

School Resource Officers (SRO)/Law Enforcement Memo

(Updated June 2018)

House Bill 239 (HB239) and House Bill 132 (HB132) do not eliminate School Resource Officers (SROs) nor is the intent of either bill to minimize the important role SROs play in schools. Rather, the changes are focused on reducing the amount of referrals to juvenile court (and arrests) that are being made, for offenses that could be addressed with alternative referrals and interventions. The following describes what has and has not changed under current state law regarding the role SROs/law enforcement related to offenses occurring on school property.

What is the background to HB 239 and HB 132?

In June 2016, state leadership, including Governor Herbert, Chief Justice Durant, Senate President Niederhauser and Speaker Hughes appointed an interbranch Working Group to examine Utah's juvenile justice system and produce recommendations for improvement. A thorough review of statewide data suggested that youth who are referred to court have worse outcomes than youth who receive services in the community, and that court referrals can lead to deeper involvement in the juvenile justice system. Data also showed a large proportion of cases coming into Utah's juvenile justice system were low level offenses that were referred by schools.

As a result of these findings, the legislature made changes that affect how certain low level offenses, including truancy, are addressed. Low level school-based offenses are no longer under the jurisdiction of the juvenile court, and instead should be addressed with more in-school intervention and support. HB 132 clarifies the circumstances under which a school may make a referral to court for habitual truancy or a class C misdemeanor.

Does current law eliminate SROs from schools?

No. Current does not eliminate SROs from schools. Current law does not change an SRO/law enforcement officer's ability to consult with school officials in response to any offense.

Does current law limit an SRO/law enforcement officer's ability to investigate behaviors?

No. Current law does not limit an SRO/law enforcement officer's ability to investigate behaviors that occur on school grounds. All the same requirements that existed prior to HB 239 and HB 132 still apply (e.g. reasonable suspicion, Miranda, etc.).

Does current law prevent SROs from interacting with youth?

No. SROs can and are encouraged to continue interacting with youth to serve as positive role models.

Does current law prohibit SROs from arresting youth, or referring them to court, for offenses on school property?

No, with specific exceptions. No one (including SROs) can make a referral to court (or arrest) for class C misdemeanors, status offenses, and infractions, occurring on school property. **Exception:** A referral to court (or arrest) for habitual truancy or a class C misdemeanor, can **only** be made in cases where the youth refuses to participate in an evidence-based practice.¹

Arrests and referrals may still be made for all offenses that are not class C misdemeanors, status offenses, or infractions. All class B misdemeanors and nonperson class A misdemeanors may be made directly to juvenile court (or to alternative school-based interventions). For a more detailed list of which offenses may and may not be referred to juvenile court, refer to the School Offense Referral Guide.²

Any offense that is not a class C misdemeanor, infraction or status offense remains referable to court including:

- Assault (any level);
- All drug possession and drug paraphernalia charges; and
- Disruption of school activities and criminal trespass on school property.

What is considered a status offense? Are alcohol and tobacco violations considered status offenses?

Current law defines status offenses as “a violation of the law that would not be a violation but for the age of the offender” (Utah Code 78A-6-105(50)). These offenses include, but are not limited to:

- Truancy
- Ungovernable youth
- Runaway youth

Alcohol and tobacco offenses are not status offenses because they are classified as misdemeanor offenses in Utah statute.

- Purchase, possession or consumption of alcohol is a class B misdemeanor and may be referred to court.
- Using false identification to purchase tobacco products is a class A misdemeanor and may be referred to court
- Minors not using a false identification to purchase tobacco products or a first time tobacco distribution offense are class C misdemeanors and may not be referred to court

For more information on tobacco and alcohol related offenses, see page 4 on the School Offense Referral Guide.

¹ HB 239 originally removed truancy and class c misdemeanors from the jurisdiction of the juvenile court, eliminating court referral as an option for habitual truancy and class c misdemeanors. This provision will “sunset” after 2 years (March 2020) and revert to the original HB 239 policy.

² For a list of offenses that may or may not be referred to court, see the School Offense Referral Guide (July 2017) <https://justice.utah.gov/Juvenile/HB239/School%20Offense%20Referral%20Guide.pdf>

Can notices of truancy still be issued?

Yes. SROs and other law enforcement officers can still issue notices of truancy. Schools are still permitted to give a law enforcement officer, acting as a SRO (see 53a-11-101.7(3)(a)), the authority to issue notices of truancy to any minor (of at least 12 years of age) who is believed to be truant and has missed five or more school days in an academic year.

Can SROs make a referral to court or arrest a youth for habitual truancy?

No, with specific exceptions. Current law eliminates the possibility for SROs (or anyone else, including other law enforcement officers) to make referrals to court for habitual truancy. Currently law **only** permits schools to make a referral for habitual truancy in cases where the youth refuses to participate in an evidence-based practice.³

Did current law eliminate compulsory education?

No. Compulsory education is still the law and schools can still refer violations against parents for students under the age of 12. Compulsory education targets parents, whereas the changes in the current law impact how schools respond to youth.

Can SROs still take a youth into their custody?

Yes. SROs and other law enforcement officers can still take a child, believed to be truant, into their custody for the purposes of transportation to an alternative intervention including a receiving center, a truancy center, back to school, or to their parents/guardian; this is ‘temporary custody.’

Current law only prohibits SROs and other law enforcement officers from taking youth into custody for the purposes of referral to court (or arrest) for class C misdemeanors, status offenses, or infractions occurring on school grounds. Current law clarifies that SROs are specifically allowed to take youth into custody for the purposes of transporting a youth to a location permitted by law.

A child may also be taken into custody as a result of investigating any behavior that is eligible for referral to court as permitted by law and outlined in the *School Offense Referral Guide*.

Legal custody can be taken in situations where a parent is unable to care for the child (e.g., if the parent is arrested). In this situation, a law enforcement officer is allowed to transport the child to the appropriate location, and must follow transportation procedures (e.g., pat downs).

Can a SRO or other law enforcement officer transport a youth?

Yes. Law enforcement can transport a child to school, to the child’s parents/guardian, or a truancy center; this is considered ‘temporary custody.’ Current law clarifies that an SRO is permitted to transport a minor from school to a location, if the location is permitted by law. Law enforcement and SROs can still transport youth within existing Utah laws that were not changed under HB 239 or HB 132.

³ HB 239 originally removed truancy from the jurisdiction of the juvenile court, eliminating court referral as an option for habitual truancy. This provision will “sunset” after 2 years (March 2020) and revert to the original HB 239 policy.

What does current law state regarding the investigation process or the juvenile court's ability to intervene in cases involving abuse, neglect or dependency?

Current law does not change the process for opening an investigation into abuse, neglect, or dependency by DCFS. If school personnel, SRO, or other law enforcement officer has a concern about a student that is appropriate for DCFS involvement, they should contact DCFS to open an investigation. Current law does not limit the juvenile court's ability to intervene in cases involving abuse, neglect or dependency.

For more information, visit www.justice.utah.gov/juvenile or email hb239info@utah.gov