

## **11.5 Suppression of Evidence Obtained through Illegal Search and Seizure**

- A. Scope of Discussion in this Manual
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### **11.5 Suppression of Evidence Obtained through Illegal Search and Seizure**

#### **A. Scope of Discussion in this Manual**

Much of the case law regarding search and seizure is derived from criminal proceedings. The discussion in this manual is limited to age as a relevant factor in determining whether a seizure has occurred within the meaning of the Fourth Amendment and a brief review of juvenile case law regarding search and seizure in the school setting.

The North Carolina Defender Manual contains a chapter devoted to the issues surrounding warrantless search and seizure cases. *See* 1 NORTH CAROLINA DEFENDER MANUAL Ch. 15, Stops and Warrantless Searches (2d ed. 2013).

#### **B. Age as Factor in Legality of Search and Seizure**

The North Carolina Court of Appeals held in a 2007 case that age is a relevant factor in determining whether a person has been seized within the meaning of the Fourth Amendment. *In re I.R.T.*, 184 N.C. App. 579 (2007). In *I.R.T.*, the juvenile was 15 years old when he was questioned by two officers with gang unit emblems on their shirts and carrying visible guns, who had arrived in marked police cars. Under these circumstances, including the consideration of the age of the juvenile, the Court found that a reasonable person would not have felt free to leave and that the juvenile was therefore “seized” within the meaning of the Fourth Amendment. *Id.* at 585. The Court upheld the denial of the juvenile’s motion to suppress the evidence resulting from a search, however, finding that based on the juvenile’s conduct and other circumstances the officers had reasonable suspicion to seize the juvenile as well as probable cause to search the juvenile.

#### **C. Case Law: Search and Seizure at School**

**Standard for school searches.** In *New Jersey v. T.L.O.*, 469 U.S. 325, 341–42 (1985), the U.S. Supreme Court distinguished between a search of a student in school performed by a police officer and one conducted by a school official. Law enforcement officers must conform to the requirements of the Fourth Amendment. School officials, however, are held to a lower standard. To determine the legality of a search by a school official, the court must first determine whether the search was justified at its inception. Second, the court must determine whether the search was reasonably related to the circumstances that initially justified the search. In *In re Murray*, 136 N.C. App. 648, 652 (2000), the North

Carolina Court of Appeals followed *T.L.O.* and held that the search of a student's book bag at school by a principal was reasonable under this standard.

In *In re D.D.*, 146 N.C. App. 309, 319 (2001), the Court of Appeals applied the standard from *T.L.O.* and upheld a search of a juvenile by police officers working "in conjunction with" school officials. The Court has since upheld other searches and seizures of juveniles by school resource officers under the *T.L.O.* standard. *See, e.g., In re J.F.M. & T.J.B.*, 168 N.C. App. 143 (2005) (upholding detention of a student by a school resource officer); *In re S.W.*, 171 N.C. App. 335 (2005) (affirming search of a student by an officer who worked "exclusively" as a school resource officer); *In re D.L.D.*, 203 N.C. App. 434, 439 (2010) (upholding search of a student at school by a sheriff's corporal assigned to the school and who had made "numerous arrests" there). The Court of Appeals has stated that the *T.L.O.* standard applies to officers who are "primarily responsible to the school district rather than the local police department." *In re J.F.M. & T.J.B.*, 168 N.C. App. at 147.

The Court has also recognized that a school search of a juvenile by "outside law enforcement officers" would be weighed against the standard of probable cause. *In re D.D.*, 146 N.C. App. at 318. Other courts have reached similar conclusions. *See, e.g., State v. Meneese*, 282 P.3d 83, 88 (Wash. 2012) (school resource officer with police duties, but no authority to discipline students, held to the standard of probable cause for search of juvenile's backpack); *Patman v. State*, 537 S.E.2d 118, 120 (Ga. App. 2000) (police officer working special duty at a high school required to have probable cause to search juvenile's jacket pocket), *overruled on other grounds by State v. Kazmierczak*, 771 S.E.2d 473, 479 (Ga. App. 2015).

**Intrusive school searches.** Although searches by school officials are not subject to probable cause, intrusive searches might not survive scrutiny under the lower standard outlined in *T.L.O.* In *Safford Unified Sch. Dist. No. 1 v. Redding*, 557 U.S. 364, 377 (2009), the U.S. Supreme Court held that a strip search of a 13-year-old student by an assistant principal was unreasonable where there was no indication of danger to students from the type and quantity of drugs that led to the search and where there was no reason to suspect that the student was carrying pills in her underwear. Based on *Redding*, the North Carolina Court of Appeals reversed a delinquency adjudication based on drugs found during a "bra-lift" that was conducted during a school-wide search because the search lacked "individualized grounds for suspecting" that the juvenile had drugs on her person. *In re T.A.S.*, 213 N.C. App. 273, 280-81 (2011). However, the North Carolina Supreme Court vacated the Court of Appeals opinion and remanded the case to district court for further findings. *In re T.A.S.*, 366 N.C. 269, 269 (2012).