

S 177704

**In the Supreme Court of the State of California**

In re M.M., a Person Coming Under the  
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

M.M.,

Defendant and Appellant.

Case No. \_\_\_\_\_

SUPREME COURT  
FILED

NOV 08 2005

Frederick K. Church Clerk

DEPUTY

Fourth Appellate District, Division Two, Case No. E045714  
San Bernardino County Superior Court, Case No. J220179  
The Honorable Michael A. Knish, Judge

**PETITION FOR REVIEW**

EDMUND G. BROWN JR.  
Attorney General of California  
DANE R. GILLETTE  
Chief Assistant Attorney General  
GARY W. SCHONS  
Senior Assistant Attorney General  
STEVEN T. OETTING  
Supervising Deputy Attorney General  
SCOTT C. TAYLOR  
Deputy Attorney General  
State Bar No. 137887  
110 West A Street, Suite 1100  
San Diego, CA 92101  
P.O. Box 85266  
San Diego, CA 92186-5266  
Telephone: (619) 645-2605  
Fax: (619) 645-2191  
Email: Scott.Taylor@doj.ca.gov  
*Attorneys for Plaintiff and Respondent*

## TABLE OF CONTENTS

	<b>Page</b>
Issue Presented.....	1
Statement of the Case and Facts .....	1
Reasons for Review .....	2
A Campus Security Officer Employed by a Public School District is a Public Officer within the Meaning of Penal Code Section 148.....	3
I.    Officer Butts is a Public Officer.....	4
Conclusion .....	9

## TABLE OF AUTHORITIES

	Page
<b>CASES</b>	
<i>Dibb v. County of San Diego</i> (1994) 8 Cal.4th 1200 .....	6
<i>In re Eddie D.</i> (1991) 235 Cal.App.3d 417 .....	4
<i>In re Frederick B.</i> (1987) 192 Cal.App.3d 79 .....	4
<i>In re Muhammed C.</i> (2002) 95 Cal.App.4th 1325 .....	3
<i>People v. Olsen</i> (1986) 186 Cal.App.3d 257 .....	4, 5, 6, 7
<i>People v. Olsen,</i> 138 Cal.App.3d .....	7
<i>People v. Rosales</i> (2005) 129 Cal.App.4th 81 .....	5, 6
<b>STATUTES</b>	
Education Code	
§ 38000.....	5
§ 38000 (a).....	5
§ 38001.5.....	7
§ 38001.5 (c).....	5, 8
Penal Code	
§ 148.....	passim
§ 148.2.....	6
§ 148 (a).....	1, 2, 4
§ 148 (a)(1) .....	3
§ 424.....	6
§ 594 (b)(2)(A).....	2
Welfare and Institutions Code	
§ 602 (a).....	2

**COURT RULES**

California Rules of Court

rule 8.500(b)..... 1  
rule 8.504 ..... 1

**OTHER AUTHORITIES**

52 California Jurisprudence Third

Public Officer and Employees, § 1 ..... 4



**TO THE HONORABLE RONALD M. GEORGE, CHIEF JUSTICE,  
AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE  
CALIFORNIA SUPREME COURT:**

Respondent, the People of the State of California, respectfully petitions this Court to grant review in this matter pursuant to rule 8.500(b) of the California Rules of Court. In a published opinion authored by Justice Art W. McKinstler filed on September 24, 2009, the Court of Appeal, Fourth Appellate District, Division Two, reversed the judgment of the juvenile court. A copy of the opinion is attached to this petition as Exhibit A.

**ISSUE PRESENTED**

Is a campus security officer employed by a public school district a public officer for purposes of Penal Code section 148, subdivision (a)?

**STATEMENT OF THE CASE AND FACTS**

On January 30, 2008, the security department of Arroyo Valley High School received a call reporting vandalism on the school campus. Campus security officers responded to the scene and saw a group of students scatter. They pursued one group of three or four students, which included the minor, running toward Baseline Street. As the officers pursued the group, Campus Security Officer Bryan Butts yelled to the students to stop. Officer Butts, who was acquainted with the minor, called the minor by name and ordered him to stop several times. The minor continued to run. Officer Butts saw the minor throw a white container to the ground during the pursuit. Officer Butts believed the container was a spray paint can but when he returned to retrieve the container he found only a water bottle. Eventually the minor was stopped outside the school campus by San Bernardino Unified School District Police Officer Alfredo Yanez and was arrested.

A petition was filed pursuant to Welfare and Institutions Code section 602, subdivision (a), alleging that the minor had resisted or delayed a public officer, a misdemeanor, in violation of Penal Code section 148, subdivision (a), and had committed misdemeanor vandalism, in violation of Penal Code section 594, subdivision (b)(2)(A). After a jurisdictional hearing, the juvenile court found the resisting a public officer allegation true but found the vandalism allegation not true. The juvenile court declared the minor a ward of the court and placed him on probation in the custody of his mother. The minor filed a notice of appeal.

On appeal, the minor claimed the evidence was insufficient to support the true finding because Campus Security Officer Butts was not a peace officer or public officer within the meaning of Penal Code section 148, subdivision (a). The Fourth District Court of Appeal, Division Two, held that as a matter of law a campus security officer employed by a school district is not a public officer for the purpose of Penal Code section 148. The true finding of the juvenile court was reversed. No petition for rehearing was filed.

### **REASONS FOR REVIEW**

Review is necessary in this case to settle the important question of law of whether campus security officers employed by a public school district to protect the safety of students and staff and to protect the public property of the school district are public officers under Penal Code section 148, subdivision (a), and therefore hold a position in which the public is legally prohibited from resisting, delaying or obstructing them in the discharge of their public duties. A campus security officer employed by a public school district performs the same duties at the school as a peace officer, and the school district is statutorily authorized to employ school security officers to perform the important sovereign functions of the protection of students and staff and the preservation of public property.

These important duties performed by campus security officers and the challenges they face on a daily basis at our public schools require that their position be given deference and authority under the law. Withholding such legal authority from the position of campus security officer will serve to undermine their authority on our public school campuses and therefore limit the ability of our public school district to protect our children, teachers and public property from the many, daily threats they face, in the most financially efficient manner.

**A CAMPUS SECURITY OFFICER EMPLOYED BY A PUBLIC SCHOOL DISTRICT IS A PUBLIC OFFICER WITHIN THE MEANING OF PENAL CODE SECTION 148**

Penal Code section 148 provides, in relevant part:

Every person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician...in the discharge or attempt to discharge any duty of his or her office or employment, when no other punishment is prescribed, shall be punished . . . .”

(Pen. Code, § 148, subd. (a)(1).)

The legal elements of the offense of resisting, delaying, or obstructing an peace officer, public officer or emergency medical technician (EMT) are that the defendant willfully resisted, delayed, or obstructed a public officer, peace officer, or an EMT when the officer was engaged in the performance of his duties, and defendant knew or reasonably should have known that the other person was a public officer, peace officer, or EMT engaged in the performance of his duties. (*In re Muhammed C.* (2002) 95 Cal.App.4th 1325, 1329.)

The evidence presented at trial showed that the minor refused to stop when directed to do so by Officer Butts. The minor knew Officer Butts as they had daily contact since the minor started attending the school and had more than 30 conversations during that time. The minor looked back at



Officer Butts as the officer was yelling appellant's name and directing him to stop. Officer Butts was pursuing appellant as part of his duties as a campus security officer at Arroyo Valley High School, which include ensuring the safety of the school, both persons and property. Therefore, the only issue presented to the juvenile court and to the Court of Appeal was whether Officer Butts, in his position of campus security officer, was a public officer under Penal Code section 148, subdivision (a).

#### **I. OFFICER BUTTS IS A PUBLIC OFFICER.**

Officer Butts, as a campus security officer, is a public officer for purposes of Penal Code section 148. The term "public officer" encompasses a wider range of positions than "peace officer." (*In re Eddie D.* (1991) 235 Cal.App.3d 417, 421; *In re Frederick B.* (1987) 192 Cal.App.3d 79, 89-90.) In fact, although "all peace officers are public officers, all public officers are not peace officers." (*In re Eddie D.*, *supra*, 235 Cal.App.3d at p. 422.) School security officers are included in this larger category of public officers.

It is almost impossible to define a "public officer" in every context. (*People v. Olsen* (1986) 186 Cal.App.3d 257, 265 citing 52 Cal.Jur.3d, Public Officer and Employees, § 1, p. 162 [*Olsen*].) However,

"[o]ne of the prime requisites [of a public office] is that [it] be created by the *constitution* or authorized by some *statute*. And it is essential that the incumbent be clothed with some portion of the sovereign functions of government, either legislative, executive, or judicial to be exercised in the interest of the public. There must also be a duty or service to be performed, and it is the nature of this duty, not its extent, that bring into existence a public office and a public officer."

(*Id.* at pp. 265-266 [emphasis in original].)

The Court of Appeal recognized that the court in *Olsen* noted the distinction between a public officer and private officer was that a private officer “holds his position by contract rather than by election or official appointment” and the private officer’s “duties are performed at the instance and for the benefit of the individual or corporation employing him.” (*Olsen, supra*, 186 Cal.App.3d at p. 266, fn. 5; Exhibit A at p. 5.)

The position of school security officer is authorized by Education Code section 38000, which provides school districts with the authority to establish a security department and to “employ personnel to ensure the safety of school district personnel and pupils and the security of the real and personal property of the school district.” (Ed. Code, § 38000, subd. (a).)

Education Code section 38001.5, subdivision (c), further states that a school security officer provides “security services as a watchperson, security guard, or patrolperson on or about premises owned or operated by a school district to protect persons or property or to prevent the theft or unlawful taking of district property of any kind or to report any unlawful activity to the district and local law enforcement agencies. (Ed. Code, § 38001.5, subd. (c).) Officer Butts was employed as an officer of the school district security department. His duties included ensuring the safety of the faculty, students, and property of the district – all of which are in the interest of the public. Because Officer Butts’s position as a campus security officer is authorized by statute, the nature of his duties require him to perform a sovereign function of government in the public interest, and he is a public employee of the school district, he is a public officer.

The Court of Appeal applied a definition of public officer developed in *People v. Rosales* (2005) 129 Cal.App.4th 81, 86. In *Rosales*, the court decided whether a superintendent of a county park was a public officer for

purposes of negligent handling of public moneys under Penal Code section 424. (*Id.* at p. 83.) The court stated:

A public office is ordinarily and generally defined to be the right, authority, and duty, created and conferred by law, the tenure of which is not transient, occasional, or incidental, by which for a given period an individual is invested with power to perform a public function for the benefit of the public. [Citation.] ... . The most general characteristic of a public officer, which distinguishes him from a mere employee, is that a public duty is delegated and entrusted to him, as agent, the performance of which is an exercise of a part of the governmental functions of the particular political unit for which he, as agent, is acting. ... [Citations.] ...' ... [¶] '[T]wo elements now seem to be almost universally regarded as essential' to a determination of whether one is a 'public officer': 'First, a tenure of office "which is not transient, occasional or incidental," but is of such a nature that the office itself is an entity in which incumbents succeed one another ... , and, second, the delegation to the officer of some portion of the sovereign functions of government, either legislative, executive, or judicial.' [Citation.]" (*Dibb v. County of San Diego* (1994) 8 Cal.4th 1200, 1212, italics omitted.)

(*Rosales*, 129 Cal.App.4th at p. 86.)<sup>1</sup>

Although *Rosales* defined "public officer," it did not involve either the requirements of Penal Code section 148 or the context of a campus security officer. Further, the court relied on the holding in a civil case, not a criminal case, for its definition. (*Ibid.*) The present case provides a different context requiring a different analysis to be applied. *People v. Olsen*, 186 Cal.App.3d 257, which involved a violation of Penal Code

---

<sup>1</sup> In *Dibb*, this Court determined that members of the Citizens Law Enforcement Review Board ("CLERB") were public officers because the members were "delegated a public duty to exercise a part of the governmental functions of the political unit for which he, as agent, is acting." This court held that in that context the members of CLERB possessed the two essential elements of county officers, appointment for a fixed term of office and the delegation of a public duty. (*Dibb*, 8 Cal.4th at p. 1213.)

section 148.2, gives the appropriate analysis for determining whether a campus security officer is a public officer. In *Olsen*, although recognizing that generally a public office is a tenured position that exists independently from the person in the position, the court emphasized other aspects of a public officer such as a position authorized by statute, the performance of a sovereign function of government, a duty or service to be performed by the public officer and that the officer performs duties for the public rather than for the benefit of the individual or the private company who employs him or her. (*People v. Olsen*, 138 Cal.App.3d at pp. 265-266.) A comparison of these factors identified in *Olsen* with the position of campus security officer in the present case reveals that the significant requirements of a public officer are met by a campus security officer.

The Court of Appeal held that “a campus security officer does not exercise a delegated sovereign function of government.” (Exhibit A at p. 6.) The Court of Appeal minimized the role of campus security officers as “simply” providing security services to the school district and making reports to law enforcement agencies, citing Education Code section 38001.5. (*Ibid.*) However, section 38001.5 provides the important purposes for the employment of campus security officers -- purposes which clearly indicate the performance of a delegated sovereign function of government – to protect the safety of students, teachers and the public.

a) It is the intent of the Legislature to ensure the safety of pupils, staff, and the public on or near California's public schools, by providing school security officers with training that will enable them to deal with the increasingly diverse and dangerous situations they encounter.

The statute goes on to define school security officers as persons employed by the school district

“to provide security services as a watchperson, security guard, or patrolperson on or about premises owned or operated by a school

**district to protect persons or property or to prevent the theft or unlawful taking of district property of any kind or to report any unlawful activity** to the district and local law enforcement agencies.

(Education Code section 38001.5, subdivision (c), emphasis added.)

The statute does not limit a campus security officer to simply reporting observations to law enforcement but rather requires that a campus security officer employed by the school district protect persons and property on school district premises.

While it is true that campus security officers do not hold a tenured or fixed term of office, they are appointed by the school district and in that regard vary considerably from a private security guard hired through a private security company. In this regard their employment is much the same as a police officer. Moreover, the inclusion of public officers along with peace officers and EMT's in Penal Code section 148 was clearly meant to expand the reach of the statute above that of a limited number of designated public office holders. In fact, public employees authorized to protect persons and property at public schools would appear to be exactly the target of a statute requiring persons not to resist, obstruct or delay such a person in the discharge of their duties.

Although not a peace officer, a campus security officer performs many of the same functions on public school campuses. A school security officer must enforce both the law and rules of the school to maintain safety for the pupils, staff, and other people on the campus as well as the property. (Ed. Code, § 38001.5, subd. (c).) Obedience to the directions of school security officers is required for these officers to perform their duties adequately. In this regard, there is no distinction between these campus security officers and peace officers performing the same tasks and charged with the same responsibilities.

The Court of Appeal's published opinion, relegating the role of statutorily authorized campus security officers to that of a school employee to which students and the public owe no greater deference or obedience than they owe to a school janitor, undermines the authority of these officers, inhibits their ability to perform a crucial government function and limits the school district's ability to provide for the security of our public schools under "increasingly diverse and dangerous situations" and during financially challenging times. Review is required to allow campus security officers the ability to work under the minimal cloak of authority provided by Penal Code section 148.

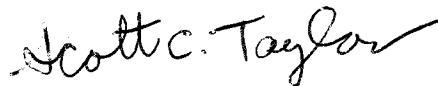
### CONCLUSION

Respondent respectfully requests this Court to grant review in this case to determine that campus security officers employed by a public school district to protect students, staff, the public and public property are public officers pursuant to Penal Code section 148.

Dated: November 3, 2009

Respectfully submitted,

EDMUND G. BROWN JR.  
Attorney General of California  
DANE R. GILLETTE  
Chief Assistant Attorney General  
GARY W. SCHONS  
Senior Assistant Attorney General  
STEVEN T. OETTING  
Supervising Deputy Attorney General



SCOTT C. TAYLOR  
Deputy Attorney General  
*Attorneys for Plaintiff and Respondent*



## CERTIFICATE OF COMPLIANCE

I certify that the attached PETITION FOR REVIEW uses a 13 point Times New Roman font and contains 2,614 words.

Dated: November 3, 2009

EDMUND G. BROWN JR.  
Attorney General of California

A handwritten signature in cursive script that reads "Scott C. Taylor".

SCOTT C. TAYLOR  
Deputy Attorney General  
*Attorneys for Plaintiff and Respondent*





**CERTIFIED FOR PUBLICATION**  
**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**  
**FOURTH APPELLATE DISTRICT**  
**DIVISION TWO**

In re M.M., a Person Coming Under the  
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

M.M.,

Defendant and Appellant.

E045714

(Super.Ct.No. J220179)

OPINION

APPEAL from the Superior Court of San Bernardino County. Michael A. Knish,  
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Reversed.

Lauren E. Eskenazi, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant  
Attorney General, Gary W. Schons, Assistant Attorney General, and Jeffrey J. Koch and  
Scott C. Taylor, Deputy Attorneys General, for Plaintiff and Respondent.

On April 25, 2008, an amended petition under Welfare and Institutions Code section 602, subdivision (a), was filed. It charged minor, M.M., with felony vandalism under Penal Code section 594, subdivision (b)(1) (count 1) and resisting or delaying a public officer under Penal Code section 148, subdivision (a)(1) (count 2). On April 30, 2008, the prosecution dismissed count 1 and added count 3, misdemeanor vandalism under Penal Code section 594, subdivision (b)(2)(A).<sup>1</sup>

After the evidence was presented, the juvenile court dismissed count 3 for lack of evidence but found the allegations in count 2, resisting a public officer under section 148, true. The court placed minor on probation in the custody of his mother.

On appeal, minor contends that his conviction under section 148 is not supported by substantial evidence because he did not resist a public officer. We agree because, as a matter of law, a campus security officer is not a public officer. Therefore, the judgment is reversed.

## I

### FACTUAL AND PROCEDURAL HISTORY

On January 30, 2008, the security department at Arroyo Valley High School received a call regarding vandalism on campus. Campus Security Officers Bryan Butts, Oscar Ramos, and Ron Meyer responded directly to the scene, while Officer Alfredo Yanez drove his patrol car around the perimeter of the school campus. Unlike Security

---

<sup>1</sup> All statutory references are to the Penal Code unless otherwise specified.

Officer Butts, Officer Yanez is a peace officer employed by the San Bernardino City Unified School District.

When the campus security officers arrived at the scene, they saw a group of students scatter. They pursued one group of three or four students, one of whom was minor, heading towards Baseline Street.

As they began to pursue the group, Officer Butts yelled to the group several times to stop. Minor and Officer Butts were well acquainted with each other; they had over 30 conversations with each other. Officer Butts yelled directly to minor, by name, to stop many times. Minor continued to run.

During this pursuit, Officer Butts saw minor throw a white container on the ground. The officer believed this container to be a spray paint can. Later, Officer Butts returned to retrieve the object thrown, but only found a water bottle.

Eventually, minor exited the campus and encountered Officer Yanez. Minor immediately submitted to his command to stop and was arrested.

## II

### ANALYSIS

Minor contends that the evidence is insufficient to support a conviction for violating section 148 because, as a matter of law, Officer Butts is not a peace officer, a

public officer, or an emergency medical technician (EMT), for the purposes of section 148.<sup>2</sup>

Section 148, subdivision (a)(1) provides, in pertinent part, that “[e]very person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician . . . in the discharge or attempt to discharge any duty of his or her office or employment . . . shall be punished . . . .”

The legal elements of the offense of resisting, delaying, or obstructing an officer or EMT are that the defendant willfully resisted, delayed, or obstructed a public officer, peace officer, or an EMT when the officer was engaged in the performance of his or her duties, and the defendant knew or reasonably should have known that the other person was a public officer, peace officer, or EMT engaged in the performance of his or her duties. (*In re Muhammed C.* (2002) 95 Cal.App.4th 1325, 1329.)

The term “public officer” encompasses a wider range of positions than “peace officer.” (*In re Eddie D.* (1991) 235 Cal.App.3d 417, 421.) Although “all peace officers are public officers, all public officers are not peace officers.” (*Id.* at p. 422.) The question on appeal, then, is whether public school security officers are included in this larger category of public officers.

---

<sup>2</sup> We note that under Education Code section 38001, “[p]ersons employed and compensated as members of a police department of a school district, when appointed and duly sworn, are peace officers, for the purposes of carrying out their duties of employment pursuant to Section 830.32 of the Penal Code.” Here, Officer Butts was not a member of a police department of the San Bernardino City Unified School District. Instead, he was a security guard hired by the school district. Hence, at trial, the prosecution conceded that campus security officers are not peace officers under Penal Code section 148.

In *People v. Olsen* (1986) 186 Cal.App.3d 257 (*Olsen*), the court noted that it is almost impossible to define a “public officer” in every context. (*Id.* at p. 265.) The court, however, stated as follows:

“[One] of the prime requisites [of a public office] is that [it] be created by the *constitution* or authorized by some *statute*. And it is essential that the incumbent be clothed with some portion of the sovereign functions of government, either legislative, executive, or judicial to be exercised in the interest of the public. There must also be a duty or service to be performed, and it is the nature of this duty, not its extent, that brings into existence a public office and a *public officer*. Thus, an office, as a general rule, is based on some *law* that defines the duties appertaining to it and fixes the tenure, and it exists independently of the presence of a person in it.’ [Citation.]” (*Olsen, supra*, 186 Cal.App.3d at pp. 265-266, fn. omitted.)

In a footnote, the court noted that a public officer differs from a private officer because the private officer “holds his position by contract rather than by election or official appointment,” and the private officer’s “duties are performed at the instance and for the benefit of the individual or corporation employing him.” (*Olsen, supra*, 186 Cal.App.3d at p. 266, fn. 5.)

*People v. Rosales* (2005) 129 Cal.App.4th 81, defines a public officer in a similar fashion. The court stated that ““A public office is ordinarily and generally defined to be the right, authority, and duty, created and conferred by law, the tenure of which is not transient, occasional, or incidental, by which for a given period an individual is invested with power to perform a public function for the benefit of the public. [Citation.]”

. . . . The most general characteristic of a public officer, which distinguishes him from a mere employee, is that a public duty is delegated and entrusted to him, as agent, the performance of which is an exercise of a part of the governmental functions of the particular political unit for which he, as agent, is acting. . . . [Citations.] . . .” . . . [¶] “[T]wo elements now seem to be almost universally regarded as essential” to a determination of whether one is a “public officer”: “First, a tenure of office ‘which is not transient, occasional or incidental,’ but is of such a nature that the office itself is an entity in which incumbents succeed one another . . . , and, second, the delegation to the officer of some portion of the sovereign functions of government, either legislative, executive, or judicial.” [Citation.]’ (*Dibb v. County of San Diego* (1994) 8 Cal.4th 1200, 1212, italics omitted.)” (*Id.* at p. 86.)

In this case, minor was convicted of resisting a public officer under section 148. The evidence showed that minor refused to stop when directed to do so by Officer Butts at Arroyo Valley High School. Officer Butts was a campus security officer hired by the school district, not a peace officer. The issue, therefore, is whether a campus security officer, hired by a public school district, qualifies as a public officer.

Based on the definition of a public officer, we find that, as a matter of law, a campus security officer does not qualify as a public officer. First, a campus security officer does not exercise a delegated sovereign function of government. Instead, a campus security officer simply provides security services to the school district and reports such activities to the district and local law enforcement agencies. (Ed. Code, § 38001.5, subd. (c).) Moreover, a campus security officer does not hold a tenured

position, one that is held for a specified period of time. He is neither elected nor officially appointed; a security officer is simply hired by the school district. (See *Olsen, supra*, 186 Cal.App.3d at pp. 265-266.)

Based on the above, we find that Officer Butts is not a public officer.

Notwithstanding, the People contend that school security officers are public officers because the officers are performing a public function for the benefit of the public. In support, the People rely on Education Code section 38000. It provides school districts with the power to establish a security department and to “employ personnel to ensure the safety of school district personnel and pupils and the security of the real and personal property of the school district.” (Ed. Code, § 38000, subd. (a).) The People also rely on Education Code section 38001.5, subdivision (c). It states that a school security officer provides “security services as a watchperson, security guard, or patrolperson on or about premises owned or operated by a school district to protect persons or property or to prevent the theft or unlawful taking of district property of any kind or to report any unlawful activity to the district and local law enforcement agencies.”

These two sections of the Education Code, however, do not support the People’s argument. Although both sections 38000 and 38001.5 of the Education Code provide a mechanism for school districts to establish campus security, these sections do not cloak such security personnel with the status of being public officers.

We assume that failure to obey and cooperate with a campus security officer may involve some school-imposed sanction; we are concerned about public safety on school



campuses, and the protection of property and maintenance of order on school grounds.

However, as a court, we must interpret the laws as the Legislature has enacted them.

The Legislature can amend the existing laws to include security officers hired by public school districts as “public officers” for the purpose of section 148. We, as a court, cannot by judicial fiat change the laws enacted by the Legislature to further public policy objectives. That is the province of the Legislature.

Based on the above, we shall reverse minor’s conviction for resisting a public officer because, as a matter of law, Officer Butts is not a public officer under section 148.

### III

#### DISPOSITION

The judgment is reversed.

CERTIFIED FOR PUBLICATION

/s/ McKinster  
J.

We concur:

/s/ Ramirez  
P.J.

/s/ Richli  
J.

**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **People v. Martin M., a Minor**  
No.: **E045714**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On November 3, 2009, I served the attached **PETITION FOR REVIEW** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

Lauren E. Eskenazi, Attorney at Law  
11693 San Vicente Boulevard  
Suite # 510  
Los Angeles, CA 90049

San Bernardino County District Attorney's  
Office  
316 North Mountain View Avenue  
San Bernardino, CA 92415-0004

**Counsel for Appellant (two copies)**

Appellate Defenders, Inc.  
555 West Beech Street, Suite 300  
San Diego, CA 92101

County of San Bernardino  
Appeals & Appellate District  
Superior Court of California  
401 North Arrowhead Avenue  
San Bernardino, CA 92415-0063

Court of Appeal of the State of California  
Fourth Appellate District  
Division Two  
3389 Twelfth Street  
Riverside, CA 92501

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 3, 2009, at San Diego, California.

M. Torres-Lopez  
\_\_\_\_\_  
Declarant

*M. Torres-Lopez*  
\_\_\_\_\_  
Signature