that are designed to improve student behavior and school climate. The ABA opposed zero-tolerance policies for their potential discriminatory effect, mandated exclusion from school, and the mandated referral to law enforcement without regard for the student's history or consideration of mitigating circumstances.<sup>184</sup>

Atkinson noted that opponents to zero tolerance policies held that the negative and unintended consequences of zero-tolerance discipline policies outweighed their benefits.<sup>185</sup> Several extreme instances in which harsh penalties were assigned for minor infractions brought attention to the rigid application of zero-tolerance. Serious negative consequences were imposed which excluded students for not less than a year and often referred them to law enforcement for consequences beyond school-imposed discipline, the author noted. The disproportionate application of zero-tolerance policies on the basis of race and gender was well-documented, where males of color received more expulsions than their white counterparts.

Atkinson reported that the constitutionality of such policies was questionable with regard to whether students were afforded their *due process* rights. One particular case, previously discussed, exemplified the Rutherford Institute's contention that disciplinary action imposed without regard for students' behavioral records or mitigating circumstances could prove to be unduly harsh even if the court ruled the action permissible. The case involved an eighth grader who was suspended for a semester for the removal of a knife from a friend who was alleged to be suicidal. The youngster placed the knife in his locker but did not alert the school authorities. The decision by the school district was upheld when a federal judge held that the case presented no federal constitutional issues. Its dismissal was affirmed by the Fourth U. S. Circuit Court of Appeals in Richmond, Virginia. The dissenting judge filed a separate opinion that the student was a victim of good intentions run amuck and issued this caution:

The panic over school violence and the intent to stop it has caused school officials to jettison the common sense idea that a person's punishment should fit his crime in favor of

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<sup>184</sup> *Ibid.*

<sup>185</sup> *Ibid.*

a single harsh punishment, namely mandatory school suspension. Such a policy has stripped away judgment and discretion on the part of those administering it; refuting the well-established precept that judgment is the better part of wisdom.<sup>186</sup>

Atkinson reported that the Rutherford Institute posted descriptions of 37 cases which warranted their involvement, six that were Virginia cases.<sup>187</sup> The *schoolhouse to jailhouse track* had the effect of removing students from school to the streets and placing them on a fast track to the juvenile justice system. The effectiveness of zero-tolerance policies has been undermined by its failure to achieve the desired goal of creating safe and nurturing environments.

The issue brief prepared by Atkinson described the ineffectiveness of zero-tolerance policies and called for effective alternatives that promotes a safe environment conducive to learning and deals with disruptive student behavior. Critics claimed that zero-tolerance policies are overused because they are easier or safer to apply than exercising discretion. Zero-tolerance discipline policies were summarized as unjust, discriminatory, unconstitutional, ineffective in achieving desired goals, harmful to schools and student, and ineptly implemented. Increasing numbers of websites and blogs have been developed for the exchange of information; and organizations concerned with the zero tolerance policies are now monitoring legislation, while seeking opportunities to galvanize opposition in each state.<sup>188</sup>

Atkinson's review of Virginia laws and guidelines relative to zero-tolerance discipline policies focused on then current Virginia laws, specifically school-related possession of firearms and drugs, administrative discretion in the implementation of zero-tolerance discipline, and adherence to procedural due process.<sup>189</sup> The *Student Conduct Policy Guidelines*,<sup>190</sup> which were first developed in 1994 and revised in 2004, 2005, 2006, 2009, and 2013, provided School Boards assistance in implementing student conduct policies. Local school boards are now required to adopt and revise regulation on codes of student conduct that are consistent with, but may be more stringent than, the guidelines.

Based upon the issue brief, these conclusions were drawn: defenders of zero-tolerance policies advocated the need to send a clear message that certain behaviors would not be tolerated

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<sup>186</sup> Ratner, *op. cit.*

<sup>187</sup> Anne Atkinson, *op. cit.*

<sup>188</sup> *Ibid.*

<sup>189</sup> *Ibid.*

<sup>190</sup> Virginia Board of Education, *Student Code of Conduct Policy Guidelines*. (Richmond, Virginia: Virginia Department of Education, October, 2013).

and were designed to protect students.<sup>191</sup> On the other hand, criticisms of zero-tolerance discipline policies were summarized as unjust, discriminatory, unconstitutional, ineffective in achieving desired goals, harmful to schools and student, and ineptly implemented. Local opposition to implementation was acknowledged and described as increasing. Common themes emerging among key stakeholder group positions for improvements to zero-tolerance discipline policies are as follows: (1) offenses that will result in automatic sanctions should be well-defined and confined to offenses that represent a danger to others; (2) educators are responsible for examining the circumstances of each case and exercising sound discretion; (3) zero-tolerance policy is but a single element in a comprehensive approach that includes prevention, intervention, and enforcement strategies; (4) discipline policies should be implemented in a manner that places emphasis on learning rather than punishment, and allows students to learn about rights, responsibilities, and fair consequences; and (5) alternative education services should be provided to students removed from school for disciplinary reasons.

The major limitation to examining zero-tolerance policies, according to Atkinson, is the absence of any study of policies and practices in the Commonwealth.<sup>192</sup> Specifically, how are they implemented, what are the levels and degrees of discretion or strategies used to ensure sound use of discretion, how many of the annually documented suspensions and expulsions are attributed to zero-tolerance, how many districts provide alternative education to students expelled from school, how many are re-admitted, how many request re-admission, but are denied, what transitions services are provided, who drop out, and who enter the juvenile justice system. In the issue brief, Atkinson includes the following recommendations: (1) Conduct a study of zero-tolerance policies and practices in Virginia to identify effective/best practices and to inform the development of training, technical assistance, and related resources to support the appropriate implementation of such policies; (2) Conduct a second related study to examine the status of alternative education for suspended and expelled students and to consider the development of guidelines to support the implementation of programming designed to achieve positive outcomes; (3) Encourage leadership organizations in Virginia to collaborate to strengthen student conduct policy development and implementation, such as showcasing effective models, joint sponsorship of training and other capacity-building activities, with

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<sup>191</sup> Anne Atkinson, *op. cit.*

<sup>192</sup> *Ibid.*

emphasis on the appropriate use of administrative discretion ; and (4) Promote comprehensive approaches to school safety that includes prevention, early intervention, and effective responses to problem behaviors. A model is described by the *Safe and Drug-Free Schools and Communities Act*<sup>193</sup> was intended to supplement local and state programming.

### **A Parent's Guide to Understanding Student Discipline Policies and Practices**

In 2008, the Virginia Department of Education requested Anne Atkinson and Rebecca Gillette develop a resource for parents which summarized policies, answered frequently asked questions, made recommendations for parents, and provided additional informational resources. The document prepared by Atkinson and Gillette provided assistance to parents, specifically those whose children had received disciplinary consequences. Specific topics addressed (a) the establishment of policies, (b) roles, rights and, responsibilities, and (c) the disciplinary process as it relates to suspension and expulsion. Through *A Parent's Guide to Understanding Discipline Policies and Practices in Virginia Schools*, the authors encouraged parents to be supportive of their school's efforts to provide a safe, orderly environment for learning, to read and review the *Student Code of Conduct* with their child to ensure compliance, and to collaborate with the school staff immediately in the event of an incident to prevent repeat offenses. The *Guide* sought to: (1) develop the parent's understanding of the school board's role as the final administrative in all discipline matters, (2) encourage parents to work with the school to meet responsible behavior goals, and (3) serve as their child's advocate and seek alternate types of interventions.<sup>194</sup>

### **Prevention v. Punishment: Threat Assessment, School Suspensions, and Racial Disparities**

According to Cornell, because suspension is linked to dropping-out of school and increased delinquency, reducing the suspension rate could help to reduce school dropout and delinquency rates for all students, but especially for black, male students. He noted that the University of Virginia's Curry School of Education created the *Virginia Student Threat Assessment Guidelines (VSTAG)*.<sup>195</sup> The *Guidelines* were modeled on the Secret Service's methods to assess when a person actually poses a threat as opposed to having made one. Threat

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<sup>193</sup> *Title IV (20 U.S.C. 7101 et seq.*

<sup>194</sup> Anne J. Atkinson and Rebecca V. Gillette, *A Parent's Guide to Understanding Discipline Policies and Practices in Virginia Schools*, (Richmond, Virginia: PolicyWorks, Ltd., 2008).

<sup>195</sup> Dewey G. Cornell, *The Virginia Model for Student Threat Assessment*. (Charlottesville, VA: University of Virginia, 2006).

assessment standards used in 35 schools reduced that racial discipline gap. VSTAG focused on: (1) detrimental effects of school suspension; (2) racial disparities in school discipline; (3) creating safe, fair, and supportive schools; and (4) using threat assessment to reduce the rate of suspension and expulsion among black male students.<sup>196</sup>

*Prevention v. Punishment: Threat assessment, school suspensions, and racial disparities* presented evidence on the implementation of *Virginia Student Threat Assessment Guidelines* (VSTAG) in Virginia public schools associated with significant reduction in short-term and long-term suspension rates. The study concluded that schools implementing threat assessment had smaller racial disparities in their long-term suspension rates; and threat assessment was associated with lower rates out-of-school suspension overall: 15% fewer students receiving short-term suspensions and 25% fewer students receiving long-term suspensions for schools using threat assessment.<sup>197</sup>

### **Findings**

This study sought to trace the legislative process in the Commonwealth by answering the following research questions:

1. *What changes did Gun-Free Schools Act legislation undergo in the Commonwealth following its initial implementation?*

Gun-Free Schools Act legislation in the Commonwealth underwent several changes following its initial implementation. Provisions exempting weapons on school property for hunting purposes posed obvious challenges for legislators. Legislators wrestled with formulating exceptions for shotguns and shotgun shells, unloaded shotguns and rifles, and secured (in closed containers or in racks) shotguns or rifles. Legislators also wrestled with the specific wording of amendments (i.e., expansion of the term *school*, specificity of terms air rifle or BB gun, and replacing *bringing* with *possessing*). However, only *HB 1462* required a preliminary review to determine that special circumstances exist and that no disciplinary action or another disciplinary action was appropriate. A school board had the authority to promulgate guidelines for determining what constituted special circumstances.

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<sup>196</sup>Dewey G. Cornell, *Prevention v. Punishment: Threat Assessment, School Suspensions, and Racial Disparities*. (Richmond, Virginia: JustChildren, Legal Aid Justice Center, 2013).

<sup>197</sup> *Ibid.*

Following the implementation of the Virginia statute, it became apparent that it needed to be fine-tuned. Several amendments were passed which included the following: (1) eliminated the exception for possession of an unloaded firearm in a closed container and established special circumstances; (2) provided school administrators and/or the school boards the authority to determine whether special circumstances existed and that there was no need for disciplinary action or the need for additional terms of expulsion or long-term suspension were appropriate; (3) underwent preliminary review to determine what, if any, other action was appropriate; (4) expanded definition of *school property*; (5) included *air rifle and BB gun*; (6) revised language from *bringing onto school property* to *possession on school property*; (7) eliminated *mandatory* requirement for expulsion; and (8) required local school boards to establish threat assessment teams in each school, as well as district-level oversight.

2. *What were the expectations of the members of the Virginia General Assembly who sponsored the zero-tolerance provisions of the Gun-Free Schools Act?*

The legislators interviewed who sponsored *GFSA* legislation had a singular expectation. Overwhelmingly, their desire to meet a perceived obligation to parents, students, and educators for safe schools was the driving force that motivated the enactment of gun-free legislation in the Commonwealth.

According to Delegate Green,

Legislation both at the federal and the state levels have been very beneficial to our citizens because it has lessened the threat of gun violence in schools. It has had a tremendous beneficial effect, and I think it is worked very well.

Senator White affirmed,

I think we, as policy makers, have to do one thing when we are required by the Constitution of Virginia to offer a free public education to all Virginia students. The one thing is assure the public - the parents and students - that there is going to be safety in that learning environment, and students are going to be in a fairly nurturing environment in which they can learn.

3. *What incidents, either internal or external to the Virginia General Assembly, influenced the sponsors of zero-tolerance legislation?*

Several factors, either internal or external to the General Assembly, influenced the sponsors of *GFSA* legislation. The phrase, *all politics is local*, coined by Speaker of the House of

Representatives, Thomas *Tip* O’Neill, is applicable here. Selected sponsors’ recollections of several incidents in Tidewater schools had some impact, but they made scarce reference to Columbine, Jonesboro, and other highly-publicized incidents of school shootings. Those who mentioned Columbine did not recall whether it preceded or followed the enactment of the legislation. Delegate Green said, *Even when shootings occur outside of schools, such as places of employment, those events strengthen the support for gun-free schools legislation.* The media coverage and publicity of these shootings placed emphasis on what lawmakers were trying to avoid in schools in the Commonwealth.

Lobbyists can wield their influence on legislation. Support and opposition came from the expected sources. School systems, PTAs, gun control advocates supported the legislation while guns’ rights advocates opposed it. Delegates interviewed reported that there was less opposition than they had expected. Although prohibition of gun possessions on school property was difficult to oppose, incidents involving student hunters helped to shape several amendments.

Funding from *Elementary and Secondary Education Act (ESEA)* was not recognized as an influence on the formulation or implementation of gun-free legislation in the Commonwealth. Funding was only deemed prohibitive when it pertained to providing alternative education for those students expelled from school. Delegates refrained from including a continued educational provision or an alternative education requirement because its inclusion would have required local school districts to bear the expense. Only one selected sponsor expressed his support for continued instruction through alternative education for those students who are expelled. He expressed concern for the impact of the one calendar year expulsion *in the life of a child.*

4. *Did the enacted zero-tolerance legislation meet the expectations of the members of the Virginia General Assembly who sponsored the legislation?*

Legislators focused on the public outcry for improved safety on school grounds, as well as its obligation to provide a safe learning environment. Many of the interviewees perceived the *GFSA* as effective and a reasonable restriction on guns in public schools, but they acknowledged, School administrators could better assess the effectiveness of the legislation. They also acknowledged that passage of the Virginia legislation occurred as a reaction to the nationwide rash of gun violence in schools and was driven partially by the federal *GFSA*. Legislators

credited the passage to the strategic referral of the bill by Speaker Thomas Moss to the Committee on Education, saying, *The house committee most favorably inclined to its passage.*

Early proposals by members of the *General Assembly* sought to comply with federal *GFSA* because the ESEA funding was tied to compliance. Moreover, members of the *General Assembly* felt obligated to deliver to the public a safe and gun-free learning environment by the public schools. The language of the statute sent a clear message that possession of guns on school property would not be tolerated.

The addition of several amendments was cited as a means to guarantee that the implementation of the legislation met expectations, and these amendments enabled the *General Assembly* to fine-tune the legislation. Despite some adversity, the selected interviewees noted, *The opposition was not as strong as had been anticipated*, as they recalled the specific roles that key Delegates and Senators played during the legislative process. They noted,

The extreme application of zero-tolerance policies taken by some school districts, such as the ruling that penalizing a student for taking possession of a knife to forestall a potential suicide met the definition of an unintended outcome.<sup>198</sup>

They also indicated that the racially disparate application was an unintended outcome.

5. *Are selected sponsors of the legislation satisfied with the current status of zero-tolerance legislation in the Commonwealth?*

Selected sponsors were cautious to give their stamp of approval to the success of zero-tolerance legislation in the Commonwealth. Three or more selected legislators commented, *(They) were not in a position to judge its effectiveness and would defer to school administrators.* One commented that he *would have to establish a negative* or establish how many people were not killed or injured because of zero-tolerance legislation. Most frequently selected legislators acknowledged that proposed amendments come up yearly to fine tune the legislation. Their most direct assessment was *they would make the consequences stricter.*

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<sup>198</sup> *Ratner, op cit.*

## CHAPTER FIVE

### CONCLUSIONS AND RECOMMENDATIONS

This study enables the reader to trace the evolution of GFSA legislation in the Commonwealth. As result of this study, several conclusions are drawn to assist local school boards and school administrators gain an understanding of the historical development and legislative intent of the GFSA. Further, an understanding of the intentions of this legislation will guide the formulation of model policy statements.

#### Purpose and Methodology

The purpose of this study was to trace the historical development of the GFSA<sup>199</sup> legislation in the *Commonwealth of Virginia*. Chapter Five contains the conclusions and recommendations for potential follow-up studies. The conclusions and recommendations are presented in two sections. In the first section, conclusions are presented with supporting data from interviews, legislation, and other non-legislative documents. In the second section, recommendations for further study are offered based upon the findings of this study.

This study sought to trace the legislative process in the Commonwealth by answering the following research questions:

1. What changes did *Gun-Free Schools Act* legislation undergo in the Commonwealth following its initial implementation?
2. What were the expectations of the members of the Virginia General Assembly who sponsored the zero-tolerance provisions of the *Gun-Free Schools Act*?
3. What incidents, either internal or external to the Virginia General Assembly, influenced the sponsors of zero-tolerance legislation?
4. Did the enacted zero-tolerance legislation meet the expectations of the members of the Virginia General Assembly who sponsored the legislation?
5. Are selected sponsors of the legislation satisfied with the current status of zero-tolerance legislation in the Commonwealth?

Two types of data analysis were utilized: document analysis and content analysis. In order to conduct this study, documents from the *Legislative Information System (LIS)* that

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<sup>199</sup> *Gun-Free Schools Act of 1994, op. cit.*

reported chronologically the GFSA legislation over a 19 year span were analyzed, interviews with selected legislators were conducted and analyzed, and non-legislative documents were analyzed to further support the interview findings.

### Conclusions

First, this study revealed that cited research did not inform the development of the GFSA legislation in the Commonwealth of Virginia. The General Assembly jumped on what was a *hot issue* completely unencumbered by cited research. Recommendations from the *Joint Subcommittee* and from the *Education Summit*, as well as the desire of the legislative body to send a clear message that acts of violence would not be tolerated in schools, guided the development of the GFSA legislation in the Commonwealth of Virginia.

The General Assembly over-relied on recommendations in the *Report of the Joint Subcommittee Studying Acts of Violence and Crime by Students on School Property (House Document No. 61)*. The Joint Subcommittee, which was in existence at least three years, studied violence and crime by students on school property, and its recommendations addressed issues dealing with school violence, student conduct, and classroom management and were enacted into the *Code of Virginia*. Additionally, the Joint Sub-Committee made recommendations to amend the *Code of Virginia* by: (1) clarifying and strengthening the crime reporting requirements of local school districts; (2) clarifying and extending the definition of school property to include school buses and school-sponsored events; and (3) requiring the review and updating of local school board policies. The General Assembly supported the recommendation that local school boards be required to develop and implement standards and a protocol for responding to school emergencies and crises.

According to a key selected interviewee,

A lot of the legislation that found its way into the *Code of Virginia* addressed school violence, student conduct issues, and management originated from this document. The *General Assembly* relied heavily on *House Document 61* for subsequent legislation. Its tentacles found their way into subsequent legislation. Issues came out of the work of that particular legislative sub-committee. The legislation is sprinkled throughout the *Code*; there is not any one place. However, there are a couple of places in certain titles of the *Code* where Education legislation predominates, *Title 22.1* which is Education; *Title 18.2*, which is the *Criminal Code*; and *Title 16.1*, which concerns the Juvenile Courts and juveniles generally. Over time the *Joint Sub-Committee on the Prevention of School Violence and Student Misconduct* recommended several initiatives that found their way

into the *Code of Virginia*, and they are dependent technically upon the aim of the legislation as to where they are codified.

Second, the General Assembly did not revisit the issue in terms of its actual effects that the researcher documented from the literature until ten years after the enactment of GFSA legislation. The General Assembly repeatedly implemented legislation and made amendments to that legislation without the benefit of statistical analysis or further research. Several selected sponsors reported that they fine-tuned the legislation yearly. One key selected sponsor stated, *It comes up practically every year to make some change in the law*. Selected sponsors readily expressed that they would make the penalties stricter. Despite being unfamiliar with updates to current legislation, other selected sponsors added that they too would make the penalties harsher.

When asked whether the legislation met their expectations or what their level of satisfaction was with the legislation, selected sponsors responded that they would have to defer to school administrators to assess how successful the implementation of the legislation had been. Frequently, they acknowledged that they felt they were not in positions to judge its success either because they were removed from the matter or because they had no access to statistics. Although the selected sponsors lacked the statistical proof, they felt that the *perceived* decrease in the incidents of school shootings in the Commonwealth equated to safer schools.

Not only did the selected sponsors lack the perspective of building level administrators and School Board members, but they also lacked consistent data. The *SSIR* database, dedicated to making discipline data accessible to the public, presented data not disaggregated by race/ethnicity, disability status, type disability, or gender.<sup>200</sup> Further, data release restrictions limited access to confidential information and to small data sets fewer than ten students. Crime and violence reporting to the Virginia Department of Education did not identify: (1) the number of students suspended or expelled without educational services; (2) the number of students placed in local alternative educational programs; (3) disciplinary incidents and outcomes for economically disadvantaged and students with limited English proficiencies; or (4) data for students who were arrested or referred to juvenile court for school-based misconduct. Designated as a *voluntary legislature* and assisted by limited staff, the selected sponsors were ill-equipped to research the data and assess the success of the enacted legislation.

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<sup>200</sup> Angela Ciolfi, Crystal Shin, and Jeree Harris, *op. cit.*

It was clear that the legislative intent was to send the clear message to students that possession of weapons on public school grounds would not be tolerated. What raises the question is why legislators were content to rely on administrators' assessments of the effectiveness of zero-tolerance legislation. The exclusion of students from schools to the streets and potentially to the judicial system is a major impact in the lives of students and their communities. With so much at stake for students, parents, and educators, what message did that send about the legislators who imposed harsher penalties? What does that say to educators, parents, or policymakers?

Third, Delegate Dillard's request that the Board examine *HB 2202* marked the turning point in the evolution of GFSAs in the Commonwealth. The House Committee on Education considered but did not pass *HB 2202*, which would have prohibited the imposition of disciplinary actions against students for possession of a *bona fide* eating utensil or personal grooming device unless the item was used as a weapon or for intimidation. Delegate Dillard, on behalf of the House Education Committee, sent a letter to the Board of Education in February 2005, requesting that the Board examine *HB 2202* and its related issues and report any findings and recommendations to the committee.<sup>201</sup> The ensuing issue brief, by Anne Atkinson of PolicyWorks, Ltd., an independent, non-partisan program evaluation and policy research firm based in central Virginia, marked a pivotal point in the evolution of GFSAs in the Commonwealth of Virginia. The evolution of GFSAs from this point forward was influenced by cited research and studies intent on curbing the rate of short- and long-term suspensions and eliminating mandatory expulsions. This seminal request and its subsequent report contributed to the evolution of GFSAs in the Commonwealth.

Atkinson's brief: (1) examined the intent of zero-tolerance policies and positions of key organizations, (2) summarized issues related to zero-tolerance policies, including harsh penalties for minor infractions, disproportionate application to minorities and special education students, Constitutional and *due process* violations, negative consequences for schools (i.e., climate of fear, poor student-teacher relationship, drop-out rate, and schoolhouse to jailhouse track); (3) reviewed laws and guidelines in Virginia, and (4) offered conclusions and considerations.<sup>202</sup> According to the Atkinson,

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<sup>201</sup> Patricia I. Wright, "Informational Memo No. 3: Zero-tolerance Policies," *op. cit.*

<sup>202</sup> Anne Atkinson, *op. cit.*

A review of literature revealed that no study examining the nature and prevalence of zero-tolerance policies has been conducted in Virginia, but there was no evidence that suggested that Virginia differed from other states; and confirmed that the intent of zero-tolerance policies was to send a clear message that certain disciplinary infractions would not be tolerated.

As local opposition to zero-tolerance implementation increased, previously-enacted legislation was deemed unjust, discriminatory, unconstitutional, ineffective in achieving desired goals, harmful to schools and students, and ineptly implemented. Finally, armed with a set of research-based recommendations, the legislature reversed the original bill's requirements for zero-tolerance. An informational memo was sent from the Superintendent of Public Instruction to district superintendents encouraging the exercise of reasonableness when imposing disciplinary sanctions against students.<sup>203</sup> Legislation passed in 2012 that reversed the expanded definition, removing certain weapons from the definition of *firearm* that were not included in the federal *Improving America's Schools Act of 1994 (Part F- Gun-Free Schools Act of 1994)*. Proposed legislation called for continued education through alternative education did not pass, but it prompted a fiscal impact study. Legislation passed in 2013 that established threat assessment teams at the school level with oversight at the district level. Legislation passed in 2014 that brought an easing of the *mandatory* language, marking the latest evolution in the legislative process concerning GFSA in the Commonwealth.<sup>204</sup>

What remains unanswered is the question why legislators were content to rely on administrators' assessments of the effectiveness of zero-tolerance legislation. Selected sponsors who were interviewed declined to commit to being satisfied with the current status of the GFSA legislation. Instead, they deferred to school administrators.

### **Recommendations for Future Study**

The review of literature revealed the lack of a study examining the nature and prevalence of zero-tolerance policies in Virginia. Specifically, the following omissions exist: how are they implemented, what are the levels and degrees of discretion or strategies used to ensure sound use of discretion, how many of the annually documented suspensions and expulsions are attributed to zero-tolerance, how many districts provide alternative education to students expelled from school, how many are re-admitted, how many request re-admission, but are denied, what

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<sup>203</sup> *Patricia Wright, op. cit.*

<sup>204</sup> *Ibid.*

transitions services are provided, who drop out, and who enter the juvenile justice system. Justified by the above, the following studies are needed:

First, conduct a study of zero-tolerance policies and practices in Virginia designed to identify effective practices and to inform the development of training, technical assistance, and related resources to support the appropriate implementation of such policies.

Second, conduct a study of zero-tolerance policies and practices in Virginia designed to examine compliance with new federal guidelines on race equity. Fashion this study after the *Part II of the 2009-10 Civil Rights Data Collection (CRDC) report*<sup>205</sup> and design it to focus on access to and success in college- and career-ready courses, teacher equity, retention, and access to pre-K programs, incidents of bullying and harassment, and discipline infractions. Similar to the CRDC report, disaggregate data by race, ethnicity, English learner status, gender, and disability under *IDEA*<sup>206</sup> and *Section 504 of the Americans with Disabilities Act (ADA)*.<sup>207</sup>

Third, conduct a study tracing the evolution of GFSA legislation in the Commonwealth beyond this study, with particular focus on threat assessment development and training following the 2013 legislative mandate for such training. Although widely recommended as a violence prevention strategy, there are few empirical studies of its use. Cornell, *et al.*, found that students in schools using the *Virginia Threat Assessment Guidelines* reported less bullying, had a greater willingness to seek the help of others, and perceived the school more positively than two other comparison groups.<sup>208</sup>

Next conduct a study focusing on alternative education opportunities for regular education students suspended or expelled from public schools in the Commonwealth. Identify what progress has been made beyond the 2012 impact study of ten localities regarding the fiscal impact to school districts that provide alternate education for students suspended or expelled from public schools.

Issued on January 16, 2013, *Now is the Time: The President's Plan to Protect our Children and our Communities by Reducing Gun Violence*, included four common-sense steps

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<sup>205</sup>*Title IV (20 U.S.C. 7101 et seq.)*

<sup>206</sup>*Public Law: Pub. L. 101-476, Titles amended: 20 U.S.C. sections amended: 1400 et seq.*

<sup>207</sup>*Section 504 of the Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 394 (Sept. 26, 1973), codified at 29 U.S.C. § 701 et seq.*

<sup>208</sup>Dewey Cornell, Peter Sheras, Anne Gregory, and Xitao Fan, "A Retrospective Study of School Safety Conditions in High School Using the Virginia Threat Assessment Guideline Versus Alternative Approaches." (*School Psychology Quarterly*, Vol. 24, No. 2 (2009): 119-129.

we can take right now.<sup>209</sup> According to the plan, the third step is making schools safer. To realize this common-sense step, the first strategy was to put up to 1,000 more school resource officers (SROs) and counselors in schools and help schools invest in safety by (1) taking executive action to provide incentives for schools to hire SROs, (2) putting up to 1,000 new school resource officers and school counselors on the job, and (3) investing in other strategies to make our schools safer. The second strategy included in the plan was to ensure that every school has a comprehensive emergency management plan by (1) giving schools and other institutions a model for how to develop and implement reliable plans and (2) helping schools develop and implement emergency plans. The third and final strategy to make schools safer was to create a safer climate at schools across the country by (1) helping 8,000 schools create safer and more nurturing school climates and (2) sharing best practices on school discipline.

Based upon the recommended strategies for making schools safer in the President's plan, a final recommendation for further study is to analyze the extent to which its implementation has made schools safer in the Commonwealth. Identify the resources (SROs, counselors, comprehensive emergency management training, etc.) that have been made available through the plan and determine to what extent their implementation has made school climates in the Commonwealth safer.

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<sup>209</sup> Barack Obama, *op cit.*

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## APPENDIX A

### PUBLIC LAW 103-882 – OCT. 20, 1994 210

#### “PART F – GUN POSSESSION”

##### “Sec. 14601. GUN-FREE REQUIREMENTS

“(a) SHORT TITLE. – This section may be cited as the ‘Gun-Free Schools Act of 1994’.

“(b) REQUIREMENTS. –

“(1) IN GENERAL. – Except as provided in paragraph (3), each State receiving Federal funds under this Act shall have in effect a State law requiring local educational agencies to expel from school for a period of not less than one year a student who is determined to have brought a weapon to a school under the jurisdiction of local educational agencies in that State, except that such State law shall allow the chief administering officer of such local educational agency to modify such expulsion requirement for a student on a case-by-case basis.

“(2) CONSTRUCTION. – Nothing in this title shall be construed to prevent a State from allowing a local educational agency that has expelled a student from such a student’s regular school setting from providing educational services to such student in an alternative setting.

“(3) SPECIAL RULE. – (A) Any State that has a law in effect prior to the date of enactment of the Improving America’s Schools Act of 1994 which is in conflict with the not less than one year expulsion requirement described in paragraph (1) shall have the period of time described in subparagraph (B) to comply with such requirement.

“(B) The period of time shall be the period beginning on the date of enactment of the Improving America’s Schools Act and ending one year after such date.

“(4) DEFINITION. – For the purpose of this section, the term ‘weapon’ means a firearm as such term is defined in section 921 of title 18, United States Code.

“(c) SPECIAL RULE. – The provisions of this section shall be construed in a manner consistent with the Individuals with Disabilities Education Act.

“(d) REPORT TO STATE. – Each local educational agency requesting assistance from the State educational agency that is to be provided from funds made available to the State under this Act shall provide to the States, in the application requesting such assistance –

“(1) An assurance that such local educational agency is in compliance with the State law required by subsection (b); and

“(2) A description of the circumstances surrounding any expulsions imposed under the State law required by subsection (b), including –

“(A) The name of the school concerned;

“(B) The number of students expelled from such school; and

“(C) The type of weapons concerned.

“(e) REPORTING. – Each State shall report the information described in subsection (c) to the Secretary on an annual basis.

“(f) REPORT TO CONGRESS. – Two years after the date of enactment of the Improving America’s Schools Act of 1994, the Secretary shall report to Congress if any State is not in compliance with the requirements of this title.

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<sup>210</sup> *Gun-Free Schools Act of 1994 20 USC Chapter 70 20 U.S.C. § 7151 (Supp. 2003).*

**“SEC. 14602. POLICY REGARDING CRIMINAL JUSTICE SYSTEM REFERRAL.**

“(a) IN GENERAL. – No funds shall be made available under this Act to any local educational agency unless such agency has a policy requiring referral to the criminal justice or juvenile delinquency system of any student who brings a firearm or weapon to school served by such agency.

“(b) DEFINITIONS. – For the purpose of this section, the terms ‘firearm’ and ‘school’ have the same meaning given to such terms by section 921(a) of title 18, United States Code.

**“SEC. 14603. DATA AND POLICY DISSEMINATION UNDER IDEA**

“The Secretary shall –

“(1) widely disseminate the policy of the Department in effect on the date of enactment of the Improving America’s Schools Act of 1994 with respect to disciplining children with disabilities;

“(2) collect data on the incidence of children with disabilities (as such term is defined in section 602(a) (1) of the Individuals With Disabilities Education Act) engaging in life threatening behavior or bringing weapons to schools; and

“(3) submit a report to Congress not later than January 31, 1995, analyzing the strengths and problems with the current approaches regarding disciplining children with disabilities.

## APPENDIX B

### § 22.1-277.07. EXPULSION OF STUDENTS UNDER CERTAIN CIRCUMSTANCES; EXCEPTIONS.<sup>211</sup>

A. In compliance with the federal Improving America's Schools Act of 1994 (Part F-Gun-Free Schools Act of 1994), a school board shall expel from school attendance for a period of not less than one year any student whom such school board has determined, in accordance with the procedures set forth in this article, to have possessed a firearm on school property or at a school-sponsored activity as prohibited by § 18.2-308.1; to have possessed a firearm or destructive device as defined in subsection E, a firearm muffler or firearm silencer, or a pneumatic gun as defined in subsection E of § 15.2-915.4 on school property or at a school-sponsored activity. A school administrator, pursuant to school board policy, or a school board may, however, determine, based on the facts of a particular situation that special circumstances exist and no disciplinary action or another disciplinary action or another term of expulsion is appropriate. A school board may promulgate guidelines for determining what constitutes special circumstances. In addition, a school board may, by regulation, authorize the division superintendent or his designee to conduct a preliminary review of such cases to determine whether a disciplinary action other than expulsion is appropriate. Such regulations shall ensure that, if a determination is made that another disciplinary action is appropriate, any such subsequent disciplinary action is to be taken in accordance with the procedures set forth in this article.

B. The Board of Education is designated as the state education agency to carry out the provisions of the federal Improving America's Schools Act of 1994, and shall administer the funds to be appropriated to the Commonwealth under this act.

C. Each school board shall revise its standards of student conduct no later than three months after the date on which this act becomes effective. Local school boards requesting moneys apportioned to the Commonwealth through the federal Improving America's Schools Act of 1994 shall submit to the Department of Education an application requesting such assistance. Applications for assistance shall include:

1. Documentation that the local school board has adopted and implemented student conduct policies in compliance with this section; and
2. A description of the circumstances pertaining to expulsions imposed under this section, including (i) the schools from which students were expelled under this section, (ii) the number of students expelled from each such school in the school division during the school year, and (iii) the types of firearms involved in the expulsions.

D. No school operating a Junior Reserve Officers Training Corps (JROTC) program shall prohibit the JROTC program from conducting marksmanship training when such training is a normal element of such programs. Such programs may include training in the use of pneumatic

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<sup>211</sup> *Gun-Free Schools Act*, (July 1, 1995).

guns. The administration of a school operating a JROTC program shall cooperate with the JROTC staff in implementing such marksmanship training.

E. As used in this section:

"Destructive device" means (i) any explosive, incendiary, or poison gas, bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter ounce, mine, or other similar device; (ii) any weapon, except a shotgun or a shotgun shell generally recognized as particularly suitable for sporting purposes, by whatever name known that will, or may be readily converted to, expel a projectile by the action of an explosive or other propellant, and that has any barrel with a bore of more than one-half inch in diameter that is homemade or was not made by a duly licensed weapon manufacturer, any fully automatic firearm, any sawed-off shotgun or sawed-off rifle as defined in § 18.2-299 or any firearm prohibited from civilian ownership by federal law; and (iii) any combination of parts either designed or intended for use in converting any device into any destructive device described in this subsection and from which a destructive device may be readily assembled.

"Destructive device" shall not include any device that is not designed or redesigned for use as a weapon, or any device originally designed for use as a weapon and that is redesigned for use as a signaling, pyrotechnic, line-throwing, safety, or other similar device, nor shall it include any antique firearm as defined in subsection G of § 18.2-308.2:2.

"Firearm" means any weapon prohibited on school property or at a school-sponsored activity pursuant to § 18.2-308.1, or any weapon, including a starter gun, that will, or is designed or may readily be converted to, expel single or multiple projectiles by the action of an explosion of a combustible material or the frame or receiver of any such weapon. "Firearm" shall not include any pneumatic gun, as defined in subsection E of § 15.2-915.4.

"One year" means 365 calendar days as required in federal regulations.

"School property" means any real property owned or leased by the school board or any vehicle owned or leased by the school board or operated by or on behalf of the school board.

F. The exemptions set out in § 18.2-308 regarding concealed weapons shall apply, mutatis mutandis, to the provisions of this section. The provisions of this section shall not apply to persons who possess such firearm or firearms or pneumatic guns as a part of the curriculum or other programs sponsored by the schools in the school division or any organization permitted by the school to use its premises or to any law-enforcement officer while engaged in his duties as such.

G. This section shall not be construed to diminish the authority of the Board of Education or the Governor concerning decisions on whether, or the extent to which, Virginia shall participate in the federal Improving America's Schools Act of 1994, or to diminish the Governor's authority to coordinate and provide policy direction on official communications between the Commonwealth and the United States government.

## APPENDIX C

### § 22.1-279.6. BOARD OF EDUCATION GUIDELINES AND MODEL POLICIES FOR CODES OF STUDENT CONDUCT; SCHOOL BOARD REGULATIONS.<sup>212</sup>

A. The Board of Education shall establish guidelines and develop model policies for codes of student conduct to aid local school boards in the implementation of such policies. The guidelines and model policies shall include, but not be limited to, (i) criteria for the removal of a student from a class, the use of suspension, expulsion, and exclusion as disciplinary measures, the grounds for suspension and expulsion and exclusion, and the procedures to be followed in such cases, including proceedings for such suspension, expulsion, and exclusion decisions and all applicable appeals processes; (ii) standards, consistent with state, federal and case laws, for school board policies on alcohol and drugs, gang-related activity, hazing, vandalism, trespassing, threats, search and seizure, disciplining of students with disabilities, intentional injury of others, self-defense, bullying, and dissemination of such policies to students, their parents, and school personnel; and (iii) standards for in-service training of school personnel in and examples of the appropriate management of student conduct and student offenses in violation of school board policies.

In accordance with the most recent enunciation of constitutional principles by the Supreme Court of the United States of America, the Board's standards for school board policies on alcohol and drugs and search and seizure shall include guidance for procedures relating to voluntary and mandatory drug testing in schools, including, but not limited to, which groups may be tested, use of test results, confidentiality of test information, privacy considerations, consent to the testing, need to know, and release of the test results to the appropriate school authority.

In the case of suspension and expulsion, the procedures set forth in this article shall be the minimum procedures that the school board may prescribe.

B. School boards shall adopt and revise, as required by § 22.1-253.13:7 and in accordance with the requirements of this section, regulations on codes of student conduct that are consistent with, but may be more stringent than, the guidelines of the Board. School boards shall include, in the regulations on codes of student conduct, procedures for suspension, expulsion, and exclusion decisions and shall biennially review the model student conduct code to incorporate discipline options and alternatives to preserve a safe, non-disruptive environment for effective teaching and learning.

Each school board shall include, in its code of student conduct, prohibitions against bullying, hazing, and profane or obscene language or conduct. School boards shall also cite, in their codes of student conduct, the provisions of § 18.2-56, which defines and prohibits hazing and imposes a Class 1 misdemeanor penalty for violations, i.e., confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both.

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<sup>212</sup> *Board of Education Guidelines and Model Policies for Codes of Student Conduct; School Board Regulations.*

A school board may regulate the use or possession of beepers or other portable communications devices and laser pointers by students on school property or attending school functions or activities and establish disciplinary procedures pursuant to this article to which students violating such regulations will be subject.

Nothing herein shall be construed to require any school board to adopt policies requiring or encouraging any drug testing in schools. However, a school board may, in its discretion, require or encourage drug testing in accordance with the Board of Education's guidelines and model student conduct policies required by subsection A and the Board's guidelines for student searches required by § 22.1-279.7.

C. The Board of Education shall establish standards to ensure compliance with the federal Improving America's Schools Act of 1994 (Part F-Gun-Free Schools Act of 1994), as amended, in accordance with § 22.1-277.07.

This subsection shall not be construed to diminish the authority of the Board of Education or to diminish the Governor's authority to coordinate and provide policy direction on official communications between the Commonwealth and the United States government.

**APPENDIX D**  
**INTERVIEW PROTOCOL**

1. Describe the national debate surrounding the increased gun violence on school grounds prior to the enactment of the GFSA of 1994.
2. What research/reading helped you to shape the national debate and formulate a framework to guide the development of the legislation?
3. Aside from meeting the funding mandate of the federal GFSA, how has the Virginia GFSA legislation enhanced the educational environment?
4. What were your expectations of GFSA legislation in the Commonwealth?
5. Please describe your role in the development of GFSA legislation?
6. What, if any, internal or external forces influenced the sponsors/patron of GFSA legislation in the Commonwealth?
7. Which constituencies/lobbyists have been proponents of GFSA legislation in the Commonwealth? Which have been opponents?
8. In your opinion, to what degree has GFSA legislation been successful?
9. In your opinion, to what degree has its success been impacted by unforeseen consequences?
10. Please describe how you would change current GFSA legislation to meet your expectations?
11. Who else would you suggest that I interview regarding the development of GFSA legislation in the Commonwealth?
12. What other comments do you wish to add regarding the development of GFSA in the Commonwealth?

**APPENDIX E**  
**SELECTION OF INTERVIEWEES**

Dr. Richard Salmon, Committee Chair

**APPENDIX F**  
**INFORMED CONSENT FOR PARTICIPANTS IN RESEARCH PROJECTS**  
**INVOLVING HUMAN SUBJECTS**

**VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY**

**Informed Consent for Participants in Research Projects Involving Human Subjects**

**I. Purpose of this Research/Project**

The Gun-Free Schools Act of 1994 has affected the school environment throughout the country by imposing expulsion requirements for students who bring weapons onto school grounds. The Act also required that any student who was found in possession of a weapon on school grounds be automatically referred to appropriate law enforcement authorities, and it specified reporting data are required from all states. The Act did not require that expelled students, including those expelled for 365 days, be placed in alternative education settings. Both state and local boards of education have provided guidance to school personnel, students, parents, and the public regarding implementation of GFSA policies. Local school boards specifically were required by the Act to provide information to parents and students on the interpretation and implementation of the Act and related disciplinary policies. Local school boards were challenged to balance the need for a safe educational environment against the need to provide educational services for those expelled, including both regular and special education students.

There is ongoing debate over the effectiveness of this legislation. Proponents credit its implementation with decreased incidents of school violence. Opponents charge there is little scientific research to show that the Act and its derivative “zero-tolerance” measures have proved effective for reducing school violence and/or increasing school safety. Research has suggested that the implementation of Gun-Free Schools Act legislation has produced unintended consequences.

This study is a historical analysis, tracing the development of the Gun-Free Schools Act legislation in Virginia pursuant to § 22.1-277.07. This study seeks to assist school boards and school administrators gain an understanding of the historical development and legislative intention of the Act. An understanding of the intentions of this legislation will guide the formulation of model policy statements.

**II. Procedures**

After tracing changes in the language of §22.1-277.07 and reviewing a wide variety of written materials related to such change, interviews have been sought from individuals who this research has identified as “key players” in sponsoring this legislation. If you agree to be a participant in this study, you will be contacted to schedule an interview at your convenience for both time and location. Questions to be asked in the interview will be shared with you in advance. The interview will be audio-taped and will last for approximately forty-five (45) minutes. The expense of the telephone calls will be incurred by the researcher.

**III. Risks**

There are no known risks to the participants of this project.

**IV. Benefits**

No promise or guarantee of benefits has been made to encourage your participation in this project. This study seeks to assist school boards and school administrators gain an understanding of the historical development and legislative intention of the Act.

**V. Extent of Anonymity and Confidentiality**

Anonymity of participants will be maintained at all times through the use of pseudonyms.

**VI. Compensation**

No monetary compensation will be provided for participation in this project.

**VII. Freedom to Withdraw**

Subjects are free not to answer any question, and subjects are free to withdraw from this project at any time without penalty.

**VIII. Subject’s Responsibilities**

I voluntarily agree to participate in this project. I have the following responsibilities:

- To participate in a forty-five minute, audio-tape interview via the telephone

**IX. Subject’s Permission**

I have read the Consent Form and the conditions of this project. I have had all my questions answered. I hereby acknowledge the above and give my voluntary consent:

Subject’ signature	Date

Should I have any pertinent questions about this research or its conduct, and research subjects’ rights, and whom to contact in the event of a research-related injury to the subject, I may contact:

Patricia Y. Taylor Smith	(804) 262-8752/pytsmith@verizon.com
Investigator	Telephone/email
Richard G. Salmon	(540) 231-9711/rgsalmon@vt.edu
Faculty Advisor	Telephone/email
David M. Moore	(540)231-4991/moored@vt.edu
Chair, Virginia Tech Institutional	Telephone/email

Review Board for the Protection of Human Subjects  
Office of Research Compliance  
2000 Kraft Drive, Suite 2000 (0497)  
Blacksburg, VA 24060

**NOTE: Subjects receive a complete copy of the signed informed consent.**

**APPENDIX G**  
**VIRGINIA LEGISLATIVE AMENDMENTS**

CHAPTER 724

*An Act to amend and reenact §§ 22.1-257, as it is currently effective and as it may become effective, 22.1-277.1 and 22.1-278 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 22.1-277.01, relating to the expulsion of students for certain infractions.*

[H 1614]

Approved April 6, 1995

Be it enacted by the *General Assembly of Virginia*:

1. That §§ 22.1-257, as it is currently effective and as it may become effective, 22.1-277.1 and 22.1-278 of the *Code of Virginia* are amended and reenacted and that the *Code of Virginia* is amended by adding a section numbered 22.1-277.01 as follows:

§ 22.1-257. Excusing children who cannot benefit from education or whose parents conscientiously object; excusing children for reasons of health or apprehension for personal safety; school board and court authority to order alternatives.

A. A school board:

1. May, on recommendation of the principal and the division superintendent, with the written consent of the parent or guardian, excuse from attendance at school any pupil who the school board determines, in accordance with regulations of the Board of Education, cannot benefit from education at such school;

2. Shall excuse from attendance at school any pupil who, together with his parents, by reason of bona fide religious training or belief, is conscientiously opposed to attendance at school;

3. Shall, on the recommendation of the juvenile and domestic relations district court of the county or city in which the pupil resides, excuse from attendance at school for such period of time as the court deems appropriate any pupil who, together with his parents, is opposed to attendance at a school by reason of concern for such pupil's health, as verified by competent medical evidence, or by reason of such pupil's reasonable apprehension for personal safety when such concern or apprehension in that pupil's specific case is determined by the court to be justified;

4. May, on recommendation of the juvenile and domestic relations district court of the county or city in which the pupil resides, excuse from attendance at school any pupil who, in the judgment of such court, cannot benefit from education at such school;

5. May, *in accordance with the procedures set forth in § 22.1-277 and upon a finding that a school-age child has (i) committed an offense in violation of school board policies, ~~or against whom such charges are pending as~~ (ii) been charged with an offense described in subsection A of § 22.1-209.1:2 relating to the Commonwealth's laws, or with a violation of school board policies, on weapons, alcohol or drugs, or intentional injury to another person, or (iii) been expelled from school attendance pursuant to § 22.1-277.01*, require the child to attend an alternative education program as provided in § 22.1-209.1:2 or § 22.1-277.1.

B. The court in reaching its determination as to whether the concern or apprehension referred to in subdivision A 3 of this section is justified shall take into consideration the recommendation of the principal and division superintendent.

C. The juvenile and domestic relations district court of the county or city in which a pupil resides, or in which charges are pending against a pupil, or any court in which charges are pending against a pupil, may require the pupil who has been charged with (i) a crime which resulted in or could have resulted in injury to others, (ii) a violation of Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, or (iii) any offense related to possession or distribution of any Schedule I, II, or III controlled substances to attend an alternative education program, including, but not limited to, night school, adult education, or any other educational program designed to offer instruction to students for whom the regular program of instruction may be inappropriate. The local school board of the school division in which the pupil resides shall determine the appropriate alternative education placement for such pupil. This subsection shall not be construed to limit the authority of school boards to expel, suspend, or exclude students, as provided in §§ 22.1-277, 22.1-277.01, and 22.1-277.2.

D. As used in subdivision A 2 of this section, the term "bona fide religious training or belief" does not include essentially political, sociological or philosophical views or a merely personal moral code.

*E. As used in this section, the term "charged" means that a petition or warrant has been filed or is pending against a pupil.*

§ 22.1-257. (Delayed effective date) Excusing children who cannot benefit from education or whose parents conscientiously object; excusing children for reasons of health or apprehension for personal safety; court authority to order alternatives.

A. A school board:

1. May, on recommendation of the principal and the division superintendent, with the written consent of the parent or guardian, excuse from attendance at school any pupil who the school board determines, in accordance with regulations of the Board of Education, cannot benefit from education at such school;

2. Shall excuse from attendance at school any pupil who, together with his parents, by reason of bona fide religious training or belief, is conscientiously opposed to attendance at school;

3. Shall, on the recommendation of the family court of the county or city in which the pupil resides, excuse from attendance at school for such period of time as the court deems appropriate any pupil who, together with his parents, is opposed to attendance at a school by reason of concern for such pupil's health, as verified by competent medical evidence, or by reason of such pupil's reasonable apprehension for personal safety when such concern or apprehension in that pupil's specific case is determined by the court to be justified;

4. May, on recommendation of the family court of the county or city in which the pupil resides, excuse from attendance at school any pupil who, in the judgment of such court, cannot benefit from education at such school;

5. May, *in accordance with the procedures set forth in § 22.1-277* and upon a finding that a school-age child has (i) committed an offense in violation of school board policies, ~~or against whom such charges are pending as~~ (ii) *been charged with an offense described in subsection A of § 22.1-209.1:2 relating to the Commonwealth's laws, or with a violation of school board policies, on weapons, alcohol or drugs, or intentional injury to another person, or (iii) been expelled from school attendance pursuant to § 22.1-277.01*, require the child to attend an alternative education program as provided in § 22.1-209.1:2 or § 22.1-277.1.

B. The court in reaching its determination as to whether the concern or apprehension referred to in subdivision A 3 of this section is justified shall take into consideration the recommendation of the principal and division superintendent.

C. The family court of the county or city in which a pupil resides, or in which charges are pending against a pupil, or any court in which charges are pending against a pupil, may require the pupil who has been charged with (i) a crime which resulted in or could have resulted in injury to others, (ii) a violation of Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, or (iii) any offense related to possession or distribution of any Schedule I, II, or III controlled substances to attend an alternative education program, including, but not limited to, night school, adult education, or any other educational program designed to offer instruction to students for whom the regular program of instruction may be inappropriate. The local school board of the school division in which the pupil resides shall determine the appropriate alternative education placement for such pupil. This subsection shall not be construed to limit the authority of school boards to expel, suspend, or exclude students, as provided in §§ 22.1-277, 22.1-277.01, and 22.1-277.2.

D. As used in subdivision A 2 of this section, the term "bona fide religious training or belief" does not include essentially political, sociological or philosophical views or a merely personal moral code.

*E. As used in this section, the term "charged" means that a petition or warrant has been filed or is pending against a pupil.*

*§ 22.1-277.01. Expulsion of students under certain circumstances; Board of Education designated agency; local school board application for assistance; reporting; exceptions.*

*A. In compliance with the federal Improving America's Schools Act of 1994 (Part F--"Gun-Free Schools Act of 1994"), a school board shall expel from school attendance for a period of not less than one year any student whom such school board has determined, in accordance with the procedures set forth in § 22.1-277, to have brought a firearm onto school property or to a school-sponsored activity as prohibited by § 18.2-308.1, or to have brought a firearm as defined in subsection D of this section on school property or to a school-sponsored activity. A school board may, however, determine, based on the facts of the particular case that special circumstances exist and another disciplinary action or term of expulsion is appropriate.*

*B. The Board of Education is designated as the state education agency to carry out the provisions of the federal Improving America's Schools Act of 1994, and shall administer the funds to be appropriated to the Commonwealth under this act.*

*C. Each school board shall revise its standards of student conduct no later than three months after the date on which this act becomes effective. Local school boards requesting moneys apportioned to the Commonwealth through the federal Improving America's Schools Act of 1994 shall submit to the Department of Education an application requesting such assistance. Applications for assistance shall include:*

*1. Documentation that the local school board has adopted and implemented student conduct policies in compliance with this section;*

*2. A description of the circumstances pertaining to expulsions imposed under this section, including (i) the schools from which students were expelled under this section, (ii) the number of students expelled from each such school in the school division during the school year, and (iii) the types of firearms involved in the expulsions.*

*D. As used in this section:*

*"Destructive device" means (i) any explosive, incendiary, or poison gas, bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter ounce, mine, or other similar device; (ii) any weapon, except a shotgun or a shotgun shell generally recognized as particularly suitable for sporting purposes, by whatever name known which will, or may readily be converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and (iii) any combination of parts either designed or intended for use in converting any device into any destructive device described in this subsection and from which a destructive device may be readily assembled. "Destructive device" shall not include any device which is not designed or redesigned for use as a weapon, or any device originally designed for use as a weapon and which is redesigned for use as a signaling, pyrotechnic, line-throwing, safety, or similar device.*

*"Firearm" means any weapon prohibited on school property or at a school-sponsored activity pursuant to § 18.2-308.1, or (i) any weapon, including a starter gun, which will, or is designed or may readily be converted to, expel a projectile by the action of an explosive; (ii) the frame or*

receiver of any such weapon; (iii) any firearm muffler or firearm silencer; or (iv) any destructive device.

*"One year" means 365 calendar days as required in federal regulations.*

*E. The exemptions set out in § 18.2-308 shall apply, mutatis mutandis, to the provisions of this section. The provisions of this section shall not apply to persons who possess such firearm or firearms as a part of the curriculum or other programs sponsored by the schools in the school division or any organization permitted by the school to use its premises or to any law-enforcement officer while engaged in his duties as such. In addition, this section shall not apply to possession of an unloaded firearm which is in a closed container in or upon a motor vehicle or an unloaded shotgun or rifle in a firearms rack in or upon a motor vehicle.*

*F. This section shall not be construed to diminish the authority of the Board of Education or the Governor concerning decisions on whether, or the extent to which, Virginia shall participate in the federal Improving America's Schools Act of 1994, or to diminish the Governor's authority to coordinate and provide policy direction on official communications between the Commonwealth and the United States government.*

§ 22.1-277.1. Disciplinary authority of school boards under certain circumstances.

A school board may, *in accordance with the procedures set forth in § 22.1-277*, require any student who has been (i) *charged with an offense relating to the Commonwealth's laws, or with a violation of school board policies, on weapons, alcohol or drugs, or intentional injury to another person; (ii) found guilty or not innocent of a crime which resulted in or could have resulted in injury to others, or of a crime for which the disposition ordered by a court is required to be disclosed to the superintendent of the school division pursuant to § 16.1-305.1; or (iii) expelled pursuant to § 22.1-277.01*, to attend an alternative education program, including, but not limited to, night school, adult education, or any other educational program designed to offer instruction to students for whom the regular program of instruction may be inappropriate. A school board may require such student to attend such programs regardless of where the crime occurred.

*As used in this section, the term "charged" means that a petition or warrant has been filed or is pending against a pupil.*

§ 22.1-278. Guidelines for school board policies; school board regulations governing student conduct; Board standards for compliance with federal law requiring expulsion under certain circumstances by school board.

A. By July 1, ~~1994~~ 1995, the Board of Education shall establish guidelines and develop model student conduct policies to aid local school boards in the implementation of such policies. The guidelines shall include, but not be limited to, (i) criteria for the use of suspension and expulsion as disciplinary measures, the grounds for suspension and expulsion, and the procedure to be followed in such cases; (ii) standards, consistent with state, federal and case laws, for school board policies on alcohol and drugs, vandalism, trespassing, threats, search and seizure, disciplining of students with disabilities, intentional injury of others and dissemination of such

policies to students, their parents, and school personnel; and (iii) standards for in-service training of school personnel in and examples of the appropriate management of student conduct and student offenses in violation of school board policies. In the case of suspension and expulsion, the procedures set forth in § 22.1-277 shall be the minimum procedures that the school board may prescribe. By October 31, ~~1994~~ 1995, school boards shall adopt regulations governing student conduct which are consistent with, but may be more stringent than, the guidelines of the Board.

*B. The Board of Education shall establish standards to ensure compliance with the federal Improving America's Schools Act of 1994 (Part F--"Gun-Free Schools Act of 1994"), in accordance with § 22.1-277.01, to be effective on July 1, 1995.*

*This subsection shall not be construed to diminish the authority of the Board of Education or the Governor concerning decisions on whether, or the extent to which, Virginia shall participate in the federal Improving America's Schools Act of 1994, or to diminish the Governor's authority to coordinate and provide policy direction on official communications between the Commonwealth and the United States government.*

## APPENDIX H

### A LIST OF PROPOSED GUN-FREE SCHOOLS AND EXPULSION OF STUDENTS FOR CERTAIN INFRACTIONS

<b>Year</b>	<b>Bill Number</b>	<b>Name of Bill</b>	<b>Patron</b>
1995	HB1614	Gun-free Schools and expulsion of students for certain infractions	Shirley Cooper (D)
1995	HB 2140	Gun-free Schools and expulsion of students for certain infractions	William S. Moore, Jr. (D)
1995	HB 2330	Expulsion of students for firearms possession on school property	Frank W. Wagner (R)
1995	SB 874	Expulsion of students for firearms possession on school property	Thomas Norment, Jr. (R)
1996	HB 1530	Student expulsion for weapons offenses; zero-tolerance	George W. Grayson (D)
1997	HB 1530	Student expulsion for weapons offenses; zero-tolerance	George W. Grayson (D)
1998	HB 1421	Expulsion of students for possession of certain weapons	Lionell Spruill, Sr. (D)
1999	HB 1462	Expulsion of students for firearms possession	Phillip A. Hamilton (R)
1999	SB 1136	Student Expulsions	Janet D. Howell (D)
2000	HB 464	Possession of weapons on school property, school buses, etc.	Robert Tata (R)
2000	HB 1179	School board disciplinary procedures	John S. Reid (R)
2000	HB 1201	Expulsion of students for gun possession	Robert Tata (R)
2000	SB 80	Firearms; exempts certain ROTC program personnel	Janet D. Howell (D)
2001	HB 1179	School board disciplinary procedures	John S. Reid (R)
2002	HB 512	Student discipline	Bradley P. Marrs (R)
2002	HB 971	Zero-tolerance policies in public schools	Dwight C. Jones (D)
2003	HB 1907	Student expulsions; possession of air rifle or BB gun	James F. Almand (D)
2003	HB 2408	Student discipline	Bradley P. Marrs (R)
2005	HB 2223	Student expulsion; procedures for re-admission	Thomas Davis Rust (R)
2005	HB 2202	Students; policy for disciplinary actions	Bradley P. Mars (R)
2006	HB 1516	Possession of certain weapons; expulsion for possession thereof on school property	Robert Tata (R)
2007	HB 1866	Firearms on school property; increases penalty for pneumatic weapons	Robert Wittman (R)
2007	HB 2853	Stun weapons; eliminates references to tasers throughout Code	Brian Moran (D)
2007	HB 3013	Firearms on school property; misdemeanor to possess pneumatic weapons thereon	Robert Wittman (R)
2007	HB 1229		Dwight C. Jones (D)
2008	HB 136	School; definition thereof for purposes of prohibiting weapons on school grounds	Christopher Peace (R)
2009	HB 1822	Handguns; exempts permit holders from prohibition against carrying onto school property	Joseph Johnson (D)
2010	HB 72	Firearms; possession with intent to use on school property is a Class 1 misdemeanor	Charles Carrico (R)
2010	HB 1214	Firearm on public school property; prohibits those in closed container in motor vehicle	Kaye Kory (D)
2011	SB 903	Violent felony; possession of firearm on school property prohibited, penalty	R. Creigh Deeds (D)

<b>Year</b>	<b>Bill Number</b>	<b>Name of Bill</b>	<b>Patron</b>
2012	HB 365	Student suspension or expulsion from school; requires superintendent to ensure continued education (Identical to HB 887)	Jennifer L. McClellan
2012	HB 887	Student suspension or expulsion from school; requires superintendent to ensure continued education (Identical to HB 365)	Kenneth C. Alexander
2013	HB 1866	Public schools; mandatory expulsion of students	Roxann L. Robinson
2013	HB 2344	School safety: threat assessment teams and oversight committees	Mark L. Cole
2014	HB 726	Students; suspension and expulsion, continuation of curriculum	Jennifer L. McClellan
2014	HB 198	Student discipline; expulsion due to firearm or drug offenses (Identical to HB 752 and SB 441)	R. Steven Landes
2014	HB 752	Student discipline; expulsion due to firearm or drug offenses (Identical to HB 752 and SB 441)	Thomas Davis Rust
2014	SB 441	Student discipline; expulsion due to firearm or drug offenses (Identical to HB 752 and HB 198)	Thomas A. Garrett

## APPENDIX I

### LIST OF ZERO-TOLERANCE AND SCHOOL DISCIPLINE POLICIES

#### Zero-tolerance and school discipline policies

**Alabama:** Suspension required for possession of drugs, alcohol, weapons, or the committing of or threat of physical harm towards another. Expulsion is required for possession of a firearm. Alabama Code 16-1-24.1 (1995)

**Alaska:** Suspension for willful disobedience, open and persistent defiance of authority, and any felony conviction. Expulsion for possession of a firearm or deadly weapon. AK St § 14.03.160

**Arizona:** Expulsion for continued open defiance of authority, continued disruptive or disorderly behavior, use or display of a dangerous instrument or deadly weapon, use or possession of a gun, or excessive absenteeism. Ariz. Rev. Stat Ann. 15-841

**Arkansas:** Suspension for assault or threat; using, offering or selling alcoholic beverages or illegal drugs; possession of paging device; willful or intentional damage or destruction or stealing of school property. Expulsion for hazing, possession of firearm or other weapons; illegal drugs or other contraband. Ark. A.C.A. 6-18-502, 507

<sup>1</sup> [http://www.law.harvard.edu/groups/civilrights/conferences/zero/zt\\_report2.html](http://www.law.harvard.edu/groups/civilrights/conferences/zero/zt_report2.html)

<sup>2</sup> Gun-Free Schools Act of 1994, 20 U.S.C. § 8921(b) (1) (1995)

**California:** Suspension for possession or selling of a firearm, terrorist threats, hate violence, threat to cause physical harm, property damage, extortion, and habitual profanity. Expulsion for possession or selling of firearm, assault with a deadly weapon, terrorist threats, hate violence, threats to cause physical harm, property damage, extortion, habitual profanity. Cal. Educ. Code 48915

**Colorado:** Suspension or expulsion for continued willful disobedience or open and persistent defiance of proper authority and willful destruction or defacing of school property. Expulsion for carrying, bringing, using, or possessing a dangerous weapon; sale of a drug or controlled substance; robbery; and assault. Col. Rev. Stat. 22-33-106

**Connecticut:** Suspension for assault, possession of firearm, offer of sale and distribution of controlled substances, and disruptive behavior. Expulsion for possession of firearm, deadly weapon or dangerous instrument, and an offer of sale and distribution of a controlled substance. Conn. Gen. Stat. Ann. 10-233d

**Delaware:** Expulsion or suspension for possession of a weapon or illegal drugs. **DE ST TI 14 § 4112**

**District of Columbia:** Expulsion for possession of a weapon. D.C. CODE 1981 § 31-451

**Florida:** Suspension for violence against any school district personnel; violation of a school's sexual harassment policies; or being formally charged with a felony or delinquent act. Expulsion

can occur for violence against any school district personnel or school property; violation of school's sexual harassment policies; possession of a firearm; willful disobedience; open defiance of authority; being charged with a felony; and unlawful possession or use of controlled dangerous substances Fla. Stat. Ann. 230.23

**Georgia:** Suspension for assault and battery. Expulsion for weapon possession. Ga. Code Ann. 20-2-751.1

**Hawaii:** Suspension or Expulsion occurs for possession of a dangerous weapon and the possession of liquor or illegal drugs. Haw. Rev. Stat. Ann. 302A-1134.5

**Idaho:** Suspension for the disruption of good order. Expulsion for carrying a weapon or firearm. I.C. 33-205

**Illinois:** Suspension for gross disobedience and misconduct. Expulsion for possession of a weapon. IL ST CH 105 § 5/10-22.6

**Indiana:** Suspension can occur for misconduct, substantial disobedience, or other unlawful activity. Expulsion for possession of firearm or deadly weapon, misconduct, substantial disobedience or other unlawful activity. Ind. Code Ann. 20-8.1-5.1-10

**Iowa:** Suspension for possession of a dangerous weapon or possession of alcoholic beverages. Expulsion for possession of a dangerous weapon. IA ST § 280.21B

**Kansas:** Suspension for willful violation of student conduct regulation, disruptive conduct, conduct which endangers the safety of others, commission of a felony or misdemeanor, disobedience of an order of school official, possession of a weapon, and possession or use of illegal drugs. Expulsion for possession of a weapon, possession of drugs, willful violation of student conduct regulation, disruptive conduct, conduct which endangers safety of others; commission of a felony or misdemeanor, and disobedience of an order of school official. KS ST § 72-8901-8908

**Kentucky:** Suspension for willful disobedience or defiance of authority, use of profanity or vulgarity; assault or battery, threat or force of violence, possession of alcohol and drugs and possession of weapons or dangerous instruments. Expulsion for possession of a weapon or dangerous instrument, possession of prescription drugs with the intent to distribute, and assault or battery. K.Y. Rev. Stat. Ann. 158.150

**Louisiana:** Suspension for willful disobedience, intentional disrespect toward school official, use of unchaste or profane language, use of tobacco or possession of alcoholic beverages or controlled dangerous substances, cuts or defaces school property, possession of firearm, habitual tardiness and absenteeism, and other serious offenses. Expulsion for possession of a weapon. LSA-R.S. 17:416

**Maine:** Expulsion for deliberate disobedience or deliberate disorder, possession of firearm, or possession and trafficking of drugs. ME ST T. 20-A § 1001

**Maryland:** Expulsion for possession of a firearm. MD EDUC, § 7-305 (e)

**Massachusetts:** Suspension or expulsion for possession of dangerous weapon, possession of illegal drugs, alcohol, or some legal drugs absent prescription, hitting or pushing a teacher or school official, or a felony complaint or conviction. Mass. Gen. Laws Ann. ch. 71, 37 H

**Michigan:** Suspension for gross misdemeanor or persistent disobedience. Expulsion for possession of dangerous weapon, arson, criminal sexual conduct, physical assault by student in grade 6 or above, and gross misdemeanor or persistent disobedience. Mich. Comp. Laws Ann. 380.1311

**Minnesota:** Expulsion for possession of a firearm. M.S.A. § 121A.44

**Mississippi:** Expulsion for possession of a dangerous weapon or firearms and possession of controlled substances. Miss. Code Ann. § 37-11-18 Suspension or Expulsion for defacing of school property. Miss. Code Ann. § 37-11-19

**Missouri:** Suspension or expulsion for possession of a weapon. Mis. Rev. Stat. 160-261

**Montana:** Suspension or expulsion for possession of a firearm. MCA 25-5-202.2

**Nebraska:** Suspension or expulsion for violence, force, coercion, threat, intimidation; willfully causing or attempting to cause substantial damage to property, stealing or attempting to steal property of substantial value, or repeated damage or theft involving property; causing or attempting to cause personal injury to a school employee, to a school volunteer, or to any student, threatening or intimidating any student for the purpose of or with the intent of obtaining money or anything of value from such student, possession of a firearm, engaging in the unlawful possession, selling, dispensing, or use of a controlled substance or an imitation controlled substance or alcoholic liquor, being under the influence of a controlled substance or alcoholic liquor, public indecency, and sexually assaulting or attempting to sexually assault any person. Neb.Rev.St. § 79-263 Neb.Rev.St. § 85-601 Neb.Rev.St. § 79-2,102

**Nevada:** Suspension or expulsion for possession of a firearm, possession and sale of a controlled substance, membership in a gang; and battery on a school official. Nev. Rev. Stat. Ann. 392.466

**New Hampshire:** Suspension for gross misconduct. Expulsion for gross misconduct, theft, destruction; violence, and possession of a pellet or BB gun or rifle. N.H. Rev. Stat. § 193:13

**New Jersey:** Suspension or expulsion for possession of a firearm, assault with weapon, continued and willful disobedience, open defiance of authority, physical assault upon another student, taking or attempting to take personal property or money from another student, willfully causing damage to school property, unauthorized occupancy of school grounds, and knowing possession or consumption of alcohol or dangerous substances. N.J.S.A. 18A:37-2 and N.J. Stat. Ann. 18A: 37-8

**New Mexico:** Expulsion for possession of a weapon. N.M. Stat. Ann. 22-5-4.7

**New York:** Suspension for insubordinate or disorderly conduct. Expulsion for possession of a weapon. NY EDUC § 3214

**North Carolina:** Suspension for willful violation policies of conduct, physical assault or serious injury to another student or to a teacher, and false bomb threats to a school or its personnel. Expulsion for possession of a weapon or presenting a clear threat to school safety. N.C.G.S.A. § 115C-391

**North Dakota:** Suspension for insubordination, habitual indolence, disorderly conduct, or possession of a weapon. Expulsion for possession of a firearm. N.D. Cent. Code 15-49-13

**Ohio:** Suspension for disruptive behavior. Expulsion for possession of a weapon or a bomb threat. OH ST § 3313.66

**Oklahoma:** Suspension for violation of school regulation and immorality. Expulsion for possession of a firearm. 70 Okl.St. Ann. § 24-101.3

**Oregon:** Suspension or expulsion for assaults or menaces against a school employee or another student, willful disobedience and defiance of authority, use or display or profane or obscene language, property damage, or possession of a weapon. O.R.S. § 339.250

**Pennsylvania:** Suspension for disobedience or misconduct. Expulsion for possession of a weapon. 24 P.S. § 13-1317.2 and 24 P.S. § 13-1318

**Rhode Island:** Suspension for disruptive behavior or possession of a firearm (or a realistic replica of a firearm). Expulsion can occur for possession of a weapon or firearm. RI ST § 16-60-4 (21)

**South Carolina:** Suspension for commission of any crime, gross immorality, gross misbehavior or persistent disobedience. Expulsion for possession of firearm, commission of any crime, gross immorality, gross misbehavior, or persistent disobedience. SC ST § 59-63-210 and SC ST § 59-63-217

**South Dakota:** Suspension for insubordination or misconduct, aggressive violent behavior; consumption or possession of alcoholic beverages, use or possession of a controlled dangerous substance, use or possession of a firearm, and property damage. Expulsion for consumption or possession of alcoholic beverages, use or possession of a controlled dangerous substance, and use or possession of a firearm SDCL § 13-32-4 and SDCL § 13-32-5

**Tennessee:** Suspension for immoral or disreputable conduct, violence or threat of violence, property damage, assault of school official with vulgar language, possession of a firearm or drug use. Expulsion for battery upon school official or possession of narcotics or weapons. Tenn. Code Ann. 49-6-4216

**Texas:** Expulsion for possession of firearm, illegal knife, club or weapon. Tex. Educ. Code Ann. 37.006-7

**Utah:** Suspension for frequent or flagrant willful disobedience, defiance of proper authority, or disruptive behavior, including the use of foul, profane, vulgar, or abusive language; willful destruction or defacing of school property; possession, control, or use of an alcoholic beverage; the possession, control, or actual or threatened use of a real, look alike, or pretend weapon, explosive, or noxious or flammable material; or the sale, control or distribution of a drug or controlled substance, an imitation controlled substance defined, or drug paraphernalia; commission of an act involving the use of force or the threatened use of force. Expulsion for possession of a firearm; aggravated assault; arson; possession, use and distribution of marijuana or controlled substance. U.C.A. 1953 § 53A-11-904

**Vermont:** Suspension for ongoing threats, disruptive behavior, possession of a firearm. 16 V.S.A. § 1162 and 16 V.S.A. § 1166

**Virginia:** Expulsion for possession of a firearm. Va. Code 22.1-257

**Washington:** Suspension for gang activity or defacing of property. Expulsion for possession of firearm or deadly weapon or gang activity. Wash. Rev. Code. Ann. 9.41.280

**West Virginia:** Suspension for use, sale or possession of narcotics, felonious act, threat to injure, willful disobedience, possession of alcohol, use of profane language directed at school employee or pupil, intentionally defacing any school property; participation in any physical altercation, habitual violations of school rules or policies. Expulsion for use, sale or possession of narcotics, possession of firearm or deadly weapon; felonious act, threats to injure, willful disobedience, possession of alcohol, use of profane language directed at school employee or pupil, intentionally defacing any school property, participation in any physical altercation and habitual violation of school rules or policies. WV ST § 18A-5-1a

**Wisconsin:** Suspension or expulsion for disobeying school rules, conveying a threat or false information concerning the destruction of school property, and possession of a firearm. Expulsion for disruptive conduct. W.S.A. 119.25 and W.S.A. 120.13

**Wyoming:** Expulsion for possession, use or carrying of a deadly weapon. W.S.1977 § 21-4-306<sup>213</sup>

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<sup>213</sup> Rutherford Institute. Zero-tolerance and school discipline policies. (2001) [www.rutherford.org/files\\_images/general/B03\\_Zero-Tolerance\\_2001.pdf](http://www.rutherford.org/files_images/general/B03_Zero-Tolerance_2001.pdf)

## APPENDIX J

### REDACTED RECORDS OF OPEN-ENDED INTERVIEWS

#### Interview 1: Delegate Black

*Describe the national debate surrounding increased gun violence on school grounds prior to the enactment of the Gun-Free Schools Act of 1994.*

Delegate Black: I am not in the position to summarize or characterize the national debate. My view would be more localized than it would be nationalized. But I think that it is pretty evident that there were many people who were expressing concern about firearms being brought into schools.

*What research or reading helped you to shape the national debate and the local debate and formulate a framework to guide in the development of the legislation?*

Delegate Black: Again, from my perspective, I am not able to talk with you about the national circumstances. I can only tell you that the perception that I had from many different sources was that parents, teachers, and administrators were all very concerned about firearms being brought into schools, (and) the consequences that could result if that should take place.

*Aside from meeting the funding mandate of the federal Gun-Free Schools Act, how has the Virginia legislation enhanced the educational environment?*

Delegate Black: I think that question would be better addressed to school administrators, superintendents, and school boards. But, I think what they would probably tell you is a safe environment makes activities at school more productive.

*What were your expectations of the Gun-Free Schools Act legislation on the Commonwealth?*

Delegate Black: I hoped that it would have the effect of discouraging the ones thinking about bringing firearms (students or anyone) over to the school.

*Describe your role in the development of the Gun-Free Schools Act legislation.*

Delegate Black: I probably played very little role in any of that. Basically, as I recall and I hope my recollection is correct. You need to remember you are asking me about something that happened quite some time ago, what 15 years ago? My recollection is that the federal legislation was passed that basically put the state legislatures in the position of having to adopt legislation or stand to lose some federal funding. That's my recollection as how that policy evolved.

*What, if any, internal or external forces influenced the sponsors or the patron of the Gun-Free Schools Act legislation in the Commonwealth?*

Delegate Black: You would have to talk to redacted text about that. redacted text came to me and asked redacted text, and I agreed to do it.

*Sir, which constituents or lobbyist have been proponents of the Gun-Free Schools Act legislation in the Commonwealth and which have been opponents?*

Delegate Black: I do not recall anyone coming to me and saying, "You need to do this." At the same time, I do not recall anyone coming to me and saying, "This is bad legislation."

*In your opinion, to what degree has the Gun-Free Schools Act legislation been successful?*

Delegate Black: I think that question would be better addressed to school administrators, school boards, and superintendents. The impression that I have is the media makes a big deal about firearms being brought on the school premises. These events do not happen too often, but when they do happen, there is tremendous publicity associated.

*Sir, in your opinion, to what degree has its success been impacted by unforeseen consequences?*

Delegate Black: One of the consequences of legislation being passed at the federal level requiring states and localities to take certain actions as a result of that puts the locality in a difficult situation. Basically, the policies about what happens at the local school for the most part should be, in my opinion, a decision made by a school board, the local government body that has responsibility for oversight of what takes place in the school community. There are those who become dissatisfied with the decision made at the local area, by the local authorities, and then they need to go to higher authorities to get a different policy in place. This can be an over- or an under-reaction at the local level, depending upon the person who is affected. And so there are those who have voiced dismay about the consequences of a student who has been expelled, but the administrators find themselves in a situation that regardless of what they do, how they act, there is going to be somebody who is going to be dissatisfied and vocal in their dissatisfaction. I suspect that that has something to do with why the federal authorities chose to do what they did and engulf it in the state legislation.

*Please describe how you would change current Gun-Free Schools Act legislation to meet your expectation(s).*

Delegate Black: I am not aware of anything that needs to be done at the present time. Now, one of the things that I get the impression sometimes that people think, and this may be unfair, but I think folks tend to forget that the Virginia *General Assembly*, those of us who serve in *General Assembly*, are supposed to be a part-time activity. In other words, we are a citizen legislature, our pay is very little, the amount of help we have is one assistant. I represent a district that includes redacted text. So the amount of time that I have as a legislator to consider outside sources is very limited.

Delegate Black: Probably the most input that I get comes from local school boards and local superintendents, who do not hesitate a bit to express their views. I have not had the first school board superintendent, school board member, or local government say that they think there needs to be any change to the law with regards to firearms in schools. [Okay]. And, if I am going to become aware of it is that's how I would become aware of it. In other words, I expect most legislators in Virginia would tell you that, for the most part, ideas that they have which cause them to formulate bills are not ideas that they create on their own. They are in response to concerns that are being made by constituents.

*The next question you have already given me some input, but perhaps you have thought of someone else. Who else would you suggest I interview regarding the development of Gun-Free Schools Act legislation in the Commonwealth?*

Delegate Black: I would suggest that you speak to redacted text.

*My last question is: What other comments do you wish to add?*

Delegate Black: I do not have any to add.

## Interview 2: Senator White

*Describe the national debate surrounding increased gun violence on school grounds prior to the enactment of the Gun-Free Schools Act, the federal Act in 1994.*

Senator White: Well, I know that guns in schools became more of an issue in Virginia with one or two incidents, primarily in Hampton Roads, that occurred in the late 1980s and early 1990s, and that is what brought the issue to the fore in Virginia.

*What research or reading helped you to shape the national debate for you, and perhaps you have answered it with it being brought home to incidents in Virginia Beach, and what helped you to formulate a framework to guide in the development of the legislation in Virginia?*

Senator White: Well, when this discussion was being held in Virginia, I was still in redacted text. The discussion primarily occurred in the Committee on Courts of Justice. redacted text, but my role in the whole debate over the discussion was pretty minor compared to lots of other people. And the people, redacted text was actually the delegate that I think carried the bill. redacted text But, honestly, I do not think that I read anything into.... redacted text. I have cast thousands and thousands of votes, been involved in many debates, and I just do not remember everything about everyone, but I do not remember that I read anything-----about some of the incidents that had occurred in Virginia.

*Aside from meeting the funding mandate of the federal Gun-Free Schools Act, how has the Virginia Gun-Free Schools Act legislation enhanced the educational environment from your vantage point?*

Senator White: The one thing we as policy makers are required by the Constitution of Virginia is to offer a free public education to all Virginia students. The one thing we have to do is assure the public, assure the parents and students that there is going to be safety in that learning environment - a fairly nurturing environment in which they can learn. redacted text. But we have got to do whatever we can to assure that we have as safe an environment as possible in schools. Certainly the Columbine situation brought that home and showed what can happen. There have been any numbers of incidents around the country where there have been guns in schools. Honestly, you are not going to be able to assure safety in every situation, but there are always things that can happen and if bad people are always going to do bad things. Particularly when it comes to school or it comes to protecting children, you have to do everything within your means to assure the public, parents, and children that the environment is going to be safe. I

think to that extent ensuring that guns are not in schools has enhanced the educational environment.

*What were your expectations of the Gun-Free Schools Act legislation on the Commonwealth, particularly with the expulsion for one calendar year, report to law enforcement and being able to modify on a case-by-case basis?*

Senator White: Honestly, the one year expulsion worried me because you are talking about children. Children, I would like to believe, are capable of mistakes and you have to correct them and bring them along. A year is a long time in the life of a child. You have to be harsh and you have to set an example. I do not know that my expectations, I am like a lot of people, I did not know exactly what to expect. I just hoped for a more safe school environment.

*And Senator, I think you touched on this a little bit earlier, this next question: Please describe your role in the development of the Gun-Free Schools Act legislation.*

Senator White: My role in the development was very minor. I hope you have talked to redacted text

*What, if any, internal or external forces influenced the sponsors or the patron of the Gun-Free Schools Act legislation in the Commonwealth?*

Senator White: I think that everyone felt pressure from parents and from the public about guns in schools, and I think every one of us who had to take a vote on this issue was dramatically influenced by what we read in the newspapers and about our fear of this nurturing environment being turned into a war zone with firearms. redacted text

*Which constituencies/lobbyists have been proponents of the Gun-Free Schools Act legislation in the Commonwealth and which have been opponents?*

Senator White: I hardly remember because the lobbying occurs primarily at the committee level. I do not remember being lobbied on this issue. Honestly, I cannot imagine anybody lobbying for or about guns in schools; but I will tell you that there are some gun-rights groups, gun owner rights groups that lobby against any restrictions on any guns whatsoever just because they do not like the precedent. And I am certain that they were involved, but I do not recall anything specific. And usually I would expect that the state PTA and the VEA were lobbying for this legislation, but this would just be speculation on my part because I have no specific recollection of being lobbied on this issue.

*Yes, Sir, in your opinion, to what degree has the Gun-Free Schools Act legislation been successful?*

Senator White: I think it has been successful because it laid the marker down. It has put the public on notice that this certain behavior is not going to be tolerated, and it is going to have a price tag. Kids are going to have to stay at home for a whole year. To that extent it has been successful. But the other side of it is this, you know, guns are going to be involved in school. No matter what the law is. There are still people and if they are intent on doing bad things, they are going to do them. All you can do is try to create as safe an environment as possible. And I think that this legislation had that goal, and I think it is an important tool to protect children. Honestly, I know it caught the attention of a lot of people, and I know it has been an effective enforcement tool in the community.

*Sir, in your opinion, to what degree has its success been impacted by unforeseen consequences?*

Senator White: See, that is one thing that concerned me about the year out of school. One thing that concerned me early on about the year out of school is that some of the kids who are guilty of bringing guns to school are exactly the kids that need the most intervention, and the year out of school might mean that a kid on the brink of being lost becomes completely lost. And so you worry about it on an individual basis. Has that happened? I do not know that I can specifically answer that. I know that would be my main concern.

**redacted text**

I worry though that there are consequences with respect to the children, and they are just children. The children that have brought guns to school that have been expelled.

*And along that line, could you describe how you would change current Gun-Free Schools Act legislation to meet your expectation?*

Senator White: Well, you know, I saw that question when you sent it and honestly, I have not really thought it a whole lot except to require that when children are, expelled for a year that they have to undergo some sort of home, that there is some sort of home schooling, some form or counseling, that the year out of school is not a year away from education.

Senator White: I would like to have that requirement that there be placement in an alternative setting. You know, here is the problem. Our education system differs among localities because the localities are the ones that bear the primary cost of funding an educational system.

And the Constitution says that school systems are run by local school boards. It is difficult for there to be a state mandate unless there's a state dollar that follows that mandate. In a perfect world, I think that there ought to be some alternative settings for every child because at the end of the day, they are still children.

*And you have given some names so far, but my next question is: Who else would you suggest that I interview regarding the development of Gun-Free Schools Act legislation in the Commonwealth, and you have given me the names redacted text*

Senator White: Gerald redacted text He would probably be the very best person you could talk to because he is one of the best people I know on redacted text

Senator White: redacted text

There were other people involved, but you know what, 1995 is a long time for me.

Senator White: Okay, redacted text.

Senator White: redacted text

*And lastly, sir, what other comments do you wish to add regarding the development of the Gun-Free Schools Act in the Commonwealth?*

Senator White: I do not have anything else to add.

### **Interview 3: Staffer Gray**

*If you would, please describe the national surrounding increased gun violence on school grounds prior to the enactment of the Gun-Free Schools Act of 1994, the federal legislation in 1994.*

Staffer Gray: At the state level, most of the discussion took place during the 1980's when there appeared to have been a rash of school violence, disciplinary problems, and classroom management problems in the public schools, if you will, not just in Virginia, but across the nation. And during that time, we had some egregious events that occurred, not in Virginia, but elsewhere in the nation that pretty much put a spotlight on it. And Virginia had its share of student disciplinary problems, actions, school violence that were random and that led the *General Assembly* and local school divisions to begin to act. We did not have a replay. For example, in Virginia, you had environmental situations, and by that I mean, you had people who did not any legitimate business on the school campuses actually being there, and crime in the community was creeping onto school property. And that took shape in students having problems with each other, those problems being exacerbated and carried out on school property, school buses and at events. And then you had the community in which things took place off the school campus that may or may not have involved students finding its way onto the school grounds and into the schools, including weapons, knives, and other things that made learning difficult.

So the *General Assembly* and the local school divisions in Virginia wanted to provide an atmosphere in the schools where, that was conducive to learning. So that led to the establishment of one or two legislative studies on how to deal with it. And one that was very prominent during that time was the Joint Sub-Committee on the Prevention of School Violence and Student Misconduct. And that is how Virginia got started in it. And then you have the overlay of the federal government, the Congress passing legislation that required local school boards and states to enact certain legislation to prevent students and others from bringing weapons onto school property. And that was, I believe, the federal government's attempt to help the states and to help control what apparently was a growing problem across the nation.

Staffer Gray: No, state. And that was established by the *General Assembly*. That Joint Sub-Committee was in existence, I am going to say it was in the 1980's. It was in existence at least three years, about three to four years, and a lot of the legislation that found its way into the

*Code of Virginia* addressed school violence, student conduct issues, management issues, came out of the work of that particular legislative sub-committee.

The legislation is sprinkled throughout; there is not any one place. However, there are a couple of places in certain titles of the Code where that of legislation predominates, Title 22.1 which is Education Title, 18.2, which is the Criminal Code, and 16.1, which concerns the Juvenile Courts and juveniles generally. Overtime the Joint Sub-Committee on the Prevention of School Violence and Student Misconduct recommended several initiatives that found their way into the *Code of Virginia*, and it depends technically based on what the aim of the legislation is where we codify it. And that is why it is not in just one title.

*Okay, it seems as if you have done an excellent job answering the second question as well, and that is what research or reading helped you to shape the national debate and formulate a framework to guide in the development of the legislation? So it sounds like that work that was done early in the 1980's through the Joint Sub-Committee and the General Assembly did that, if you would want to address any more?*

Staffer Gray: I think Virginia in doing that - the intent of the state was not to have an effect nationally, although there may have been some other states that looked at Virginia as an example of some of the initiatives underway during that time, but Virginia also was reacting to the national setting. And the *General Assembly* also was trying to get its arms around the creeping problem that the public schools were beginning to experience in the Commonwealth. That was front and center. So any impact that Virginia may have had nationally probably is secondary to the primary reason that they began to look at the problem and at the issues to address them. It was like a fire - maybe you can compare it to a brush fire. What Virginia did not want was for that brush fire to become uncontrollable and engulf the whole Commonwealth. So, I do not think we shaped the national debate because that was not their aim, but we probably had an effect in some other states because of the steps that Virginia took.

*Aside from meeting the funding mandate of the federal Gun-Free Schools Act, how has the Virginia legislation enhanced the educational environment?*

Staffer Gray: I think it was successful, although some would argue that the pendulum may have swung to the extreme for a while, but we see it coming back to the center. There was a lot of angst and concern among policy makers and school officials about what they were witnessing in the public schools in Virginia even in our early grades. And the effort to get that

under control, and some would argue that those efforts in some instances might have been more than what the problem required. Perhaps, the interpretation of ‘No Tolerance, Zero-tolerance’ requirements exceeded rationality for several years regarding the suspension and expulsion of students. For example, a mother who packed a student’s lunch put a butter knife with his lunch so that he could slice the sandwich. The student did not know that the butter knife was there, but in the cafeteria, the monitors or the teachers saw the knife when he opened his lunch. The student was suspended for having a weapon on school property. Similar administrative decisions caused some problems for parents, students, and even for some policy makers. For a while, because of this zero-tolerance mindset in some school divisions and among their attorneys, common sense did not prevail in every instance. But we have begun to see some weakening of a strict zero-tolerance attitude and school divisions are becoming more sensible, if that is a good word, in handling such issues on a case-by-case basis. School administrators and local school boards are looking at the facts in each individual case before making a decision – imposing suspension, expulsion, or other disciplinary actions.

So the crime did not go away, it was not eradicated. We still have it across the Commonwealth, across the nation today, but I think in Virginia some of the egregious problems that the legislation was designed to address (once it was implemented and officials got a handle on how to implement it, how to administer it), I think, you have seen in a number of school divisions some of their problems have abated. I mean, they have fewer problems.

*What were your expectations of the Gun-Free Schools Act legislation on the Commonwealth?*

Staffer Gray: As staff, we do not have any. I did not have any expectations of the legislation in the Commonwealth. I certainly knew what the Congress’ design or what their purpose was for the legislation. I knew what the Congress and what Virginia’s legislature wanted to achieve in implementing it, but I did not have any expectations of it.

*Please describe your role in the development of the Gun-Free Schools Act legislation.*

Staffer Gray: **redacted text**

*Thank you. What, if any, internal or external forces influenced the sponsors or the patron of the Gun-Free Schools Act legislation in the Commonwealth?*

Staffer Gray: Now that, **redacted text** I cannot answer. **redacted text**

*You have touched on the next question. Which constituencies/lobbyists have been proponents of the Gun-Free Schools Act legislation in the Commonwealth and which have been opponents? Would you like to say more?*

Staffer Gray: The Gun-Free Schools Act legislation occurred many years ago, I cannot recall who the opponents and proponents were. I think it is safe to say that as far as I recall, I do not believe we had any opponents to the idea that schools should be free of weapons. What I recall is that there were some concerns raised by some advocacy groups that the Second Amendment rights of persons may be compromised. I recall that some of the patrons in speaking to some of those lobbyists and individuals, private citizens, tried to work out a way that those constitutional rights were guaranteed while at the same time protecting students, teachers, staffs and those who had legitimate business in the public schools.

The proponents, as you can guess, probably included every parent, PTA, students who had been affected adversely perhaps, teachers, administrators, and the education community. But I do not recall that there was any strong opposition to the Gun-Free Schools Act; maybe the criminals but they were not going to step forward and voice an opinion in this arena that that legislation should not be passed.

*In your opinion, to what degree has the Gun-Free Schools Act legislation been successful in the Commonwealth?*

Staffer Gray: I think it is been generally successful. As I mentioned previously, you have had fewer problems, fewer instances of guns, weapons, finding their way into the classroom. That is not to say that we are 100% free of instances across the Commonwealth, but we have a lot fewer. You do not hear about it anymore and then when you do, it is isolated. It is not a regular occurrence. Now if you would ask some school officials in some schools across the state whether they have experienced challenges, I am sure they do. Are they still dealing with some of those same issues more frequently than in some other school divisions in the state? I am sure the answer would be "Yes". But statewide, the Gun-Free Schools Act, I think, most people would agree has been successful.

*In your opinion, to what degree has its success been impacted by unforeseen consequences?*

Staffer Gray: Probably, in my opinion, if I were to put myself in the place of some of the school personnel who I am thinking of right now in some areas of the state, I would say that the

success has been impacted by the need to employ the necessary personnel, skilled competent personnel to deal with the problem. And, to acquire the necessary funding from state, local and maybe national sources to help school divisions do their job in that regard. The communities, in which some schools are located, probably, are not supportive. The students who are affected and who are assigned to those schools probably do not have the supportive network and safety net that children should have. Cultural role models or lack of appropriate role models, incompetent teachers and administrators, insensitive administrators; unfortunately, we have some people in the public schools around the nation that really do not like kids so those things, and then the baggage in personal situations that teachers and administrators bring with them to the classroom, as all employees do, wherever they may work, if they cannot divorce themselves or do some compartmentalization when they get there, probably compromise the success of the program. And then if the implementation or administration is capricious and arbitrary as we have heard reports of over the years, the lack of attention to residual affects when school officials do not implement the policies even-handedly, one group of students will be more adversely affected than others. The result will be a disproportionate rate of suspensions and expulsions among minorities, particularly among African-American students. This problem, in my opinion, hampers the success of the GFSA.

*Please describe how you would change current Gun-Free Schools Act legislation to meet your expectations.*

Staffer Gray: redacted text

*Who else would you suggest that I interview regarding the development of Gun-Free Schools Act legislation in the Commonwealth?*

Staffer Gray: There are two people who are no longer in the *General Assembly* who have the wealth of information about that and those persons were the patrons of the legislation.

redacted text

*Thank you. On that same note, given that your role has been in legislative services, are there any documents that you would recommend I look at?*

Staffer Gray: I would recommend certainly examine the statute and related statutes since the Gun-Free Schools Act was passed. There has been some ripple effect where you were addressing weapons on school property, student discipline, classroom management, accessibility to school files, notification of law enforcement officials, and *vice versa* for school officials.

When you had these kinds of problems, reporting incidences on school property, they have found their way into higher education as well. You do not have a Gun-Free Schools Act in higher education, but the idea of safe campuses is an example of what took place with the Gun-Free Schools Act and other legislative acts, that Joint Sub-Committee affected. As far as documents are concerned, Virginia does not have a written legislative history so there are not any documents remaining.

There was, I want to call it, a summit, but maybe that is not the right word, I can see the publication, but for the life of me, I cannot recall the title. There was a parallel organization within the education community looking at the same issues and problems that the legislative committee was studying, and they issued a report. It was not a state document. And so that makes it difficult to get your hands on it. And for the life of me I do not know where or who would have a copy of what the school officials across the state produced. redacted text I can look on my shelf and see if I still have a copy and the other thing, let me check quickly. I cannot find it.

During that time, the *General Assembly* legislative entities were not required to submit a written report. If they had a study sometimes they did, sometimes they did not. But they were not required to do so. Now they are required to have at least a legislative summary, executive summary stating whether or not that is the end of the study or if a report is coming, but let me check real quickly and see if one was filed. redacted text

Staffer Gray: I did. And you access it, it is online, you go to the *General Assembly* website, and on the left hand side, there is a window, a little box at the bottom of the menu, it says, "Studies and Commissions." redacted text

And then once there, on the home site there is, as I mentioned a window at the bottom of the menu, it says, "Studies and Commissions," and when you click on that or highlight that, another box comes up with three other items in the menu. You want the last one, "Reports to the *General Assembly*." And you click on that and that will bring you to a search page and you want option number two which is Search Reports. In the key word box or phrase, just type in School Violence. And there are two reports that come up; one is an example of what I mentioned as an outgrowth of efforts stemming from the whole discussion of weapons on school property and student violence and disciplinary problems. The report you are looking for that corresponds to the era of the Gun-Free Schools Act is House Document 61 for 1991. The other one is House

Document 62 but that was 2000 and that pertains to Guidelines for Student Searches, you know, you can connect the dots to that one. If you got contraband and weapons on school property, obviously, the next thing that school divisions were doing is searching.

So, and I am trying to see if the terminology will bring up more, I do not know it is like that, nothing for student violence, let's use and see if anything comes up for the residuals 2006, the Study on Campus Safety. Remember, I mentioned the tentacles going into the higher education, and student disciplinary statutes, you know, dealing with and after the law was implemented? Still you had some other laws from that sub-committee that were implemented. The whole notion of student discipline, what do school divisions need in place for sound learning environments, things like that, are dispersed throughout the Code. So you might want to look at some of those, but the key words will determine what comes up. I used "student conduct" and got the residual report. If you use "school violence", that is going to put you on point to that era that you are exploring.

**redacted text**

Students who have disciplinary problems, suspensions and expulsions problems, sometimes find themselves in line for the court system and in harm's way where school violence is concerned and vice versa. If they are involved on and off campus in those kinds of activities, chances are they are going to end up in the suspension and expulsion category. And if they are having problems in both areas, the potential drop-out is vulnerable to both of those things.

**redacted text**

**redacted text** That is one example of what started up in the 1980's and the 1990's growing now into a body of law and policy, both in public education and higher education, that had its roots 20 to 30 years ago in something, a kid brought a gun to school.

*What other comments do you wish to add regarding the development of Gun-Free Schools Act legislation in the Commonwealth?*

Staffer Gray: I know what else I could add, although I would caution that it is still evolving. **redacted text** these are "people" issues. As long as you have people and people are flawed, you are going to have repeat of the same issue; maybe a different form, but it is not going to go away. We are going to see it in one form or another. You would never be out of business because of the inventiveness of the human mind, and the problems we seem to make for ourselves and situations we tend to get ourselves into. The Gun-Free Schools Act and all of the

other legislation, they are amended, year after year, maybe not every year but in some form, something gets amended. The *General Assembly* sees ways to perfect what they have done, or to close loopholes in certain legislation, or to address a nuance on an old problem. It is not going to end; it just will evolve into something else that needs to be addressed.

Staffer Gray: The *General Assembly* was in the heart of those issues in the 80's, redacted text As I said; there is no written legislative history. Well, I hope it is been helpful because I know when you pull up the bill history on LIS, you see the different versions of the bill, the substitutions and amendments, but what you do not see is why they (the changes) were made, whether they were technical, substantive, who was involved in it, did it resolve because of deliberations on the floor or in committee, you do not know. You do not know, but I would highly recommend that you talk to the primary sources redacted text.

#### **Interview 4: Delegate Green**

*The first question is: Describe the national debate surrounding increased gun violence on school grounds prior to the enactment of the Gun-Free Schools Act of 1994 which was a federal legislation.*

Delegate Green: Well, I think it was certainly an atmosphere in which something had to be done because the public awareness was very high and the concerns and anxieties of parents were really a great concern. And we felt like we had to do something with regard to the school violence, and, of course, we have to act within the constraints of the Constitution. We felt that when working with minors that we could have special rules, special restrictions that may not apply to others but would apply when the goal was to take care of our young people. I think that was some of the background prior to the enactment of that federal legislation. Of course, I am in the *General Assembly* right now, but we deal in the state legislation constantly having, particularly in the committee that I am on, dealing with the gun-related matter.

*The second question if you're ready: What if any research or reading helped you to shape the national debate and formulate a framework to guide in the development of the legislation?*

Delegate Green: Well, I am a state legislator not a federal legislator, but we do have a lot of gun legislation in every session. And like other issues, I just try to read everything I can on the subject. Of course, I feel like it is an informed opinion, sometimes the articles that I read I realize have a whole lot of depth to them and that is really very helpful. There is quite a bit of good information out there, and I just try to educate myself as best I can, and I continue to do so constantly. I read these articles in the newspapers, magazines, publications, of course, if they do not get in the proper file, but just the fact of underlining them and outlining them with a pen and cutting them out, hopefully, it makes an impression on my brain that will help later when we consider legislation like that. That is all I have on that question.

*Aside from meeting the funding mandate of the federal Gun-Free Schools Act, how has the Virginia Gun-Free Schools Act legislation enhanced the educational environment?*

Delegate Green: Well, obviously, it is hard enough to get our students in an environment where you can have a building and teachers and all of that, but when you have an environment which is infected with fear, in this particular case, fear of incidents of gun violence, obviously, that is very detrimental to the education process. This, of course, is one of the major concerns in our schools - to make sure that our students are disciplined and look after the well-being of each

other. Certainly, guns in the schools would have just the opposite effect. They create fear and really hamper greater the education process. So I think this legislation does help to encourage parents to send their kids to our public schools in the hopes that they not only will be just as safe as they would be at home, but in some cases, particularly in bad neighborhoods, they would be much more safe in school than they would be back in their own homes. That is all I have on that question.

*Sir, what were your expectations of the Gun-Free Schools Act legislation on the Commonwealth?*

Delegate Green: Well, certainly the expectation was that we would have some opposition to it. It turned out it was not as bad as we thought because I think pretty much more of a bipartisan basis. There was the belief that something had to be done and even those who have the most ardent belief in gun rights understood that this was a reasonable restriction, one that had the overwhelming support of our citizens. So, in effect, that is how it has turned out. We still have incidents of violence from time to time - incidents, scares, and sometimes actual violence in our schools, but I think this legislation both at the federal level and the state level has been very beneficial to our citizens because it has lessened considerably the threat of that gun violence. It has not eliminated it and never will, but it has had a tremendous beneficial effect, and I think it has worked very well.

*Yes sir. Would you please describe your role in the development of the Gun-Free Schools Act legislation?*

Delegate Green: Okay. Well, of course, I was supportive of it, and it was fairly early in my legislative career. **redacted text** but certainly that was one of our higher priorities was safety in our schools and in particular having the schools in a gun-free environment. I was too new to the process to take a leadership role, in other words, I was not the patron of the bill or anything like that. But I certainly was supportive of that and have been involved since then as my seniority has increased in the legislature. I have been more and more involved in all sorts of gun laws. For example, every year, it seems like; we have a question about somebody coming onto school grounds that has had a gun in their car or the trunk. Those types of issues are very difficult. Years ago we had questions about a student; a male student was planning to go hunting right after school which is fairly common in the rural areas. That time he had a gun in his car. That creates a very difficult problem giving consequences like that, but, unfortunately, one of those

students just might have criminal intent. So it is a constant battle to comply with the constitutional right to bear arms, but at the same time, impose reasonable restrictions that do not infringe on citizens' constitutional rights.

*What, if any, internal or external forces influenced the sponsors or the patron of the Gun-Free Schools Act legislation in the Commonwealth?*

Delegate Green: Well, certainly there are a lot of forces that were concerned about it; sometimes opposed to it, sometimes not opposed but very concerned about it. The National Rifle Association, of course, was the biggest lobbying organization concerned with Second Amendment rights, and they very forcefully entered that debate and continue to do so. redacted text

Hunting is frequently done and people do not really think twice about having guns, particularly long arms, a rifle, shotgun, things like that. It is a little bit more unusual, at least it has been in the past, a little bit more unusual to have small arms like pistols. But these pistols, of course, have greatly increased. Many women keep a pistol in their purse. redacted text that type of thing was unheard of. I never heard of a lady having a pistol in her purse. But you have a lot of citizen concern and citizen desire to have a safe society, and many times they are concerned that the public safety provided by police might not be at the highest level. As a result, they often tend to get their own weapons and permits and try to protect themselves that way. Sometimes that works and sometimes it does not. Every now and then you will hear of somebody who did not keep their gun properly locked in their home; and the kids get hold of it; and somebody was killed. Those things happen.

The issue of guns rights and guns regulations is one that calls forth or produces quite a bit of emotion by our citizens. I wish they were a little bit calmer, especially these days. Often times in the legislature, it gets to be very emotional not only among the legislators but emotional comments by people, ordinary citizens who come to speak about proposed legislation, either in favor of it or in opposite to it.

Delegate Green: It is unfortunate that reasonable people should be able to differ on this, differ in a civil way, but the emotion is very high on this issue, and much more so in this region for whatever reason than it is in many other lands.

*Which constituencies/lobbyists have been proponents of the Gun-Free Schools Act legislation in the Commonwealth and which have been opponents?*

Delegate Green: Organizations like the Parent Teachers' Association and school boards have been supportive of it. The Brady organization out of Washington is supportive of it. And of course, in opposition, I say it is in opposition, actually it has been a pretty good while ago; I do not remember how vehemently the National Rifle Association (NRA) opposed it. They may have finally come around and supported it. I do not recall, frankly, but the NRA is one that has been very zealous, very active in trying to avoid any slight opening of the door with regards to restriction to gun rights. So they would probably oppose it. There are some other organizations that are even more vehement than the NRA on these matters. I cannot think of the names of them right off hand.

Delegate Green: I said there are other organizations under guns rights organizations other than the NRA which frequently lobby in the *General Assembly*. I cannot think of the names of these organizations. One of them is Gun Owners of America or something like that. There are others that have views as strong as the NRA on such matters; these other organizations have even stronger views than I think the NRA does. They think the NRA is not strong enough in their view in speaking up for gun rights.

*Sir, in your opinion, to what degree has the Gun-Free Schools Act legislation been successful in the Commonwealth?*

Delegate Green: Well, of course, it is hard to measure the success, but I think the number of incidents that we have had has been cut down quite a bit. It is true that at the college level, we had the terrible massacre at Virginia Tech several years ago, but again, that was at the college level. That was not at the K-12 level. So I think it is been effective. There continues to be fine tuning of it, and in most places it comes up practically every year, at least to make some small change in the law. I have not sensed any sentiment to repeal the law or substantially to weaken it. The sentiment that I am experiencing from our citizens is that it is working well; do not mess with it; and do not make any significant changes. Just keep it strong and reasonable. I think most citizens feel that way at this time.

*In your opinion, to what degree has its success been impacted by unforeseen consequences?*

Delegate Green: Well, I think an occasional bad incident will occur, including a school shooting. However, they have been less frequent in recent years largely because of legislation like this. Still the fact that these incidents occur, even if they do not occur on the school grounds,

they may occur in a place of employment or elsewhere, wherever they occur, I think it tends to strengthen the support of Gun-Free Schools laws. People are vividly reminded of what a terrible catastrophe it would be if you had another Columbine or a huge shooting at a K-12 student area. I think these incidents continue to point to the need to strengthen these laws and to never retreat to a policy of weakening these laws.

*Could you describe how you would change current Gun-Free Schools Act legislation to meet your expectations?*

Delegate Green: Well, at this point, I am not aware of any specific changes that I would recommend. As I have indicated, we as legislators are always open to suggestions from citizens as to how we can improve the laws and make them work better. In this particular area, this particular law, I am not aware of any proposed changes that I would advocate, but again, most anything you do can be improved. I speak not only myself but other legislators when I say that we are certainly open at all times to receive these suggestions, consider them, and if we find they have merit to adopt amendments to the law.

*Sir, who else would you suggest that I interview regarding the development of Gun-Free Schools Act legislation in the Commonwealth?*

Delegate Green: I cannot think of the official name of it, redacted text There are some other ones, one or two other state organizations, again, I cannot think of their names right now. redacted text and they know the names of all these organizations. They could help you with that.

*What other comments do you wish to add regarding the development of the Gun-Free Schools Act in the Commonwealth of Virginia?*

Delegate Green: Well, all I would say is that again we encourage our citizens to observe closely what is going on in their schools. If they see that the gun-free zone in their schools is not working as well as it should, please contact your legislator and make suggestions as to how the law could be improved. Hardly anything that we do is intended to be permanent and un-amended. In our daily lives we are constantly doing things differently in order to improve our lives. The same is true of this type of legislation. We want to make sure that it works as well as it possibly can. It is much better to amend the law, strengthen it in advance to prevent a catastrophe, rather than wait and have some defect in the law to cause a catastrophe in certain schools and then we act after the fact. ‘An ounce of prevention is worth a pound of cure.’

## **Interview 5: Delegate Blue**

*Describe the national debate surrounding increased gun violence on school grounds prior to the enactment of the Gun-Free Schools Act legislation of 1994?*

Delegate Blue: Oh, I am not so sure there was a debate. I think it was common knowledge among most of the individuals involved and there was just a major difference of opinion as to the reasons for the violence and whether or not guns were the cause of it. My opinion, that's what we had to control, and a lot of people do not feel that that was necessary. I mean, it went back and forth about whether it was guns or the gunner that was responsible.

*What research or reading, if any, helped you to shape the national debate and the local debate and formulate a framework to guide in the development of the legislation?*

Delegate Blue: I do not recall what research we had available before us. What I had, my innate knowledge of the nature of guns, general knowledge of the violence that was occurring, and reports from every school systems. I do not recall specifically what was read or not read.

*Aside from meeting the funding mandate of the federal Gun-Free Schools Act, how has the Virginia legislation enhanced the educational environment?*

Delegate Blue: In my opinion, if the school is gun-free, then it takes a lot of tension away, a lot of difficulties away; and so the kids have more of an opportunity to concentrate on what they are there for.

*What were your expectations of the Gun-Free Schools Act legislation on the Commonwealth?*

Delegate Blue: That it would fulfill the objective of gun-free schools.

*Would you describe your role in the development of the Gun-Free Schools Act legislation?*

Delegate Blue: I do not recall how active I was; I do know I voted for it; supported it, but I do not know or recall how active I was.

*What, if any, internal or external forces influenced the sponsors or the patron of the Gun-Free Schools Act legislation in the Commonwealth?*

Delegate Blue: I am not so sure that is what influenced the sponsors, either negative or otherwise. We had teachers and administrators who were in favor, and we had gun advocates who were opposed. And that is true with every piece of legislation so I am sure some of the votes that we lost were because of the approach - positive or negative. Everybody was involved in

some aspect. School boards had opinions; teachers had opinions; gun advocates opinions; parents spoke up; and students spoke up.

*Which constituencies/lobbyists have been proponents of the Gun-Free Schools Act legislation in the Commonwealth and which have been opponents?*

Delegate Blue: I do not recall the specifics. I know that teachers and parents, for the most part, had a great deal of involvement in supporting it. I do not recall those that were opposed to it.

*In your opinion, to what degree has the Gun-Free Schools Act legislation been successful?*

Delegate Blue: I am not so sure I can answer that. I have not kept up with it. I would assume that if it worked in any particular area, then it was successful. If they kept one gun out of school, it was successful.

*In your opinion, to what degree has its success been impacted by unforeseen consequences?*

Delegate Blue: I cannot answer that one.

*Would you describe how you would change current Gun-Free Schools Act legislation to meet your expectations?*

Delegate Blue: No, because I do not know how it is been changed since we first were involved in it. I know I have not read it recently so I do not know what changes have already been made. I would enforce it. Whatever the penalties are, I would increase them.

*Who else would you suggest that I interview regarding the development of Gun-Free Schools Act legislation in the Commonwealth?*

Delegate Blue: I would suggest that you speak to redacted text; I would go to redacted text first.

*What other comments do you wish to add regarding the development of Gun-Free Schools Act legislation in the Commonwealth?*

Delegate Blue: None really. I just wish that all schools could be gun-free.

## **Interview 6: Delegate Brown**

*If you would, describe the national debate surrounding increased gun violence on school grounds prior to the enactment of the Gun-Free Schools Act of 1994.*

Delegate Brown: When I reviewed your material, I was trying to get clear in my mind whether this was reaction to what went on in Columbine or whether it was just something that had filtered down from the Congressional Act, and quite frankly, I cannot tell you that I recall whether it was before the shooting out there or after, but I know it was all flowing from federal legislation.

*What research or reading, if any, helped you to shape the national debate and the local debate and formulate a framework to guide in the development of the legislation?*

Delegate Brown: Well, again, the legislation originated, I believe, out of the House Education Committee. You would probably be better asking people on that committee as to what exactly was going on. I remember that as time progressed, there were a number of amendments to that thing that came through the House Courts of Justice Committee, dealing with people who were bringing a firearm to keep in their car and go hunting after school or as soon as they got out of school. I can remember those kinds of debates. School grounds were just not appropriate places for firearms.

*Aside from meeting the funding mandate of the federal Gun-Free Schools Act, how has the Virginia Gun-Free Schools Act legislation enhanced the educational environment?*

Delegate Brown: Again, I think the answer to that is kind of self-explanatory. Schools are institutions of learning. Now we would expect people to conduct themselves with a certain degree of civility, and schools were not places where you have to be looking over your shoulder all the time wondering if somebody is carrying a firearm.

*What were your expectations of the Gun-Free Schools Act legislation in the Commonwealth?*

Delegate Brown: Well, I think everyone's expectation was that it would make schools safer.

*And would you describe your role in the development of the Gun-Free Schools Act legislation?*

Delegate Brown: Well, you know again, the reason that I suggested that you call **redacted text** was because of his involvement in the development of the legislation.

*What, if any, internal or external forces influenced the sponsors or the patron of the Gun-Free Schools Act legislation in the Commonwealth?*

Delegate Brown: Again, I do not know who the patrons were, but my guess is that it was **redacted text** I suspect that he had a lot of input on that legislation.

*Which constituencies/lobbyists have been proponents of the Gun-Free Schools Act legislation in the Commonwealth and which have been opponents?*

Delegate Brown: Well, I think you had the VEA, the Principals' Association; those folks were the primary proponents. Who was the opposition? It is possible the NRA expressed some opposition, but I do not recall.

*In your opinion, to what degree has the Gun-Free Schools Act legislation been successful?*

Delegate Brown: Well, I do not know how anybody can render an opinion on that. I do not think there was any significant outbreak on public school campuses in Virginia. I think what we did was pretty much a reaction to what was going on at the federal level. My belief is that it probably makes public education on public school campuses safer environments, but I have no statistical data or anything that would either dispel that opinion or confirm it.

*And this may be along the same line, in your opinion, to what degree has its success been impacted by unforeseen consequences?*

Delegate Brown: Well, again, I think it would be the same as for the last question.

*If you would, please describe how you would change current Gun-Free Schools Act legislation to meet your expectations.*

Delegate Brown: Well, I have been disengaged from the legislature for ten years. I would have to sit down and read the Act to see what amendments that have tacked on since I left. Again, I am probably not a lot of help to you because I am not as current on this particular legislation as I would be some other pieces of legislation that I had sat down and spent hours drafting.

*And the next question, you have helped me considerably on already, and that question is, who else would you suggest that I interview regarding the development of Gun-Free Schools Act legislation in the Commonwealth?*

Delegate Brown: I would talk the chief patron on the bill from 1995.

Delegate Brown: Yes, **redacted text** is from down in Williamsburg.

*Okay, thank you. And lastly, what other comments do you wish to add regarding the development of the Gun-Free Schools Act legislation in the Commonwealth?*

Delegate Brown: I do not know what else to tell you because again, if you understand how the legislature works, redacted text Most legislation gets shaped and pretty well set in place by the Committee process structure; so the keys for you are to get to the people who were on the House Education Committee back then.

## **Interview 7: Delegate Red**

*Describe the national debate surrounding increased gun violence on school grounds prior to the enactment of the Gun-Free Schools Act of 1994 and that's the national legislation.*

Delegate Red: I cannot recall precisely the events; I believe the Jonesboro and Columbine shootings actually occurred after that. I think there had been numerous instances or a number of instances though of gun violence on school grounds. The national legislation was passed I think in 1994. It was found that instances of general targeted at school were rarely sudden or impulsive acts, but had involved planning. There was a Secret Service report following the Columbine that indicated in most instances other people knew about the attackers' ideas and/or the plan to attack, or they had some inkling. They did not threaten their targets directly, but there was a general awareness of some idea. It was difficult to profile students who engaged in targeted school violence. They finally did engage in a behavior that caused others concern. It is so hard to predict. I think that gave rise to the idea of prohibition of the guns in school property and gun-free school zones.

*What research or reading, if any, helped you to shape the national debate and the local debate and formulate a framework to guide in the development of the legislation at the state level?*

Delegate Red: Generally speaking, I did not have any particular research on that. Generally, the idea of carrying guns in schools was somewhat abhorrent to me, and I felt that the legislation was a good idea. I favored the idea of prohibiting guns in schools. It seemed to me that guns in schools seemed inherently dangerous, particularly when you take into consideration the general angst that surrounds teenagers as they grow up in a situation in which they have easy access to firearms. I think this promotes the escalation of violence.

*Aside from meeting the funding mandate of the federal legislation, how has the Virginia legislation enhanced the educational environment?*

Delegate Red: Well, I think it has at least given a modicum of a secure feeling that the guns are prohibited on school grounds, and I think people rightly or wrongly tend to rely on others' observation of the law. It is much like asking or give you the feeling that you can go through a green light when the other's light is red. Well, you generally assume that the car seeing that big red light and they are going to stop for it. There is a general feeling in our society

that people will obey the law or at least give credence to it. It is kind of the social compact that I will obey the laws, and I expect you to obey the laws also.

*What were your expectations of the Gun-Free Schools Act legislation on the Commonwealth?*

Delegate Red: I think I pretty well answered that, I think that it was designed to be beneficial to calming the influence surrounding schools and make them generally safer and give the students, faculty, and parents a secure feeling about schools. Schools are not only educational institution but they are also socialization institutions. I think that people need to feel that they can be secure in attending that social institution, and I think the Gun-Free Schools Act and similar legislation are assets. I realize that there are those who feel that everybody should have a gun just in case somebody else has a gun and starts shooting; they can defend themselves (which I think has no logic at all).

*Would you describe your role in the development of the Gun-Free Schools Act legislation?*

Delegate Red: Ma'am I was a member of the *General Assembly*, I supported it, I cannot remember if I spoke in favor of it or not, but I supported it. The way it was drafted, it was sent to the Committee on Education in the House which generally would be favorable to that type of legislation. I cannot remember precisely whether or not I was involved in discussing that with Speaker Thomas Moss at the time or not.

*Please describe your role in the development of the Gun-Free Schools Act legislation.*

Delegate Red: Yes Ma'am, it is very difficult at this juncture to recall precisely what transpired. I was not on the committee that considered it. I will say this; it was referred to the Committee on Education in the House of Delegates, which was a committee that would generally favor that type of legislation. I cannot recall whether or not I was involved in discussing the matter with redacted text to make that decision to refer it to the Committee on Education rather than the Committee on Militia and Police, or the Committee on Courts of Justice, or not, I cannot remember exactly, but I would have favored referring to that committee because I think it was a favorable committee. It was reported out I think 18-2. I cannot recall whether I spoke to this matter on the floor, but I certainly did support it and very strongly.

*The next question is what, if any, internal or external forces influenced the sponsors or the patron of the Gun-Free Schools Act legislation in the Commonwealth?*

Delegate Red: All right, well, let us talk about two things. First, the internal or the external forces that influenced in terms of interest groups. In favor of it would have been, of course, Virginians Against Handgun Violence, I believe that is the name of it. I believe we had some support from local and state PTA members if not the organizations. I would expect that the VEA, the Virginia Education Association, would probably have supported it. I cannot recall whether or not anybody spoke to me about it or not, but I probably did not need any extra attention because my general reputation was that I favored that type of legislation; I had supported other measures to pose reasonable safety restrictions on gun sales and use. Opposing it were Gun Owners of America, the Virginia Citizens Defense League, and the National Rifle Association (NRA).

Internally, there was not a whole lot of vigorous opposition. *redacted text* opposed it in committee, I believe, and on the floor; but it passed fairly easily in the House.

*Now the next question is very closely associated to this one, and if you feel it is redundant or you have already answered it, just let me know: Which constituencies/lobbyists have been proponents of the Gun-Free Schools Act legislation in the Commonwealth and which have been opponents?*

Delegate Red: Well, as I recall, I think supporting it would have been Virginia Education Association, and many of the PTA's; I cannot recall whether the state PTA took a position on that or not, but I would have thought they would have done so. I believe a number of parents did speak to me about, or at least one or two did. I think Virginians Against Handgun Violence would have and Mrs. Brady's group, I cannot remember the name of her group. Opposing it, of course, would have been the NRA, the Virginia Citizens Defense League, and Gun Owners of America.

*In your opinion, to what degree has the Gun-Free Schools Act legislation been successful?*

Delegate Red: It is very difficult to answer. What you are asking is for me to establish a negative. I mean, how many people have not been injured or killed because of this? I cannot tell you that. I think it has created a general atmosphere in the Commonwealth that guns are prohibited in schools. I think that has inhibited people from bringing firearms onto school property, and in that respect I think it has been successful.

*In your opinion, to what degree has its success been impacted by unforeseen consequences?*

Delegate Red: Well, I do not know what the unforeseen consequences are.

Delegate Red: I am not aware of any particular consequences on any particular race. I suspect more males have been referred than females; that tends to be true of gun ownership, gun possession tends to be generally a male syndrome, but I have no statistics. I cannot really cite you any studies that show that there has been any impact or consequence to any particular group that is a recognized demographic group. I do not think you can separate it out by race or gender. Well, I guess you can by gender, but I think that is just reflective of societal norms that more men carry guns or firearms than women. I guess that is the historical hunter-gatherer syndrome, but I am not an anthropologist or an archeologist so I have a hard time justifying. I cannot cite data to support my conclusions, but I have a lot of conclusions I cannot support by data.

*Would you describe how you would change current Gun-Free Schools Act legislation to meet your expectations?*

Delegate Red: If I could change it, I'd make it stricter. I think starter guns should be restricted to school personnel. That is in Section 22.1-277.01. Look, I think a track coach ought to be able to have a starter gun, but I am just darned if I can see how a sprinter should have one, okay?

Delegate Red: I do not see any reason to permit silencers. That is in Section 22.1-277.01. There is an exception to permit silencers, and I am having trouble figuring out what a destructive device is. I can figure it out, but there is an exception that I just have a little problem understanding. I cannot recall how that came in. Do you have that Act in front of you now?

[I do not, I could pull it up on my computer, but I do not have in front of me right now.]

Delegate Red: Do not worry about it, but there is a Governor's Amendment that came down, and they describe destructive devices. I think they should be prohibited and I am trying to find out where they are prohibited, maybe they have prohibited it on another section of the code, but a destructive device means any weapon and it "says except a shotgun or shotgun shell generally recognized as particularly suitable for sporting purposes by whatever name known, which will or may readily be converted to expel a projectile by the action of an explosive or other propellant and which has a barrel with a bore of more than one-half inch in diameter." Now that excludes a shotgun from being labeled a destructive device, but it is a firearm still. I just

cannot recall why that exception was proposed by redacted text, but there is a lot that redacted text did that I cannot explain and I doubt that he can either.

*Who else would you suggest that I interview regarding the development of Gun-Free Schools Act legislation in the Commonwealth?*

Delegate Red: Oh well, have you talked to redacted text? She was the patron of the bill.

Delegate Red: She was patron, redacted text.

[I attempted to make contact, but I didn't get a response.]

Delegate Red: Well, redacted text voted against it.

Delegate Red: I am just thinking, give me just a second. redacted text was co-patron on that. He is a redacted text, a redacted text. He has retired from the *General Assembly*, and he was also redacted text at the time. We have a number of delegates residing in the Southside Virginia area that are traditionally described as anti-gun law, I mean, as pro-firearm anti-gun control. I am speaking of redacted text; I am just reading off the co-patrons on this. You mind me doing this?

Delegate Red: redacted text he is now a state Senator. These are people that jump out at me: redacted text; he was in the House at the time; he was a co-patron.

Delegate Red: Yeah, redacted text. The atmosphere in 1995 was a hell of a lot different than it is now, okay. The NRA was not quite as intense. I got threatening letters and stuff from Gun Owners of America, and I did not hear from NRA because their opposition to this legislation at the time was a little *pro forma*. They were not quite as radical.

*My final question is what other comments do you wish to add regarding the development of the Gun-Free Schools Act legislation in the Commonwealth?*

Delegate Red: No.

## APPENDIX K

### HOUSE JOINT RESOLUTION NO. 213

*Continuing the Joint Subcommittee Studying the Prevention of School Crime and Violence.*

Agreed to by the *House of Delegates*, February 8, 1994

Agreed to by the *Senate*, February 28, 1994

WHEREAS, the public schools of the Commonwealth have the responsibility for the education **of our children, and such education should occur in an atmosphere conducive to learning and free** of crime, fear, and violence; and

WHEREAS, the *Joint Subcommittee Studying Acts of Violence and Crime by Students on School Property*, established pursuant to *House Joint Resolution No. 312 (1989)* and continued pursuant to *House Joint Resolution No. 132 (1990)*, found that:

1. Although the magnitude of crime and violence in Virginia's public schools remains smaller than that of some other states, all areas of the Commonwealth experience the problem to some degree, and urban school divisions report the greatest incidence;
2. Trespassing, truancy, vandalism and property damage, assaults, and violations of drug control statutes are significant problems for many public schools in the Commonwealth;
3. Many persons perceive that the juvenile justice system is too lenient in dealing with serious juvenile offenders, particularly those who commit an offense in violation of school board policies;
4. Students lack respect for authority, and guidance and control from parents; schools lack parental and community support; and school personnel desire greater support from school officials when they report acts of school crime and violence;
5. School personnel are concerned about the threat posed by the criminal behavior of some students; however, school officials must manage such incidents with restraint, balancing the rights of the perpetrators with those of the school community; and
6. There is inconsistency among school divisions regarding the management of student disciplinary problems and records, including the reporting of acts of crime and violence on school property and at school-sponsored activities; and

WHEREAS, the 1990 *General Assembly* enacted legislation recommended by the joint subcommittee to clarify and strengthen the requirements for reporting school crime by local school divisions, clarify and extend the definition of school property to include school buses and school-sponsored activities, and require the periodic review and updating of local school board policies; and

WHEREAS, since the joint subcommittee's study and the enactment of tougher laws to address violence among youth, continued shootings, stabbings, vandalism, drug violations, and violations of school board policies indicate that the incidences and severity of school crime and violence are rising and are now among the most pressing problems facing schools in the Commonwealth; and

WHEREAS, prompted by concerns expressed by many persons about the worsening situation, several groups were established during the 1992 interim to address the problem, including the reconstitution of the joint subcommittee as the Ad Hoc Joint Subcommittee on School Crime and Violence; the Virginia Association of School Superintendents' "Education Summit on Violence in Schools," composed of representatives of the education community, professional and citizen organizations, and students; and the special joint subcommittee established to review the recommendations of the Education Summit, adopt policy positions, and recommend appropriate legislation to the 1993 *General Assembly*; and

WHEREAS, although the 1993 *General Assembly* passed many of the components of the Virginia School Crime and Violence Prevention Act and legislation recommended by the Special Joint Subcommittee on School Crime and Violence, the implementation of the legislation required legislative oversight, and other critical public policy issues relating to the provision of educational services to school-age children who are suspended or expelled for committing offenses in violation of school board policies must be resolved; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, that the Joint Subcommittee Studying the Prevention of School Crime and Violence be continued. The current membership of the joint subcommittee shall continue to serve as appointed pursuant to House Joint Resolution No. 832 (1993). Vacancies shall be filled in the manner in which they were appointed. The joint subcommittee shall

- (i) review the legislation concerning violence among youth, school crime and violence, and determine the effectiveness of such laws and identify any problems and gaps in the administration and implementation of such laws;
- (ii) monitor the implementation of the recommendations of the Education Summit on Violence in Schools, particularly the management of scholastic records, the roles and responsibilities of parents and guardians in maintaining proper student conduct, staff development, and interagency collaboration;
- (iii) provide legislative oversight to ensure that the pilot alternative education programs and the model school board policies on student conduct are implemented expeditiously and effectively;
- (iv) review the interim evaluation and Board of Education's status reports on such pilot programs;
- (v) review the criteria which must be developed by the Committee on District Courts and the Department of Education pertaining to disclosure of information on the disposition of delinquency adjudications as provided in HB 2360 (1993);
- (vi) consider ways in which schools may effectively prevent and control criminal activity on school property, successfully prosecute juvenile offenders, and secure increased parental involvement in and community support of schools;
- (vii) review relevant state and federal laws and regulations, and case laws pertaining to juvenile crime vis-à-vis school board policies on student conduct and staff development and training in handling student disciplinary problems;
- (viii) review and assess the potential impact and policy implications of the proposed federal Safe Schools Act of 1993, and determine the efficacy and appropriateness of the states participation in the provisions of such Act upon its passage; and

(ix) examine such related issues and recommend statutory and policy changes as may be necessary to ensure orderly and safe public schools. All agencies of the Commonwealth shall provide assistance upon request as the joint subcommittee may deem appropriate. The direct costs of this study shall not exceed \$ 9,250. The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 1996 Session of the *General Assembly* as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents. Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

**APPENDIX L**  
**COMMISSION ON YOUTH**

§ 30-174. Virginia Commission on Youth; purpose; membership; terms; compensation and expenses; quorum; voting on recommendations.

A. The Virginia Commission on Youth (the Commission) is established in the legislative branch of state government. The purpose of the Commission shall be to study and provide recommendations addressing the needs of and services to the Commonwealth's youth and their families. In so doing, it shall encourage the development of uniform policies and services to youth across the Commonwealth and provide a forum for continuing review and study of such services. In addition to its own proposals, the Commission shall coordinate the proposals and recommendations of all commissions and agencies as to legislation affecting youth.

B. The Commission shall consist of 12 members to be appointed as follows: six members of the House of Delegates to be appointed by the Speaker of the House of Delegates; three members of the Senate to be appointed by the Senate Committee on Rules; and three non-legislative citizen members to be appointed by the Governor. Non-legislative citizen members shall be citizens of the Commonwealth.

C. Legislative members shall serve terms coincident with their terms of office. Non-legislative citizen members shall serve four-year terms. Members may be reappointed for successive terms. Vacancies shall be filled for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments.

D. The Commission shall elect its chairman and vice-chairman annually. A majority of the members shall constitute a quorum. The meetings of the Commission shall be held at the call of the chairman or whenever the majority of the members so request.

E. Members of the Commission shall receive compensation as provided in § 30-19.12 and shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. However, all such compensation and expense payments shall come from existing appropriations to the Commission.

F. No recommendation of the Commission shall be adopted if a majority of the Senate members or a majority of the House members appointed to the Commission (i) vote against the recommendation and (ii) vote for the recommendation to fail notwithstanding the majority vote of the Commission.

(1989, c. 189, §§ 9-292, 9-293; 1992, c. 778; 2001, c. 844; 2004, c. 1000.)

**APPENDIX M**

**HOUSE JOINT RESOLUTION NO. 186**

Offered January 24, 2000

*Establishing a joint subcommittee to study student disciplinary statutes.*

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Patrons-- Amundson, Albo, Baskerville, Bolvin, Brink, Callahan, Dillard, Hull, McClure, Plum, Scott, Van Landingham and Watts; Senators: Byrne, Couric, Howell, Puller and Whipple

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Referred to Committee on Rules

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WHEREAS, Article 3 of Chapter 14 of Title 22.1 establishes the laws for student discipline in the public schools of the Commonwealth; and

WHEREAS, the student disciplinary statutes were first codified almost 50 years ago; and

WHEREAS, during the past 50 years, the nature and severity of discipline problems confronting public schools and school personnel daily have changed substantially, and the courts, and federal and state governments have become increasingly involved in establishing student disciplinary policies and procedures; and

WHEREAS, the student discipline statutes, amended annually by the *General Assembly*, have become increasingly more difficult to interpret and administer due to inconsistencies in the laws, and the intent of the statutes has become obscured; and

WHEREAS, student discipline laws that are understandable, consistent, and fair allow schools and teachers to ensure due process, minimize classroom disruptions, promote student safety, and enhance the learning environment; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, that a joint subcommittee be established to study student disciplinary statutes. The joint subcommittee shall be composed of 10 legislative members, to be appointed as follows: six members of the House of Delegates, to be appointed by the Speaker; and four members of the Senate, to be appointed by the Senate Committee on Privileges and Elections.

During the course of its deliberations, the joint subcommittee shall collaborate and communicate with other study committees charged to examine related issues. It shall also confer with the Secretary of Education, the President of the Board of Education, the Superintendent of Public Instruction, representatives of the Virginia Parents and Teachers Association, the Virginia School Boards Association, the Virginia Education Association, the Virginia Association of School Superintendents, the Virginia Association of Elementary School Principals, the Virginia Association of Secondary School Principals, the Virginia Counselors Association, the Virginia Association of Chiefs of Police, the Virginia Sheriffs Association, the National School Safety Center, and other recognized national and state organizations involved law enforcement and in

the research, investigation, and study of school safety and student conduct issues which may further its work.

In conducting the study, the joint subcommittee shall:

1. Conduct a comprehensive review and analysis of U. S. Supreme Court, and other federal and state court decisions relating to student discipline, due process, and suspension and expulsion;
2. Review the provisions of Article VIII, § of the Virginia Constitution which bestows a constitutional right to a free public education to all school age children of the Commonwealth and recommend ways to reconcile the constitutional mandate, statutory provisions regarding expulsions, the general practice among school divisions respecting long-term suspensions and expulsions, and inconsistencies in the interpretation and application of the laws pertaining to expulsions among school boards;
3. Review the provisions of federal and State laws pertaining to student conduct and discipline; suspension, exclusion, and expulsion; school board policies pertaining to these issues; school crime reporting requirements and the disclosure of certain student information; alternative education programs for disruptive students; and parental involvement;
4. Ascertain and evaluate the procedures used by local school boards to develop and administer student discipline policies and procedures;
5. Review, discuss, and consider the findings and recommendations of the Summit on School Violence and previous and on-going study committees that examined school violence and safety issues to avoid unnecessary replication of efforts; and
6. Consider issues inherent in Senate Joint Resolution 85 (1996), and address concerns that minority students disproportionately receive more severe sanctions for violating school board student conduct and disciplinary policies;
7. Inventory alternative discipline procedures for handling cases at the local level;
8. Recommend ways to restore balance in the approach taken by public schools to deal with school safety crises and violations of school board policies to provide prompt, consistent, and decisive disciplinary action when warranted, while ensuring equity, due process, and the safety of students and school personnel;
9. Recommend approaches for substantive revisions to State laws pertaining to school crime and violence; compulsory school attendance law; student conduct and disciplinary issues; suspension, exclusion, and expulsion; alternative education programs for disruptive students; disclosure of certain student information; and such other statutes that impact or are intertwined with any of the issues being considered by the joint subcommittee; and
10. Consider such related issues as the joint subcommittee may deem appropriate and necessary.

The direct costs of this study shall not exceed \$19,500.

The Division of Legislative Services shall provide staff support for the study. All agencies of the Commonwealth shall provide assistance to the joint subcommittee, upon request.

The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 2002 Session of the *General Assembly* as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

**APPENDIX N**

**SUMMIT RECOMMENDATIONS BY TOPIC**

Topics	Recommendations
Discipline Policies/Application	<ul style="list-style-type: none"> <li>A. Each school board conduct a review of its disciplinary polices to ensure that behavioral expectation and consequences are clearly stated</li> <li>B. Each school administration and school board take strong and consistent action in all weapon, alcohol, drug and assault violations and refer to law enforcement all student behavior that constitutes criminal activity in the Commonwealth</li> <li>C. Each school administration request that parents review and sign annually a statement of review of the division’s Code of Conduct</li> <li>D. Each school involve students and parents in the development, review, and application of disciplinary expectations and consequences for non-compliance</li> </ul>
Information Access/Use	<ul style="list-style-type: none"> <li>A. The Virginia State Board of Education make clarification in the Management of Student Scholastic Records</li> <li>B. Parents enrolling students from outside the Commonwealth be required to disclose whether the student has been expelled or is the subject of pending weapons, alcohol and other drugs, or assault violations</li> <li>C. Any student expelled from a Virginia or out-of-state division may be denied admission to any other Virginia school division until there is a review by the receiving Superintendent or his designee. No Virginia division is required to admit an expelled student. Admission of a student following expulsion should be based upon evidence of successful progress in rehabilitative efforts</li> <li>D. Amend the <i>Code of Virginia</i> to clarify the right of a school board to deny admission or re-admission to the same division if there is evidence that the student’s behavior poses a threat to the safety and well-being of the school environment</li> <li>E. The <i>General Assembly</i> introduce legislation to require superintendents to be notified of disposition of all cases involving juveniles of their divisions found guilty of weapons violations, physical assaults, and any other crime resulting in the injury of others</li> </ul>
Weapons	<ul style="list-style-type: none"> <li>A. The <i>General Assembly</i> pass legislation to reduce the availability of handguns to minors</li> <li>B. Amend the <i>Code of Virginia</i> to re-examine and strengthen penalties for the illegal use of handguns</li> </ul>

	<ul style="list-style-type: none"> <li>C. Eliminate from communities paramilitary and automatic weapons which have no sporting or defense use and represent a threat to public gatherings</li> <li>D. Development and dissemination of educational literature which would be required to be given by retail gun sellers advising purchasers of 1) laws governing juvenile access and use of firearms, 2) laws governing adults related to juvenile access and use of firearms, and 3) suggestions for safe handling and security of firearms from minors</li> </ul>
<p>Outreach Programs for Parents of Disruptive Youth</p>	<ul style="list-style-type: none"> <li>A. Every school in the Commonwealth develop initiatives to provide parental support and outreach services to strengthen meaningful involvement in a constructive home-school partnership</li> <li>B. School divisions develop a program of parent volunteers</li> </ul>
<p>Parental Responsibility</p>	<ul style="list-style-type: none"> <li>A. Every school in the Commonwealth request participation in appropriate support, parenting, or educational for parents of any child disciplined for weapons-related, alcohol or other drug, or assault offenses</li> <li>B. The <i>General Assembly</i> study the definition of child neglect and/or “Child in Need of Services” (“CHINS”) to assure that parental refusal to cooperate with recommendations may be considered as one indicator of child neglect.</li> <li>C. Authorize appropriate school officials to initiate a “CHINS” petition based upon documented parental refusal or failure to participate/cooperate with recommendations designed to resolve student behaviors relating to weapons, alcohol and other drugs, and assaults</li> </ul>
<p>Alternative Programs</p>	<ul style="list-style-type: none"> <li>A. The State Board of Education appoint a task force to develop a plan to provide local and regional alternative education programs for severely disruptive and violent youth</li> <li>B. Design these programs to begin early with school-based intervention efforts</li> <li>C. Design these programs to conclude with implementation of a full-time residential setting for adolescents, accessible for school divisions for expelled students or those in need of structured educational alternatives</li> <li>D. Design a continuum of alternative programs to focus on prevention, early intervention, and long-term reduction in the number of students expelled without the benefit</li> </ul>

	of appropriate alternative placements
Early Childhood Programs	<p>A. The Governor and the members of the <i>General Assembly</i> to urge the Virginia Congressional delegation to support expanded access for eligible “at risk” children to programs (Head Start, chapter I, and other early intervention efforts) which increase school success and reduce juvenile crime</p> <p>B. The State Board of Education require the development of local programs for: 1) early childhood students “at higher than normal risk” for developing disruptive behaviors, 2) comprehensive prevention/intervention educational planning for “at-risk” populations, and 3) promotion and funding of a parent peer-leader program to parents of these students</p> <p>C. The <i>General Assembly</i> provided enabling legislation to allow each locality to determine use of facilities for before- and after-school programs</p>
School/Community teams/Coalitions and Inter-agency Cooperation	<p>A. Each school division utilize local school and community teams to integrate resources and to develop initiatives to ensure safe schools</p> <p>B. Each school analyze and use data with community teams to identify the type and extent of violent student behavior for planning prevention/intervention efforts, specifically addressing the needs of their respective school community</p> <p>C. Summit participants support the efforts of the Legislative Task Force’s study by:</p> <ol style="list-style-type: none"> <li>a. Submission of information describing the nature and extent of juvenile violent/criminal behavior</li> <li>b. Submission of this report for consideration</li> <li>c. Encouraging representatives and the general public to comment on issues related to juvenile crime, prevention programs, and matters relative to adult/juvenile criminal statutes and sentencing guidelines</li> </ol>
Management of School Buildings	<p>A. Each school in the Commonwealth train a staff member in the audit process and implement the process in selected/scheduled schools</p> <p>B. School divisions provide appropriate telecommunication systems</p> <p>C. School divisions evaluate the need for increased use of technology in areas such as hotlines, metal detectors</p> <p>D. School divisions establish committees to review issues relating to housing, movement, and supervision of people in the design of facilities, and report</p>

	<p>recommendations</p> <p>E. The <i>General Assembly</i> review trespassing statutes in order to provide a more effective and enforceable means for protecting children and public events from disruption and intruders</p> <p>F. The <i>General Assembly</i> pass legislation prohibiting any person from knowingly delivering a threat to life or limb of a teacher, principal or their immediate families</p> <p>G. Each School Board review its policies governing: 1) the conduct/management of the public who come onto school property and 2) expectations/requirements of adult supervision/accompaniment of young children attending public events on school property</p>
Staff Competencies	<p>A. Virginia schools of education view teacher and administrator preparation programs to ensure pre-service training and development of skills in the following areas: 1) mediation and conflict resolution; 2) understanding and responding to ethnic, national, and cultural diversity; 3) school and classroom management; 4) instructional strategies for disruptive students; 5) building a supportive school climate; 6) handling confidential student data as a standard of professional ethics; 7) identifying/working with alcohol and drug abuse</p> <p>B. The State Department of Education make model guidelines and resource materials available to local school divisions for use in staff development</p> <p>C. School division assess staff needs related to these skills and implement program to support their development</p>
K-12 Curricula	<p>A. Violence prevention become an integral part of the K-12 curriculum and students become engaged in peer mediation, conflict resolution, citizenship, problem-solving, decision-making, and personal responsibility development</p> <p>B. School divisions review curricula to ensure the inclusion of these objectives and teaching strategies</p> <p>C. Extend DARE and consider other anti-crime programs</p>
Comprehensive Safe School Legislative Program	<p>A. The 1993 session of the <i>General Assembly</i> to pass a comprehensive safe school legislative program, including the recommendations in this report</p>

**APPENDIX O**  
**INFORMATIONAL MEMO**

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF EDUCATION  
P.O. BOX 2120  
RICHMOND, VIRGINIA 23218-2120

INFORMATIONAL

SUPTS. MEMO NO.3  
January 5, 2006

TO: Division Superintendents

FROM: Patricia I. Wright  
Acting Superintendent of Public Instruction

SUBJECT: Zero-tolerance Policies

During the 2005 legislative session, the House Committee on Education considered but did not pass HB 2202 (Marrs), which would have prohibited the imposition of disciplinary actions against students for possession of a bona fide eating utensil or personal grooming device unless the item was used as a weapon or for intimidation. On behalf of the House Education Committee, Delegate Dillard sent a letter to the Board of Education in February 2005, requesting that the board examine HB 2202 and its related issues and report any findings and recommendations to the committee.

A briefing paper entitled *Zero-tolerance Policies: An Issue Brief* was prepared under the guidance of the Department of Education. It was reviewed and accepted by the Board of Education at its meeting on November 30, 2005. At the direction of the board, the issue brief is now being provided to all school divisions.

Questions may be directed to Dr. Cynthia Cave, director of the Office of Student Services, at 804-225-2818 or [Cynthia.Cave@doe.virginia.gov](mailto:Cynthia.Cave@doe.virginia.gov).

PIW/ADC/erc

[http://www.doe.virginia.gov/administrators/superintendents\\_memos/2006/inf003a.pdf](http://www.doe.virginia.gov/administrators/superintendents_memos/2006/inf003a.pdf)

**TABLE 1**

*Summary of Gun-Free Schools Act Legislation 1995 - 2014*

**1995 Legislative Session**

Bill Number	Patron	P/F	Action
HB 1614	Shirley Cooper	Passed	Required, in compliance with the federal Improving America's School Act of 1994 (Part F--"Gun-Free Schools Act of 1994"), that school boards expel from school attendance for one year, as required in federal regulations, any student who is determined by the school board to have brought a firearm onto school property or to a school-sponsored activity. Based on the facts of the particular case, school boards may determine that special circumstances existed and another disciplinary action or term of expulsion was appropriate. The Board of Education was designated as the state education agency to carry out the provisions of and to administer the funds to be appropriated to Virginia under the federal Improving America's Schools Act of 1994. Each school board must revise its standards of student conduct to conform to this provision within three months of its effective date. The federally required certification of compliance and data on the expulsions imposed by this measure must be provided to the Virginia Department of Education by every school board applying for funds apportioned to Virginia through the federal law. Consistent with other federal and state law, the terms "destructive device" and "firearm" were defined and certain exemptions, such as possession of a firearm as part of the curriculum or a school program, were set forth.
HB 2140	William S. Moore, Jr.	No action taken by Education	Required, in compliance with the federal Improving America's School Act of 1994 (Part F--"Gun-Free Schools Act of 1994"), that school boards expelled from school attendance for one school year, or 365 calendar days as required in federal regulations, any student who was determined by the school board, to have brought a firearm onto school property or to a school-sponsored activity. Based on the facts of the particular case, school boards may determine that special circumstances existed and another disciplinary action or term of expulsion was appropriate. Students with disabilities must be accorded the rights provided by the Individuals with Disabilities Education Act of 1991, 20 USC § 1400 et seq., such as least restrictive environment, free and appropriate education, and I.E.P. hearing for change in placement. The Board of Education, designated as the state education agency to carry out the provisions of the federal Improving America's Schools Act of 1994, must report annually to the United States Secretary of Education on the expulsion of students with disabilities. Each school board must revise its standards of student conduct to conform to this

			<p>provision within three months of its effective date. The federally required certification of compliance and data on the expulsions imposed by this measure must be provided to the Virginia Department of Education by every school board applying for funds apportioned to Virginia through the federal law. Consistent with other federal and state law, the terms “destructive device” and “firearm” were defined and certain exemptions, such as possession of a firearm as part of the curriculum or a school program, were set forth.</p> <p>This bill was recommended by the Joint Subcommittee Studying the Prevention of School Crime and Violence.</p>
HB 2330	Frank W. Wagner	Passed by indefinitely in Education	<p>Required school boards to expel from school attendance for 365 calendar days, any student who was determined by the school board to have brought a firearm onto school property or to a school-sponsored activity. Based on the facts of the particular case, school boards may determine that special circumstances existed and another disciplinary action or term of expulsion was appropriate. School boards were also authorized to require that any student who was expelled pursuant to the provisions of this bill attend an alternative education program as the board may have deemed appropriate. Consistent with federal and state laws, the term “firearm” was referenced.</p>
SB 874	Thomas K. Norment, Jr.	Passed	<p>Required, in compliance with the federal Improving America's Schools Act of 1994 (Part F -- “Gun-Free Schools Act of 1994”), that school boards expelled from school attendance for one year, as required in federal regulations, any student who was determined by the school board to have brought a firearm onto school property or to a school-sponsored activity. Based on the facts of the particular case, school boards may determine that special circumstances existed and another disciplinary action or term of expulsion was appropriate. The Board of Education was designated as the state education agency to carry out the provisions of the federal Improving America's Schools Act of 1994. Each school board must revise its standards of student conduct to conform to this provision within three months of its effective date. The federally required certification of compliance and data on the expulsions imposed by this measure must be provided to the Virginia Department of Education by every school board applying for funds apportioned to Virginia through the federal law. Consistent with other federal and state law, the terms “destructive device” and “firearm” were defined and certain exemptions, such as possession of a firearm as part of the curriculum or a school program, were set forth. School boards were also authorized to require students who have been expelled, charged with an offense, or found guilty or not innocent of specific crimes, to attend alternative education programs.</p> <p>Identical to HB 1614</p>

**1996 Legislative Session**

Bill Number	Patron	P/F	Action
HB 1530	George W. Grayson	Continued to 1997 in Education w/ sub.	<p>Clarified that suspension or expulsion was not required for the possession of an object that was not a destructive device or firearm; that a reasonable person would consider a toy; and that it was not brandished in a threatening or disruptive manner.</p> <p>Current law required expulsion of students bringing weapons on school property for 365 days, unless the school board determined another punishment was appropriate. The "zero-tolerance" provision was approved during the 1995 Session, reflecting the requirements of the federal Gun-Free Schools Act of 1994 that required states to have such a statute and to implement "zero-tolerance."</p>

**1997 Legislative Session**

Bill Number	Patron	P/F	Action
HB 1530	George W. Grayson	No action taken by Education	<p>Clarified that suspension or expulsion was not required for the possession of an object that was not a destructive device or firearm; that a reasonable person would consider a toy; and that it was not brandished in a threatening or disruptive manner.</p> <p>Current law required expulsion of students bringing weapons on school property for 365 days, unless the school board determines another punishment was appropriate. The "zero-tolerance" provision was approved during the 1995 Session, reflecting the requirements of the federal Gun-Free Schools Act of 1994 that required states to have such a statute and to implement "zero-tolerance."</p>

**1998 Legislative Session**

Bill Number	Patron	P/F	Action
HB 1421	Lionell Spruill, Sr.	Stricken from docket by Education (24-Y 0-N)	<p>Provided for expulsion from public school attendance for one calendar year for those students whom a school board has determined, in accordance with established <i>due process</i> procedures, to have brought on to school property or to a school-sponsored activity certain specified weapons, such as a bowie knife, switchblade knife, ballistic knife, razor, slingshot, spring stick, fighting chain, throwing star, or oriental dart. A school board may, however, determine, based on the facts of the particular case that special circumstances exist and another disciplinary action or term of expulsion was appropriate.</p> <p>Mirroring language in the Gun-Free Schools Act, § 22.1-277.01, the measure required each school board to revise its standards of student conduct no later than three months after the date on which this act became effective to reflect this requirement. The local school board was to report annually to the Board of Education regarding a description of the circumstances pertaining to expulsions imposed under this measure.</p>

**1999 Legislative Session**

Bill Number	Patron	P/F	Action
HB 1462	Phillip A. Hamilton	Passed	<p>Eliminated the exception for possession of an unloaded firearm which was in a closed container in or upon a motor vehicle or an unloaded shotgun or rifle in a firearms rack in or upon a motor vehicle from the statute requiring expulsion of students for bringing firearms onto school property or to a school-sponsored activity. This provision also specifically authorized a school administrator, pursuant to school board policy, or a school board to determine, based on the facts of a particular situation that special circumstances existed and no disciplinary action or another disciplinary action or another term of expulsion was appropriate. School boards were also authorized to promulgate guidelines for determining what constitutes special circumstances.</p>

**1999 Legislative Session (continued)**

Bill Number	Patron	P/F	Action
SB 1136	Janet D. Howell	Passed	Modified the “zero-tolerance” law, which mandates one-year expulsions for students bringing weapons on school property or to school-sponsored events, to permit school boards, by regulation, to authorize the division superintendent or his designee to conduct a preliminary review of such cases to determine whether a disciplinary action other than expulsion was appropriate. These regulations were to ensure that any such “other” subsequent disciplinary action was to be taken in accordance with the <i>due process</i> procedures set forth in § 22.1-277. Currently, a school board may determine that “special circumstances” exist in these weapons possession cases and that another disciplinary action is more appropriate.

**2000 Legislative Session**

Bill Number	Patron	P/F	Action
HB 464	Robert Tata	Passed	Defined "school property" for the purpose of mandatory expulsion for possession of firearms on school property. School property was defined as any school owned or leased real property or vehicle and a vehicle operated by or on behalf of the school board.
HB 1179	John S. Reid	Continued to 2001 in Education (23-Y 0-N)	Revised certain provisions relating to <i>due process</i> and expulsions, suspensions, and exclusions of students by school board. This bill provided (i) definitions of "expulsion," "long-term suspension," "short-term suspension," and "alternative education"; (ii) delineated steps and alternatives for <i>due process</i> procedures relating to suspension, expulsion, and exclusion of students; (iii) a requirement that disciplinary committees of school boards be odd-numbered committees of at least three members; (iv) clarification of the responsibilities for the zero-tolerance law (Gun-Free Schools Act of 1994); and (v) clarification and simplification of the provisions authorizing disciplinary actions such as alternative education placements and exclusion. This bill authorizes school boards to establish, in their regulations, the responsibilities of hearing officers and board committees for long-term suspensions and expulsions.

**2000 Legislative Session (continued)**

Bill Number	Patron	P/F	Action
HB 1201	Robert Tata	Tabled in Militia and Police (19-Y 0-N)	Provided a technical amendment to clarify the definition of "destructive device" and to confirm this definition with the action taken last year through a House Bill relating to expulsion of students for possession of guns on school property.
SB 80	Janet Howell	Passed Senate  Passed by indefinitely in Militia and Police (14-Y 7-N)	Amended the section requiring automatic expulsion of students who possessed firearms by eliminating the exception for firearms used as part of the curriculum or as part of other programs sponsored by the school or an organization permitted by the school to use its premises. However, ROTC programs currently allowing the use of firearms are the exception, if the firearms were securely stored and maintained when not in use.

**2001 Legislative Session**

Bill Number	Patron	P/F	Action
HB 1179	John S. Reid	House: Stricken at request of Patron in Education (23-Y 0-N)	Revised certain provisions relating to <i>due process</i> and expulsions, suspensions, and exclusions of students by school board. This bill provided (i) definitions of "expulsion," "long-term suspension," "short-term suspension," and "alternative education"; (ii) delineated steps and alternatives for <i>due process</i> procedures relating to suspension, expulsion, and exclusion of students; (iii) a requirement that disciplinary committees of school boards be odd-numbered committees of at least three members; (iv) clarification of the responsibilities for the zero-tolerance law (Gun-Free Schools Act of 1994); and (v) clarification and simplification of the provisions authorizing disciplinary actions such as alternative education placements and exclusion. This bill authorized school boards to establish, in their regulations, the responsibilities of hearing officers and board committees for long-term suspensions and expulsions.

**2002 Legislative Session (continued)**

Bill Number	Patron	P/F	Action
HB 512	Bradley Marrs	House: Passed by indefinitely in Education (13-Y 8-N)	Amended student suspension and expulsion requirements by prohibiting the imposition of disciplinary actions against students, unless required to comply with federal Gun-Free Schools provisions, for (i) reasonable actions taken in good faith by a student in defense of himself or others; to prevent harm to property; or in response to provocation; (ii) possession of a bona fide eating or food service utensil, personal grooming device, or mechanical tool, unless such utensil, device, or tool is brandished or employed as a weapon or otherwise to effect or to threaten an act of violence against another or against property; and (iii) possession or use of nonprescription medication, regardless of whether school personnel have knowledge of such possession or use, if such nonprescription medication was held with the prior or subsequent approval of the pupil's parent. No student who has received notice of an intended suspension or expulsion who asserted these particular actions can be suspended or expelled until school administrators conduct a preliminary factual inquiry regarding the validity of such assertion. School boards shall adopt procedures consistent with <i>due process</i> requirements of this article for the conduct of such inquiry.

**2002 Legislative Session (continued)**

Bill Number	Patron	P/F	Action
HB 971	Dwight C. Jones	House: Passed by indefinitely in Education (13-Y 7-N)	<p>Revised various student expulsion statutes to require school boards to promulgate guidelines for determining what constitutes special circumstances in expulsion cases involving weapons or drugs for expulsions issued for drug violations. The guidelines must include consideration of the (i) nature and seriousness of the violation; (ii) the degree of danger to the school community; (iii) student's disciplinary history, including the seriousness and number of previous infractions; (iv) appropriateness and availability of an alternative education placement or program; (v) student's age and grade level; (vi) results of any mental health, substance abuse, or special education assessments; (viii) student's attendance and academic records; and (viii) such other matters as are deemed appropriate.</p> <p>Currently, these factors were to be considered in expulsion cases other than those involving the "drug-free" and federal Gun-Free Schools provisions.</p> <p>The Gun-Free statutes, while "requiring" expulsion for the specified offenses, granted school administrators the discretion to determine that "special circumstances exist and [that] no disciplinary action or another disciplinary action or term of expulsion was appropriate." Similarly, the drug-free statute cited "special circumstances"; however, while it permitted the recommendation of another disciplinary action, it did not include the "no disciplinary action" option.</p>

**2003 Legislative Session**

Bill Number	Patron	P/F	Action
HB 1907	James F. Almand (resigned 8/03)	Passed	<p>Modified the "Gun-Free Schools" statute to add "possession of an air rifle or BB gun on school property or at a school-sponsored activity" to those firearms-related offenses for which school boards are to expel students for one calendar year, unless the school board determines that "special circumstances exist and no disciplinary action or another disciplinary action or another term of expulsion is appropriate."</p> <p>The current weapons, firearms, and destructive device definitions in the Gun-Free Schools and criminal statutes do not clearly address air rifles or BB guns. Under current law, students were to be expelled (unless "special circumstances" exist) for possession of "firearms," defined in the Gun-Free Schools statute as "any destructive device," and those weapons that may "expel a projectile by the action of an explosive," those weapons prohibited on school property or at school-sponsored activities in § 18.2-308.1." Section 18.2-308.1, in turn, cross-referenced and incorporated the definition of "weapons" listed in § 18.2-308 A, which included various knives as well as "any pistol, revolver, or other weapon designed or intended to propel a missile of any kind by action of an explosion of any combustible material."</p> <p>The measure did not alter the definition of "firearm" in the criminal statutes or within the Gun-Free Schools provision.</p>

### 2003 Legislative Session (continued)

Bill Number	Patron	P/F	Action
HB 2408	Bradley P. Marris	House: Passed by indefinitely in Education (20-Y 1-N)	Amended student suspension and expulsion requirements by prohibiting the imposition of disciplinary actions against students, unless required to comply with federal Gun-Free Schools provisions, for possession of a bona fide eating utensil or personal grooming device unless such utensil or device was brandished or employed as a weapon or otherwise to effect or to threaten an act of violence or intimidation against another or against property. No student who has received notice of an intended suspension or expulsion who asserts the applicability of this section can be suspended or expelled until school administrators conduct a preliminary factual inquiry regarding the applicability of this provision. School boards shall adopt procedures consistent with <i>due process</i> requirements of this article for the conduct of such inquiries, which may include procedures for expedited and summary administrative hearings.

### 2005 Legislative Session

Bill Number	Patron	P/F	Action
HB 2202	Bradley Mars	House: Tabled in Education (21-Y 1-N)	Prohibited the imposition of disciplinary consequences for the possession/use of a bona fide eating utensil or personal grooming device unless the device was brandished or used as a weapon to threaten or inflict violence or injury.
HB 2223	Thomas Rust	Passed	Provides that school board, or its designated committee, or superintendent may review petitions for re-admission. If the superintendent or the committee denies re-admission, the student may petition the full school board for review of the denial.

### 2006 Legislative Session

Bill Number	Patron	P/F	Action
HB 1516	Robert Tata	Passed	Required a school board to expel from school for at least one year a student who <i>possesses</i> certain weapons on school property or at a school-sponsored activity. Current law related to "bringing" weapons to school.

**2007 Legislative Session**

Bill Number	Patron	P/F	Action
HB 1866	Wittman	House: Left in Courts of Justice	Classified possession of a firearm that expelled a projectile by action of pneumatic pressure as a class 6 felony
HB 2853	Moran	Passed	Eliminated references to tasers in the Code; amended the definition of stun weapon
HB 3013	Wittman	House: Left in Militia, Police, and Public Safety	Classified possession of a firearm that expelled a projectile by action of pneumatic pressure as a Class 1 misdemeanor

**2008 Legislative Session**

Bill Number	Patron	P/F	Action
HB 136	Peace	House: Left in Militia, Police, and Public Safety	Defined "school" (for the purposes of weapons prohibition) as any public school from kindergarten through 12 <sup>th</sup> grade, operated under the authority of any locality within the Commonwealth, or any private or religious school that offers instruction at any level or grade from kindergarten through 12 <sup>th</sup> grade. Current definition defines "school" as any elementary, middle, or secondary school

**2009 Legislative Session**

Bill Number	Patron	P/F	Action
HB 1822	Johnson	House: Left in Militia, Police, and Public Safety	Exempted concealed handgun permit holds from prohibition against carrying handguns onto the property of a school (public, private, or religious)

**2010 Legislative Session**

Bill Number	Patron	P/F	Action
HB 72	Carrico	House: Left in Militia, Police, and Public Safety	Modified the penalty from possession of a firearm on school property from a Class 6 felony to a Class 1 misdemeanor; Possession of a weapon with the intent to use unlawfully, threaten, or endanger another person is guilty of a Class 6 felony; Established penalty for discharge of a weapon on school property as a mandatory minimum term of imprisonment of five years
HB 1214	Kory	House: Left in Militia, Police, and Public Safety	Prohibited a person from possessing an unloaded firearm that is in a closed container, located at a school

**2011 Legislative Session**

Bill Number	Patron	P/F	Action
SB 903	Creigh Deeds	Passed	Clarified, by removing “and”, that a person need not be convicted of both §18.2-308 and §18.2-308.2 in order to have the offense qualify as a violent felony for the purpose of sentencing guidelines. Provides that use of a firearm in a threatening manner in a school is the only felony in §18.2-308 that qualifies as a violent felony

**2012 Legislative Session**

Bill Number	Patron	P/F	Action
HB 365	Jennifer L. McClellan	House: Continued to 2013 in Education by voice vote	Requires superintendent to ensure continued education for students suspended or expelled from school (Identical to HB 887)
HB 887	Kenneth C. Alexander	House: Continued to 2013 in Education by voice vote	Requires superintendent to ensure continued education for students suspended or expelled from school (Identical to HB 365)

### 2013 Legislative Session

Bill Number	Patron	P/F	Action
HB 1866	Roxann L. Robinson	Passed	Removes certain weapons from the definition of “firearm” that are not included in the definition of “firearm” in the federal <i>Improving America’s School Act of 1994</i> (Part F- Gun-Free Schools Act of 1994)
HB 2344	Mark L. Cole	Passed	Requires local school boards to establish policies and procedures for the establishment of threat assessment teams in each school, to be overseen by a district-level committee; lists team requirements; community reporting protocol; intervention strategies; and reports to the superintendent

### 2014 Legislative Session

Bill Number	Patron	P/F	Action
HB 726	Jennifer L. McClellan	House: Left in Appropriations	Requires each student who is suspended or expelled from attendance to be afforded the opportunity to continue to progress in the curriculum of the division during the suspension or expulsion. Requires discretion in considering disciplinary action, re-engagement, and alternatives to suspension or expulsion
HB 198	R. Steven Landes	Passed	Clarifies that students who have committed certain weapons or drug offenses are not required to be expelled regardless of the mitigating circumstances of the situation. Identical to HB 752 and SB 441)
SB 441	Thomas A. Garrett	Passed	Clarifies that students who have committed certain weapons or drug offenses are not required to be expelled regardless of the mitigating circumstances of the situation. Identical to HB 752 and HB 198)
HB 752	Thomas Davis Rust	Passed	Clarifies that students who have committed certain weapons or drug offenses are not required to be expelled regardless of the mitigating circumstances of the situation. Identical to SB 441 and HB 198)

## CHAPTER 801

*An Act to amend and reenact §§ 22.1-257, as it is currently effective and as it may become effective, 22.1-277.1, and 22.1-278 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 22.1-277.01, relating to the expulsion of students for certain infractions.*

[S 874]

Approved April 6, 1995

Be it enacted by the *General Assembly of Virginia*:

1. That §§ 22.1-257, as it is currently effective and as it may become effective, 22.1-277.1, and 22.1-278 of the *Code of Virginia* are amended and reenacted and that the *Code of Virginia* is amended by adding a section numbered 22.1-277.01 as follows:

§ 22.1-257. Excusing children who cannot benefit from education or whose parents conscientiously object; excusing children for reasons of health or apprehension for personal safety; school board and court authority to order alternatives.

A. A school board:

1. May, on recommendation of the principal and the division superintendent, with the written consent of the parent or guardian, excuse from attendance at school any pupil who the school board determines, in accordance with regulations of the Board of Education, cannot benefit from education at such school;

2. Shall excuse from attendance at school any pupil who, together with his parents, by reason of bona fide religious training or belief, is conscientiously opposed to attendance at school;

3. Shall, on the recommendation of the juvenile and domestic relations district court of the county or city in which the pupil resides, excuse from attendance at school for such period of time as the court deems appropriate any pupil who, together with his parents, is opposed to attendance at a school by reason of concern for such pupil's health, as verified by competent medical evidence, or by reason of such pupil's reasonable apprehension for personal safety when such concern or apprehension in that pupil's specific case is determined by the court to be justified;

4. May, on recommendation of the juvenile and domestic relations district court of the county or city in which the pupil resides, excuse from attendance at school any pupil who, in the judgment of such court, cannot benefit from education at such school;

5. May, *in accordance with the procedures set forth in § 22.1-277 and upon a finding that a school-age child has (i) committed an offense in violation of school board policies, ~~or against whom such charges are pending~~ as (ii) been charged with an offense ~~described in subsection A of~~*

*§22.1-209.1:2 relating to the Commonwealth's laws, or with a violation of school board policies, on weapons, alcohol or drugs, or intentional injury to another person, or (iii) been expelled from school attendance pursuant to § 22.1-277.01, require the child to attend an alternative education program as provided in § 22.1-209.1:2 or § 22.1-277.1.*

B. The court in reaching its determination as to whether the concern or apprehension referred to in subdivision A 3 of this section is justified shall take into consideration the recommendation of the principal and division superintendent.

C. The juvenile and domestic relations district court of the county or city in which a pupil resides, or in which charges are pending against a pupil, or any court in which charges are pending against a pupil, may require the pupil who has been charged with (i) a crime which resulted in or could have resulted in injury to others, (ii) a violation of Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, or (iii) any offense related to possession or distribution of any Schedule I, II, or III controlled substances to attend an alternative education program, including, but not limited to, night school, adult education, or any other educational program designed to offer instruction to students for whom the regular program of instruction may be inappropriate. The local school board of the school division in which the pupil resides shall determine the appropriate alternative education placement for such pupil. This subsection shall not be construed to limit the authority of school boards to expel, suspend, or exclude students, as provided in §§ 22.1-277, 22.1-277.01, and 22.1-277.2.

D. As used in subdivision A 2 of this section, the term "bona fide religious training or belief" does not include essentially political, sociological or philosophical views or a merely personal moral code.

*E. As used in this section, the term "charged" means that a petition or warrant has been filed or is pending against a pupil.*

§ 22.1-257. (Delayed effective date) Excusing children who cannot benefit from education or whose parents conscientiously object; excusing children for reasons of health or apprehension for personal safety; court authority to order alternatives.

A. A school board:

1. May, on recommendation of the principal and the division superintendent, with the written consent of the parent or guardian, excuse from attendance at school any pupil who the school board determines, in accordance with regulations of the Board of Education, cannot benefit from education at such school;

2. Shall excuse from attendance at school any pupil who, together with his parents, by reason of bona fide religious training or belief, is conscientiously opposed to attendance at school;

3. Shall, on the recommendation of the family court of the county or city in which the pupil resides, excuse from attendance at school for such period of time as the court deems appropriate any pupil who, together with his parents, is opposed to attendance at a school by reason of

concern for such pupil's health, as verified by competent medical evidence, or by reason of such pupil's reasonable apprehension for personal safety when such concern or apprehension in that pupil's specific case is determined by the court to be justified;

4. May, on recommendation of the family court of the county or city in which the pupil resides, excuse from attendance at school any pupil who, in the judgment of such court, cannot benefit from education at such school;

5. May, *in accordance with the procedures set forth in § 22.1-277* and upon a finding that a school-age (i) committed an offense in violation of school board policies, ~~or against whom such charges are pending as~~ (ii) *been charged with an offense described in subsection A of § 22.1-209.1:2 relating to the Commonwealth's laws, or with a violation of school board policies, on weapons, alcohol or drugs, or intentional injury to another person, or (iii) been expelled from school attendance pursuant to § 22.1-277.01*, require the child to attend an alternative education program as provided in § 22.1-209.1:2 or § 22.1-277.1.

B. The court in reaching its determination as to whether the concern or apprehension referred to in subdivision A 3 of this section is justified shall take into consideration the recommendation of the principal and division superintendent.

C. The family court of the county or city; in which a pupil resides, or in which charges are pending against a pupil, or any court in which charges are pending against a pupil, may require the pupil who has been charged with (i) a crime which resulted in or could have resulted in injury to others, (ii) a violation of Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, or (iii) any offense related to possession or distribution of any Schedule I, II, or III controlled substances to attend an alternative education program, including, but not limited to, night school, adult education, or any other educational program designed to offer instruction to students for whom the regular program of instruction may be inappropriate. The local school board of the school division in which the pupil resides shall determine the appropriate alternative education placement for such pupil. This subsection shall not be construed to limit the authority of school boards to expel, suspend, or exclude students, as provided in §§ 22.1-277, 22.1-277.01, and 22.1-277.2.

D. As used in subdivision A 2 of this section, the term "bona fide religious training or belief" does not include essentially political, sociological or philosophical views or a merely personal moral code.

*E. As used in this section, the term "charged" means that a petition or warrant has been filed or is pending against a pupil.*

*§ 22.1-277.01. Expulsion of students under certain circumstances; Board of Education designated agency; local school board application for assistance; reporting; exceptions.*

*A. In compliance with the federal Improving America's Schools Act of 1994 (Part F--"Gun-Free Schools Act of 1994"), a school board shall expel from school attendance for a period of not less than one year any student whom such school board has determined, in accordance with the*

*procedures set forth in § 22.1-277, to have brought a firearm onto school property or to a school-sponsored activity as prohibited by § 18.2-308.1, or to have brought a firearm as defined in subsection D of this section on school property or to a school-sponsored activity. A school board may, however, determine, based on the facts of the particular case that special circumstances exist and another disciplinary action or term of expulsion is appropriate.*

*B. The Board of Education is designated as the state education agency to carry out the provisions of the federal Improving America's Schools Act of 1994, and shall administer the funds to be appropriated to the Commonwealth under this act.*

*C. Each school board shall revise its standards of student conduct no later than three months after the date on which this act becomes effective. Local school boards requesting moneys apportioned to the Commonwealth through the federal Improving America's Schools Act of 1994 shall submit to the Department of Education an application requesting such assistance. Applications for assistance shall include:*

*1. Documentation that the local school board has adopted and implemented student conduct policies in compliance with this section;*

*2. A description of the circumstances pertaining to expulsions imposed under this section, including (i) the schools from which students were expelled under this section, (ii) the number of students expelled from each such school in the school division during the school year, and (iii) the types of firearms involved in the expulsions.*

*D. As used in this section:*

*"Destructive device" means (i) any explosive, incendiary, or poison gas, bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter ounce, mine, or other similar device; (ii) any weapon, except a shotgun or a shotgun shell generally recognized as particularly suitable for sporting purposes, by whatever name known which will, or may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and (iii) any combination of parts either designed or intended for use in converting any device into any destructive device described in this subsection and from which a destructive device may be readily assembled. "Destructive device" shall not include any device which is not designed or redesigned for use as a weapon, or any device originally designed for use as a weapon and which is redesigned for use as a signaling, pyrotechnic, line-throwing, safety, or other similar device.*

*"Firearm" means any weapon prohibited on school property or at a school sponsored activity pursuant to § 18.2-308.1, or (i) any weapon, including a starter gun, which will, or is designed or may readily be converted to, expel a projectile by the action of an explosive; (ii) the frame or receiver of any such weapon; (iii) any firearm muffler or firearm silencer; or (iv) any destructive device.*

*"One year" means 365 calendar days as required in federal regulations.*

*E. The exemptions set out in § 18.2-308 shall apply, mutatis mutandis, to the provisions of this section. The provisions of this section shall not apply to persons who possess such firearm or firearms as a part of the curriculum or other programs sponsored by the schools in the school division or any organization permitted by the school to use its premises or to any law-enforcement officer while engaged in his duties as such. In addition, this section shall not apply to possession of an unloaded firearm which is in a closed container in or upon a motor vehicle or an unloaded shotgun or rifle in a firearms rack in or upon a motor vehicle.*

*F. This section shall not be construed to diminish the authority of the Board of Education or the Governor concerning decisions on whether, or the extent to which, Virginia shall participate in the federal Improving America's Schools Act of 1994, or to diminish the Governor's authority to coordinate and provide policy direction on official communications between the Commonwealth and the United States government.*

§ 22.1-277.1. Disciplinary authority of school boards under certain circumstances.

A school board may, *in accordance with the procedures set forth in § 22.1-277*, require any student who has been (i) *charged with an offense relating to the Commonwealth's laws, or with a violation of school board policies, on weapons, alcohol or drugs, or intentional injury to another person;* (ii) *found guilty or not innocent of a crime which resulted in or could have resulted in injury to others, or of a crime for which the disposition ordered by a court is required to be disclosed to the superintendent of the school division pursuant to § 16.1-305.1;* or (iii) *expelled pursuant to § 22.1-277.01*, to attend an alternative education program, including, but not limited to, night school, adult education, or any other educational program designed to offer instruction to students for whom the regular program of instruction may be inappropriate. A school board may require such student to attend such programs regardless of where the crime occurred.

*As used in this section, the term "charged" means that a petition or warrant has been filed or is pending against a pupil.*

§ 22.1-278. Guidelines for school board policies; school board regulations governing student conduct; Board standards for compliance with federal law requiring expulsion under certain circumstances by school board.

A. By July 1, ~~1994~~ 1995, the Board of Education shall establish guidelines and develop model student conduct policies to aid local school boards in the implementation of such policies. The guidelines shall include, but not be limited to, (i) criteria for the use of suspension and expulsion as disciplinary measures, the grounds for suspension and expulsion, and the procedure to be followed in such cases; (ii) standards, consistent with state, federal and case laws, for school board policies on alcohol and drugs, vandalism, trespassing, threats, search and seizure, disciplining of students with disabilities, intentional injury of others and dissemination of such policies to students, their parents, and school personnel; and (iii) standards for in-service training of school personnel in and examples of the appropriate management of student conduct and student offenses in violation of school board policies. In the case of suspension and expulsion, the procedures set forth in § 22.1-277 shall be the minimum procedures that the school board may prescribe. By October 31, ~~1994~~ 1995, school boards shall adopt regulations governing

student conduct which are consistent with, but may be more stringent than, the guidelines of the Board.

*B. The Board of Education shall establish standards to ensure compliance with the federal Improving America's Schools Act of 1994 (Part F--"Gun-Free Schools Act of 1994"), in accordance with § 22.1-277.01, to be effective on July 1, 1995.*

*This subsection shall not be construed to diminish the authority of the Board of Education or the Governor concerning decisions on whether, or the extent to which, Virginia shall participate in the federal Improving America's Schools Act of 1994, or to diminish the Governor's authority to coordinate and provide policy direction on official communications between the Commonwealth and the United States government.*

## CHAPTER 1027

### *An Act to amend and reenact § 22.1-277.01 of the Code of Virginia, relating to expulsion of public school students under certain circumstances.*

[H 1462]

Approved April 22, 1999

Be it enacted by the *General Assembly of Virginia*:

1. That § 22.1-277.01 of the *Code of Virginia* is amended and reenacted as follows:

§ 22.1-277.01. Expulsion of students under certain circumstances; Board of Education designated agency; local school board application for assistance; reporting; exceptions.

A. In compliance with the federal *Improving America's Schools Act of 1994* (Part F-"Gun-Free Schools Act of 1994"), a school board shall expel from school attendance for a period of not less than one year any student whom such school board has determined, in accordance with the procedures set forth in § 22.1-277, to have brought a firearm onto school property or to a school-sponsored activity as prohibited by § 18.2-308.1, or to have brought a firearm as defined in subsection D of this section on school property or to a school-sponsored activity. *A school administrator, pursuant to school board policy, or a school board may, however, determine, based on the facts of the a particular ease situation, that special circumstances exist and no disciplinary action or another disciplinary action or another term of expulsion is appropriate. A school board may promulgate guidelines for determining what constitutes special circumstances.*

B. The Board of Education is designated as the state education agency to carry out the provisions of the federal *Improving America's Schools Act of 1994*, and shall administer the funds to be appropriated to the Commonwealth under this act.

C. Each school board shall revise its standards of student conduct no later than three months after the date on which this act becomes effective. Local school boards requesting moneys apportioned to the Commonwealth through the federal *Improving America's Schools Act of 1994* shall submit to the Department of Education an application requesting such assistance.

Applications for assistance shall include:

1. Documentation that the local school board has adopted and implemented student conduct policies in compliance with this section;
2. A description of the circumstances pertaining to expulsions imposed under this section, including (i) the schools from which students were expelled under this section, (ii) the number of students expelled from each such school in the school division during the school year, and (iii) the types of firearms involved in the expulsions.

D. As used in this section:

"Destructive device" means (i) any explosive, incendiary, or poison gas, bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter ounce, mine, or other similar device; (ii) any weapon, except a shotgun or a shotgun shell generally recognized as particularly suitable for sporting purposes, by whatever name known which will, or may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and (iii) any combination of parts either designed or intended for use in converting any device into any destructive device described in this subsection and from which a destructive device may be readily assembled. "Destructive device" shall not include any device which is not designed or redesigned for use as a weapon, or any device originally designed for use as a weapon and which is redesigned for use as a signaling, pyrotechnic, line-throwing, safety, or other similar device.

"Firearm" means any weapon prohibited on school property or at a school-sponsored activity pursuant to § 18.2-308.1, or (i) any weapon, including a starter gun, which will, or is designed or may readily be converted to, expel a projectile by the action of an explosive; (ii) the frame or receiver of any such weapon; (iii) any firearm muffler or firearm silencer; or (iv) any destructive device.

"One year" means 365 calendar days as required in federal regulations.

E. The exemptions set out in § 18.2-308 shall apply, mutatis mutandis, to the provisions of this section. The provisions of this section shall not apply to persons who possess such firearm or firearms as a part of the curriculum or other programs sponsored by the schools in the school division or any organization permitted by the school to use its premises or to any law-enforcement officer while engaged in his duties as such. ~~In addition, this section shall not apply to possession of an unloaded firearm which is in a closed container in or upon a motor vehicle or an unloaded shotgun or rifle in a firearms rack in or upon a motor vehicle.~~

F. This section shall not be construed to diminish the authority of the Board of Education or the Governor concerning decisions on whether, or the extent to which, Virginia shall participate in the federal *Improving America's Schools Act of 1994*, or to diminish the Governor's authority to coordinate and provide policy direction on official communications between the Commonwealth and the United States government.

## CHAPTER 707

### *An Act to amend and reenact § 22.1-277.01 of the Code of Virginia, relating to student expulsions under certain circumstances.*

[S 1136]

Approved March 28, 1999

Be it enacted by the *General Assembly of Virginia*:

1. That § 22.1-277.01 of the *Code of Virginia* is amended and reenacted as follows:

§ 22.1-277.01. Expulsion of students under certain circumstances; Board of Education designated agency; local school board application for assistance; reporting; exceptions.

A. In compliance with the federal *Improving America's Schools Act of 1994* (Part F-"Gun-Free Schools Act of 1994"), a school board shall expel from school attendance for a period of not less than one year any student whom such school board has determined, in accordance with the procedures set forth in § 22.1-277, to have brought a firearm onto school property or to a school-sponsored activity as prohibited by § 18.2-308.1, or to have brought a firearm as defined in subsection D of this section on school property or to a school-sponsored activity. A school board may, however, determine, based on the facts of the particular case that special circumstances exist and another disciplinary action or term of expulsion is appropriate. *In addition, a school board may, by regulation, authorize the division superintendent or his designee to conduct a preliminary review of such cases to determine whether a disciplinary action other than expulsion is appropriate. Such regulations shall ensure that, if a determination is made that another disciplinary action is appropriate, any such subsequent disciplinary action is to be taken in accordance with the procedures set forth in § 22.1-277.*

B. The Board of Education is designated as the state education agency to carry out the provisions of the federal *Improving America's Schools Act of 1994*, and shall administer the funds to be appropriated to the Commonwealth under this act.

C. Each school board shall revise its standards of student conduct no later than three months after the date on which this act becomes effective. Local school boards requesting moneys apportioned to the Commonwealth through the federal *Improving America's Schools Act of 1994* shall submit to the Department of Education an application requesting such assistance. Applications for assistance shall include:

1. Documentation that the local school board has adopted and implemented student conduct policies in compliance with this section;

2. A description of the circumstances pertaining to expulsions imposed under this section, including (i) the schools from which students were expelled under this section, (ii) the number of students expelled from each such school in the school division during the school year, and (iii) the types of firearms involved in the expulsions.

D. As used in this section:

"Destructive device" means (i) any explosive, incendiary, or poison gas, bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter ounce, mine, or other similar device; (ii) any weapon, except a shotgun or a shotgun shell generally recognized as particularly suitable for sporting purposes, by whatever name known which will, or may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and (iii) any combination of parts either designed or intended for use in converting any device into any destructive device described in this subsection and from which a destructive device may be readily assembled. "Destructive device" shall not include any device which is not designed or redesigned for use as a weapon, or any device originally designed for use as a weapon and which is redesigned for use as a signaling, pyrotechnic, line-throwing, safety, or other similar device.

"Firearm" means any weapon prohibited on school property or at a school-sponsored activity pursuant to § 18.2-308.1, or (i) any weapon, including a starter gun, which will, or is designed or may readily be converted to, expel a projectile by the action of an explosive; (ii) the frame or receiver of any such weapon; (iii) any firearm muffler or firearm silencer; or (iv) any destructive device.

"One year" means 365 calendar days as required in federal regulations.

E. The exemptions set out in § 18.2-308 shall apply, mutatis mutandis, to the provisions of this section. The provisions of this section shall not apply to persons who possess such firearm or firearms as a part of the curriculum or other programs sponsored by the schools in the school division or any organization permitted by the school to use its premises or to any law-enforcement officer while engaged in his duties as such. In addition, this section shall not apply to possession of an unloaded firearm which is in a closed container in or upon a motor vehicle or an unloaded shotgun or rifle in a firearms rack in or upon a motor vehicle.

F. This section shall not be construed to diminish the authority of the Board of Education or the Governor concerning decisions on whether, or the extent to which, Virginia shall participate in the federal *Improving America's Schools Act of 1994*, or to diminish the Governor's authority to coordinate and provide policy direction on official communications between the Commonwealth and the United States government.

## CHAPTER 523

### *An Act to amend and reenact § 22.1-277.01 of the Code of Virginia, relating to possession of weapons on school property.*

[H 464]

Approved April 6, 2000

Be it enacted by the *General Assembly of Virginia*:

1. That § 22.1-277.01 of the *Code of Virginia* is amended and reenacted as follows:

§ 22.1-277.01. Expulsion of students under certain circumstances; Board of Education designated agency; local school board application for assistance; reporting; exceptions.

A. In compliance with the federal *Improving America's Schools Act of 1994* (Part F-Gun-Free Schools Act of 1994), a school board shall expel from school attendance for a period of not less than one year any student whom such school board has determined, in accordance with the procedures set forth in § 22.1-277, to have brought a firearm onto school property or to a school-sponsored activity as prohibited by § 18.2-308.1, or to have brought a firearm as defined in subsection D of this section on school property or to a school-sponsored activity. A school administrator, pursuant to school board policy, or a school board may, however, determine, based on the facts of a particular situation that special circumstances exist and no disciplinary action or another disciplinary action or another term of expulsion is appropriate. A school board may promulgate guidelines for determining what constitutes special circumstances. In addition, a school board may, by regulation, authorize the division superintendent or his designee to conduct a preliminary review of such cases to determine whether a disciplinary action other than expulsion is appropriate. Such regulations shall ensure that, if a determination is made that another disciplinary action is appropriate, any such subsequent disciplinary action is to be taken in accordance with the procedures set forth in § 22.1-277.

B. The Board of Education is designated as the state education agency to carry out the provisions of the federal *Improving America's Schools Act of 1994*, and shall administer the funds to be appropriated to the Commonwealth under this act.

C. Each school board shall revise its standards of student conduct no later than three months after the date on which this act becomes effective. Local school boards requesting moneys apportioned to the Commonwealth through the federal *Improving America's Schools Act of 1994* shall submit to the Department of Education an application requesting such assistance. Applications for assistance shall include:

1. Documentation that the local school board has adopted and implemented student conduct policies in compliance with this section;

2. A description of the circumstances pertaining to expulsions imposed under this section, including (i) the schools from which students were expelled under this section, (ii) the number of

students expelled from each such school in the school division during the school year, and (iii) the types of firearms involved in the expulsions.

D. As used in this section:

"Destructive device" means (i) any explosive, incendiary, or poison gas, bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter ounce, mine, or other similar device; (ii) any weapon, except a shotgun or a shotgun shell generally recognized as particularly suitable for sporting purposes, by whatever name known which will, or may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and (iii) any combination of parts either designed or intended for use in converting any device into any destructive device described in this subsection and from which a destructive device may be readily assembled. "Destructive device" shall not include any device which is not designed or redesigned for use as a weapon, or any device originally designed for use as a weapon and which is redesigned for use as a signaling, pyrotechnic, line-throwing, safety, or other similar device.

"Firearm" means any weapon prohibited on school property or at a school-sponsored activity pursuant to § 18.2-308.1, or (i) any weapon, including a starter gun, which will, or is designed or may readily be converted to, expel a projectile by the action of an explosive; (ii) the frame or receiver of any such weapon; (iii) any firearm muffler or firearm silencer; or (iv) any destructive device.

"One year" means 365 calendar days as required in federal regulations.

*"School property" means any real property owned or leased by the school board or any vehicle owned or leased by the school board or operated by or on behalf of the school board.*

E. The exemptions set out in § 18.2-308 shall apply, mutatis mutandis, to the provisions of this section. The provisions of this section shall not apply to persons who possess such firearm or firearms as a part of the curriculum or other programs sponsored by the schools in the school division or any organization permitted by the school to use its premises or to any law-enforcement officer while engaged in his duties as such.

F. This section shall not be construed to diminish the authority of the Board of Education or the Governor concerning decisions on whether, or the extent to which, Virginia shall participate in the federal *Improving America's Schools Act of 1994*, or to diminish the Governor's authority to coordinate and provide policy direction on official communications between the Commonwealth and the United States government.

## CHAPTER 843

### *An Act to amend and reenact § 22.1-277.07 of the Code of Virginia, relating to expulsion of students under certain circumstances.*

[H 1907]

Approved March 22, 2003

Be it enacted by the *General Assembly of Virginia*:

1. That § 22.1-277.07 of the *Code of Virginia* is amended and reenacted as follows:

§ 22.1-277.07. Expulsion of students under certain circumstances; exceptions.

A. In compliance with the federal *Improving America's Schools Act of 1994* (Part F-Gun-Free Schools Act of 1994), a school board shall expel from school attendance for a period of not less than one year any student whom such school board has determined, in accordance with the procedures set forth in this article, to have brought a firearm onto school property or to a school-sponsored activity as prohibited by § 18.2-308.1, or to have brought a firearm as defined in subsection D or an air rifle or BB gun on school property or to a school-sponsored activity.

A school administrator, pursuant to school board policy, or a school board may, however, determine, based on the facts of a particular situation that special circumstances exist and no disciplinary action or another disciplinary action or another term of expulsion is appropriate. A school board may promulgate guidelines for determining what constitutes special circumstances. In addition, a school board may, by regulation, authorize the division superintendent or his designee to conduct a preliminary review of such cases to determine whether a disciplinary action other than expulsion is appropriate. Such regulations shall ensure that, if a determination is made that another disciplinary action is appropriate, any such subsequent disciplinary action is to be taken in accordance with the procedures set forth in this article.

B. The Board of Education is designated as the state education agency to carry out the provisions of the federal *Improving America's Schools Act of 1994*, and shall administer the funds to be appropriated to the Commonwealth under this act.

C. Each school board shall revise its standards of student conduct no later than three months after the date on which this act becomes effective. Local school boards requesting moneys apportioned to the Commonwealth through the federal *Improving America's Schools Act of 1994* shall submit to the Department of Education an application requesting such assistance. Applications for assistance shall include:

1. Documentation that the local school board has adopted and implemented student conduct policies in compliance with this section; and
2. A description of the circumstances pertaining to expulsions imposed under this section, including (i) the schools from which students were expelled under this section, (ii) the number of

students expelled from each such school in the school division during the school year, and (iii) the types of firearms involved in the expulsions.

D. As used in this section:

"Destructive device" means (i) any explosive, incendiary, or poison gas, bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter ounce, mine, or other similar device; (ii) any weapon, except a shotgun or a shotgun shell generally recognized as particularly suitable for sporting purposes, by whatever name known that will, or may be readily converted to, expel a projectile by the action of an explosive or other propellant, and that has any barrel with a bore of more than one-half inch in diameter; and (iii) any combination of parts either designed or intended for use in converting any device into any destructive device described in this subsection and from which a destructive device may be readily assembled. "Destructive device" shall not include any device that is not designed or redesigned for use as a weapon, or any device originally designed for use as a weapon and that is redesigned for use as a signaling, pyrotechnic, line-throwing, safety, or other similar device.

"Firearm" means any weapon prohibited on school property or at a school-sponsored activity pursuant to § 18.2-308.1, or (i) any weapon, including a starter gun, that will, or is designed or may readily be converted to, expel a projectile by the action of an explosive; (ii) the frame or receiver of any such weapon; (iii) any firearm muffler or firearm silencer; or (iv) any destructive device.

"One year" means 365 calendar days as required in federal regulations.

"School property" means any real property owned or leased by the school board or any vehicle owned or leased by the school board or operated by or on behalf of the school board.

E. The exemptions set out in § 18.2-308 regarding concealed weapons shall apply, mutatis mutandis, to the provisions of this section. The provisions of this section shall not apply to persons who possess such firearm or firearms as a part of the curriculum or other programs sponsored by the schools in the school division or any organization permitted by the school to use its premises or to any law-enforcement officer while engaged in his duties as such.

F. This section shall not be construed to diminish the authority of the Board of Education or the Governor concerning decisions on whether, or the extent to which, Virginia shall participate in the federal *Improving America's Schools Act of 1994*, or to diminish the Governor's authority to coordinate and provide policy direction on official communications between the Commonwealth and the United States government.

## CHAPTER 703

### *An Act to amend and reenact § 22.1-277.07 of the Code of Virginia, relating to possession of certain weapons on school property; expulsion.*

[H 1516]

Approved April 5, 2006

Be it enacted by the *General Assembly of Virginia*:

1. That § 22.1-277.07 of the *Code of Virginia* is amended and reenacted as follows:

§ 22.1-277.07. Expulsion of students under certain circumstances; exceptions.

A. In compliance with the federal *Improving America's Schools Act of 1994* (Part F-Gun-Free Schools Act of 1994), a school board shall expel from school attendance for a period of not less than one year any student whom such school board has determined, in accordance with the procedures set forth in this article, to have ~~brought a firearm onto school property or to possessed a firearm on school property or at a school-sponsored activity as prohibited by § 18.2-308.1, or;~~ to have brought possessed a firearm or destructive device as defined in subsection E, a firearm muffler or firearm silencer, or a pneumatic gun as defined in subsection E of § 15.2-915.4 ~~onto school property or to on school property or at a school-sponsored activity~~. A school administrator, pursuant to school board policy, or a school board may, however, determine, based on the facts of a particular situation that special circumstances exist and no disciplinary action or another disciplinary action or another term of expulsion is appropriate. A school board may promulgate guidelines for determining what constitutes special circumstances. In addition, a school board may, by regulation, authorize the division superintendent or his designee to conduct a preliminary review of such cases to determine whether a disciplinary action other than expulsion is appropriate. Such regulations shall ensure that, if a determination is made that another disciplinary action is appropriate, any such subsequent disciplinary action is to be taken in accordance with the procedures set forth in this article.

B. The Board of Education is designated as the state education agency to carry out the provisions of the federal *Improving America's Schools Act of 1994*, and shall administer the funds to be appropriated to the Commonwealth under this act.

C. Each school board shall revise its standards of student conduct no later than three months after the date on which this act becomes effective. Local school boards requesting moneys apportioned to the Commonwealth through the federal *Improving America's Schools Act of 1994* shall submit to the Department of Education an application requesting such assistance. Applications for assistance shall include:

1. Documentation that the local school board has adopted and implemented student conduct policies in compliance with this section; and

2. A description of the circumstances pertaining to expulsions imposed under this section, including (i) the schools from which students were expelled under this section, (ii) the number of students expelled from each such school in the school division during the school year, and (iii) the types of firearms involved in the expulsions.

D. No school operating a *Junior Reserve Officers Training Corps* (JROTC) program shall prohibit the JROTC program from conducting marksmanship training when such training is a normal element of such programs. Such programs may include training in the use of pneumatic guns. The administration of a school operating a JROTC program shall cooperate with the JROTC staff in implementing such marksmanship training.

E. As used in this section:

"Destructive device" means (i) any explosive, incendiary, or poison gas, bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter ounce, mine, or other similar device; (ii) any weapon, except a shotgun or a shotgun shell generally recognized as particularly suitable for sporting purposes, by whatever name known that will, or may be readily converted to, expel a projectile by the action of an explosive or other propellant, and that has any barrel with a bore of more than one-half inch in diameter that is homemade or was not made by a duly licensed weapon manufacturer, any fully automatic firearm, any sawed-off shotgun or sawed-off rifle as defined in § 18.2-299 or any firearm prohibited from civilian ownership by federal law; and (iii) any combination of parts either designed or intended for use in converting any device into any destructive device described in this subsection and from which a destructive device may be readily assembled.

"Destructive device" shall not include any device that is not designed or redesigned for use as a weapon, or any device originally designed for use as a weapon and that is redesigned for use as a signaling, pyrotechnic, line-throwing, safety, or other similar device, nor shall it include any antique firearm as defined in subsection G of § 18.2-308.2:2.

"Firearm" means any weapon prohibited on school property or at a school-sponsored activity pursuant to § 18.2-308.1, or any weapon, including a starter gun, that will, or is designed or may readily be converted to, expel single or multiple projectiles by the action of an explosion of a combustible material or the frame or receiver of any such weapon. "Firearm" shall not include any pneumatic gun, as defined in subsection E of § 15.2-915.4.

"One year" means 365 calendar days as required in federal regulations.

"School property" means any real property owned or leased by the school board or any vehicle owned or leased by the school board or operated by or on behalf of the school board.

F. The exemptions set out in § 18.2-308 regarding concealed weapons shall apply, mutatis mutandis, to the provisions of this section. The provisions of this section shall not apply to persons who possess such firearm or firearms or pneumatic guns as a part of the curriculum or other programs sponsored by the schools in the school division or any organization permitted by the school to use its premises or to any law-enforcement officer while engaged in his duties as such.

G. This section shall not be construed to diminish the authority of the Board of Education or the Governor concerning decisions on whether, or the extent to which, Virginia shall participate in the federal *Improving America's Schools Act of 1994*, or to diminish the Governor's authority to coordinate and provide policy direction on official communications between the Commonwealth and the United States government.