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# **Use of Force in Texas Public Schools: The Case for Transparency, Accountability and Decriminalization**

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**March 2011**

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## Section I – Executive Summary and Introduction

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A surprising number of Texas school districts have turned responsibility for what used to be routine student discipline over to law enforcement. As a result, many students receive a criminal record instead of a trip to the principal's office for engaging in childish misbehavior. This trend is detrimental to Texas schoolchildren, their families and communities, and ultimately, to Texas' economic well-being.

The presence of law enforcement officials, commonly known as school resource officers (SROs), in Texas' public schools has significantly expanded since the late 1990s.<sup>1</sup> Today in Texas, there are 178 independent school districts (ISDs) that employ their own police departments.<sup>2</sup> Unfortunately, no statewide guidelines exist to govern the mission of SROs, nor does any statewide entity have responsibility for oversight over SROs in Texas public schools. Each individual ISD creates its own governing policies, resulting in an inconsistent patchwork across the state. While some districts have formulated policies that help ensure a safe and positive educational environment, others have adopted policies that are counterproductive to public schools' core mission: providing the best possible education for students.

In the absence of statewide legislative guidance, a number of school districts have encouraged their SROs to take on a dual law enforcement and disciplinary enforcement role. In many school districts, the negative impact of this blending of responsibilities is exacerbated by the blurring of the distinction between criminal acts and childish or adolescent misbehavior. Behavior once subject to school discipline, such as using profanity in class, is now subject to criminal sanction.<sup>3</sup> To make matters worse, despite the obvious differences between apprehending adults in the street and ensuring the safety of children in a school, SROs are currently only required to receive the same basic training that municipal law enforcement personnel receive.<sup>4</sup> Moreover, law enforcement departments operating in schools are not required to provide use of force data to the state. The lack of this basic transparency and accountability mechanism results in an inability of parents, school officials, legislators and other stakeholders to ensure that SROs are acting within their local guidelines. Increased criminalization of childish misbehavior and the failure to require relevant training requirements, coupled with the lack of institutional transparency

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<sup>1</sup> Johanna Wald and Lisa Thureau, Charles Hamilton Houston Institute for Race and Justice, "First, Do No Harm," March 2010.

<sup>2</sup> Email from Kaye Wilson, executive assistant, Texas Commission on Law Enforcement Officer Standards and Education, to the ACLU of Texas, Oct. 14, 2010 (on file with ACLU of Texas).

<sup>3</sup> Brian Thevenot, *School District Cops Ticket Thousands of Students*, The Texas Tribune, June 2, 2010, available at <http://www.texastribune.org/texas-education/public-education/school-district-cops-ticket-thousands-of-students/>; see also Johanna Wald and Lisa Thureau, Charles Hamilton Houston Institute for Race and Justice, "First, Do No Harm," March 2010. ("Behaviors such as schoolyard scuffles, shoving matches, and even verbal altercations – once considered exclusively the domain of school disciplinarians – took on potentially sinister tones and came to be seen as requiring law enforcement intervention.")

<sup>4</sup> Texas Education Code §37.081(h).

and accountability in the context of school discipline, leads to escalating consequences for minor conduct infractions.

This phenomenon is problematic on multiple levels. First, criminalization of student conduct increases the likelihood of confrontations between children and SROs during which physical force may be deployed. Second, criminalizing non-criminal behavior of schoolchildren introduces affected children into the Texas criminal justice system, which negatively impacts their ability to obtain employment or gain admission to college. Finally, the creation of an adversarial environment “pushes students, particularly at-risk students, out of school rather than engaging them in a positive educational environment.”<sup>5</sup>

To address this dangerous and unproductive trend, the Texas Legislature must amend the Texas Education Code to define the mission and role of on-campus law enforcement, and establish a statewide policy governing the use of force by SROs with mandated basic reporting and training requirements. Specifically, the Texas Legislature must ensure that if SROs are deployed,<sup>6</sup> they are provided with a clearly defined mission and the tools necessary to carry out that mission. In addition, the Texas Education Code must be amended to ensure that childish misbehavior is not regarded as a criminal act.

Adoption of these recommendations will positively impact not just student safety and education, but will also strengthen Texas’ economic well-being, as a student’s disciplinary history is a major indicator in determining the likelihood of student dropout.<sup>7</sup> Texas’ student dropout rate is a scourge on our state’s economic profile. As a recent study issued by the Texas A&M Bush School of Government and Public Service estimated, “[t]he total of the predicted cost [to Texas] of dropouts from the cohort of the senior class of 2012 is between \$6 billion and \$10.7 billion” over their lifetimes.<sup>8</sup>

This report is intended to provide the context necessary to accurately assess the real world implications of current Texas law vis-à-vis law enforcement and discipline in Texas public schools. In addition, this report provides recommendations focused on ensuring a safe and positive school environment. In doing so, Section II will look at SROs in Texas ISDs, including a history of SROs and the sources of authority. Section III examines the increased negative interactions between SROs and Texas public schoolchildren. Section IV will discuss use of force policies in Texas school districts, including the use of force continuum, reporting requirements, training requirements, and the Public Information Act

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<sup>5</sup> Catherine Yonsoo Kim and I. India Geronimo, American Civil Liberties Union, “Policing in Schools: Developing a Governance Document for School Resource Officers in K-12 Schools 6,” August 2009.

<sup>6</sup> This paper takes no position on the decision to deploy SROs in the first place.

<sup>7</sup> Deborah Fowler, Texas Appleseed, “Texas School-to-Prison Pipeline; Dropout to Incarceration,” p. 33, October 2007.

<sup>8</sup> Roman Alvarez, et. al., “The ABCD’s of Texas Education: Assessing the Benefits and Costs of Reducing the Dropout Rate,” May 2009.

exemption that permits law enforcement agencies to withhold their use of force policies. Finally, Section V concludes with ACLU of Texas' legislative recommendations.

*Information in this report regarding specific use of force policies and data was obtained by the ACLU of Texas through Public Information Act requests to nine school districts. These requests asked for information about the scope and structure of SRO programs; records describing arrests, weapons utilized, demographic data; all information concerning instances where SROs deployed force, and use of force policies. The districts selected included: Austin, Cushing, Dallas, Edinburg, El Paso, Houston, Killeen, Northside, and Tyler. These districts were selected to provide a cross-section of the geographical, rural and urban diversity in Texas.*



## Section II – SROs in Texas Public Schools

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The existence of sworn law enforcement in United States public schools dates back to 1958 in Flint, Mich.<sup>9</sup> However, it was not until the late 1990s, in part driven by a number of high-profile school shootings and increasing “tough on crime” rhetoric, that SROs were deployed in greater numbers.<sup>10</sup> In 1989, there were only seven school districts in Texas that housed their own police departments.<sup>11</sup> Over the past 20 years, that number has increased more than 2500 percent.<sup>12</sup>

There are two ways in which ISDs deploy SROs in their districts. A school may create its own internal police department or may enter into contract with a local law enforcement agency. For the latter option, districts formalize their agreement through a memorandum of understanding (MOU).

Chapter 37 of the Texas Education Code grants Texas school districts the power to deploy SROs on their campuses.<sup>13</sup> SROs commissioned under this section have the “power, privileges, and immunities of peace officers;”<sup>14</sup> “may enforce all laws, including municipal ordinances, county ordinances, and state laws;”<sup>15</sup> and “may take a juvenile into custody.”<sup>16</sup> Each school board establishes the jurisdiction of SROs or security personnel on that district’s campuses and determines the scope of SRO duties.<sup>17</sup> The chief of police for each school district police department is accountable to the district’s superintendent.<sup>18</sup> In addition, Chapter 52 of the Family Code grants SROs the authority to take a child into custody.<sup>19</sup>

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<sup>9</sup> Engin Gulen, Sam Houston State University, *School Resource Officer Programs*, 17 TELEMASP BULLETIN 2, 1 (2010); see also Cathy Girouard, National Criminal Justice Reference Service, Fact Sheet, Crime in Schools, School-based Programs, School Resource Officer Training Program, March 2001, available at <http://www.ncjrs.gov/txtfiles1/ojdp/fs200105.txt>.

<sup>10</sup> Johanna Wald and Lisa Thureau, Charles Hamilton Houston Institute for Race and Justice, “First, Do No Harm,” March 2010; see also Jamie Dycus, American Civil Liberties Union, “Hard Lessons: School Resource Officer Programs and School-based Arrests in Three Connecticut Towns,” November 2008.

<sup>11</sup> Brian Thevenot, *School District Cops Ticket Thousands of Students*, The Texas Tribune, June 2, 2010, available at <http://www.texastribune.org/texas-education/public-education/school-district-cops-ticket-thousands-of-students/>.

<sup>12</sup> Email from Kaye Wilson, executive assistant, Texas Commission on Law Enforcement Officer Standards and Education, to the ACLU of Texas, Oct. 14, 2010, (on file with ACLU of Texas).

<sup>13</sup> Texas Education Code §37.081(a)(Under this Chapter, the board of trustees of each Texas school district has the authority to “employ security personnel and [] commission peace officers ...”) (because this section permits only “commissioned peace officers” to carry a weapon, this paper focuses on commissioned peace officers, also known as SROs, and not on non-commissioned “security personnel”).

<sup>14</sup> Texas Education Code §37.081(b)(1).

<sup>15</sup> Texas Education Code §37.081(b)(2).

<sup>16</sup> Texas Education Code §37.081(b)(3).

<sup>17</sup> Texas Education Code §37.081(e).

<sup>18</sup> Texas Education Code §37.081(f).

<sup>19</sup> Texas Family Code §52.01(a)(3)(A-B)(actions include: a violation of the penal law of Texas, a local ordinance, or “delinquent conduct or conduct indicating a need for supervision ...”).





## Section III – Dangerous Trend: The Criminalization of School Misconduct

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*“Can you tell me why you’d write a ticket ... instead of just ordering a kid to study hall, or to stay after school on a pretty day and write 1,000 times, ‘The world isn’t big enough for filthy minds?’”<sup>20</sup>*  
– TEXAS STATE SEN. JOHN WHITMIRE (D-HOUSTON)

When confronted with conflict or criminal activity, law enforcement personnel are guided by their agency’s mission and their training in assessing the situation and determining the appropriate response. Unfortunately, the Texas Education Code fails to mandate that SROs receive specialized training to help them deal with the unique challenges and responsibilities of policing in an educational environment.

Under the Texas Education Code, SROs are only required to “meet the minimum standards for peace officers established by the Commission on Law Enforcement Officer Standards and Education.”<sup>21</sup> As a report commissioned by the U.S. Department of Justice found, “without proper training, SROs can make serious mistakes related to their relationships with students, school administrators, and parents that at best cause short-term crises and at worst jeopardize the entire program in the school.”<sup>22</sup> Furthermore, the report found that “SROs may need help to ‘unlearn’ some of the techniques they learned to use on patrol duty that are not appropriate in dealing with students (for example, resorting too quickly to using handcuffs or treating misconduct as part of a person’s criminal make-up when in a student the behavior may be an example of youthful indiscretion).”<sup>23</sup> Just like educators,<sup>24</sup> SROs should be required to undertake extensive training to prepare them for interacting with this vulnerable population. The Texas Legislature must ensure that all individuals entrusted with the well-being of Texas’ schoolchildren have the proper training.

*The report found that “SROs may need help to ‘unlearn’ some of the techniques they learned to use on patrol duty that are not appropriate in dealing with students ...”*

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<sup>20</sup> Brian Thevenot, *School District Cops Ticket Thousands of Students*, The Texas Tribune, June 2, 2010, available at <http://www.texastribune.org/texas-education/public-education/school-district-cops-ticket-thousands-of-students/>.

<sup>21</sup> Texas Education Code §37.081(h).

<sup>22</sup> Peter Finn, et. al., *Comparison of Program Activities and Lessons Learned Among 19 School Resource Officer (SRO) Programs* 50 (2005).

<sup>23</sup> Peter Finn et. al., *Comparison of Program Activities and Lessons Learned Among 19 School Resource Officer (SRO) Programs* 48 (2005).

<sup>24</sup> For Educator Preparation Curriculum, see 19 Texas Administration Code §228.30.

Nationally, the mission of SROs varies greatly, from serving strictly as “enforcers” of laws and school rules, to “caseworkers,” to “keepers of the peace,” to “an extra pair of hands.”<sup>25</sup> In Texas, many school districts have chosen to include “enforcer” as part of the SRO mission. This has led to the proliferation of negative interactions between SROs and students, including students in primary schools. For example, in the 2006-2007

*In the 2006-2007 school year, Dallas schools issued criminal citations to 92 ten-year-olds, and in 2007, Alief ISD issued 163 tickets to elementary school students.*

school year, Dallas schools issued criminal citations to 92 ten-year-olds, and in 2007, Alief ISD issued 163 tickets to elementary school students.<sup>26</sup> Many of these tickets were issued for “disorderly conduct” or “classroom disruption.”<sup>27</sup> The ACLU of Texas recommends that the Texas Legislature make it clear that absent a real and immediate threat to persons under their jurisdiction, SROs should refrain from involving themselves in school matters.

To implement this recommendation, the Texas Legislature must eliminate the crimes of “disruption of classes”<sup>28</sup> and “disruption of transportation”<sup>29</sup> under the Texas Education Code. These crimes, both Class C misdemeanors, help further the notion that childish misbehavior rises to the level of a criminal act and thus can, and should be dealt with as a law enforcement matter. The Texas Penal Code already outlines penalties for serious criminal activity, including crimes against person, property and other conduct considered to be crimes against society. If a child commits a Penal Code violation at school, as a last resort he or she may be charged and prosecuted under the Penal Code. By including Class C misdemeanors in the Texas Education Code, the legislature creates confusion and encourages school administrators to criminalize behavior that should be addressed as a school discipline matter. School administrators should only rely on law enforcement in situations where a real and immediate safety threat exists.

<sup>25</sup> Johanna Wald and Lisa Thureau, Charles Hamilton Houston Institute for Race and Justice, “First, Do No Harm,” March 2010.

<sup>26</sup> Brian Thevenot, *School District Cops Ticket Thousands of Students*, The Texas Tribune, June 2, 2010, available at <http://www.texastribune.org/texas-education/public-education/school-district-cops-ticket-thousands-of-students/>.

<sup>27</sup> Brian Thevenot, *School District Cops Ticket Thousands of Students*, The Texas Tribune, June 2, 2010, available at <http://www.texastribune.org/texas-education/public-education/school-district-cops-ticket-thousands-of-students/>.

<sup>28</sup> Texas Education Code §37.124 (a person commits a “disruption of classes” if they “alone or in concert with others[] intentionally disrupt[] the conduct of classes or other school activities.”).

<sup>29</sup> Texas Education Code §37.126 (a person commits a “disruption of transportation” if they “intentionally disrupt[], prevent[], or interfere[] with a the lawful transportation of children to or from school or an activity sponsored by a school on a vehicle owned or operated by a county or independent school district.”).

## Section IV – Use of Force

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### A. The Use of Force Continuum in Texas Public Schools

The “use of force continuum” is a nationally recognized tool intended to guide how much force law enforcement personnel may deploy against a subject, including which types of weapons and physical techniques may be used in a given situation. The theory underlying the continuum is that officers should counter the subject’s resistance with no greater than the minimum level of force required to overcome that resistance. Use of force continuums usually begin with a minimally intrusive force option, such as the mere presence of the law enforcement personnel, and extend to deadly force on the other end.

A sample of ISDs surveyed by the ACLU of Texas employ the following use of force continuums:

#### **El Paso**

1. Police Presence/Verbal Control;
2. Escort;
3. Control and Compliance;
4. Chemical Agents;
5. Unarmed Striking Techniques;
6. Impact Weapon;
7. Police Canines;
8. Deadly or Potentially Deadly Force.<sup>30</sup>

#### **Killeen ISD**

1. Presence;
2. Verbal Commands (Soft Hands);
3. Pepper Spray;
4. Control Techniques (Hard Hands);
5. Baton;
6. Deadly Force.<sup>31</sup>

<sup>30</sup> Texas Public Information Act response from El Paso ISD to ACLU of Texas 7-8, Aug. 4, 2010, (on file with ACLU of Texas).

<sup>31</sup> Texas Public Information Act response from Killeen ISD to ACLU of Texas 10, July 20, 2010, (on file with ACLU of Texas).

### **Austin ISD**

1. Presence;
2. Verbal Direction
3. Soft Empty-Hand Control Techniques;
4. Chemical Weapons (pepper spray);
5. Taser Electronic Control Device;
6. Intermediate Control Techniques;
7. Deadly Force.<sup>32</sup>

### **Dallas ISD**

1. Officer Presence;
2. Verbal Direction;
3. Soft Empty-Hand Techniques;
4. Hard Empty-Hand Techniques;
5. Pepper Spray;
6. Intermediate Weapons;
7. Deadly Force.<sup>33</sup>

### **Tyler ISD**

1. Verbal Command;
2. Open Hand Control;
3. Pepper Spray;
4. Hand to Body Physical Force;
5. Non-Lethal Force;
6. Deadly Force.<sup>34</sup>

The methods of force permitted in the use of force continuum and the order of escalation dictate the way that law enforcement personnel, including SROs, interact with the public and manage conflict. There is enormous variety in the force continuums utilized in public schools. As seen above, a SRO in Killeen ISD may pepper spray a non-violent child if the child fails to follow the SRO's verbal command.<sup>35</sup> In contrast, a SRO in Dallas schools may only use pepper spray if the SRO first tried and failed to gain control of the child using verbal, soft, and hard empty-hand techniques.<sup>36</sup> For example, if a child in a

<sup>32</sup> Texas Public Information Act response from Austin ISD to ACLU of Texas 42-43, July 28, 2010, (on file with ACLU of Texas).

<sup>33</sup> Texas Public Information Act response from Dallas ISD to ACLU of Texas 167, Aug. 16, 2010, (on file with ACLU of Texas).

<sup>34</sup> Texas Public Information Act response from Tyler ISD to ACLU of Texas 53, Aug. 13, 2010, (on file with ACLU of Texas).

<sup>35</sup> Texas Public Information Act response from Killeen ISD to ACLU of Texas 10, July 20, 2010, (on file with ACLU of Texas) ("OC spray may be used when : a) Verbal dialogue has failed to bring about the subject's compliance; and b) the subject has signaled his intention to actively resist the officer's efforts to make the arrest or gain control.").

<sup>36</sup> Texas Public Information Act response from Dallas ISD to ACLU of Texas, 167, Aug. 16, 2010, (on file with ACLU of Texas).

Killeen school declines a SRO's instruction to stand up from a classroom chair, under Killeen's policy the SRO may then pepper spray the child. But if that same child declined a SRO's instruction to stand up from a classroom chair in a Dallas school, the SRO would first have to use bare hands, and, if necessary, physical strikes to gain compliance from the child before using pepper spray.

The wide range of use of force continuums currently employed by SROs in Texas public schools is dangerous to children, parents, educators, and their communities. SRO policies vary so significantly that parents and children cannot know what to expect. The creation of a minimum statewide use of force policy for SROs, including a statewide minimum use of force continuum, will provide children and parents with a clear understanding of when and how a SRO may use force in a public school. In addition, uniform statewide training programs should be developed to further ensure that all SROs in Texas are appropriately trained and consistent in deploying the minimum force necessary to ensure student compliance.

## **B. Tasers and Pepper Spray**

A number of districts permit SROs to carry Tasers and pepper spray, also known as O.C. [Oleoresin Capsicum] spray. The use of these weapons on children may have serious health consequences and should be banned as a force option for controlling public school students.

Tasers are electro-muscular disruption technology devices that can deliver electricity into the victim via two stainless steel barbs. "The electrical impulse instantly overrides the victim's central nervous system, paralyzing the muscles throughout the body, rendering the target limp and helpless. ... The tasered person also experiences an excruciating pain that radiates throughout the body."<sup>37</sup>

Tasers have been heavily marketed to corrections and law enforcement personnel as a way to both improve officer safety and reduce the risk of injury to suspects and incarcerated individuals.<sup>38</sup> A growing body of evidence suggests that both of these claims are false.<sup>39</sup> In fact, a number of reports have concluded that Tasers may have been the

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<sup>37</sup> Bryan v. MacPherson, No. 08-55622, 18915 (9th Cir., Nov. 30, 2010).

<sup>38</sup> TASER X26, <http://www.taser.com/products/law/Pages/TASERX26.aspx> (last visited Feb. 23, 2010).

<sup>39</sup> See e.g. *Less Than Lethal: The Use of Stun Weapons in US Law Enforcement*, Amnesty International (2008); Mark Scholsberg, *Stun Gun Fallacy: How the Lack of Taser Regulation Endangers Lives*, ACLU of Northern California (September 2005); Tim Butz, *Taser Use by Nebraska Law Enforcement Agencies: The Case for Policy Reform*, ACLU of Nebraska (November 2005); *Report of the Maryland Attorney General's Task Force On Electronic Weapons*, (December 2009). Silja J.A. Talvi, *Death By Taser: The Killer Alternative to Guns*, AlterNet, Nov. 18, 2006. available at <http://www.alternet.org/rights/44455/>.

cause of death for a number of individuals who died after being shocked with a Taser.<sup>40</sup> The concerns raised regarding the safety of Tasers<sup>41</sup> are exacerbated by the fact that many ISDs allow for the use of a Taser on a child in less than life-threatening situations. These concerns are reflected in the findings of a recent governmental study that found, “[u]ntil more research is undertaken to clarify the vulnerability of children to Taser currents ... children and persons of small stature should be considered at possible greater risk than adults.”<sup>42</sup> Considering that a number of deaths occurred after adults were subjected to a Taser,<sup>43</sup> the 82nd Legislature should make it a top priority to prohibit the use of a Taser on children.

In addition to being potentially unsafe, Tasers are also unnecessary to ensure the safety in public schools. The Texas Youth Commission – the state’s juvenile corrections agency that houses children convicted of serious crimes, including felonies – does not permit the use of Tasers under its use of force policy.<sup>44</sup> Furthermore, neither of the two largest school districts in Texas (Dallas or Houston) permit the use of Tasers by their SROs.<sup>45</sup>

Pepper spray is a chemical spray that causes “intense burning pain, swelling, reddening, and occasional blistering. [In addition, r]espiratory effects include nasal irritation and a tightening of airways, severe coughing and sneezing, and shortness of breath. Additionally, laryngospasm, or closing of the vocal cords, may result in a blocked airway for up to 45 seconds. Researchers also note a marked increase in heart rate and blood pressure, even in controlled settings. More systemic effects of pepper spray exposure may include disorientation, panic, and loss of motor control.”<sup>46</sup>

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<sup>40</sup> See e.g. *Less Than Lethal: The Use of Stun Weapons in US Law Enforcement*, Amnesty International (2008); Mark Scholsberg, *Stun Gun Fallacy: How the Lack of Taser Regulation Endangers Lives*, ACLU of Northern California (Sept. 2005); Tim Butz, *Taser Use by Nebraska Law Enforcement Agencies: The Case for Policy Reform*, ACLU of Nebraska (Nov. 2005); *Report of the Maryland Attorney General’s Task Force On Electronic Weapons*, (Dec. 2009). Silja J.A. Talvi, *Death By Taser: The Killer Alternative to Guns*, AlterNet, Nov. 18, 2006. available at <http://www.alternet.org/rights/44455/>.

<sup>41</sup> See e.g. *Less Than Lethal: The Use of Stun Weapons in US Law Enforcement*, Amnesty International (2008); Mark Scholsberg, *Stun Gun Fallacy: How the Lack of Taser Regulation Endangers Lives*, ACLU of Northern California (Sept. 2005); Tim Butz, *Taser Use by Nebraska Law Enforcement Agencies: The Case for Policy Reform*, ACLU of Nebraska (Nov. 2005); *Report of the Maryland Attorney General’s Task Force On Electronic Weapons*, (Dec. 2009). Silja J.A. Talvi, *Death By Taser: The Killer Alternative to Guns*, AlterNet, Nov. 18, 2006. available at <http://www.alternet.org/rights/44455/>.

<sup>42</sup> Liliana Segura, *A Recipe for Disaster: School Cops are Being Armed with 50,000-Volt Tasers*, Mother Jones, Sept. 16, 2009, available at [http://www.alternet.org/rights/142652/school\\_cops\\_are\\_now\\_being\\_armed\\_with\\_50,000-volt\\_tasers\\_-\\_guess\\_what%27ll\\_happen/](http://www.alternet.org/rights/142652/school_cops_are_now_being_armed_with_50,000-volt_tasers_-_guess_what%27ll_happen/).

<sup>43</sup> For example, last year a 24-year-old man died after being tasered by a Fort Worth police officer. The autopsy found that the primary cause of death was “sudden death during neuromuscular incapacitation due to application of a conducted energy device[.]” Angela K. Brown, *Fort Worth Taser Death Ruled Homicide*, NBCDFW, Aug. 27, 2009, available at <http://www.nbcdfw.com/news/local-beat/Fort-Worth-Taser-Death-Ruled-Homicide-55512962.html>.) This death was later ruled a homicide, and the City of Fort Worth paid \$2 million to the victim’s family to settle a wrongful death case. *Fort Worth agrees to pay \$2 million in man’s Taser death*, Associated Press, May 18, 2010, available at <http://www.wfaa.com/news/Fort-Worth-agrees-to-pay-2-million-in-mans-death-94144289.html>.

<sup>44</sup> Public Information Act response from Texas Youth Commission response to ACLU of Texas request 29, July 26, 2010, (on file with ACLU of Texas).

<sup>45</sup> Public Information Act response from Dallas ISD to ACLU of Texas 164-67, Aug. 16, 2010, (on file with ACLU of Texas); see also Public Information Act response from Houston ISD to ACLU of Texas request 37-39, Aug. 18, 2010, (on file with ACLU of Texas).

<sup>46</sup> Leah Pinney, “Pepper Spray in the Texas Youth Commission: Research, Review and Policy Recommendations,” Texas Criminal Justice Coalition 2, November 2007.

The inherent dangers involved with deploying pepper spray on children extend beyond the intended target of the spray. As recently witnessed in Texas, the use of pepper spray has resulted in the hospitalization of a number of children not involved in the incident for which the pepper spray was deployed.<sup>47</sup> In April 2009, six children at Hillcrest High School in Dallas were hospitalized and the school had to be evacuated when pepper spray circulated through the school's ventilation system after a SRO used pepper spray to break up a fight.<sup>48</sup> In addition, on Oct. 12, 2009, students were treated for exposure to pepper spray after it was used to break up a fight at Manor High School in Manor ISD.<sup>49</sup> As these episodes highlight, the use of pepper spray can impact both the intended target as well as innocent bystanders. The potential for collateral damage with pepper spray creates an unsafe school environment.

### **C. Transparency and Accountability**

An additional impediment to accountable and safe schools is the lack of transparency in SRO reporting requirements. Under current law, school district police departments and local law enforcement agencies under contract with ISDs are not required to report use of force data to the state, or to make such information searchable in its database. As a result, stakeholders, including parents, school officials, legislators, and the press, lack the ability to access information critical to ensuring that SROs are acting in a manner that makes schools safer and creates a positive learning environment. For example, in the ACLU of Texas' request to Northside ISD Police Department, we requested "[a]ll existing Department records and data on the use of force by Department officers, agents, or employees" for the past two school years.<sup>50</sup> Northside ISD Police Department responded "the only records which may contain the requested information would be the District offense/incident reports. ... To determine if any Department records contain any of the information you are requesting, thousands of Department reports would have to be manually retrieved and researched in order to create a listing of the data as you have requested. Further, the electronic records system which the Department maintains does not provide us with the ability to search Department reports for use of force cases."<sup>51</sup>

While Northside ISD could not provide us with any of this requested information, other districts could provide some, but not all, of the information. For example, Austin ISD responded that "[p]olice records and educational records are two completely separate

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<sup>47</sup> Tawnell D. Hobbs, *Pepper spray prompts evacuation at Hillcrest High*, The Dallas Morning News, April 21, 2009, available at <http://www.dallasnews.com/sharedcontent/dws/dn/education/stories/042109dnmethigh.f93e45aa.html>.

<sup>48</sup> Tawnell D. Hobbs, *Pepper spray prompts evacuation at Hillcrest High*, The Dallas Morning News, April 21, 2009, available at <http://www.dallasnews.com/sharedcontent/dws/dn/education/stories/042109dnmethigh.f93e45aa.html>.

<sup>49</sup> Emily Ramshaw, *Texas Schools Rarely Track Force Against Students*, The Texas Tribune, Nov. 25, 2009, available at <http://www.texastribune.org/texas-education/public-education/tx-schools-rarely-track-force-against-students/>.

<sup>50</sup> Public Information Act request from ACLU of Texas to Northside ISD Police Department, June 29, 2010, (on file with ACLU of Texas).

<sup>51</sup> Public Information Act response from Northside ISD to ACLU of Texas 1, July 13, 2010, (on file with ACLU of Texas).



records” so information concerning the special education status of children subjected to physical force by Austin school district SROs is not available.<sup>52</sup> Furthermore, Austin ISD responded that it does not distinguish between Austin school district students and others involved in incidents, therefore one cannot obtain information concerning only Austin school students involved in use of force incidents with Austin SROs.<sup>53</sup> On the other hand, both Houston and El Paso school districts were able to provide the ACLU of Texas with all of this information, with the exception of information concerning students’ special education status.<sup>54</sup> To remedy this deficiency, the Texas Legislature must mandate that districts with SROs or which contract with local law enforcement maintain a publicly available and searchable database containing all incidents where physical force was used on students.

While the ACLU of Texas did not receive enough data to reach any conclusions regarding disproportionate use of force against students of color, the information we did receive indicates there is a significant risk. For example, in Houston, African American children make up 26.5 percent<sup>55</sup> of the district’s student body, but were involved in 56 percent of use of force incidents between students and SROs during the 2009-2010

*In Houston, African American children make up 26.5 percent of the district’s student body, but were involved in 56 percent of use of force incidents between students and SROs during the 2009-2010 school year, and were involved in 43 percent of the incidents during the prior school year.*

school year, and were involved in 43 percent of the incidents during the prior school year.<sup>56</sup> State law requiring adequate and consistent data collection is the only way to monitor the use of force against different student demographic groups and facilitate the development of interventions to remedy discrimination if it exists.

A final obstacle to ensuring that SROs contribute to a transparent and safe school environment is the exemption under the Texas Public Information Act regarding the “release of [an] internal record or notation [that] would interfere with law enforcement or prosecution.”<sup>57</sup>

<sup>52</sup> Public Information Act response from Austin ISD to ACLU of Texas 4, July 28, 2010 (on file with ACLU of Texas).  
<sup>53</sup> Public Information Act response from Austin ISD response to ACLU of Texas 4-5, July 28, 2010, (on file with ACLU of Texas).  
<sup>54</sup> Public Information Act response from Houston ISD to ACLU of Texas 461-465, Aug. 18, 2010, (on file with ACLU of Texas); Public Information Act response from El Paso ISD to ACLU of Texas 3, Aug. 4, 2010, (on file with ACLU of Texas).  
<sup>55</sup> Facts and Figures About HISD, 2010 Facts and Figures, <http://www.houstonisd.org/HISDConnectDS/v/index.jsp?vgnextoid=62c6757761efc010VgnVCM10000052147fa6RCRD> (last visited Dec. 16, 2010).  
<sup>56</sup> Public Information Act response from Houston ISD response to ACLU of 463, 465, Aug. 18, 2010, (on file with ACLU of Texas).  
<sup>57</sup> Texas Government Code §552.108(b)(1).

This exemption has been interpreted by the Texas Attorney General to permit law enforcement agencies in Texas, including school district police departments, to withhold their use of force policies.<sup>58</sup> The Texas Public Information Act (Chapter 552 of the Texas Government Code) enables Texans to receive and review information collected, assembled or maintained by or for a Texas government body. The Texas Legislature must amend the Texas Public Information Act to ensure that parents, children and other stakeholders are aware of how and when a SRO can employ force against a child in Texas' public schools. The current interpretation of this exemption runs counter to the idea of transparent and accountable government. Furthermore, the fact that major ISDs and regular law enforcement agencies have waived this right to withhold their use of force policies shows that the concern about "interfere[nce] with law enforcement" is unfounded.

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<sup>58</sup> Open Records Decision No. 531 at 2 (1989) (quoting *Ex Parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977), see also *City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App., Austin 2002, no pet.).



## Section V – Conclusion and Recommendations

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The ACLU of Texas found that the mission of and reporting structure for SROs in Texas lacks basic government accountability and transparency mechanisms. As a result, parents, school administrators and other stakeholders lack the information necessary to ensure that SROs are acting in a manner that makes schools and children safer while also fostering a positive learning environment. Furthermore, the criminalization of childish misbehavior, previously handled as a school disciplinary matter, has led in many cases to the “municipal courthouse becom[ing] the new principal’s office.”<sup>59</sup> These deficiencies are compounded when factoring in the lack of relevant training required for SROs.

The lack of government accountability and training creates a major threat to Texas’ families and their children. The economic future of this great state depends on the success of our students. It is a documented fact that students who drop out of school often have a history of disciplinary problems.<sup>60</sup> In addition to initiating alternative approaches to discipline, we must ensure SROs receive relevant training to better enable them to support the educational environment.

When dropouts from a single graduating class cost Texas between \$6 billion and \$10.7 billion over their lifetimes, Texas cannot afford to wait.<sup>61</sup> By ensuring that SROs are accountable to the people and act in a transparent manner, the Texas Legislature will help make Texas’ schoolchildren safer and the state’s economic future more secure.

To ensure these goals, the ACLU of Texas makes the following policy recommendations:

- ◆ **Ticketing: Ensure that the role of School Resource Officers is to improve school safety, not to discipline children.** Absent a real and immediate threat to persons under their jurisdiction, SROs should refrain from involving themselves in school disciplinary matters. Unfortunately, the current role of SROs in many schools puts them, and not education experts, in charge of school discipline, even in primary schools. To help clarify the role of SROs, legislators should curb the ability of SROs to issue criminal citations for behavior that should be considered a school-related disciplinary issue, including elimination of “disruption of classes”<sup>62</sup> and “disruption of transportation”<sup>63</sup> as crimes under the Texas Education Code.

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<sup>59</sup> Brian Thevenot, *School District Cops Ticket Thousands of Students*, The Texas Tribune, June 2, 2010, available at <http://www.texastribune.org/texas-education/public-education/school-district-cops-ticket-thousands-of-students/>.

<sup>60</sup> Deborah Fowler, Texas Appleseed, “Texas School-to-Prison Pipeline; Dropout to Incarceration,” p. 33, October 2007.

<sup>61</sup> Roman Alvarez, et. al., “The ABCD’s of Texas Education: Assessing the Benefits and Costs of Reducing the Dropout Rate,” May 2009.

<sup>62</sup> Texas Education Code §37.124 (a person commits a “disruption of classes” if they “alone or in concert with others[] intentionally disrupt[] the conduct of classes or other school activities.”).

<sup>63</sup> Texas Education Code §37.126 (a person commits a “disruption of transportation” if they “intentionally disrupt[], prevent[], or interfere[] with the lawful transportation of children to or from school or an activity sponsored by a school on a vehicle owned or operated by a county or independent school district.”).

◆ **Training: Provide SROs with appropriate training.** The authority granting school districts the power to deploy SROs on their campuses lacks specific language to ensure that SROs are trained to deal with children. Despite obvious differences between apprehending adults on the street and monitoring the safety of children in a school, SROs are currently only required to “meet the minimum standards for peace officers established by the Commission on Law Enforcement Officer Standards and Education.”<sup>64</sup> Legislators should amend the Texas Education Code to ensure that SROs receive extensive training that will prepare them for the numerous mental and physical issues involved when interacting with children.

◆ **Reporting: Parents have the right to know how SROs will treat their children at school.** Under current law, school police departments and local law enforcement agencies contracting with them are not required to report use of force data. To remedy this deficiency, legislators should require schools to maintain a publicly available and searchable database containing details of all incidents where physical force was used by SROs on students. This database should include information that identifies:

- ✧ Student’s offense/reason for arrest/use of force;
- ✧ Type of force used;
- ✧ Campus/location where the incident took place;
- ✧ The year in which the incident occurred;
- ✧ SRO’s race/ethnicity;
- ✧ Student’s age and grade;
- ✧ Student’s gender;
- ✧ Student’s race/ethnicity;
- ✧ Student’s special education status;
- ✧ Student’s eligibility for free or reduced lunch.

◆ **Transparency: Legislators should clarify that the Texas Public Information Act requires law enforcement agencies to disclose their use of force policies.** Many ISD and regular law enforcement agencies already freely disclose their use of force policies; such an amendment would simply hold all Texas law enforcement agencies to the same standard.

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<sup>64</sup> Texas Education Code §37.081(h).

◆ **Safety: Create a statewide use of force policy for school district police departments and other law enforcement agencies engaged in policing schools.**

Records received from various schools and police departments indicate wide variation across the state in use of force policies used by SROs. By creating a standardized statewide use of force policy, all stakeholders, including SROs, parents, children, teachers, and school administrators, would have a common understanding of how and when SROs can deploy physical force. In addition, a minimum statewide use of force policy could be incorporated into statewide training requirements and put all Texas SROs on the same page.

◆ **Safety: Prohibit the use of dangerous and/or imprecise weapons on schoolchildren.**

An increasing amount of evidence suggests that Tasers may be a cause of death for a number of adult individuals who died after being shocked with a Taser.<sup>65</sup> Considering that a number of adults have died after being subjected to a Taser, the 82nd Legislature should make it a top priority to prohibit the use of Tasers on children.<sup>66</sup> In addition to being potentially unsafe, Tasers are also unnecessary to ensure safety in public schools. The Texas Youth Commission and the two largest school districts in Texas (Dallas and Houston) prohibit the use of Tasers by their SROs.<sup>67</sup> The legislature must also prohibit the use of pepper spray by SROs. The use of pepper spray can impact both the intended target as well as innocent bystanders. Such collateral damage should not be permitted in Texas' public schools.

◆ **Funding: Ensure transparency in funding generated from school ticketing.**

The legislature should require all districts to report any funds generated from Class C misdemeanors committed on school property. In addition, legislators should bolster alternative approaches to school discipline such as Positive Behavioral Interventions and Supports.

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<sup>65</sup> See e.g. *Less Than Lethal: The Use of Stun Weapons in US Law Enforcement*, Amnesty International (2008); Mark Scholsberg, *Stun Gun Fallacy: How the Lack of Taser Regulation Endangers Lives*, ACLU of Northern California (Sept. 2005); Tim Butz, *Taser Use by Nebraska Law Enforcement Agencies: The Case for Policy Reform*, ACLU of Nebraska (Nov. 2005); *Report of the Maryland Attorney General's Task Force On Electronic Weapons*, (Dec. 2009). Silja J.A. Talvi, *Death By Taser: The Killer Alternative to Guns*, AlterNet, Nov. 18, 2006, available at <http://www.alternet.org/rights/44455/>.

<sup>66</sup> For example, last year a 24-year-old man died after being tasered by a Fort Worth police officer. The autopsy found that the primary cause of death was "sudden death during neuromuscular incapacitation due to application of a conducted energy device[.]" Angela K. Brown, *Fort Worth Taser Death Ruled Homicide*, NBCDFW, Aug. 27, 2009, available at <http://www.nbcdfw.com/news/local-beat/Fort-Worth-Taser-Death-Ruled-Homicide-55512962.html>.) This death was later ruled a homicide, and the City of Fort Worth paid \$2 million to the victim's family to settle a wrongful death case. *Fort Worth agrees to pay \$2 million in man's Taser death*, Associated Press, May 18, 2010, available at <http://www.wfaa.com/news/Fort-Worth-agrees-to-pay-2-million-in-mans-death-94144289.html>).

<sup>67</sup> Public Information Act response from Texas Youth Commission response to ACLU of Texas request 29, July 26, 2010, (on file with ACLU of Texas); see also Public Information Act response from Dallas ISD to ACLU of Texas 164-67, Aug. 16, 2010, (on file with ACLU of Texas); see also Public Information Act response from Houston ISD to ACLU of Texas request 37-39, Aug. 18, 2010, (on file with ACLU of Texas).



## Appendix A

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### Police Departments in Texas Independent School Districts

ALDINE ISD  
ALEDO ISD  
ALIEF ISD  
ALVIN ISD  
ANGLETON ISD  
ARANSAS CO. ISD  
ARANSAS PASS ISD  
ATHENS ISD  
AUSTIN ISD  
AZLE ISD  
BARBERS HILL ISD  
BAY CITY ISD  
BEAUMONT ISD  
BLOOMING GROVE ISD  
BRIDGE CITY ISD  
BROWNSVILLE ISD  
BUNA ISD  
CALDWELL ISD  
CALHOUN COUNTY ISD  
CARRIZO SPRINGS CISD  
CASTLEBERRY ISD  
CEDAR HILL ISD  
CENTER ISD  
CENTRAL ISD  
CHINA SPRING ISD  
CHISUM ISD  
CLEVELAND ISD  
COLDSRING-OAKHURST CISD  
COLUMBIA-BRAZORIA ISD  
COMMERCE ISD  
CONNALLY ISD  
CONROE ISD  
CORPUS CHRISTI ISD



CORSICANA ISD  
CRANDALL ISD  
CRYSTAL CITY ISD  
CUSHING ISD  
DALLAS ISD  
DIBOLL ISD  
DONNA ISD  
DUMAS ISD  
EAGLE PASS ISD  
EAST CENTRAL ISD  
ECTOR COUNTY ISD  
EDGEWOOD ISD  
EDINBURG CISD  
EL PASO ISD  
ENNIS ISD  
FAIRFIELD ISD  
FERRIS ISD  
FLORESVILLE ISD  
FORT BEND ISD  
FRENSHIP ISD  
GAINESVILLE ISD  
GALVESTON ISD  
GARRISON ISD  
GRANGER ISD  
HALLSVILLE ISD  
HARLANDALE ISD  
HEMPSTEAD ISD  
HIGHLAND PARK ISD  
HOUSTON ISD  
HUDSON ISD  
HUGHES SPRINGS ISD  
HUMBLE ISD  
HUNTINGTON ISD  
IOWA PARK ISD  
JACKSONVILLE ISD  
JEFFERSON ISD  
JIM HOGG CO. ISD

JUDSON ISD  
KATY ISD  
KAUFMAN ISD  
KEMP ISD  
KILLEEN ISD  
KLEIN ISD  
LA JOYA ISD  
LA MARQUE ISD  
LA VEGA ISD  
LANCASTER ISD  
LAREDO ISD  
LEONARD ISD  
LEXINGTON ISD CAMPUS POLICE  
LIBERTY HILL ISD  
LIBERTY-EYLAU ISD  
LINDEN-KILDARE CISD  
LOS FRESNOS ISD  
LUBBOCK ISD  
LUBBOCK-COOPER ISD  
LUFKIN ISD  
LYFORD CISD  
MADISONVILLE CISD  
MALAKOFF ISD  
MANSFIELD ISD  
MCALLEN ISD  
MCLEOD ISD  
MEXIA ISD  
MIDLAND ISD  
MONAHANS-WICKETT-PYOTE ISD  
MONTGOMERY ISD  
MOUNT PLEASANT ISD  
MOUNT VERNON ISD  
NACOGDOCHES ISD  
NEEDVILLE ISD  
NEW CANEY ISD  
NORTH EAST ISD  
NORTH FOREST ISD

NORTHSIDE ISD  
PALACIOS ISD  
PARADISE ISD  
PASADENA ISD  
PFLUGERVILLE ISD  
PHARR-SAN JUAN ISD  
PITTSBURG ISD  
PLEASANTON ISD  
POINT ISABEL ISD  
PORT ARTHUR ISD  
POST ISD  
PRESIDIO ISD  
QUINLAN ISD  
RAINS ISD  
RAYMONDVILLE ISD  
RED OAK ISD  
RICE ISD POLICE DEPARTMENT  
RIO GRANDE CITY CISD  
RIO HONDO ISD  
RIVERCREST ISD  
ROBINSON ISD  
ROBSTOWN ISD  
ROMA ISD  
ROOSEVELT ISD  
ROYAL ISD  
SAN ANGELO ISD  
SAN ANTONIO ISD  
SAN ANTONIO TECH ACADEMY  
SAN BENITO ISD  
SAN FELIPE-DEL RIO ISD  
SANTA FE ISD  
SANTA MARIA ISD  
SANTA ROSA ISD  
SCHERTZ-CIBOLO-UNIVERSAL CITY ISD  
SEALY ISD  
SHALLOWATER ISD  
SHELBYVILLE ISD

SHEPHERD ISD  
SOCORRO ISD  
SOMERSET ISD  
SOUTH SAN ANTONIO ISD  
SOUTHSIDE ISD  
SOUTHWEST ISD  
SPLENDORA ISD  
SPRING BRANCH ISD  
SPRING HILL ISD  
SPRING ISD  
SPURGER ISD  
SULPHUR SPRINGS ISD  
SWEENEY ISD  
TAFT ISD  
TAHOKA ISD  
TERRELL ISD  
TEXARKANA ISD  
TEXAS CITY ISD  
TIDEHAVEN ISD  
TIMPSON ISD  
TYLER ISD  
UNITED ISD  
VAN ALSTYNE ISD  
VAN ISD  
VIDOR ISD  
WACO ISD  
WESLACO ISD  
WHARTON ISD  
WHITE SETTLEMENT ISD  
WICHITA FALLS ISD  
WINNSBORO ISD  
WODEN ISD  
WOODVILLE ISD  
YSLETA ISD



## Appendix B

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### U.S. Dept. of Justice

#### Sample Use of Force Continuum (with definitions)<sup>68</sup>

- ◆ **Officer Presence** – No force is used. Considered the best way to resolve a situation.
  - ◇ The mere presence of a law enforcement officer works to deter crime or diffuse a situation.
  - ◇ Officers' attitudes are professional and nonthreatening.
- ◆ **Verbalization** – Force is not-physical.
  - ◇ Officers issue calm, nonthreatening commands, such as “Let me see your identification and registration.”
  - ◇ Officers may increase their volume and shorten commands in an attempt to gain compliance. Short commands might include “Stop,” or “Don't move.”
- ◆ **Empty-Hand Control** – Officers use bodily force to gain control of a situation.
  - ◇ *Soft technique*. Officers use grabs, holds and joint locks to restrain an individual.
  - ◇ *Hard technique*. Officers use punches and kicks to restrain an individual.
- ◆ **Less-Lethal Methods** – Officers use less-lethal technologies to gain control of a situation.
  - ◇ *Blunt impact*. Officers may use a baton or projectile to immobilize a combative person.
  - ◇ *Chemical*. Officers may use chemical sprays or projectiles embedded with chemicals to restrain an individual (e.g., pepper spray).
  - ◇ *Conducted Energy Devices (CEDs)*. Officers may use CEDs to immobilize an individual. CEDs discharge a high-voltage, low-amperage jolt of electricity at a distance.
- ◆ **Lethal Force** – Officers use lethal weapons to gain control of a situation. Should only be used if a suspect poses a serious threat to the officer or another individual.
  - ◇ Officers use deadly weapons such as firearms to stop an individual's actions.

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<sup>68</sup> U.S. Dept. of Justice, National Institute of Justice, Police Use of Force – The Use-Of-Force-Continuum, available at <http://www.ojp.usdoj.gov/nij/topics/law-enforcement/officer-safety/use-of-force/continuum.htm>.



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