



JACKIE LACEY
DISTRICT ATTORNEY

LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE

ONE MINUTE BRIEF

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NUMBER: 2018-03 **DATE:** 03-02-18 **BY:** Devallis Rutledge **TOPIC:** Search for Minors' Guns

ISSUE: What are the Fourth Amendment rules on searching a minor and his/her property at school or at home, based on reports that the minor is armed, or has made shooting threats?

In the aftermath of schoolhouse shootings, it is not uncommon for police to receive increased reports of students threatening to carry out shootings at local schools. To avoid potential tragedies, officers may need to act quickly to disarm minors and to search such places as school lockers and minors' bedrooms, without opportunity to seek search warrants (still preferable, safety permitting). Court decisions have accommodated such "special needs."

- **Detentions.** *"[D]etentions of minor students on school grounds do not offend the Constitution, so long as they are not arbitrary, capricious, or for the purposes of harassment."* *In re Randy G.* (2001) 26 Cal.4th 556, 567 (ruling that reasonable suspicion is **not required**).

- **Searches at School.** *"Under ordinary circumstances, a search of a student by a teacher or other school official will be justified at its inception when there are **reasonable grounds** for suspecting that the search will turn up evidence that the student has violated or is violating either the **law** or the **rules** of the school."* *New Jersey v. TLO* (1985) 469 US 325, 341-42 (upholding the search of a student's purse for evidence of smoking and drugs).

A school resource/police officer is a "school official" under *TLO*. *"For purposes of Fourth Amendment analysis, 'school officials' include police officers ... who are assigned to high schools as resource officers."* *In re KJ* (2018) 18 Cal.App.5th 1123, 1129 (upholding detention and search at school based on an anonymously-texted report of an armed student).

Although **anonymous tips** may not qualify as reasonable suspicion away from school, the US Supreme Court has suggested that this rule does not necessarily apply at school. “Nor do we hold that public safety officials in quarters where the reasonable expectation of Fourth Amendment privacy is **diminished**, such as airports and **schools**, cannot conduct protective searches **on the basis of information insufficient to justify searches elsewhere.**” *Florida v. JL* (2000) 529 US 266, 274.

- **Parental Consent.** A parent can give **valid consent** for a search of his or her minor child’s rooms and property in the parent’s home. The US Supreme Court has repeatedly suggested that the parent-child “hierarchy” allows such consent. “[O]ne might contemplate how parental custodial authority would be **impaired** by requiring judicial approval for search of a **minor child’s room.**” *Griffin v. Wisconsin* (1987) 483 US 868, 876. “**Unless** the people living together fall within some recognized hierarchy, like a household of **parent and child...**, there is no societal understanding of superior and inferior [authority over the premises].” *Georgia v. Randolph* (2006) 547 US 103, 114.

Accordingly, **a parent can give valid consent**, even over the express objections of the minor child. “[M]other, as the parent of a minor child, had the **authority to consent** to a search of his bedroom and to **override any objection** he raised to the search of her apartment.” *In re DC* (2010) 188 Cal.App.4th 978, 981.

In re Scott K (1979) 24 Cal.3d 395, held that a parent could not consent to a search of the minor child’s locked toolbox; however, this **pre-Prop 8 case** was decided solely on the basis of the **California** Constitution—not the Fourth Amendment—and is **no longer binding precedent** for the exclusion of evidence, because **the US Supreme Court has never adopted this ruling.** “Our state Constitution thus forbids the courts to order the exclusion of evidence at trial as a remedy for an unreasonable search and seizure unless that remedy is **required** by the federal Constitution **as interpreted by the United States Supreme Court.**” *People v. Camacho* (2000) 23 Cal.4th 824, 830.

BOTTOM LINE: Officers responding to reports of armed or threatening minor students may make detentions and searches, under these and related authorities, where the circumstances reasonably warrant such actions.

(Citations omitted and emphases added in quoted material.)

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