

GEOFFREY BRIGGS*

Increasing Safety, Decreasing Liability: Campus Safety at Oregon’s Community Colleges

Introduction	262
I. Campus Safety: A Matter of Life or Death	266
II. Divergent and Ambiguous Statutory Authorizations for Campus Safety Regimes.....	268
A. University Police Departments’ Scope of Authority	269
B. Community College Campus Safety Departments’ Scope of Authority	271
C. Divergent Authorizations	272
III. Variable Interpretations: How Oregon’s Community Colleges Understand the Laws	273
A. How Oregon’s Community College Campus Safety Practices Came Under Scrutiny	273
B. How Oregon’s Community College Campus Safety Practices Vary	275
IV. The Authoritative Overreach of Community College Campus Safety Departments	276
A. What the Oregon Laws Say; What the Oregon Laws Mean.....	276
1. Community Colleges’ Traffic Control Powers	277
a. Where and to What Do the Traffic Control Powers Apply?	279

* J.D. Candidate, 2020, University of Oregon School of Law; B.A., Western Washington University. Thank you to Professor Megan Austin for her helpful advice, to the staff of Oregon Law Review for their hard work on this Comment, and to my wife, Kendal, for her unwavering support.

b.	College “Peace Officer” Distinguished from University “Police Officer”	279
2.	Community Colleges’ General Powers	282
3.	The “Citizen’s Arrest” Statute.....	284
B.	Conclusion About Authoritative Overreach.....	285
V.	Three Solutions to Colleges’ Scope of Authority Problem ...	286
A.	The Judicial Solution.....	286
B.	The Legislative Solution	287
C.	The Infrastructural Solution	290
VI.	The Infrastructural Solution: Increasing Safety, Decreasing Liability and Authoritative Overreach.....	291
	Conclusion.....	295

INTRODUCTION

The importance of campus safety and security has become increasingly apparent over time. In recent years, instances of school violence have afflicted many parts of America,¹ and regrettably Oregon is no exception. In an event that caught national headlines and prompted a response from President Obama,² a student-turned-gunman fatally shot eight students and a teacher and wounded others at Umpqua Community College (UCC) in October 2015.³ This incident—and others like it—underscores the importance of campus safety policies and personnel. Indeed, following the UCC shooting, an official at the University of Oregon (UO) commented that “[i]n the event of a catastrophic event, UOPD officers would be able to provide immediate police response to campus, and engage a threat directly.”⁴ And the former president of UCC divulged that, even before the tragic

¹ Polly Mosendz, *Map: Every School Shooting in America Since 2013*, NEWSWEEK (Oct. 6, 2015, 5:31 PM), <https://www.newsweek.com/list-school-shootings-america-2013-380535> [<https://perma.cc/4DR7-E6TJ>].

² Barack Obama, President, The White House, Statement by the President on the Shootings at Umpqua Community College, Roseburg, Oregon (Oct. 1, 2015, 6:22 PM), <https://obamawhitehouse.archives.gov/the-press-office/2015/10/01/statement-president-shootings-umpqua-community-college-roseburg-oregon> [<https://perma.cc/4GEX-Y5AN>].

³ Dirk Vanderhart et al., *Oregon Shooting at Umpqua College Kills 10, Sheriff Says*, N.Y. TIMES (Oct. 1, 2015), <https://www.nytimes.com/2015/10/02/us/oregon-shooting-umpqua-community-college.html> [<https://perma.cc/YB87-S8V6>].

⁴ Jack Heffernan et al., *A Mass Shooting Through Eyes of UCC Alumni at University of Oregon*, DAILY EMERALD (Eugene) (Oct. 3, 2015), https://www.dailyemerald.com/multimedia/a-mass-shooting-through-eye-.ni-at-university/article_ffc27da4-e6c8-542a-a6e4-3c924252db88.html [<https://perma.cc/V45C-489W>].

shooting occurred, the college had contemplated hiring armed guards in the interest of campus safety.⁵

All of Oregon's public community colleges and universities have established some form of public safety regime. But interestingly, whereas Oregon's universities are statutorily empowered to create and operate campus police departments, the state's community colleges have not been similarly empowered.⁶ Oregon's community colleges have, however, been granted the authority to create and enforce campus parking regulations and control the use of and access to their campuses. Although the statutes authorizing community colleges to establish parking enforcement policies and personnel are decades old,⁷ these laws have been subjected to practically no judicial scrutiny⁸ and only very recently have been subjected to any meaningful legal scrutiny.⁹ In such an interpretive vacuum, Oregon's community colleges have variably construed these statutory authorizations. As a result, community colleges exercise a range of public safety powers. Some do little more than enforce on-campus parking rules,¹⁰ while others claim the authority to perform investigations, make arrests,¹¹ or enforce all local, state, and federal

⁵ Vanderhart et al., *supra* note 3.

⁶ Compare OR. REV. STAT. § 352.121 (2017) (referring to schools listed in ORS 352.002(1)–(7): University of Oregon; Oregon State University; Portland State University; Oregon Institute of Technology; Western Oregon University; Southern Oregon University; and Eastern Oregon University), with OR. REV. STAT. §§ 341.290, 341.300 (2017) (granting “general” and “traffic control” powers to Oregon's community colleges).

⁷ Today, the language in ORS 341.300 is substantially identical to that adopted in 1971. See H.B. 1014, 56th Or. Legis. Assemb., § 5 (1971).

⁸ Only a single reported case questions the scope of Oregon community colleges' campus safety authority: *Estate of Sawyer v. Central Or. Cmty. Coll.*, No. 6:17-cv-1150-JR, 2018 WL 2946417, at *1 (D. Or. Apr. 5, 2018). This case is examined in greater detail below.

⁹ Aubrey Wieber, *Family Sues COCC in Kaylee Sawyer Murder: Lawsuit Claims COCC Culture Set the Tone for Murder*, THE BULLETIN (Bend) (July 25, 2017, 7:27 PM), <https://www.bendbulletin.com/localstate/bend/5471438-151/family-sues-cocc-in-kaylee-sawyer-murder> [<https://perma.cc/DHD5-UN76>] [hereinafter *Family Sues*].

¹⁰ See, e.g., *Public Safety, Emergency Planning, EHS*, LINN-BENTON COMMUNITY C., <https://www.linnbenton.edu/faculty-and-staff/college-services/public-safety-emergency-planning-ehs/index.php> [<https://perma.cc/LKU3-YZEZ>] (last visited Sept. 14, 2019) [hereinafter LINN-BENTON PUB. SAFETY].

¹¹ See, e.g., *Public Safety*, PORTLAND COMMUNITY C., <https://www.pcc.edu/public-safety/about-us/> [<https://perma.cc/6SH5-CPKS>] (last visited Sept. 24, 2019) [hereinafter PORTLAND PUB. SAFETY].

laws.¹² So, although it is clear enough that Oregon law does not grant the power to create campus police departments at the state's community colleges, it is anything but clear precisely what sort of campus safety powers the law does grant to its colleges.

The scope of community college public safety authority came under scrutiny following a second headline-grabbing event occurring less than one year after the shooting at UCC.¹³ When a Central Oregon Community College (COCC) campus security officer brutally murdered a twenty-three-year-old woman, the victim's family sued COCC and questioned the college's public safety policies and practices.¹⁴ The family cited instances of authoritative overreach, such as "giving [COCC's] officers policelike uniforms and cars, handcuffs, bulletproof vests and permission to detain and interrogate suspects as well as perform citizen arrests."¹⁵ Similarly, the Deschutes County District Attorney (Deschutes DA), John Hummel, questioned the legality of COCC's public safety practices and suggested that campus safety personnel could be subject to litigation for illegal conduct, including kidnapping or impersonating police officers.¹⁶

Although COCC may be the only Oregon community college currently undergoing any significant legal scrutiny, it is not the only college susceptible to such scrutiny. Because other community colleges have adopted campus safety practices similar to those adopted by COCC, those other colleges potentially face the same accusations of authoritative overreach. Oregon's community colleges will face the looming prospect of litigation unless and until ambiguities about the scope of their campus safety programs are resolved one way or another.

Several options are available to resolve the ambiguity about the scope of authority for community college campus safety programs. One seemingly simple way to resolve the problem would be to

¹² See, e.g., *Public Safety Department*, LANE COMMUNITY C., https://www.lanecc.edu/psd?itm_source=www.lanecc.edu&itm_campaign=megamenu [https://perma.cc/8HF5-6MDQ] (last visited June 8, 2019) [hereinafter LANE PUB. SAFETY].

¹³ *Family Sues*, *supra* note 9.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Aubrey Wieber, *DA's Assessment: COCC Police Powers on 'Shaky Legal Ground': Central Oregon Community College in Bend Denies Any Wrongdoing*, THE BULLETIN (Bend) (Jan. 24, 2017, 6:55 AM), <https://www.bendbulletin.com/localstate/bend/5008349-151/das-assessmentcooc-police-powers-on-shaky-legal-ground> [https://perma.cc/3VG6-2632] [hereinafter *DA's Assessment*].

legislatively bestow on Oregon's community colleges the same powers enjoyed by the state's public universities. By doing so, many of the now-questionable policies and practices would be justifiable under an expanded and explicit statutory grant of authority. And in fact, there was an attempt to do just that as recently as 2011.¹⁷ But although this approach sounds simple enough on its face, for reasons explained below, this approach has proven complicated and historically unfavored.¹⁸ Thus, for now, resolving the question about the proper scope of authority for community college safety departments is unlikely to come in the form of direct legislative expansion.

Although the prospects may be poor for a legislative solution, there are alternatives. One is a judicial solution. For instance, if a party initiated a lawsuit alleging that a community college public safety department exceeded its statutory scope of authority, then the courts might have the opportunity to interpret the relevant statutes, thereby clarifying the community college's proper scope of authority. But as promising as this sounds, even if such a lawsuit arises, the legal outcome is not guaranteed to resolve the problem.

Insofar as college safety departments push the limits of their authority simply to safeguard their campuses, achieving that goal is not limited to acting similarly to—or actually becoming—police officers. Thus, another plausible approach is an infrastructural solution. For instance, colleges could enhance the safety and decrease the vulnerability of their campuses by modifying their campuses' physical environments. Through an infrastructural approach, community colleges could achieve their safety goals (e.g., decreasing vulnerability to UCC-style attacks) while respecting statutory limits to their authority, reducing their liability for authoritative overreach, and avoiding the political difficulties associated with a legislative solution and the uncertainties associated with a judicial solution.

This Comment explores the foregoing issues and proceeds as follows: Part I briefly explains the importance of campus safety in

¹⁷ *University One Step Closer to Sworn Police Force with Passing of Senate Bill*, DAILY EMERALD (Eugene) (Apr. 19, 2011), https://www.dailyemerald.com/news/university-one-step-closer-to-sworn-police-with-passing/article_0fd9503e-0956-502b-a345-b9b046f4bf85.html [<https://perma.cc/NXD2-V36Q>] [hereinafter DAILY EMERALD].

¹⁸ Telephone Interview with Karen Smith, General Counsel, Or. Cmty. Coll. Ass'n (Oct. 23, 2018) (explaining the disparate interests and lack of consensus on previously proposed legislation).

light of recent events; Part II provides a preliminary sketch of the relevant laws pertaining to campus safety powers for Oregon's public universities and community colleges; Part III illustrates the variability among community colleges' interpretations of their campus safety authority; Part IV argues that several community colleges have exceeded their statutory scope of authority; Part V evaluates three possible approaches to resolving the scope of authority problem; and finally, Part VI argues that the infrastructural approach is the preferred solution because it can increase campus safety while avoiding the pitfalls of a judicial or legislative solution and the liability accompanying authoritative overreach.

I

CAMPUS SAFETY: A MATTER OF LIFE OR DEATH

Over the last two decades, concerns about the safety and security of the country's college and university campuses have become increasingly apparent. These concerns have arisen from a variety of issues ranging from hazings¹⁹ to hate crimes²⁰ to sexual assaults.²¹ The increasing frequency of mass shootings on American college campuses has made such violent acts a prime example of a campus safety threat. From 2013 to late 2015, 142 school shootings shook the nation.²² The prevalence of school shootings prompted a survivor of the 2007 Virginia Tech shooting to observe that "when someone asks 'did you hear about this school shooting?' we need to ask, 'which one?'"²³ Indeed, in 2015 alone, more than forty school shootings occurred across the country.²⁴

In what was the forty-fifth school shooting in 2015, Oregon fell prey to the mass shooting phenomenon when ten people—including

¹⁹ Dakin Andone, *They Pledge. Get Hazed. The Cycle Continues: How Greek Life Perpetuates an 'Environment of Fear,'* CNN.COM (Dec. 8, 2018), <https://www.cnn.com/2018/08/25/health/hazing-dangers-fraternities-sororities/index.html> [<https://perma.cc/N3J5-8QK9>].

²⁰ Dan Bauman, *Hate Crimes on Campuses Are Rising, New FBI Data Show*, CHRON. HIGHER EDUC. (Nov. 14, 2018), <https://www.chronicle.com/article/Hate-Crimes-on-Campuses-Are/245093> [<https://perma.cc/D8W9-ERD9>].

²¹ Rio Fernandes, *Reported Campus Sexual Assaults Have Risen Sharply as Overall Crime Has Fallen*, CHRON. HIGHER EDUC. (May 4, 2016), <https://www.chronicle.com/blogs/ticker/reported-campus-sexual-assaults-have-risen-sharply-as-overall-crime-has-fallen/111097> [<https://perma.cc/YD8T-S9XN>].

²² Mosendz, *supra* note 1.

²³ *Id.*

²⁴ *Id.*

the gunman—were killed and at least seven wounded by a student-turned-gunman at UCC in Roseburg, Oregon.²⁵ At around 10:30 a.m. on October 1, 2015, twenty-six-year-old Chris Harper-Mercer entered the classroom for his expository writing class in Snyder Hall and began shooting.²⁶ For approximately twenty minutes, Harper-Mercer terrorized the campus, asking students about their religious affiliations²⁷ and apparently targeting Christians.²⁸ Many students and teachers managed to flee, while others hid in their classrooms and barricaded the doors with desks before calling 911.²⁹

The first police officers on the scene—Roseburg Detectives Joe Kaney and Todd Spingath—arrived about fifteen minutes after the attack began.³⁰ From outside Snyder Hall, the detectives exchanged gunfire with the shooter for approximately four minutes.³¹ Ultimately, the gunman took his own life—but not before he killed eight students and a teacher, wounded at least seven others, and ravaged a community.³²

The attack at UCC was Oregon's deadliest mass shooting in modern times.³³ President Barack Obama responded to the incident in a nationally televised address. Among his remarks, the President made the following observations:

In the coming days, we'll learn about the victims—young men and women who were studying and learning and working hard, their eyes set on the future, their dreams on what they could make of their lives. And America will wrap everyone who's grieving with our prayers and our love.

²⁵ Vanderhart et al., *supra* note 3.

²⁶ Rebecca Woolington, *Timeline of UCC Shooting, Aftermath: 'Somebody is Outside One of the Doors,'* THE OREGONIAN (Sept. 30, 2016), https://www.oregonlive.com/roseburg-oregon-school-shooting/2016/09/umpqua_community_college_shoot.html#incart_river_index [<https://perma.cc/8GRP-KZ7R>].

²⁷ Vanderhart et al., *supra* note 3.

²⁸ Laura Gunderson, *Oregon Shooter: New Details Emerge About Chris Harper-Mercer,* THE OREGONIAN (Oct. 2, 2015), https://www.oregonlive.com/pacific-northwest-news/2015/10/new_details_emerge_on_umpqua_c.html [<https://perma.cc/U6XT-766A>].

²⁹ Vanderhart et al., *supra* note 3.

³⁰ Woolington, *supra* note 26.

³¹ *Id.*

³² Vanderhart et al., *supra* note 3.

³³ Andrew Theen, *Umpqua Community College Shooting: Killer's Manifesto Reveals Racist, Satanic Views,* THE OREGONIAN (Sept. 8, 2017, 3:33 PM), https://www.oregonlive.com/pacific-northwest-news/2017/09/umpqua_community_college_shoot_3.html [<https://perma.cc/4H2A-DJM7>].

But as I said just a few months ago, and I said a few months before that, and I said each time we see one of these mass shootings, our thoughts and prayers are not enough. It's not enough. . . . And it does nothing to prevent this carnage from being inflicted someplace else in America—next week, or a couple of months from now.³⁴

As the President's remarks so poignantly note, thoughts and prayers may be helpful for assuaging the grief of the survivors, but they are of little help for creating safer campuses. Instead, Oregon's public colleges and universities need to be empowered to foster the sort of safe and secure campuses they need and deserve.

II

DIVERGENT AND AMBIGUOUS STATUTORY AUTHORIZATIONS FOR CAMPUS SAFETY REGIMES

The importance of campus safety is understood by Oregon's community colleges and universities and also by the state legislature. All of Oregon's public higher education institutions have developed some form of campus safety regime.³⁵ For the most part, these schools derive their authority to create their public safety regimes from express legislative authorizations. But interestingly, Oregon's public universities and community colleges have not been granted the same scope of authority to effectuate their common goal of campus safety.³⁶ On one hand, Oregon's public universities have been granted the power to establish fully-fledged campus police departments.³⁷ Meanwhile, Oregon's community colleges have not been granted that

³⁴ Obama, *supra* note 2.

³⁵ See, e.g., *About Us*, CENT. OR. COMMUNITY C., <https://www.cocc.edu/departments/public-safety/about.aspx> [<https://perma.cc/RKE9-3U2C>] (last visited Mar. 9, 2019) [hereinafter COCC PUB. SAFETY]; *Parking & Public Safety*, CHEMEKETA COMMUNITY C., <https://www.chemeketa.edu/about/parking-public-safety/> [<https://perma.cc/DG6Y-PGXQ>] (last visited Sept. 19, 2019) [hereinafter CHEMEKETA PARKING & PUB. SAFETY]; *College Safety*, CLACKAMAS COMMUNITY C., <https://www.clackamas.edu/campus-life/college-safety> [<https://perma.cc/EMH5-YURU>] (last visited Mar. 11, 2019) [hereinafter CLACKAMAS COLLEGE SAFETY]; *Law Enforcement Authority*, PUB. SAFETY, MT. HOOD COMMUNITY C., <https://www.mhcc.edu/PublicSafety/LawEnforcementAuthority/> [<https://perma.cc/W5SL-9QXC>] (last visited Mar. 12, 2019) [hereinafter MT. HOOD PUB. SAFETY]; LINN-BENTON PUB. SAFETY, *supra* note 10; PORTLAND PUB. SAFETY, *supra* note 11; LANE PUB. SAFETY, *supra* note 12.

³⁶ Aubrey Wieber, *COCC Stops Illegal Actions by Campus Cops: Security Logs from Bend College Showed Repeated Violations*, THE BULLETIN (Bend) (Feb. 9, 2017, 5:19 PM), <https://www.bendbulletin.com/newsroomstafflist/5056637-151/cocc-stops-illegal-actions-by-campus-cops> [<https://perma.cc/MR4U-BEAT>] [hereinafter *COCC Stops*].

³⁷ OR. REV. STAT. § 352.121 (2017).

same authority.³⁸ Instead, community colleges rely upon scattered statutory provisions to provide some but not all of the capabilities enjoyed by their university counterparts.³⁹ A brief overview and comparison of the relevant law demonstrates how Oregon's universities and community colleges enjoy divergent legislative authorizations.

A. University Police Departments' Scope of Authority

In the summer of 2011, Oregon's legislature passed Senate Bill 405.⁴⁰ The bill's enactment allows Oregon's public universities to obtain authorization from the State Board of Higher Education to establish campus police departments and commission campus police officers.⁴¹

Importantly, this law—which clearly excludes all the state's community colleges—applies *only* to the seven postsecondary educational institutions specified in the statute.⁴² And significantly, in the seven years since Senate Bill 405 enabled schools to establish campus police departments, a majority of the specified schools have not taken steps to do so.⁴³ In fact, after the legislature passed the bill,

³⁸ Compare §§ 341.290–.300 with §§ 352.118–.121 (formerly codified at ORS 352.383 (2013)).

³⁹ See, e.g., OR. REV. STAT. §§ 341.290–300, 133.225; see also *Hearings on H.B. 3240 Before the H. Subcomm. on Higher Educ.*, 76th Or. Legis. Assemb. (Mar. 15, 2011), video recording at 43:51 [hereinafter *H. Hearings on H.B. 3240*] (statement of Karen Smith, OCCA General Counsel). All legislative materials cited in this Comment are located in the Oregon State Archives, Salem, Oregon.

⁴⁰ LEG. ADMIN. COMM. SERVS., 76th OR. LEGIS. ASSEMB. SUMMARY OF LEGIS. 115 (2011).

⁴¹ Bill Graves, *Bill Passes Allowing Police Departments on Oregon University Campuses*, THE OREGONIAN (June 15, 2011), https://www.oregonlive.com/education/2011/06/bill_passes_allowing_police_de.html [<https://perma.cc/NV4H-LXB8>]; see also OR. REV. STAT. § 352.121.

⁴² OR. REV. STAT. § 352.002 (2017) (authorizing only the following schools to establish campus police departments: University of Oregon, Oregon State University, Portland State University, Oregon Institute of Technology, Western Oregon University, Southern Oregon University, and Eastern Oregon University).

⁴³ Among eligible institutions, only the University of Oregon and Portland State University have established campus police departments. See Press Release, Univ. of Or. Police Dep't, UO Department of Public Safety Becomes UO Police Department (Oct. 1, 2012), <https://uonews.uoregon.edu/archive/news-release/2012/10/uo-department-public-safety-becomes-uo-police-department> [<https://perma.cc/Z4N9-RSYF>]; Richard Read, *PSU Trustees Vote to Deploy Armed Police Officers on Campus Starting July 1*, THE OREGONIAN (June 12, 2015), https://www.oregonlive.com/education/2015/06/psu-trustees_vote_to_deploy_ar.html [<https://perma.cc/7GVG-ZNFN>]. It should also be noted

one public university administrator stated that their school had “no intention of changing [their] public safety model,” even stating that “[t]his is a University of Oregon bill.”⁴⁴

Despite the lack of widespread enthusiasm for Senate Bill 405, some officials at the UO indicated their desire to establish a fully-fledged campus police department⁴⁵ and are credited with pushing for the legislation.⁴⁶ Today, the University of Oregon Police Department (UOPD) has approximately thirty employees, including police officers, administrators, and other support staff.⁴⁷ The UOPD officers have the same power and authority granted to any ordinary police officer commissioned in the State of Oregon⁴⁸ and are required to undergo the same state training certifications.⁴⁹ The UOPD officers may enforce any of the state’s criminal laws and any additional administrative policies or rules adopted by the school’s governing board.⁵⁰ The UOPD’s powers include, among others, making arrests, issuing citations, taking custody of evidence, recovering stolen property, and controlling traffic.⁵¹

Not only do UOPD officers have powers similar to other police officers, they are also similarly equipped and attired. The UOPD officers are authorized to carry and use batons, TASER energy weapons, OC (pepper) spray, weapons, and pain compliance techniques, including uses up to and including deadly force—when it is objectively reasonable to do so.⁵² Additionally, the UOPD officers operate vehicles and wear uniforms that are practically indistinguishable from those of any other police force.⁵³ In short,

here that Oregon Health and Science University (OHSU) has established a campus police department under a separate statutory provision—ORS 353.125. *See OHSU Police*, OR. HEALTH & SCI. U., <https://www.ohsu.edu/public-safety/ohsu-police> [<https://perma.cc/G8D9-4RTU>] (last visited Sept. 24, 2019).

⁴⁴ Graves, *supra* note 41.

⁴⁵ DAILY EMERALD, *supra* note 17.

⁴⁶ Graves, *supra* note 41.

⁴⁷ *UOPD Org Chart*, U. OF OR. POLICE DEP’T, https://police.uoregon.edu/sites/policel.uoregon.edu/files/uopd_org_chart.pdf [<https://perma.cc/6VT7-P6RL>] (last visited Mar. 11, 2019).

⁴⁸ *See* OR. REV. STAT. § 352.121(2)(b) (2017).

⁴⁹ UNIV. OF OR. POLICE DEP’T, UNIVERSITY OF OREGON POLICE DEPARTMENT POLICY MANUAL 11 (2018) [hereinafter UOPD POLICY MANUAL].

⁵⁰ OR. REV. STAT. § 352.121(1)–(2) (2017).

⁵¹ UOPD POLICY MANUAL, *supra* note 49, at 9.

⁵² *Id.* at 30–75.

⁵³ Univ. of Or. Police, *UOPD Message to Our Students on Immigration*, YOUTUBE (Jan. 12, 2017), <https://www.youtube.com/watch?v=hVFmBiXqToU> [<https://perma.cc/D8ZA-TF2R>].

although the UOPD's beat is the property owned by the UO rather than a city or county, UOPD officers are otherwise substantially similar in every relevant respect to any other police officers in the State of Oregon in terms of their scope of authority, training, equipment, and physical appearance.⁵⁴

*B. Community College Campus Safety Departments'
Scope of Authority*

Although the UOPD enjoys a scope of authority practically identical to that of any other typical police department, Oregon's community colleges have not been equally endowed. Instead, Oregon's community colleges find their campus safety authority among a number of different statutes. The state's community colleges derive their campus safety authority primarily from their district board's general and traffic control powers under ORS 341.290–.300.⁵⁵ To a lesser extent, community colleges also rely on the state's citizen arrest statutes under ORS 133.225⁵⁶ and the power to appoint “peace officers” as defined under the statute.⁵⁷

Under the district boards' general powers, community colleges have the authority to “employ administrative officers, professional personnel and other employees, [and] define their duties,”⁵⁸ “[c]ontrol use of and access to the grounds [and] buildings,”⁵⁹ and “[e]xercise any other power, duty or responsibility necessary to carry out the functions under this section.”⁶⁰ In addition, under their traffic control powers, community colleges have the authority to adopt regulations

⁵⁴ In terms of their authority, UOPD officers are identical to any other city, county, or state police department in Oregon under ORS 161.015(4). One important difference worth mentioning is that UOPD, though situated in the city of Eugene, is organizationally focused on catering to the University's unique needs and character. *See* UOPD POLICY MANUAL, *supra* note 49, at 3 (“The University of Oregon Police Department is committed to excellence in campus law enforcement and is dedicated to the people, culture, traditions and diversity of our community.”).

⁵⁵ OR. REV. STAT. §§ 341.290, 341.300 (2017); *see, e.g.*, PORTLAND PUB. SAFETY, *supra* note 11.

⁵⁶ OR. REV. STAT. § 133.225 (2017); *see, e.g.*, MT. HOOD PUB. SAFETY, *supra* note 35.

⁵⁷ Memorandum from John Hummel, Dist. Att’y, Deschutes Cty. 2–4 (Aug. 15, 2016) [hereinafter Aug. 15, 2016 Memo from John Hummel] (on file with author); Memorandum from John Hummel, Dist. Att’y, Deschutes Cty. 1–3 (Feb. 1, 2017) [hereinafter Feb. 1, 2017 Memo from John Hummel] (on file with author).

⁵⁸ OR. REV. STAT. § 341.290(1).

⁵⁹ *Id.* § 341.290(4).

⁶⁰ *Id.* § 341.290(16).

for the “policing, control and regulation[] of traffic and parking of vehicles on property under the jurisdiction of the board.”⁶¹ Community colleges’ traffic control powers also include the ability to “appoint peace officers who shall have the same authority as other peace officers as defined [by statute].”⁶²

To a lesser extent, some community colleges have relied on the Oregon citizen arrest statute (ORS 133.225) to justify detaining individuals.⁶³ In relevant part, that statute states that “[a] private person may arrest another person for any crime committed in the presence of the private person if the private person has probable cause to believe the arrested person committed the crime.”⁶⁴

Clearly, Oregon statutes give community colleges some public safety authority, including the power to control their campuses and to regulate parking. But it is also clear that however these statutory provisions may be understood, they do not explicitly grant colleges the same powers enjoyed by universities. As is discussed below, it remains unclear precisely which activities a community college may lawfully engage in pursuant to these statutes and which activities would count as authoritative overreach.

C. Divergent Authorizations

The foregoing overview of Oregon’s campus safety law makes clear that Oregon has developed a bifurcated system of public higher education campus safety powers. But this assertion naturally leads to an important question: What exactly *are* the campus safety powers granted to Oregon’s community colleges? As explained below, this is a controversial question, and unfortunately there is neither an obvious answer nor a consensus about the scope of authority for Oregon’s community college public safety departments.

⁶¹ *Id.* § 341.300(1).

⁶² *Id.* § 341.300(5).

⁶³ *See, e.g.*, MT. HOOD PUB. SAFETY, *supra* note 35.

⁶⁴ OR. REV. STAT. § 133.225(1) (2017).

III

VARIABLE INTERPRETATIONS:

HOW OREGON'S COMMUNITY COLLEGES UNDERSTAND THE LAWS

At first glance, it is reasonable to conclude that, under Oregon law, community colleges' campus safety authority amounts to little more than routine traffic control and parking enforcement activities. After all, one of the main statutory provisions relied upon by community colleges is entitled "Traffic Control." But Oregon has seventeen publicly chartered community colleges,⁶⁵ each of which has adopted some form of public safety regime,⁶⁶ and each college understands its campus safety powers differently. Several of these community colleges have chosen not to limit their public safety efforts to mere traffic control, and these varying practices have been subject to practically no legal scrutiny—until recently.

A. How Oregon's Community College Campus Safety Practices Came Under Scrutiny

Recently, the brutal murder of a young woman raised questions about the scope of a community college's public safety authority.⁶⁷ In late July of 2016, twenty-three-year-old Kaylee Sawyer was brutally murdered by Edwin Lara, a Central Oregon Community College (COCC) campus safety officer.⁶⁸ Sawyer had apparently been walking on the edge of COCC's campus when Lara encountered her at around 1:30 a.m.⁶⁹ Lara was "uniformed and equipped with pepper spray, handcuffs and a ballistics vest, [while] working a night shift."⁷⁰ Lara was driving a COCC security vehicle equipped with a police-style cage in the back.⁷¹ Lara approached Sawyer and offered to drive her home.⁷² In short, after Sawyer was inside the security vehicle's

⁶⁵ OFFICE OF CMTY. COLLS. & WORKFORCE DEV., OR. HIGHER EDUC. COORDINATING COMMISSION, *Oregon's 17 Community Colleges*, <https://www.oregon.gov/highered/institutions-programs/ccwd/Pages/community-colleges.aspx> [<https://perma.cc/Z8NE-MSJZ>] (last visited Sept. 20, 2019).

⁶⁶ See, e.g., sources cited *supra* note 35.

⁶⁷ *Family Sues*, *supra* note 9.

⁶⁸ The Associated Press, *Oregon College Safety Officer Pleads Guilty to Killing Woman*, SEATTLE TIMES (Jan. 22, 2018, 10:47 AM), <https://www.seattletimes.com/nation-world/campus-officer-pleads-guilty-to-oregon-murder/> [<https://perma.cc/7ZNV-ME9U>].

⁶⁹ *Family Sues*, *supra* note 9.

⁷⁰ The Associated Press, *supra* note 68.

⁷¹ *Family Sues*, *supra* note 9.

⁷² *Id.*

caged area, Lara refused to let her out.⁷³ He then physically and sexually assaulted Sawyer and ultimately killed her near a deserted campus parking lot.⁷⁴

Sawyer's family subsequently brought a lawsuit against COCC in which they alleged that "Sawyer agreed [to a ride] because Lara was wearing a law enforcement uniform, and that Sawyer likely believed Lara was a Bend Police Department officer."⁷⁵ The lawsuit also questioned COCC's public safety policies and practices, including "giving [COCC's] officers policelike uniforms and cars, handcuffs, bulletproof vests and permission to detain and interrogate suspects as well as perform citizen arrests."⁷⁶ Partly as a result of Sawyer's murder and her family's subsequent lawsuit, COCC's campus safety practices have undergone intense legal scrutiny.⁷⁷

Earlier, COCC's campus safety practices had already come under scrutiny following a botched investigation attempt by campus safety personnel. In 2015, a student discovered a camera phone installed inside a hand soap dispenser in a women's restroom on campus.⁷⁸ Later, COCC campus safety personnel searched the phone and interrogated a suspect before they informed the Bend Police Department days later.⁷⁹ Ultimately, the Deschutes County District Attorney (DA) declined to prosecute, stating that campus safety personnel had "tainted" the investigation.⁸⁰ Later, the Deschutes County DA criticized the COCC campus safety authorities for "acting like a police department."⁸¹ The DA said the COCC campus safety department had exceeded its authority by carrying out criminal investigations, off-campus law enforcement, controversial search and seizure activities, and adopting police-like uniforms and vehicles.⁸²

⁷³ *See id.*

⁷⁴ *Id.*

⁷⁵ *Id.*; *see also* Complaint at 10–11, *Estate of Sawyer v. Central Or. Cmty. Coll.*, (D. Or. 2018) (No. 6:17-cv-01150-MC), 2018 WL 2946417.

⁷⁶ *Family Sues*, *supra* note 9.

⁷⁷ *Id.*

⁷⁸ *DA's Assessment*, *supra* note 16.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ A.J. Kato, *COCC, Bend PD, DA Work Out Public Safety Issues: Public Safety Officers' Roles Being Clarified*, KTVZ (Bend) (Jan. 24, 2017, 8:12 PM), <https://www.ktvz.com/news/security-changes-on-the-way-at-cocc/291346367> [<https://perma.cc/42P4-67YT>].

⁸² *DA's Assessment*, *supra* note 16.

Following the Deschutes County DA's disapproval of COCC's campus safety activities, combined with the murder of Kaylee Sawyer, the County and COCC began working to reach an agreement about the extent of COCC's campus safety department's authority and how to ensure campus safety activities would comply with the law.⁸³ And as a result, by implication, the very statutes granting public safety authority to Oregon's community colleges have now come under legal scrutiny.⁸⁴

B. How Oregon's Community College Campus Safety Practices Vary

Examining Oregon's community colleges' campus safety practices reveals a remarkable variability. Oregon's community colleges all derive their campus safety authority from the same statutes, but there has been little occasion to scrutinize these statutes. And in the absence of any meaningful interpretive guidance, no single interpretation of those statutes has prevailed. Thus, campus safety practices are not standardized across Oregon's seventeen community colleges, and each college has adopted various practices based upon its own understanding of the law.

The variation in campus safety practices may be conceptualized as falling along a spectrum of authority. At one end of this spectrum, colleges have adopted a narrower, more conservative approach to their campus safety authority. For example, some colleges' practices may extend little beyond issuing and enforcing parking permissions, providing personal safety escorts and basic first aid, promoting or enhancing safety awareness, and monitoring video surveillance systems.⁸⁵ On the other end of this spectrum, colleges have embraced a broader understanding of their authority—one that encompasses all the foregoing practices, plus practices and policies more akin to a typical police force. For example, some colleges' campus safety departments understand their authority to include “enforc[ing] all federal, state, city and county laws and ordinances on college property,”⁸⁶ “[i]nvestigating crimes,”⁸⁷ performing traffic stops,⁸⁸

⁸³ Kato, *supra* note 81.

⁸⁴ *DA's Assessment*, *supra* note 16.

⁸⁵ See, e.g., *Services*, LINN-BENTON COMMUNITY. C., <https://www.linnbenton.edu/faculty-and-staff/college-services/public-safety-emergency-planning-ehs/services.php> [<https://perma.cc/6WL8-JUU2>] (last visited Sept. 24, 2019).

⁸⁶ LANE PUB. SAFETY, *supra* note 12.

⁸⁷ CLACKAMAS COLLEGE SAFETY, *supra* note 35.

demanding driver identifications, and “mak[ing] arrests as a part of their statutory duties.”⁸⁹ Additionally, some campus safety personnel are equipped with “defensive tools, including handcuffs, baton and pepper spray,”⁹⁰ and have adopted “policelike uniforms and cars.”⁹¹

Because there is no consensus among Oregon’s community colleges about the precise scope of their statutory grant of campus safety authority, a range of interpretations and effectuations of that authority have developed over time. And although practices such as issuing vehicle passes or parking tickets may be uncontroversial, other practices—such as investigating crimes, conducting off-campus enforcement, or making arrests—are extremely controversial. In COCC’s case, the controversy surrounding its campus safety activities resulted in actual and threatened civil and criminal lawsuits for illegally exceeding its authority.⁹²

IV

THE AUTHORITATIVE OVERREACH OF COMMUNITY COLLEGE CAMPUS SAFETY DEPARTMENTS

Although not every community college campus safety practice is vulnerable to legitimate allegations of authoritative overreach, clearly some practices are. Generally speaking, a campus safety activity is susceptible to a charge of overreach when the activity is permitted under a college’s interpretation of the laws beyond what the relevant law actually authorizes. This section briefly presents the relevant laws and colleges’ interpretations of those laws and explains how colleges commit authoritative overreach.⁹³

A. What the Oregon Laws Say; What the Oregon Laws Mean

Oregon’s community colleges primarily derive their campus safety authority from their district board’s general and traffic control powers

⁸⁸ *Vehicle Regulations*, LANE COMMUNITY C., <https://www.lanecc.edu/copps/documents/vehicle-regulations> [<https://perma.cc/5JJR-YXXT>] (last updated Apr. 17, 2017).

⁸⁹ LANE PUB. SAFETY, *supra* note 12.

⁹⁰ PORTLAND PUB. SAFETY, *supra* note 11.

⁹¹ *Family Sues*, *supra* note 9.

⁹² *Id.*; see also *DA’s Assessment*, *supra* note 16.

⁹³ Ordinarily, a thorough review of a statute requires an analysis of court cases arising under or interpreting that statute. Here, however, the complete absence of any such case law or judicial interpretation precludes that approach. Thus, the following section will not address any judicial treatment of the statutes discussed.

under ORS 341.290–.300. To a lesser extent, some colleges rely on the state's citizen arrest statute, ORS 133.225, and the power to appoint peace officers as defined under the statute. In this Part, I will explain and analyze these provisions to illuminate how some community colleges understand and effectuate their powers in excess of their legitimate statutory authority.

1. Community Colleges' Traffic Control Powers

Community colleges most often cite the traffic control statute—ORS 341.300—to support the legitimacy of their campus safety activities.⁹⁴ Most significantly, subsection (1) authorizes the district general board to “adopt such regulations as it considers necessary to provide for the policing, control, and regulations of traffic and parking of vehicles on property under the jurisdiction of the board.”⁹⁵ The statute explicitly elaborates that these regulations may provide for such things as managing parking areas, issuing parking passes, assessing and collecting reasonable parking charges and fees,⁹⁶ and impounding vehicles.⁹⁷ The traffic control powers also authorize the administrative enforcement of any regulation adopted by the community college's board.⁹⁸ Thus, subsection (1) explicitly, and seemingly uncontroversially, authorizes the board to create a campus parking enforcement regime on Oregon's community college campuses.

But controversy arises when subsection (1) is read in tandem with subsection (5), which states that “for the purpose of enforcing its regulations governing traffic control, [the board] may appoint peace officers who shall have the same authority as other peace officers as defined in ORS 133.005.”⁹⁹ Under ORS 133.005, a “peace officer” means, *inter alia*: Oregon state police officers, sheriffs, constables,

⁹⁴ See, e.g., *Vehicle Regulations: Mary Spilde Downtown Center*, LANE COMMUNITY C., <https://www.lanec.edu/copps/documents/vehicle-regulations-mary-spilde-downtown-center> [<https://perma.cc/X7M5-3S8N>] (last visited Sept. 20, 2019); Chemeketa Bd. of Educ., *College Public Safety Authority*, CHEMEKETA COMMUNITY C., (last updated Jan 20, 2016), <https://www.chemeketa.edu/media/content-assets/documents/pdf/faculty-and-staff/policies-amp-procedures/2000-series/2415-POL.pdf> [<https://perma.cc/N35B-4FE6>]; COCC PUB. SAFETY, *supra* note 35.

⁹⁵ OR. REV. STAT. § 341.300(1) (2017).

⁹⁶ *Id.* § 341.300(1).

⁹⁷ *Id.* § 341.300(4).

⁹⁸ *Id.* § 341.300(2).

⁹⁹ *Id.* § 341.300(5).

marshals, municipal police officers, reserve police officers, Oregon Department of Justice (ODOJ) criminal investigators, animal welfare agents, and tribal police officers.¹⁰⁰ Most pertinently, under ORS 133.005(3)(b), a peace officer may mean “a police officer commissioned by a university under ORS 352.121 (University police departments and officers) or 353.125 (Creation of police department and commission of police officers).”¹⁰¹ Under ORS 352.121, the governing boards for Oregon’s seven universities are authorized to establish campus police departments and commission police officers.¹⁰² And under ORS 353.125, the governing board for Oregon Health and Science University enjoys a practically identical authorization.¹⁰³ These statutes explicitly authorize university police to enforce criminal laws and any administrative laws adopted by their boards, and state that “[p]olice officers commissioned under this section . . . [h]ave all the authority and immunity of a peace officer or police officer of this state.”¹⁰⁴

Some community colleges understand these statutory provisions to jointly imply that, at least in some sense, community college campus safety officers possess the same powers and authority enjoyed by university police officers.¹⁰⁵ Thus, it is perhaps unsurprising to find community college public safety departments not only enforcing parking regulations on their campuses but also adopting the appearance and equipment of an ordinary municipal police force while exercising their powers to conduct criminal investigations, make arrests of suspects, operate both on- or off-campus, and enforce federal, state, and local laws.

This permissive interpretation embraced by some colleges represents an authoritative overreach for a number of reasons. Namely, it violates the statutory limits set forth in the traffic powers statute; it disregards an important distinction between community college *peace* officers and university *police* officers; and it ignores important legislative considerations underlying the decision to allow

¹⁰⁰ *Id.* § 133.005(3).

¹⁰¹ *Id.* § 133.005(3)(b).

¹⁰² *Id.* § 352.121. *See also id.* § 352.002 (listing the seven universities with the authority to establish campus police departments and to commission police officers).

¹⁰³ *Id.* § 353.125.

¹⁰⁴ *Id.* § 352.121(2)(a)–(b); *id.* § 353.125(2)(a)–(b).

¹⁰⁵ *See, e.g., Hearings on S.B. 576 Before the S. Comm. on Judiciary*, 80th Or. Legis. Assemb. (Mar. 13, 2019) video recording at 45:28, [hereinafter *S. Hearings on S.B. 576*] (statement of Ellen Rosenblum, Oregon Attorney General).

Oregon's universities to create a fully-fledged police department but withhold that same power from community colleges.

a. Where and to What Do the Traffic Control Powers Apply?

The traffic control statute imposes statutory limits on the types of conduct and places subject to college campus safety officers' authority. Importantly, ORS 341.300(1) authorizes college boards only to "adopt such regulations as it considers necessary to provide *for the policing, control and regulations of traffic and parking of vehicles on property under the jurisdiction of the board.*"¹⁰⁶ And ORS 341.300(5) permits college boards to appoint peace officers "*for the purpose of enforcing its regulations governing traffic control.*"¹⁰⁷ On a plain language reading of the traffic control statute, any off-campus law enforcement, criminal investigations, arrests, or enforcement of federal, state, or local laws would exceed colleges' statutory authority. Perhaps it is possible that a college board could recodify some federal, state, or local laws into campus regulations. But even if that were the case, under the traffic control statutes, campus safety personnel would have the authority to enforce those regulations only insofar as they pertain to the regulation of on-campus traffic. Thus, any rule enforcement authority derived from these traffic control provisions pertains only to on-campus activities and only to activities governed by a college board's traffic control regulations.

b. College "Peace Officer" Distinguished from University "Police Officer"

The traffic control statutes allow college boards to appoint peace officers endowed with "the same authority as other peace officers."¹⁰⁸ But this does not mean college safety officers' authority is identical to university police officers' authority. First, the statutory definition of "peace officer" explicitly lists a dozen meanings—including university police officers—yet omits community college campus safety officers from that list.¹⁰⁹ Second, under ORS 181A.355(14), a "police officer" includes "[a]n officer . . . of a law enforcement unit

¹⁰⁶ OR. REV. STAT. § 341.300(1) (2017) (emphasis added).

¹⁰⁷ *Id.* § 341.300(5) (emphasis added).

¹⁰⁸ *Id.* § 341.300(5).

¹⁰⁹ *See id.* § 133.005(3)(a)–(h).

employed full-time as a peace officer who is . . . [c]ommissioned by . . . a university that has established a police department under ORS 352.121.”¹¹⁰ This definition of “police officer” makes no reference to community colleges or their campus safety personnel. More importantly, ORS 352.121 lists only seven schools authorized to establish campus police departments or appoint police officers, but no community colleges are on that list.¹¹¹

Legislative history further supports the distinction between community college campus safety peace officers and university police officers. When Senate Bill 405 passed, the legislature authorized Oregon’s universities to appoint university police officers but withheld that same power from community colleges.¹¹² Around the same time that Senate Bill 405 was passed, another bill, House Bill 3240, was introduced but did not pass. The purpose of House Bill 3240 was to authorize Oregon’s community colleges’ boards of education to commission police officers.¹¹³ In support of the bill, Walden Perkins, a senior campus safety officer at Lane Community College, explained that, “All we’re asking for is the same authority that the officers of the Oregon University System have: the right to stop and frisk somebody and the probable cause arrest authority.”¹¹⁴ Among other things, House Bill 3240 would have amended ORS 341.290–300 to give community colleges the authority to establish police departments and commission police officers.¹¹⁵ The bill also would have expanded the definition of peace officer to include officers commissioned by community college boards. However, the bill was never enacted.¹¹⁶

There are several explanations as to why Senate Bill 405 succeeded and House Bill 3240 failed. At public hearings and legislative work sessions, supporters of Senate Bill 405 opined that Oregon’s

¹¹⁰ *Id.* § 181A.355(14).

¹¹¹ *See id.* § 352.121 (referring to schools enumerated in ORS 352.002).

¹¹² *See Graves, supra* note 41.

¹¹³ H.B. 3240, 76th Or. Legis. Assemb., Summary (2011) (“Authorizes board of education of community college district to commission police officers. Grants commissioned police officers all powers and authority granted to peace officers or other police officers of this state.”).

¹¹⁴ *H. Hearings on H.B. 3240, supra* note 39, at 26:22 (statement of Waldon Perkins, Lane Community College Public Safety Officer).

¹¹⁵ H.B. 3240, *supra* note 113.

¹¹⁶ Measure Activity, *2011 Session House Bill 3240*, THE OREGONIAN (last updated June 30, 2011), <https://gov.oregonlive.com/bill/2011/HB3240/> [<https://perma.cc/BU52-R86A>].

universities are generally situated within larger cities or metro areas and have relatively large student populations that are typically more diverse or embrace different values than the surrounding, nonuniversity populations.¹¹⁷ Conversely, many community colleges are not situated in metro areas and have relatively small student populations that are more often drawn from the surrounding populace.¹¹⁸ Municipal police may be less familiar with or sensitive to the unique needs of the university community. And requiring municipal police departments to oversee a university's population in addition to the surrounding city's population strains police resources and personnel.¹¹⁹

During public hearings for House Bill 3240, critics voiced concerns about the adequacy of the provisions for personnel trainings and the availability of funding sources.¹²⁰ But even more devastatingly, a spokesperson for the Oregon Community College Association (OCCA) told the legislators that none of the seventeen colleges represented by OCCA had expressed any interest in pursuing this enhanced authority for their campus safety personnel.¹²¹

A final distinction between a peace officer and a police officer pertains to training requirements. A police officer is subject to a stringent mandatory law enforcement training certification through Oregon's Department of Public Safety Standards and Training (DPSST).¹²² Although community college public safety officers may receive a private security certification through DPSST,¹²³ this is a different and relatively less stringent training and certification compared to that required for university police officers.¹²⁴ During the public hearing for House Bill 3240, a state legislator asked what training is required for college campus safety officers. Mr. Perkins

¹¹⁷ *Hearings on S.B. 405 S. Comm. on Judiciary*, 76th Or. Legis. Assemb. (Mar. 24, 2011) [hereinafter *S. Hearings on S.B. 405*].

¹¹⁸ Telephone Interview with Karen Smith, *supra* note 18.

¹¹⁹ *S. Hearings on S.B. 405*, *supra* note 117, at 24:38 (statement of James Bean, Senior Vice President and Provost, University of Oregon).

¹²⁰ *H. Hearings on H.B. 3240*, *supra* note 39, at 16:20–57:35.

¹²¹ *Id.* at 43:51 (statement of Karen Smith, General Counsel, Oregon Community College Association).

¹²² *See, e.g.*, OR. ADMIN. R. 259-008-0010 (2018).

¹²³ *See, e.g.*, PORTLAND PUB. SAFETY, *supra* note 11.

¹²⁴ *Compare* OR. ADMIN. R. 259-008-0060 (2018) (describing in section (3)–(4) the DPSST “Basic” certification requirement for police officers), *with* OR. ADMIN. R. 259-060-0020 (2018), *and* OR. ADMIN. R. 259-060-0025 (2018) (minimum standards and application for licensure of private security professional).

responded, “Right now, all you have to be is a private licensed security officer in the state of Oregon. And that consists of an 8 hour training day.”¹²⁵ Following the Umpqua shooting, the Oregon Campus Safety Work Group (OCSWG) recognized the need for enhanced campus safety personnel training and recommended the creation of a new, unique DPSST training certification specific to campus safety and separate from the private security certification.¹²⁶ The foregoing legislative considerations may help to explain why Oregon’s universities are authorized to have police officers to serve their campuses, whereas community colleges may only appoint campus safety peace officers.

Although a “peace officer” and a “police officer” may overlap conceptually, they are not identical. The legislature had the opportunity to explicitly grant police authority to Oregon’s universities and community colleges. Instead, they granted that authority to the universities but withheld it from the colleges. As a result of that legislative decision, college safety personnel are not required to undergo the same training and certification as university, state, or municipal police officers. And under the colleges’ traffic powers, peace officers are authorized only to enforce on-campus parking regulations.

2. *Community Colleges’ General Powers*

College campus safety enforcement authority also derives from the general powers statute, ORS 341.290.¹²⁷ Under its general powers, a board of education for an Oregon community college district is empowered for the purpose of “the general supervision and control” of any community college in that district.¹²⁸ Although this statute enumerates twenty-two separate powers enjoyed by community

¹²⁵ *H. Hearings on H.B. 3240*, *supra* note 39, at 41:56 (statement of Walden Perkins, LCC Senior Campus Safety Officer). In fact, licensure as a private security professional currently requires fourteen classroom hours plus additional requirements (e.g., minimum education standards, age requirements, satisfactory moral fitness, etc.). But those additional requirements do not involve any substantial training courses or performance evaluations remotely similar to those required for certification of police officers. *See, e.g., Unarmed Security Professional*, DPSST PRIV. SEC., <https://www.oregon.gov/dpsst/PS/Pages/Unarmed-Security-Professional.aspx> [<https://perma.cc/9VZE-4CME>] (last visited Sept. 19, 2019).

¹²⁶ CMTY. PLAN. WORKSHOP, CAMPUS SAFETY AT OREGON POST-SECONDARY EDUCATION INSTITUTIONS: A REPORT FROM THE OREGON CAMPUS SAFETY WORK GROUP iv, 16 (2016).

¹²⁷ OR. REV. STAT. § 341.290 (2017).

¹²⁸ *Id.* § 341.290.

college boards, only one of these powers is particularly relevant to controversial campus safety practices. Specifically, ORS 341.290(4) grants the power to “[c]ontrol use of and access to the grounds [and] buildings.”¹²⁹ A broad reading of that provision might suggest colleges enjoy some powers and authority beyond those set forth in the traffic control statute.¹³⁰ For example, one community college has invoked this statute to exclude individuals from their campus.¹³¹ Others use the statute to justify their policies prohibiting individuals from possessing firearms or concealed weapons on their campuses.¹³²

Although colleges have invoked their general powers for campus safety purposes, some may be exceeding their authority by doing so. For instance, the Oregon State Bar Association has stated that some colleges’ campus gun policies have not really been tested in the courts and noted that these laws may change if they are subjected to a legal challenge.¹³³ More relevant here is the uncertain legal status of colleges’ unchallenged policies pertaining to stop and frisks, arrests, criminal investigations, and off-campus enforcement activities. If Oregon’s community college public safety officers were so empowered under the general powers, then it would be unnecessary or redundant to grant those powers to them through additional legislation like House Bill 3240. Indeed, these are the very same powers House Bill 3240 supporters claimed community college public safety personnel *did not have* but only hoped to obtain legislatively. In short, interpreting the general powers as an authorization for community college public safety personnel to engage in ordinary police activities is a specious position that ignores both the colleges’ own understandings of their authority and the legislative history surrounding the issue.

¹²⁹ *Id.* § 341.290(4).

¹³⁰ Telephone Interview with Karen Smith, *supra* note 18.

¹³¹ *Trespass Notice*, LANE COMMUNITY C., <https://www.lanecc.edu/copps/documents/trespass-notice> [<https://perma.cc/E63K-62WB>] (last updated Apr. 19, 2017).

¹³² *Guns in Community Colleges – FAQ*, OR. ST. B. ASS’N, http://www.osba.org/Resources/Article/Legal/Guns_in_schools_CC_FAQ.aspx [<https://perma.cc/UC7M-3GRC>] (last visited Jan. 9, 2019) (on file with author).

¹³³ *Id.*

3. The “Citizen’s Arrest” Statute

Some of the state’s community colleges have authorized their campus safety personnel to make arrests under ORS 133.225,¹³⁴ the so-called citizen’s arrest statute.¹³⁵ The most relevant part of the citizen’s arrest statute states that “[a] private person may arrest another person for any crime committed in the presence of the private person if the private person has probable cause to believe the arrested person committed the crime.”¹³⁶ In a rather high-profile example, the Deschutes County DA criticized COCC’s use of the citizen’s arrest power in the wake of Kaylee Sawyer’s murder, saying “COCC is on shaky legal ground in relying on the citizen arrest statute to perform the type of policing activities they engage in.”¹³⁷ The Deschutes County DA also noted that there has yet to be a ruling on whether or not citizen’s arrest powers pertain to government agencies or their employees.¹³⁸ However, the Deschutes County DA noted that Oregon’s constitutional provisions prohibiting unlawful searches and seizures by government entities would be relevant to an evaluation of colleges’ arrest practices.¹³⁹ Ultimately, whether or not campus safety personnel may legitimately rely on citizen’s arrest authority is a question best resolved by the state’s courts. The issue is complicated, and it is certainly far from clear whether Oregon’s college campus safety personnel enjoy arrest authority under the citizen’s arrest statute. As the Deschutes DA put it, “If COCC is relying on the citizen’s arrest statute as [a] basis for its policing activities, it does so at its own peril.”¹⁴⁰

Another concern relating to community colleges’ arrest practices is potential liability for impersonating law enforcement personnel.¹⁴¹ Under Oregon law, a person is criminally liable for impersonating law enforcement when “the person, with the intent to obtain a benefit or to injure or defraud another person, uses false law enforcement

¹³⁴ See, e.g., Dep’t of Pub. Safety, ANN. SEC. REP. (Mt. Hood Community C., Mt. Hood, Or.), 2018, at 2; Pub. Safety, ANN. CAMPUS SEC. REP. (Portland Community C., Portland, OR.), 2017, at 19; Dep’t of Campus Pub. Safety, *Crime Awareness Fire Safety Campus Security*, ANN. SEC. REP. ANN. FIRE SAFETY REP. (Cent. Or. Community C., Bend, Or.), 2014, at 2.

¹³⁵ OR. REV. STAT. § 133.225 (2017) (authorizing “[a]rrest[s] by private persons”).

¹³⁶ *Id.* § 133.225(1).

¹³⁷ *DA’s Assessment*, *supra* note 16.

¹³⁸ Feb. 1, 2017 Memo from John Hummel, *supra* note 57, at 2–3.

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 2.

¹⁴¹ For a more thorough analysis than is presented here, see *id.* at 2–3.

identification or wears a law enforcement uniform to give the impression that the person is a peace officer and does an act in that assumed character.”¹⁴² Relevant conduct includes wearing clothing explicitly bearing words such as police, sheriff, or law enforcement, or even wearing clothing “substantially similar to an official uniform of a law enforcement unit that would make it reasonably likely that a person would believe that the wearer is a peace officer.”¹⁴³ Basically, impersonation problems arise when campus safety personnel combine arrest practices with the use of a police aesthetic.

As noted above, many college campus safety personnel are equipped similarly to ordinary police and use vehicles that appear very similar to police vehicles. Again using COCC as an example, the Deschutes DA noted that “if someone is pulled over by a person wearing a policelike uniform, in a marked car with blue flashing lights, that person could be under the impression he or she is being stopped by a police officer.”¹⁴⁴ Indeed, Bend Police Chief Jim Porter said of COCC’s campus safety personnel, “[T]heir uniforms are very close to ours. They wear a badge like ours. They’re stepping out of a vehicle with overhead lights on it. It would give the person the impression that they’re being stopped by a police officer.”¹⁴⁵ And in their lawsuit, Kaylee Sawyer’s family contends their daughter accepted a ride from Edwin Lara because his uniform and vehicle gave the appearance of a Bend police officer.¹⁴⁶ Thus, it seems entirely plausible that when campus safety officers enforce campus safety rules by making a citizen’s arrest while wearing uniforms practically indistinguishable from those worn by ordinary police, that conduct could count as criminal impersonation of a police officer. Such a criminal offense would almost certainly represent an instance of authoritative overreach.

B. Conclusion About Authoritative Overreach

Some Oregon community colleges have authorized their campus safety departments to operate in excess of their statutorily defined powers. Colleges have done so primarily by adopting a permissive understanding of the scope of their authority under the traffic control,

¹⁴² OR. REV. STAT. § 162.367(1) (2017).

¹⁴³ *Id.* § 162.367(3)(b).

¹⁴⁴ *DA’s Assessment*, *supra* note 16.

¹⁴⁵ Kato, *supra* note 81.

¹⁴⁶ *Family Sues*, *supra* note 9.

general powers, and citizen's arrest statutes. Some instances of overreach are rather blatant—for example, off-campus enforcement activities or stop and frisks. Other examples are harder to evaluate—for example, using the citizen's arrest powers or wearing police-like uniforms. But the overall picture is clear: some college campus safety departments have authorized their personnel to act in ways that problematically exceed their legitimate statutory authority. What is not so clear, however, is how to resolve this problem.

V

THREE SOLUTIONS TO COLLEGES' SCOPE OF AUTHORITY PROBLEM

Resolving the issue of authoritative overreach by the state's college campus safety departments is complicated, and no single approach to a resolution presents itself as best. This section posits three possible approaches to resolving the issue—the judicial, the legislative, and the infrastructural approaches—and presents some shortcomings of each, ultimately selecting the infrastructural approach as the least problematic solution.

A. The Judicial Solution

Some Oregon community colleges have exceeded their campus safety enforcement authority by embracing overly permissive interpretations of the statutes granting campus safety enforcement authority. Judicial intervention presents an obvious means of resolving these issues by clarifying the legitimate scope of authority. For example, the courts could resolve the question of whether or not state-employed campus safety officers may rely on the citizen's arrest statute.

The judicial approach is attractive because it could help to clarify the laws governing what authority colleges have. Clarity would allow colleges to more easily act in conformity with the law and thereby reduce their liability for claims arising from authoritative overreach. However, since there has been no significant judicial treatment of the relevant statutes, a judicial resolution will happen only when and if some court case eventually commences.¹⁴⁷ Moreover, the judicial

¹⁴⁷ An exception to the virtual nonexistence of relevant cases might be the pending lawsuit brought on behalf of Kaylee Sawyer. *See* Complaint, *Estate of Sawyer v. Central Or. Cmty. Coll.*, 2018 WL 2946417 (No. 6:17-cv-01150-MC) (D. Or. July 24, 2017), ECF No. 1. To the extent that Sawyer's lawsuit challenges the relevant Oregon statutes, it may provide the opportunity for a court to examine those laws and provide some interpretive clarity.

intervention approach does little to resolve a more fundamental question: What sort of campus safety authority *should* colleges have?

B. The Legislative Solution

Although some colleges have exceeded their campus safety enforcement authority, they have done so perhaps understandably. Generally, colleges have exceeded their statutory authority in their efforts to achieve safe and secure campuses. Indeed, during public hearings for House Bill 3240, campus safety personnel bemoaned the difficulty of providing adequate campus safety to community colleges without the same legal authority, training, and equipment that university police officers enjoy.¹⁴⁸ And more recently, the Oregon Public Safety Officers Association (OPSOA) lamented that without an expansion of campus safety authority, training, and equipment, expecting community college campus safety personnel to secure their campuses or effectively handle a UCC-style school shooting is “absolutely ludicrous.”¹⁴⁹ OPSOA implored the Governor and the legislature to increase funding, enhance training and equipment, and expand the enforcement powers for college campus safety personnel pursuant to the OCSWG recommendations.¹⁵⁰ Thus, another potential solution would be to simply create fresh legislation that expands, enhances, and refines college campus safety authority—perhaps something along the lines of what House Bill 3240 would have accomplished.

Although different in character from House Bill 3240, another bill relating to college campus safety was introduced in the Oregon legislature in early 2019¹⁵¹ and recently signed into law by Oregon Governor Kate Brown.¹⁵² That bill, Senate Bill 576, was introduced largely in response to the abuse of authority evidenced in the Kaylee

¹⁴⁸ *H. Hearings on H.B. 3240*, *supra* note 39, at 16:20 (statements of Rob Wagoner, Director of Political and Legislative Affairs, American Federation of Teachers, Oregon; and Waldon Perkins, Lane Community College Public Safety Officer).

¹⁴⁹ *It's Time to Change Campus Safety at Oregon Colleges & Universities*, OR. PUB. SAFETY OFFICERS ASS'N (Feb. 22, 2018), <https://oregonpsoa.org/2018/02/22/its-time-to-change-campus-safety-at-oregon-colleges-universities/> [<https://perma.cc/Q4SU-3UWZ>].

¹⁵⁰ *Id.*

¹⁵¹ S.B. 576, 80th Or. Legis. Assemb. (2019) (introduced).

¹⁵² Gary A. Warner, *Gov. Brown Signs “Kaylee’s Law”: Law Named for Bend Woman Murdered by COCC Campus Security Officer*, THE BULLETIN (Bend) (May 24, 2019, 10:04 PM), <https://www.bendbulletin.com/localstate/7184257-151/gov-brown-signs-kaylees-law> [<https://perma.cc/S8ZK-P8FV>]; *see also* S.B. 576, *supra* note 151.

Sawyer case discussed above. Indeed, the new legislation is referred to as “Kaylee’s Law.”¹⁵³ Like the proponents of House Bill 3240, supporters of Kaylee’s Law hope to address some of the problems related to authoritative overreach. At a state Senate hearing about Kaylee’s Law, Bend Police Chief Jim Porter addressed the overreach problem, stating, “[T]he continuing theme I hear from the Community College and from their attorneys is . . . ‘The law does not say we can’t do that’ when it comes to acting as police officers.”¹⁵⁴ At the same hearing, Oregon’s Attorney General, Ellen Rosenblum, said she was “alarmed to learn of [college] campus officers who wear uniforms which seem to be designed to cultivate the misimpression that the person wearing them is a police officer. Or to drive vehicles that are functionally indistinguishable from law enforcement vehicles.”¹⁵⁵ Rosenblum further opined that “there is such a tremendous potential for abuse if individuals who are not law enforcement are allowed to imitate law enforcement.”¹⁵⁶ Kaylee’s Law garnered support from law enforcement groups and numerous public officials and was unanimously approved by the Oregon House and Senate before being signed into law.¹⁵⁷

Although House Bill 3240 and Kaylee’s Law both target campus safety authority, the two bills address authoritative overreach differently. Unlike House Bill 3240, Kaylee’s Law does not seek to resolve the overreach problem by officially expanding colleges’ authority through the establishment of college police departments. Instead, Kaylee’s Law aims to resolve the problem by restricting campus safety departments through new, explicit statutory requirements. Those requirements address authoritative overreach by restricting the problematic campus safety practices implicated in Kaylee Sawyer’s murder by COCC Campus Safety Officer Edwin Lara. Namely, Kaylee’s Law creates new requirements governing campus safety departments’ uniforms and vehicles.¹⁵⁸ Under the new legislation, campus safety vehicles may not have red or blue light bars, specialized bumpers, or internal cages.¹⁵⁹ Kaylee’s Law also

¹⁵³ S.B. 576, 80th Or. Legis. Assemb. (2019) (introduced).

¹⁵⁴ *Hearings on S.B. 576 Before the S. Comm. on Judiciary*, 80th Or. Legis. Assemb. (Mar. 13, 2019), video recording at 45:28 [hereinafter *S. Hearings on S.B. 576*] (statement of Jim Porter, Bend Chief of Police).

¹⁵⁵ *Id.* at 15:23.

¹⁵⁶ *Id.* at 15:01.

¹⁵⁷ Warner, *supra* note 152.

¹⁵⁸ S.B. 576, *supra* note 151, at § 2(4)–(5).

¹⁵⁹ *Id.* § 5(a)–(d).

requires that campus safety vehicles are clearly marked as campus safety on the front of the vehicle.¹⁶⁰ Further, colleges will be required to conform with new rules designed to distinguish campus safety personnel uniforms from law enforcement uniforms.¹⁶¹ Additionally, the new legislation imposes psychological testing and enhanced background checks for campus safety personnel and explicitly denies campus security officers the stop and frisk authority.¹⁶² Thus, Kaylee's law could help mitigate authoritative overreach by eliminating some of the statutory ambiguity that has contributed to colleges adopting problematic campus safety practices.

Kaylee's Law can make campuses safer by resolving problems arising from the illegitimate exercise of power against innocent community members. But the new law cannot resolve the problems highlighted by the supporters of House Bill 3240. Recall that supporters of House Bill 3240 argued that campus safety was at risk precisely because of the relatively limited scope of authority granted to community colleges. For example, Kaylee's Law's restrictions would not help—and indeed could further hinder—community colleges' ability to respond to property crimes, parking violations, or drug-related crimes. Relatedly, it is hard to see how Kaylee's Law could help campuses better respond to UCC-style active shooter situations. Thus, Kaylee's Law is a legislative solution that offers the promise of increasing campus safety by reducing the likelihood of abuse of authority; it is also a legislative solution that does little to provide the enhanced authority for which House Bill 3240's supporters implored the legislature and is unlikely to improve campuses' resilience to active shooters.

Still, a legislative approach is appealing because it could sidestep the need for a judicial resolution that may never occur or would not fully resolve the interpretive issues. Another virtue of this approach is that it could provide college safety officers the increased law enforcement authority they say they need. However, as mentioned above, when House Bill 3240 was before the legislature, none of Oregon's community college boards endorsed or wanted this sort of expansion. Also mentioned above were OCCA's concerns about funding for the additional training, equipment, and personnel called for in House Bill 3240. Furthermore, expanded powers could expose

¹⁶⁰ *Id.* § 2(5).

¹⁶¹ *Id.* § 2(4).

¹⁶² *Id.* § 2(2), 2(7).

community colleges to additional costs associated with civil rights actions brought against the department or its officers. It is also important to recall the fate of House Bill 3240; the bill represented an opportunity to expand colleges' law enforcement authority but lacked adequate support to move beyond the state House. Thus, there are considerable barriers facing a legislative expansion of law enforcement authority as a means of enhancing college campus safety, not the least of which is garnering adequate legislative support.

C. The Infrastructural Solution

A judicial or legislative solution is unlikely to succeed as a means of legitimately clarifying or enhancing Oregon's community college campus safety authority. Fortunately, those are not the only available means. For example, although the Oregon Campus Safety Work Group (OCSWG) report recommended an expansion of powers similar to that endorsed by OPSOA and the supporters of House Bill 3240, the report also recommended other, less controversial or legislatively dependent means of enhancing campus safety and security—namely, implementing certain physical, infrastructural features on campuses.¹⁶³ These features can be as simple as adding interior door locks in existing structures or as sophisticated as creating a state-of-the-art campus surveillance system from scratch.

Importantly, these means do not entail the same sort of uncertainties associated with either the legislative or judicial approaches; implementing infrastructural enhancements does not necessarily depend upon a particular litigation outcome or adequate legislative support. However, implementing some aspects of an infrastructural solution would almost certainly require obtaining additional funding allocations from the state. But as is discussed below, aspects of an infrastructural approach to enhanced campus safety and security could be incorporated under colleges' existing plans, projects, and remodels or by retooling colleges' current resource allocations.

¹⁶³ CMTY. PLAN. WORKSHOP, *supra* note 126, at 19–21.

VI

THE INFRASTRUCTURAL SOLUTION: INCREASING SAFETY,
DECREASING LIABILITY AND AUTHORITATIVE OVERREACH

Achieving safer community college campuses does not necessarily require allowing safety personnel to act more like university police officers. In fact, an evaluation of campus safety conditions at Oregon's public colleges and universities suggests there are a number of effective means of enhancing campus safety.¹⁶⁴ This section examines and endorses one of these means: public safety infrastructure.

In recent years, public schools have been subjected to one traumatic event after another, but infrastructure improvements could make these "soft targets" safer.¹⁶⁵ Following the UCC shooting in October 2015, Governor Kate Brown established the Oregon Campus Safety Work Group (OCSWG).¹⁶⁶ Among other things, Governor Brown tasked OCSWG with identifying ways to improve campus safety and security at the state's community colleges and universities.¹⁶⁷ The OCSWG report notes that "[i]nvestments in infrastructure are a key component to campus safety."¹⁶⁸ And about half of the schools surveyed by the OCSWG said their top campus safety challenge arose from the need for specific types of public safety infrastructure.¹⁶⁹ The report provides a number of recommendations to that end, including physical security and infrastructure improvements.¹⁷⁰ The most relevant infrastructure recommendations are the following:

Recommendation 4.1: Require all PSEI to have campus security standards that . . . incorporate crime prevention through environmental design principles. These standards should be integrated into campus planning efforts, capital projects, and major remodels.

Recommendation 4.2: Develop a Physical-Security Grant Program to . . . fund critical public safety infrastructure, including access

¹⁶⁴ *Id.*

¹⁶⁵ TIMOTHY D. CROWE, CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN xv (3d ed. 2013) (quoting Dr. C. Ray Jeffery).

¹⁶⁶ CMTY. PLAN. WORKSHOP, *supra* note 126, at i.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* at iv.

¹⁶⁹ *Id.* at 20.

¹⁷⁰ *Id.* at iii–iv, 19–21.

control, cameras, alarms, . . . and lighting in existing buildings and campus infrastructure.¹⁷¹

Recommendation 4.2 suggests creating an additional source of funding for achieving these safety-enhancing infrastructure improvements.¹⁷² The OCSWG report notes that individual schools simply do not have adequate funding to completely implement the recommended infrastructure improvements,¹⁷³ and the cost for achieving these improvements ranges between \$200,000 and \$3 million, depending on the particular school's needs.¹⁷⁴ Hence, even if colleges could implement some features of the infrastructural approach on their own, realizing maximal physical safety enhancements will almost certainly require the state to allocate additional funding to the colleges. Thus, budgetary concerns represent an ineluctable downside to the infrastructural approach.

However, OCSWG's Recommendation 4.1 suggests incorporating crime prevention through environmental design (CPTED) principles into colleges' master planning and all future construction projects.¹⁷⁵ The basic idea behind CPTED is that "[p]roper design and effective use of the built environment can lead to a reduction in the fear of crime and the incidence of crime, and to an improvement in the quality of life."¹⁷⁶ Relevant CPTED features could include using maintenance and upkeep to increase the appearance of a protected and respected area, using lighting and landscaping to enhance surveillance and visibility, or using physical elements like doors or fences to improve the control of and access to campus grounds and buildings.¹⁷⁷

The infrastructural approach is well exemplified by the new Sandy Hook Elementary School in Newtown, Connecticut.¹⁷⁸ Following one of the nation's deadliest school shootings, the new school was built incorporating features designed to prevent or mitigate future attacks¹⁷⁹ by drawing on the principles of CPTED.¹⁸⁰ The school's

¹⁷¹ *Id.* at 19–20.

¹⁷² *Id.* at 20.

¹⁷³ *Id.*

¹⁷⁴ *Id.* at 19.

¹⁷⁵ *Id.*

¹⁷⁶ CROWE, *supra* note 165, at vii (quoting Dr. C. Ray Jeffery).

¹⁷⁷ CMTY. PLAN. WORKSHOP, *supra* note 126, at 19–20.

¹⁷⁸ See Alyson Klein, *Making School a Safe Haven, Not a Fortress*, EDUC. WK. (Mar. 12, 2019), <https://www.edweek.org/ew/articles/2019/03/13/making-school-a-safe-haven-not-a.html> [<https://perma.cc/7EWQ-STYJ>].

¹⁷⁹ *Id.*

designers located the building away from the main road, so anyone approaching the school may be observed from a distance through the large windows.¹⁸¹ Exterior access control also includes forest and wetlands surrounding the building—a “modern-day moat”—forcing pedestrians to approach via one of three easily observed footbridges.¹⁸² Security cameras are installed around the school to increase surveillance.¹⁸³ Additional access control is achieved by way of an entrance built with bulletproof glass, pursuant to new state school safety guidelines.¹⁸⁴ The school's classrooms have automatic locks, and they are designed so that room occupants may shelter unseen by those looking into the classrooms from the corridor.¹⁸⁵

The infrastructural approach can enhance security, yet it is subject to criticism. One potential drawback is that the above description of the new Sandy Hook Elementary may give the impression of an inhospitable or unwelcoming fortress. But designers have worked for years to develop methods of implementing infrastructure security without sacrificing comfort, beauty, or enjoyment.¹⁸⁶ As one CPTED designer explained:

Security and designing beautiful spaces are actually symbiotic. They don't work in opposition to each other I can successfully design a school that functions as a school, [and] the learning environment functions in a healthy and inspiring way. I can also integrate the safety and security into that, so that . . . students can feel safe without being burdened by fear.¹⁸⁷

Thus, the new Sandy Hook school demonstrates that the infrastructural approach can not only enhance campus security but do so without compromising the beauty or enjoyability of the school.

Another criticism of the infrastructural approach is that retrofitting existing structures may be more difficult than designing CPTED features into new structures. As one designer observed, the key to the infrastructural approach is designing it into the structure at the

¹⁸⁰ Katharine Logan, *Continuing Education: School Security and Safety*, ARCHITECTURAL REC. (Jan. 1, 2017), <https://www.architecturalrecord.com/articles/12107-continuing-education-school-security-and-safety> [<https://perma.cc/86JH-54TM>].

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ See Klein, *supra* note 178.

¹⁸⁷ *Id.*

outset.¹⁸⁸ Otherwise, “[w]hen we’re brought in late in the game, the tools left in our toolbox dwindle.”¹⁸⁹ But even though designing security features from the outset is ideal, older buildings can still benefit from CPTED improvements. For instance, older buildings could be improved by increasing visibility, installing secured-entry vestibules, adding door locks, or installing physical barriers around campus grounds.¹⁹⁰ The key to retrofitting is “do[ing] that in a way that prioritizes getting as big an impact for as small an investment as you possibly can.”¹⁹¹ So even if costly new construction is not an option, the infrastructural approach may still be implemented by retrofitting existing structures or by incorporating CPTED principles into already-planned upgrades.

There are several important reasons to prefer the infrastructural solution over the alternatives. One major upshot of the infrastructural approach is that it not only can help reduce colleges’ vulnerability to UCC-style shootings but also can do so without inducing college safety personnel to problematically exceed their authority—or put others in harm’s way—during the performance of their duties. Another upshot of this approach is that whereas a bill like House Bill 3240 creates a sort of blanket solution, the infrastructural approach is more easily tailored to each campus’ needs. So, rather than providing a simple choice to deploy more police or not, the infrastructural approach provides choices about how much and what kinds of physical security enhancements would be most beneficial to enhancing the safety at each individual college.

A final important upshot is that colleges actually support the infrastructural approach. Recall that OCCA stated that not one of Oregon’s seventeen community colleges expressed any interest in passing the bill authorizing colleges to establish campus police departments. Conversely, in an OCSWG survey, nearly two-thirds of schools responded that physical security and access control were either a “major” or a “critical” need at their campuses.¹⁹² Thus, the infrastructural approach could increase campus safety through improvements incorporated into planned construction projects. This approach would also enhance campus safety without relying on

¹⁸⁸ Logan, *supra* note 180.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*; Klein, *supra* note 178.

¹⁹¹ See Klein, *supra* note 178.

¹⁹² CMTY. PLAN. WORKSHOP, *supra* note 126, at 15.

potentially illegitimate personnel practices, and it would do so with the support of Oregon's community colleges.

CONCLUSION

The safety and security of Oregon's community college campuses is more important today than ever. The legal authority enjoyed by college safety departments is more limited in scope than university police departments. And although the precise limits to community colleges' safety department powers are unclear, some colleges have more or less obviously exceeded the scope of their authority. Judicial or legislative resolutions to the scope of authority problem present numerous obstacles and uncertainties. Fortunately, an infrastructural solution sidesteps some of those obstacles while still allowing colleges to enhance the safety and security of their campuses. Thus, instead of providing campus safety through policies and practices that push or exceed the scope of their legitimate authority, Oregon's community colleges should pursue an infrastructural approach to implement the safety measures they desire, thereby achieving an increase in campus safety and a decrease in their liability for authoritative overreach.

