



ATTORNEY GENERAL OF TEXAS  
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## Search and Seizure Issues In Schools

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### What Does the Constitution Say?

- ▶ "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated..."
- ▶ 4th Amendment, U.S. Constitution
- ▶ "The people shall be secure in their persons, houses, papers and possessions, from all unreasonable seizures or searches..."
- ▶ Art. I, § 9, Texas Constitution

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### What are the Consequences of an Illegal Search?

- ▶ Evidence obtained after illegal stop, illegal search or illegal seizure is excluded from evidence in court  

Art. 38.23, CCP
- ▶ Evidence illegally seized or obtained is inadmissible in an adjudication hearing.  

§54.03(3), Family Code
- ▶ A school official may incur civil liability for wrongfully searching a student in violation of his or her 4th Amendment rights.  

See, 42 U.S.C.A. §1983
- ▶ Law enforcement may incur civil liability for clearly unconstitutional action.  

See, Beard v. Whitmore

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### The Exclusionary Rule

- ▶ Evidence obtained after
  - Illegal stop,
  - Illegal search or
  - Illegal seizure
- ▶ Is excluded from evidence in court  
CCP 38.23

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### The Family Code

- ▶ Evidence illegally seized or obtained is inadmissible in an adjudication hearing.  
Texas Family Code §54.03(e)

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### What Is a "Seizure"?

- ▶ A government official interfering with a person's **freedom of movement or**
- ▶ **Possessory interest** in property.
- ▶ Includes: Traffic stops, shoplifting detentions.

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**"The Terry Stop"**

- ▶ *Terry v. Ohio*, 392 U.S. 1 (1968)
- ▶ "Particular facts and inferences rationally drawn from those facts that, when viewed under the totality of circumstances and in light of the officer's experience, create a reasonable suspicion that criminal activity is afoot."

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**Restraint of Freedom**

*Brendlin v. Cal.*, 127 S. Ct. 2400 (2007)

- ▶ Officers stopped a car to check its registration without reason to believe it was being operated unlawfully.
- ▶ Officer recognized passenger as a parole violator; arrested and searched him.
- ▶ Argued: No probable cause to stop the vehicle.
- ▶ Held: A passenger is seized and entitled to challenge action when officers, by force or a show of authority, terminate or restrain the person's freedom of movement. A reasonable person as a passenger would not feel free to terminate police interaction.

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**Handcuffing Not Arrested**

*In re: J.D.B.*, No.14-05-00659-CV, (14th 2006)

- ▶ Officer stops vehicle matching description of suspicious activity
- ▶ Evasive answers; two occupants to one officer
- ▶ Handcuffs driver while witness arrives
- ▶ Issue: Is juvenile arrested (without probable cause) upon handcuffing?
- ▶ HELD: Handcuffing a suspect during temporary investigative detention may be reasonable and not amount to an arrest.

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### What Is a "Search?"

Conduct by a government official that intrudes into a protected privacy interest.

- ▶ "Peeking", "poking" or "prying" into places or items shielded from public view.
- ▶ "Frisks" or "pat-downs" by officials.
- ▶ Includes: lockers, desks, purses, handbags, backpacks, briefcases, folders, books, containers or articles of clothing.
- ▶ Includes: Reading material in a book, journal, diary, letter, note, cell phone or an appointment calendar.

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### Weapons Frisk

- ▶ *Terry v. Ohio*, 392 U.S. 1 (1968)
- ▶ Person must be lawfully detained
- ▶ Officer must articulate reasonable concern based upon facts that person is armed and dangerous
  - Not standard operating procedure
  - Not blanket words: "for officer safety"
- ▶ Allows officer to investigate without fear of violence

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### Stop and Frisk

*Arizona v. Johnson*, 129 S. Ct. 781 (2008)

- ▶ Officer stopped car on traffic in Crips neighborhood.
- ▶ Officer noticed passenger's clothing, bandana and a scanner was in Johnson's pocket.
- ▶ Officer asked passenger to step out and frisked him.
- ▶ Officer felt butt of gun in Johnson's waistband.
- ▶ Held: A passenger is seized when a vehicle is stopped for investigation of a traffic violation. Officers who conduct routine traffic stops may perform a pat-down of a driver and any passengers upon reasonable suspicion that they are armed and dangerous.

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### Weapons Frisk

*In re: K.E., No. 04-03-00504-CV (San Antonio 2004)*

- ▶ Officer stopped 16 year old at 1:00 p.m. in a high crime area on a school day.
- ▶ Because K.E. was wearing a jacket on a warm day, the officer conducted a weapons frisk for his safety.
- ▶ As he was being frisked, K.E. reached into his pocket and dropped a piece of paper containing cocaine.
- ▶ Held: Detention justified for curfew violation; jacket and high crime area justified weapons frisk.

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### Pat-Down Search

*Chism, No. 06-09-00045-CR (6th 2009)*

- ▶ Officer responded to panhandling complaint.
- ▶ Conducted a pat-down for officer safety as a matter of routine and recovered a pill bottle with cocaine residue.
- ▶ Held: "Based on the totality of the circumstances and the facts known to (the officer) at the moment of the pat down, we find the facts do not support a reasonably prudent concern for officer safety and that the resultant weapons pat down was unjustified."

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### Probable Cause

- ▶ Articulate facts and circumstances that make it more likely than not
- ▶ that a person committed or is committing an offense or
- ▶ that contraband is located in a particular place (in order to search the place).

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 **Lawfully in Custody**

§52.01 Texas Family Code

- ▶ Pursuant to a court order
- ▶ Directive to apprehend
- ▶ Probable cause arrest
- ▶ On-sight arrest
- ▶ On-sight violation of probation
- ▶ A probation officer may take a child into custody upon probable cause of a violation of probation or a condition of release

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 **Is it a Search?**

L.J., No. 03-04-00807-CV (Austin 2005)

- ▶ Facts: Officer conducting an investigative “knock and talk”
- ▶ Juvenile opens the door with a string of twisted plastic wrap hanging from her blouse which officer reaches out and grabs.
- ▶ Held: “Reaching a hand across the threshold of house was warrantless search” but reasonable and justified by probable cause and the exigent circumstances.

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 **U.S. Supreme Court**

*Kentucky v. King*, \_\_\_ U.S. \_\_\_ (2011)

- ▶ Police followed a suspected drug dealer to an apartment; smelled marijuana, knocked loudly and announced “police”.
- ▶ Officer testified to hearing noises consistent with destruction of evidence; announced intent to enter and kicked in the door.
- ▶ Drugs in plain view.
- ▶ Held: The exigent circumstances rule applies when the police do not create the exigency by engaging or threatening to engage in conduct that violates the 4th Amendment.

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### When is Consent Valid?

Must be Knowing and Voluntary

- ▶ By a person with authority to consent.
- ▶ No duress or coercion, either express or implied.
- ▶ Avoid a "coercive atmosphere."
- ▶ Consensual search is limited by the consent.
- ▶ Courts use "totality of the circumstances" test.
- ▶ Written or recorded consent helpful, but not required.

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### Voluntary

- ▶ Factors considered by Courts:
  - Show of force or authority by officers
  - Threats to get a warrant or canine unit
  - Maturity, mental or emotional state of individual
  - Prior or subsequent refusal by individual
  - Knowledge of Constitutional rights

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### Consent to Search

*D.G.*, 96 S.W.3d 465 (Austin 2002)

- ▶ School resource officer received a tip that a high school student was selling crack concealed in the hood of his sweatshirt.
- ▶ He approached D.G. at a gas station, asking if he had anything that he shouldn't have. Student: "No."
- ▶ Officer asked for permission to search and student said "Go ahead." Student placed his hands on the wall. Pat-down revealed crack in the hood of his sweatshirt.
- ▶ Held: Stop was reasonable and D.G. voluntarily consented to the search.

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**Consent to Search**

*L.C., No. 03-02-070-CV(Austin 2003)*

- ▶ 15 year old who said "ok" or "all right" as he held out his arms to be searched by police gave valid consent.
- ▶ Re-affirms *In re: D.G.*
- ▶ Valid consent must be:
  - Voluntary
  - Freely given
  - Positive and unequivocal
  - Not coerced by implied threat or covert force and
  - Not a mere acquiescence to a claim of lawful authority.

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**Consent to Search**

*In re: R.S.W., No. 03-04-00570-CV (Austin 2006)*

- ▶ Officer dispatched regarding "juveniles smoking marijuana".
- ▶ 11:30 pm sees RSW on hike and bike trail; dusk to dawn curfew; dark area; warm night, yet long-sleeved hooded red sweatshirt; RSW appeared "nervous, shaking with hands in shirt".
- ▶ Asked RSW to remove hands from shirt, frisked; felt something in pocket; asked RSW to remove item; tried to hide it; asked "what is it?" RSW: "it's weed."
- ▶ HELD: Search was based upon voluntary consent.

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**Involuntary Consent**

*In re R.J., No. 12-03-00380-CV (Tyler 2004)*

- ▶ Routine traffic stop, juvenile signs citation, Officer asks for consent to search, juvenile refuses, so Officer explains about canine sniffs and now juvenile consents
- ▶ HELD: Not a voluntary consent; voluntary consent must not be due to either physical or psychological pressure
- ▶ Factors reviewed: Age, no prior experience with law enforcement, unfamiliar with 4th Amendment rights, canine sniff and subsequent search appeared inevitable

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### Unequivocal Consent

*Meekins*, \_\_\_ S.W.3d \_\_\_ (CCA 2011)

- ▶ Drug house surveillance; def leaves drug house and fails to signal leading to a traffic stop
- ▶ In a 30 second conversation, officer requests consent to search car six times; finally defendant says: "I guess."
- ▶ Contested the search as coercive due to the officer's tone, manner, "rapid-fire" requests to search and defendant's equivocal response.
- ▶ HELD: Consensual under totality of circumstances (but could've gone either way).

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### Coercive Atmosphere

*Jones v. Latexo ISD*, 499 F.Supp. 223(E.D. Tex 1980)

- ▶ High school students were incapable of exercising unconstrained free will when asked to empty pockets or open cars for search because accustomed to receiving orders and obeying orders from school officials.
- ▶ Students were repeatedly "threatened" with calls to mom and getting a warrant if they did not cooperate.

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### What Rights do Students Have?

According to the U.S. Supreme Court...

- ▶ Students do not "shed their constitutional rights... at the schoolhouse gate."  
*Tinker v. Des Moines*
- ▶ The 4th Amendment does apply to students while on school grounds.  
*New Jersey v. T.L.O.*
- ▶ School officials need not follow strict procedures that govern police-initiated searches.  
*New Jersey v. T.L.O.*
- ▶ The nature of students' rights depends on what is appropriate for children in school.  
*Vernonia SD v. Acton*

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### The Balancing Test

*New Jersey v. T.L.O.*, 469 U.S. 325 (1985)

- ▶ U.S. Supreme Court established that the 4th Amendment applies to students in public schools in a diminished capacity.
- ▶ School officials must answer two questions:
  - Was the search reasonable at its inception?
  - Was the search reasonable in its scope, duration and intensity?

**Held:** Although the student enjoyed an expectation of privacy, the search of her purse was reasonable under the circumstances.

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### What are reasonable grounds for a search?

- ▶ 1. That a law or a school rule has been broken
- ▶ 2. That a particular student (or a group of identifiable students) has committed the violation
- ▶ 3. That the violation is the kind for which there may be physical evidence and
- ▶ 4. That the evidence will be found in a particular place associated with the suspected student(s).

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### Probable Cause on Campus

*Sloboda v. State*, 747 S.W.2d 20 (S.A. 1988)

- ▶ Student was seen tossing an empty beer can to the side of his car at a high school football game.
- ▶ He was detained and unopened beers were seen in plain view in the back seat of his locked car.
- ▶ Inside the car, the officer smelled marijuana, which justified a search of the entire vehicle for drugs.
- ▶ Held: The marijuana was admissible. Officer had probable cause to detain/arrest student and probable cause to search student's car for marijuana.

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**Weapons Pat-Down**

*In re: A. T.H., 106 S.W.3d 338 (Austin 2003)*

- ▶ Anonymous caller told school resource officer that four juveniles were smoking marijuana near an Austin High School.
- ▶ One was identified as wearing a D Sanders football jersey. School resource officer found the student, did a **pat-down for weapons** as student removed a plastic baggie from his pocket.
- ▶ Held: The school resource officer had no reasonable suspicion to conduct a weapons frisk. The tip was not corroborated by independent observations giving rise to reasonable suspicion that any criminal activity was afoot.

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**Pat-down Search**

*Russell v. State, 74 S.W.3d 887 (Waco 2002)*

- ▶ High school parking lot attendant noticed three students smoking in a car in the parking lot.
- ▶ Principal took them to the office. Russell started "messing" with a pocket of his baggy shorts.
- ▶ Russell refused to empty his pockets, so school resource officer conducted a pat down search and found marijuana.
- ▶ Held: The officer "had reasonable grounds for suspecting that the search would turn up evidence that Russell had violated or was violating the law or school rules."

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**Pat-down Search**

*Landry v. State, No. 14-03-01254-CR (14<sup>th</sup> 2005)*

- ▶ Officer observed two students returning to campus in violation of closed campus rules. Testified in his experience students leave campus when up to no good and could return with weapons or contraband.
- ▶ Principal took them to the office. Landry started "fumbling" inside her purse; officer feared for safety and gave the purse to the principal who pulled out marijuana.
- ▶ Held: The principal "had reasonable grounds for suspecting the search would turn up evidence that Landry had violated or was violating the law or school rules."

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**School Officials and Anonymous Tips**

*K.C.B., 141 S.W.3d 303 (Austin 2004)*

- ▶ Middle school hall monitor received anonymous tip from student that K.C.B. had marijuana in his underwear.
- ▶ Vice Principal asked K.C.B. to lift his shirt, extended the elastic on his shorts and observed a plastic bag containing marijuana in his waistline.
- ▶ Held: "The presence of drugs... does not tip the balance far enough for the search in this case to be deemed justified at its inception. Immediacy of action is not as necessary as could be found with a tip regarding a weapon."

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**School Officials and Tips**

*B.R.P., No. 03-07-00106-CV(Austin 2007)*

- ▶ VP received tip from student that BRP and another student hung out and sold drugs in a school bathroom.
- ▶ VP found BRP in hall 30 – 45 minutes late to class; asked BRP to go to office to discuss tardiness; BRP became nervous and said he had to go to the bathroom really bad; subsequent search revealed a plastic bag containing marijuana in his inhaler.
- ▶ Held: "Considered in their totality, these factors provide "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."

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**Pocket Search**

*Wilcher v. State, 876 S.W.2d 466 (El Paso 1994)*

- ▶ School official asked an school resource officer to bring a student to the office on a report he was carrying a gun at school.
- ▶ Student was brought in the next day and the school resource officer asked him to empty his pockets, producing a pager, lighter, over \$1,000 cash and two bags of marijuana.
- ▶ Student: school resource officer only had authority to do "pat down."
- ▶ Held: (1) Search was reasonable from its inception; and (2) Reasonable in scope due to the circumstances.

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**Reasonable Search of Book Bag**

*Coffman, 782 S.W.2d 249 (14th Dist. 1989)*

- ▶ Assistant principal saw Coffman in the hall during class.
- ▶ Coffman ignored the request for a hall permit.
- ▶ When confronted, he clutched his book bag, kept walking and became "excited and aggressive."
- ▶ Student opened the bag only after the threat to call law enforcement. A gun was inside the bag.
- ▶ Held: There was a reasonable suspicion that he was doing something illegal and was trying to hide it.

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**Reasonable Search of Book Bag**

*Briseno, No. 05-02-01630-CR (Dallas 2003)*

- ▶ Vice Principal saw Briseno in the hall during class.
- ▶ Briseno provided evasive answers to "where's your class"; allowed V.P. to follow Briseno to the wrong class and then requested to stop at locker for supplies; upon arrival to the correct class immediately dropped back pack with another student and teacher verified Briseno did not need supplies.
- ▶ V.P. found MJ in back pack and officer located cocaine in Briseno's pockets.
- ▶ Held: There was reasonable suspicion that he was in possession of contraband and was trying to hide it.

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**Reasonable Locker Search**

*Shoemaker, 971 S.W.2d 178 (Beaumont 1998)*

- ▶ Teacher's wallet stolen from closet in her office.
- ▶ Student was only person in the office before theft.
- ▶ Teacher searched locker and found three credit cards.
- ▶ Apply the test:
  - (1) Search was justified at its inception.
  - (2) Search was reasonably related in scope to the circumstances justifying the search to begin with.

**Held:** Student without reasonable expectation of privacy in locker under school's locker policy.

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**Unreasonable Search**

*Coronado v. State*, 835 S.W.2d 636 (CCA 1992)

- ▶ V.P. was told a student was leaving school to attend his grandfather's funeral, but grandfather had not died. Student denied driving to school, but pat down revealed car keys.
- ▶ Search of car revealed drugs and a weighing scale commonly used in the drug trade.
- ▶ V.P. had reasonable grounds to believe student violating rules, thus "pat-down" for keys was justified. Vehicle search was not reasonably related in scope to the circumstances which initially justified the student's detention.

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**Search of Probationer at School**

*In re: D.D.B.*, No. 03-99-00030-CV(Austin 2000)

- ▶ DDB was on probation and attended public school.
- ▶ Two residential treatment officers received a tip that he was selling marijuana at school.
- ▶ They went to DDB's school, conducted a search and found cash and a powdery substance (cocaine).
- ▶ Held: Probationer with diminished expectation of privacy. "School checks are a reasonable intrusion into student probationers' privacy because they are attending a public school, and the need to protect the other students justifies this intrusion."

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**Unreasonable Sniff Search**

*Horton v. Goose Creek ISD*, 690 F.2d 470 (5th Cir. 1982)

- ▶ Classroom sniff by trained dogs walking aisles.
- ▶ Dogs "alerted" by scratching and barking at students.
- ▶ The sniffing of individual students was a search.
- ▶ Held: "The intrusion on dignity and personal security that goes with the type of canine inspection of the student's person involved in this case cannot be justified by the need to prevent abuse of drugs and alcohol when there is no individualized suspicion..."

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### Reasonable Drug Testing

*Vernonia SD v. Acton, 515 U.S. 646 (1995)*

- ▶ School district adopted a policy of random urinalysis to test all student-athletes.
- ▶ Supreme Court balanced students' privacy interest and government interest in deterring student drug use.
- ▶ Supreme Court noted that student-athletes enjoy a reduced expectation of privacy.
- ▶ Held: School district's policy was reasonable under these limited and specific circumstances.

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### Reasonable Drug Testing

*Bd Education v. Earls, 122 S.Ct. 2559 (2002)*

- ▶ Oklahoma ISD required all middle and high school students to consent to drug testing to participate in any extra-curricular activities like choir, band, FHA.
- ▶ Held: The policy is a reasonable means of furthering the school's interest in preventing and deterring drug use among students and does not violate the 4th Amendment.
- ▶ These students have a limited expectation of privacy. The invasion on students' privacy is not significant.

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### Strip Searches

Is the suspected infraction related to health or safety?

- ▶ HELD: Reasonable
  - *Widener v. Frye*, 809 F.Supp. 35 (S.D.Ohio 1992): student appeared under influence of marijuana
  - *Cornfield v. CHSD*, 991 F.2d 1316 (7th Cir. 1993): believed student was hiding drugs
- ▶ HELD: Unreasonable
  - *Oliver v. McClung*, 919 F.Supp. 1206 (N.D.In. 1995): \$4.50 missing from gym locker
  - *Konop v. NWSD*, 26 F.Supp.2d 1189 (N.D.S.D. 1998): \$200 missing from locker

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**"Schools to Pay for Search"**

Poplar Bluff, Missouri

- ▶ "A southeast Missouri school district has agreed to pay \$7,500 each to the families of eight junior high girls who were strip-searched over missing money, the district superintendent said. The seventh and eighth graders, ages 12 to 15, were searched Jan. 6 after \$55 disappeared from a teacher's desk."

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**Are Police Liable for Unconstitutional Search?**

Beard v. Whitmore, 402 F.3d 598 (6th Cir. 2005)

- ▶ From money stolen during co-ed gym class; called police and began searching: gym, lockers, all backpacks and began strip searching the boys.
- ▶ Police arrive during boys strip search and suggest a claim of gender discrimination if the girls aren't treated the same, so girls strip searched.
- ▶ HELD: A strip search without individualized suspicion is unconstitutional. (officer can be held liable if action is clearly unconstitutional).

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**Safford United S.D. v. Redding**

- ▶ Four RX pain relief pills and one OTC pain reliever found in search of another student; said pills came from Savana; bra and panties searched; no more pills located.
- ▶ 13 year old Savana questioned and backpack searched by consent
- ▶ When nothing was found, girl was taken to school nurse for clothing search--remove all clothes to bra and panties, then extend bra and panties away from body: no pills.

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**Safford v. Redding**  
129 S. Ct. 2633

- ▶ "The content of the suspicion failed to match the degree of intrusion."
- ▶ "In sum, what was missing from the suspected facts that pointed to Savana was any indication of danger to the students from the power of the drugs or their quantity, and any reason to suppose that Savana was carrying pills in her underwear."
- ▶ HELD: Unreasonable search. "We think that the combination of the deficiencies was fatal to finding the search reasonable."

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**What about JJAEPs?**

Texas Administrative Code, Title 37, §348.110(g)

- ▶ "Searches shall be conducted according to written policies limited to certain conditions. All students entering the JJAEP shall, at a minimum, be subjected to a pat-down search or a metal detector screening on a daily basis. JJAEP staff shall not conduct strip searches."
- ▶ Code authorizes administrative searches to enter JJAEP's.

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**What about an Alternative Learning Center?**

O.E., No. 03-02-516-CV (Austin 2003)

- ▶ O.E. was adjudicated on a drug charge and ordered to attend Austin's ALC as a condition of probation.
- ▶ The ALC's security policy: all students must pass thru a metal detector, submit to a pat down, empty their pockets, and remove their shoes for inspection.
- ▶ An AISD officer found marijuana in O.E.'s shoe.
- ▶ Held: "Administrative search" and part of ALC's daily screening process. Less privacy at the ALC.

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### Administrative Search

*P.P.III*, No. 04-08-00634-CV (S.A. 2009)

- ▶ P.P. was adjudicated on possession of marijuana in a drug free zone.
- ▶ The AEP's security policy: all students must take off shoes, socks, belt and submit to a pat down.
- ▶ An officer felt a bulge in P.P.'s pocket, swiped his finger in the pocket and removed a baggie of marijuana.
- ▶ Held: "Administrative search" and part of AEP's daily screening process. Parents and students attended orientation reviewing search policies. Less privacy at the AEP.

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### Possession of Paging Devices

- ▶ § 37.082 Texas Education Code
- ▶ Local districts may adopt a policy prohibiting a student from possessing a paging device while on school property or attending a school-sponsored or related activity on or off school property.
- ▶ The policy may establish disciplinary measures and may provide for confiscation of the device.

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### Possession of Paging Devices

- ▶ § 37.082 Texas Education Code
- ▶ The policy may provide for the district to:
  - (1) dispose of a confiscated paging device w/ 30 days' prior notice. The notice shall include the serial number of the device and may be made by telephone, telegraph, or in writing; and
  - (2) charge the owner of the device or the student's parent an administrative fee not to exceed \$15 before it releases the device.

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 **Possession of Paging Devices**

- ▶ § 37.082(c) Texas Education Code
- ▶ "Paging device" means a telecommunications device that emits an audible signal, vibrates, displays a message, or otherwise summons or delivers a communication to the possessor.
- ▶ The term does not include an operator who holds an amateur radio station license issued by the FCC.

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 **AG Opinion**

- ▶ JM-1225 (1990)
- ▶ May schools prohibit "car phones"?
- ▶ Yes. See 37.082 Education Code
- ▶ The issue is whether the "device" is used to summon or deliver communication to recipient.

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 **Reasonable Cell Phone Search**

*U.S. v. Finley, 477 F.3d 250, 5<sup>th</sup> Cir. (2007)*

- ▶ Finley was arrested following a drug delivery by his passenger.
- ▶ Officers removed business cell phone from his pocket and searched text messages and call logs.
- ▶ Finley: "Illegal search of closed container".
- ▶ State: "No standing because business phone".
- ▶ Remember: Search incident to arrest?

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 Reasonable Cell Phone Search

*U.S. v. Finley*, 477 F.3d 250, 5<sup>th</sup> Cir. (2007)

- ▶ "Police officers are not constrained to search only for weapons or instruments of escape on the arrestee's person; they may also, without any additional justification, look for evidence of the arrestee's crime on his person in order to preserve it for use at trial."
- ▶ The permissible scope of a search incident to a lawful arrest extends to containers found on the arrestee's person.
- ▶ Held: Although Finley has standing to challenge the retrieval of the call records and text messages from his cell phone, we conclude the search was lawful.

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 Consensual Cell Phone Search

*Lemons v. State*, 298 S.W.3d 658 (Tyler 2009)

- ▶ Police interviewed def regarding alleged contact with 14 year old girl; asked if the def had been calling the girl and if they could see his cell phone; the def responded by handing over his cell phone.
- ▶ Officer reviewed call logs and pushed the camera button revealing nude photographs of the 14 year old girl.
- ▶ Held: It is reasonable to conclude that the surrender of his cellular telephone in response to officer's open ended request implied the grant of equally unbridled consent to examine the phone and the information contained therein.

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 Cell Phone Search

*Dixon v. State*, 13-09-00445-CR (CC 2010)

- ▶ Man finds cell phone at store, believing it to be an iPod, he steals it. Search reveals videos of hospital patients being mistreated. Turns it into the TV station and ultimately it's shown to the hospital police.
- ▶ Injury to Disabled charges are filed against Dixon.
- ▶ Held: Art. 38.23 protects people from the admission of any evidence obtained illegally whether by police or "other persons". The evidence was properly suppressed.

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### Cell Phone Search

*U.S. v. Curtis*, 635 F. 3d 704 (5<sup>th</sup> Cir. 2011)

- ▶ Officer recovered cell phone from center console and began scrolling through the texts. The officer discovered two incoming texts where the recruiter told Curtis that they needed to pay Van Nguyen \$40,000 so that she would serve as a straw buyer in other transactions.
- ▶ Undisputed: arrested pursuant to a **valid Texas arrest** warrant; that the officer recovered the phone from **an area that was within reaching distance** at the time he was arrested and that **processing was still progressing** when the officer scrolled through the text messages.
- ▶ HELD: The search extended only to Curtis's person and the area within his immediate control. *Finley* authorizes a police officer to search the electronic contents of a cell phone recovered from the area within an arrestee's immediate control.

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