

## THE UNSAFE SCHOOL CHOICE OPTION: A SNAPSHOT

### Introduction

Public schools have been plagued with one reform initiative or another for close to fifty years. They have had to deal with “education presidents or governors” who use public schools as a political football and with state legislatures who initiate top-down reforms that, for the most part, are never fully realized. Today, the nation is in the midst of a reform initiative that pales in comparison with all of its predecessors. *No Child Left Behind* (NCLB), the centerpiece of President George W. Bush’s educational agenda, was signed into law on January 8, 2002.

Although the NCLB legislation touches on many aspects of education, school accountability and the “highly qualified” teacher requirements have dominated national media attention since the passage of the law. Another less publicized and brief component of the NCLB legislation is the *Unsafe School Choice Option* (USCO), which is designed to address school safety concerns. The statute reads:

(a) **Unsafe School Choice Policy** — Each State receiving funds under this chapter shall establish and implement a statewide policy requiring that a student attending a persistently dangerous public elementary school or secondary school, as determined by the State in consultation with a representative sample of local educational agencies, or who becomes a victim of a violent criminal offense, as determined by State law, while in or on the grounds of a public elementary school or secondary school that the student attends, be allowed to attend a safe public elementary school or secondary school within the local educational agency, including a public charter school.

(b) **Certification** — As a condition of receiving funds under this chapter, a State shall certify in writing to the Secretary that the State is in compliance with this section.

*NCLB*, 20 U.S.C. § 7912 (2001)

The legislation mandates that state education agencies (SEAs) and local education agencies (LEAs) develop policies and procedures to enable students who are attending “persistently dangerous schools” (PDS) or those who are victims of violent crimes in school be given the option to transfer to another school.

The actual legislation, however, provides virtually no guidance to states. The law does not even provide definitions of key terms (i.e., “violent criminal offense,” “persistently dangerous schools,” and “on the grounds”). In response to this lack of guidance, the United States Department of Education (U.S. ED) issued a document entitled: *Unsafe School Choice Option Non-Regulatory Guidance* (2003). According to *The Administrative Procedures Act* (2004), federal agencies cannot issue binding rules without prior public notice and soliciting comments. By using the non-regulatory guidance standard, federal agencies, like the U.S. ED,

can circumvent the formal public notice and comment requirement by classifying the policy as an interpretive rule or general statement of policy (White, 2004). The *USCO Non-Regulatory Guidance* document requires states, in consultation with their various constituencies, to create a statewide USCO policy using objective criteria. To be in compliance with USCO, states had to submit their policy to the U.S. ED by July 1, 2003 and, using their state's criteria, identify their PDS by August, 2003.

It is imperative to glean understanding from policies like the USCO because they drive the educational system. Policies are manifestations of choices society has made about its future and they reflect what society values. The United States values quality public schools and believes that safe schools are an essential element to achieve this goal. Accountability, choice, and excellence are three values that are dominating educational policy agenda today, and these are evident in the *No Child Left Behind* legislation. More specifically, the USCO legislation is built on the values of accountability and choice, and on the belief that quality schools can only be achieved if they are safe learning communities (Covino, 2003; First, 1996; Marshall, Mitchell, & Wirt, 1989). This study sought to analyze patterns of policy implementation of this USCO legislation to better understand how these values translate into school practice.

### **Methodology**

This study was designed to examine the patterns of state policy responses to the USCO policy mandates in those states that reported having PDS. It is based on a triangulation of qualitative procedures of data gathering: a survey instrument, document content analysis, and telephone interviews. First, a brief survey was designed using the criteria outlined in the *Unsafe School Choice Option Non-Regulatory Guidance* (U.S. ED, 2003). The survey was sent to state superintendents of education requesting that they pass it on to the individual responsible for coordinating the USCO policy development and program. Besides requesting contact information about the person completing the questionnaire, the survey asked respondents to share their state's definition of PDS, the process or formula being used to identify schools, and the list of violent offenses that were adopted as part of their USCO policy. It asked about the agency or department that is responsible for identifying PDS and the types of training and technical assistance the SEA would provide to LEAs for data collection and management. It also requested data about the 2003-2004 persistently dangerous schools and inquired about the types of technical assistance schools would receive by virtue of their PDS status. No information was gathered regarding students who were victims of violent crimes because that part of the act did not go into effect until the next school year. When returning surveys, most respondents enclosed copies of their USCO policy rather than completing the questionnaire.

Second, a search for USCO legislation, policies, and procedures was conducted using the Internet. Finally, telephone interviews were conducted with those state agencies that did not respond to the survey or

whose policies were not available on the Internet. Besides the opportunity to request policy data, contacting these states gave us an opportunity to clarify USCO's policies and procedures. All data were digitized and entered in *QSR N6* qualitative research software, then coded and analyzed. The narrative for this article was prepared based on the information gleaned from the following six states: New Jersey, Nevada, Oregon, New York, Pennsylvania, and Texas. Besides being the only states to report PDS for the 2003-2004 school year, these states are representative of the various regions of the United States and each provides a unique perspective of USCO.

## **Findings**

### *USCO Policy Development*

The federal guidelines require SEAs, in consultation with their various constituent groups, to establish a statewide USCO policy (U.S. ED, 2004). Only New York, Pennsylvania, and New Jersey described the process they used when developing their policy. Pennsylvania's policy indicates that "the Department created an Unsafe School Choice Option Advisory Group composed of individuals from a representative sample of local education agencies and individuals from numerous other groups involved in public education in Pennsylvania" (PSDE, 2005, ¶3). New York policy states that they had "consulted with a representative sample of LEAs on policy parameters" (NYSDE, 2003, part 120.5). Once policies and procedures were developed and approved by state boards of education, they were forwarded to the U.S. ED. SEAs are required to report their PDS to the U.S. ED at the beginning of each school year (U.S. ED, 2003).

There are two parts of the federal USCO policy. The first is the *group transfer choice option* that involves the identification of unsafe schools, and the second is the *individual transfer choice option*, which is designed to address the needs of violent crime victims. Both options require that students be given the opportunity to transfer to safe school communities (U.S. ED, 2002).

### *Group Transfer Option*

Utilizing the formula that it developed and approved, each SEA was to determine the number of schools in its state that were PDS by July 1, 2003 (U.S. ED, 2003). All 50 states and the District of Columbia complied with the federal timeline, with only six of them reporting that they had PDS: Nevada (8 schools), New Jersey (7 schools), New York (2 schools), Oregon (1 school), Pennsylvania (28 schools), and Texas (6 schools).

*Identifying persistently dangerous schools.* Federal guidelines require states to utilize objective criteria when identifying persistently

dangerous schools. “Such objective criteria should encompass areas that students and parents would consider in determining a school’s level of safety, including the rates of violent offenses as defined by the State” (U.S. ED, 2004, p. 7). The New Jersey, New York, and Texas policies make reference to their respective statewide data collection systems. Schools input school safety data in uniform categories that are ultimately reported annually to the SEA (NJDOE, 2003; NYSDE, 2003; TEA, 2003).

The Appendix presents the criteria and offenses used by states to identify PDS. Of the six states, Nevada, New Jersey, Oregon, and Texas used data for three consecutive years to determine their PDS (NDOE, 2004; NJDOE, 2003; OSBOE, 2003; TEA, 2003). New York only utilizes data for two consecutive years, and Pennsylvania uses data from the previous year plus one of the two years prior to that (NYSDE, 2003; PSDE, 2004). Each state uses some sort of ratio based on the student population and the number of violent crimes to determine those schools that meet their PDS criteria. In Texas, for example, a school will be designated a PDS if it reports three or more expulsion incidents per 1000 students in each of the three years.

When comparing the PDS policies, Texas appears to have the most rigorous policy when analyzing the number of infractions with the size of the student body. However, when also taking into consideration the time period, it is safe to conclude that Pennsylvania’s policy is more stringent. For instance, the Pennsylvania policy states that, to be labeled a PDS, schools with an enrollment of 250 or less will have reported five dangerous incidents, and schools with more than 1000 students will have reported 20 or more incidents, over the course of the most recent year and one additional year of the two prior years to the most recent school year (PSDE, 2004). Whereas, the Texas policy indicates that schools must report three or more incidents per 1000 students over a three year period to be identified as a PDS (TEA, 2003). Therefore, it is the number of years that makes the policy more stringent.

When analyzing the lists of offenses for each policy, it is evident that most states used their felony and misdemeanor statutes when writing their USCO policy. New Jersey divides the offenses into two categories. *Category A* offenses are primarily offenses involving weapons and falling under the federal *Gun-Free Schools Act*, whereas *Category B* offenses consist of all other felonies (NJDOE, 2003). Pennsylvania is the only state that indicated that “a dangerous incident is defined as a weapons possession incident resulting in arrest...or a violent incident resulting in arrest...” (PSDE, 2004). One could conclude from the policy that only infractions that result in arrest will be included in the total number. Therefore, in situations where arrest is avoided, the incident will not count as a PDS offense. Conversely, other states might have left out “arrest” in their policies because the great majority of the offenses would surely lead to the arrest of the offender.

*Student transfer.* Once a school is identified as a PDS, students must be given the option to transfer to a safe school; however, they are not

required to accept the transfer option. For instance, Pennsylvania's policy requires that students and parents be informed within 10 days following LEA notification, and Texas requires that families be notified 14 days prior to the beginning of the school year. New Jersey's policy requires that parents be notified of their school's persistently dangerous status even if there is no safe school within the LEA for students to transfer to. Pennsylvania requires that once parents are informed of the designation, they may formally submit an application provided by the school to have the child transferred. However, families may make application at any time while the school has the PDS designation. Pennsylvania reported that a total of 75 students from 27 schools identified as persistently dangerous elected to transfer in the Philadelphia School District, and 58 of the 484 students in the Chester-Upland School District's one persistently dangerous school took advantage of the school transfer option (PSDE, 2004, p. 3).

Both the Pennsylvania and Texas policies indicate that students should be transferred to schools that are in good standing and making adequate progress. However, if there are no such schools in the LEA, Pennsylvania's policy encourages, but does not require, the district to establish transfer agreements with neighboring districts (PSDE, 2005). New York's policy states that LEAs "shall provide transportation for any student who takes advantages of the transfer option" (NYSDE, 2003, p. 2), whereas the Texas policy explicitly states that districts do not have to provide transportation for students who transfer.

When analyzing the data, three interesting variations surfaced. First, New York's policy states "any student who transfers to a safe public school pursuant to the provisions shall be enrolled in the classes and other activities of the public schools...in the same manner as all of the children in the public school" (NYSDE, 2003, p. 2). This policy might have serious implications for students participating in varsity sports and other extracurricular activities. Second, the Pennsylvania, Texas, and New Jersey policies discuss the permanency of the transfer. For example, the Pennsylvania and Texas policies state that the transfer must remain in effect as long as the initial school is designated as persistently dangerous. The policies also state that school districts should consider students' educational needs and that students should remain in the new school until they complete the highest grade level at their new school. Finally, the Pennsylvania policy indicates that charter schools that are designated PDS are to follow the same guidelines as other schools. It also states that if students elect to transfer to a charter school, they may only be admitted if there is space and if they meet admission requirements.

*Corrective action plan.* Once a school is designated as persistently dangerous, it must provide its SEA with a corrective action plan. The Nevada, Texas, and New Jersey policies require the LEA to submit the plan by a specific date within the respective year. New Jersey's policy mandates the format for the corrective action plan that LEAs must utilize and indicates that the SEA will provide assistance and monitoring so the plan is completed in a timely manner. The Texas policy identifies some

actions that should be included in corrective plans so as to diminish campus criminal activities. These activities include hiring security officers, utilizing conflict resolution methods, limiting access to campuses, and increasing programs or strategies to prevent school violence. The Pennsylvania policy indicates that the SEA will provide technical assistance, and review and approve proposed corrective action plans. Once a plan has been approved, the SEA will conduct a site visit during the year to assess its implementation. If the school is not making steady progress, it must revise and resubmit its plan to the SEA (PSDE, 2004).

*Early warning.* The New Jersey and Oregon policies indicate that they each have early warning procedures. New Jersey indicates that a school will fall under the early warning guidelines if it meets the PDS criteria in the first or second year. The LEA will be notified, in either year on or before August 15, by the New Jersey Department of Education (DOE), and it will be required to submit a school safety plan for the prospective year that will outline the steps the school will take to reduce criminal activities. The school will “become a top priority for intensified district support for research-based programs and technical assistance” (NJDOE, 2003, p. 3). Students attending “early warning” schools, however, will not be allowed to take advantage of the transfer option. The New Jersey DOE will re-evaluate the school in the spring to determine its progress. If the amount of criminal activity has diminished, the school will be removed from “early warning” status by July 31st of the respective year. However, if there is no improvement by the end of the third year, the school will be designated persistently dangerous (PDS).

The Oregon “early warning” policy is designed to provide technical assistance to schools beginning in the first year. Their “early warning” schools are required to submit a corrective action plan that includes “the district safety plan, school-wide discipline plan, discipline data, school and community collaboration plan for school safety and other information as deemed necessary” (OSBOE, 2003, p. 2). The school will continue to receive support if there is no improvement the second year. If there is no improvement at the end of the third year, the school will be designated PDS. It is important to note that Oregon’s “early warning” schools may receive funds and technical support from the *Safe and Drug-Free Schools and Communities Act*.

*Appealing the PDS status.* The Nevada and New Jersey policies outline the procedures for appealing the PDS designation. The Nevada policy indicates that schools must appeal the designation within 30 days and their documentation may include “clarification of incident data, school’s safety plan, local efforts to address school’s safety concerns, school safety data..., (c)urrent data the school may have available, other extenuating circumstances such as status as special or alternative school, and other information deemed relevant” (NDOE, 2004, p. 3). The New Jersey policy states that if the LEA determines that the data provided were inaccurate or that the SEA violated the written policy, it may appeal the decision to the Commissioner of Education.

The Texas Education Agency initially reported that there were six persistently dangerous schools in the state. Each of the schools appealed on the grounds that the data were based on incorrect information. After a lengthy investigation, all six schools were removed from PDS status (Robelen, 2003).

*Removal from PDS status.* Pennsylvania and New Jersey's policies outline how schools can be removed from PDS status. These policies indicate that schools will be evaluated at the end of the school year and the LEAs will be informed if their schools were removed from PDS status. This will be done only if they meet the goals in their corrective action plan. The Texas policy infers that, once the objectives outlined in the corrective plan are achieved, the LEA may petition to have a school removed from PDS status. The SEA will determine if the school successfully completed the criteria outlined in the corrective action plan.

#### *Individual Transfer Option*

*Guidelines.* In keeping with the federal USCO guidelines, each state has developed policies specifically for dealing with victims of violent crime. However, SEAs are not required to submit information pertaining to their victims of violent crime to the U.S. ED.

The Pennsylvania policy is typical of the other five states being examined by this study. It states that "a student who becomes a victim of a violent criminal offense while in or on the grounds of the public elementary or secondary school that he or she attends, must be offered the opportunity to transfer to a safe public school within the school district (or other school entity), including a charter school" (PSDE, 2005, p. 5). The New Jersey policy clarifies this issue by stating that the student is a victim of violent crime when (1) a formal charge is made with law enforcement, (2) school officials have disciplined the perpetrator, (3) there is evidence that the student has been a victim of a criminal offense (i.e., physical evidence, eyewitness testimony, etc.), or (4) there is a pre-existing restraining order against the perpetrator(s). The New Jersey and New York policies specifically state that the district superintendent is the final authority when it comes to determining if a student is a victim of violent crime. The New Jersey policy encourages school districts to establish policies and procedures to appeal the superintendent's decision. New York's policy also states that the decision to transfer should be done in consultation with the law enforcement agency, and the determination should not have any impact on any legal proceeding brought against the perpetrator.

Offenses listed in the policies are the typical felonies or misdemeanors listed in state statutes. For instance, the Pennsylvania policy states that a violent criminal offense includes any of the following crimes: aggravated assault, attempted murder, homicide, indecent assault, kidnapping, rape, robbery, sexual assault, or voluntary manslaughter. Although the New Jersey policy lists similar offenses, it also indicates that "a student is a victim of a homicide when he or she is the child, sibling or other

relative of a decedent, resulting from someone purposely, knowingly, or recklessly causing the death of the student's parent, sibling or relative in or on school grounds" (NJDOE, 2003, p. 6). The Texas policy indicates that the state is in the process of seeking clarification from the U.S. ED regarding the possibility of extending "the transfer option to siblings of victims of violent criminal acts when the sibling would otherwise be required to attend the campus on which the violent criminal act occurred" (TEA, 2004, p. 1).

*Procedures.* Basically, each policy requires that, once the victim has been identified, the LEA offer the student the transfer option within a certain number of days. For instance, the Pennsylvania policy requires 14 days, and Texas and New Jersey set the number of days at 10. States, in keeping with the federal guidelines, indicate that students have the option to remain in their current school. In Pennsylvania, New Jersey, and New York, families have up to 30 days to accept or reject the transfer offer. When counseling students about their options, New Jersey's policy encourages schools to take into consideration family needs and preferences, and only to transfer students to schools that are in good standing. Texas' policy encourages LEAs to enter into interdistrict agreements with neighboring districts to accept victims of violent crimes. The Philadelphia School District reported that during the 2003-2004 school year, 589 students transferred because they were victims of violent crimes (PSDE, 2003).

Finally, school districts in New York and Pennsylvania are required to provide student victims with transportation to a safe public school. The Nevada policy specifically states that transportation costs "may" be authorized under USCO. Although the Texas policy does not mandate providing transportation, it indicates that LEAs may use available federal funds and/or local funds from victim assistance programs to help cover expenses for transportation.

### **Conclusion**

Underlying USCO is the belief that to achieve excellence in public schools, there must be more accountability and choice. The reality of achieving excellence is that schools must be safe from violence so that teaching and learning can be accomplished. If schools are not safe environments, they must be held accountable and students must have the option to choose to attend school elsewhere. However, without serious revisions to national and state policies, we conclude that USCO is not the answer to achieving excellence for several reasons.

First, for USCO to be successful, the U.S. ED must provide more guidance to SEAs and monitor them more closely, especially when it comes to the individual transfer option. This is a major component of the USCO policy, and the federal government is not tracking the number of students who are victims of violent crimes to determine if they are being offered—and, if so, accepting or rejecting—the option to transfer schools.

When reporting the USCO data in the annual NCLB report to the U.S. ED, the USCO data are a very small part of the total report. Moreover, the data are not even reported directly to the Office of Safe and Drug-Free Schools, the U.S. ED program that is responsible for USCO. For USCO to be successful, the U.S. ED must hold SEAs accountable for each component of the legislation by closely monitoring both the individual and group transfer options.

Second, when reviewing the USCO policies for this study, it became apparent that SEAs already had policies and procedures in place for LEAs to report violent offenses. Moreover, states already had in place statewide database systems using uniform categories for reporting violent incidents in schools. Therefore, it appears that USCO is just duplicating efforts that states had already implemented to address school violence and safety issues.

Third, providing choice to families is the value that undergirds USCO. Besides parents and students having the right to leave unsafe school environments, the families do not make these decisions unilaterally in the six states. For instance, when a student is a victim of violent crime, the family cannot unilaterally transfer to another school of their choice. The district superintendent, in at least two states, has the final decision-making authority. Also, transportation, in some states, is not always provided for families electing to transfer using both the group and individual transfer options. Some policies say that the LEA “may” use various federal or state funds to transport students, whereas other states indicate that transportation is not provided. It is imperative that state and federal policy makers understand that if transportation is not provided to students, they are eliminating choice because students will ultimately be forced to remain in an unsafe school environment. Moreover, if the federal government wants to truly help public schools achieve educational excellence, they will have to fund all aspects of policies like USCO (i.e., transportation).

Finally, from this snapshot, it is clear that the six states that designated schools as “persistently dangerous” have adhered to the “letter of the law” when developing their USCO policies. Their policies, although extremely different on the surface, all meet the requirements of the legislation. Only Pennsylvania adhered to the “spirit of the law” by passing a “tough” group transfer policy, designating 28 schools as PDS during the 2003-2004 school year, and working during the following year to reduce that number by half. It is evident from analyzing the various policies that the federal government, in its efforts to impose accountability and choice, has mandated a single USCO policy for all states. The policy, as it is now written, only proves that when confronted with top-down mandates that penalize states by threatening the loss of federal dollars, most states will protect themselves by implementing and adhering to the “letter of the law.” Therefore, in the final analysis true educational excellence, accountability, and choice will just become worthless political rhetoric and promises.

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**Appendix**

*Criteria for Identifying Persistently Dangerous Schools*

State	Criteria	Offenses
Nevada	<p>The number of criminal citations during one school year must exceed the following percentages, based on school population during count days (for two of three consecutive fiscal years):</p> <ol style="list-style-type: none"> <li>1. for a school of up to 750 students, 2% of the student population;</li> <li>2. for a school of 750-1500 students, 1.75% of the student population;</li> <li>3. for a school over 1500 students, 1.5% of the student population.</li> </ol>	<p>Murder, mayhem, possession of a dangerous weapon on property or in vehicle of school, kidnapping, sexual assault, robbery, assault, battery, harassment, stalking, hazing.</p>
New Jersey	<p>The following criteria will be used by the NJDOE to determine a persistently dangerous school. A school that meets any of the two criteria in each of three consecutive school years and is part of an LEA that receives federal funds under NCLB will be determined to be persistently dangerous.</p> <ol style="list-style-type: none"> <li>1. The school has seven or more Category A offenses; or</li> <li>2. The school has a score of 1.0 or greater on the index of Category B offenses where the index is defined as the result of dividing the number of Category B offenses by the square root of the school's enrollment.</li> </ol>	<p>Category A offenses are as follows:                      A firearms offense set forth by New Jersey statute in accordance with the federal Gun-Free Schools Act, an aggravated assault upon a student, an assault with a weapon upon a student, and any assault upon a member of the school district staff.</p> <p>Category B offenses are as follows:                      Simple assault on a student, possession or sale of a weapon other than a firearm, gang fight, robbery or extortion, sex offense, terrorism, arson, sale and distribution of drugs (excluding possession with intent), harassment and bullying.</p>

*(continued)*

Appendix (continued)

State	Criteria	Offenses
New York	Having two consecutive years of a ratio of three percent or greater weapons incidents to enrollment.	The following constitutes a modified list of violent criminal offenses: Attempted murder, attempted manslaughter, attempted vehicular manslaughter, kidnapping, arson, attempted assault, aggravated assault upon a person less than eleven years old, gang assault, attempted vehicular assault stalking, menacing, reckless endangerment, rape, sodomy, aggravated sexual abuse, sexual conduct against a child in a sexual performance, robbery in the 1st degree, intimidating a victim or witness, unlawful imprisonment, aggravated harassment in the 1st degree, criminal use of a firearm.
Oregon	In Oregon, a public elementary or secondary school is considered to be "persistently dangerous" if one or more of the following conditions exist for three-consecutive school years: <ol style="list-style-type: none"> <li>1. the school has expulsion(s) for weapon(s); and/or</li> <li>2. the school has expulsion(s) for violent behavior; and/or</li> <li>3. the school has expulsion(s) for students arrested for any of the following violent criminal offenses on school ground, on school sponsored transportation, and/or in school sponsored activities:  <ol style="list-style-type: none"> <li>a) for a school with fewer than 500 enrolled students, 5 expulsions.</li> <li>b) for a larger school, one expulsion for every 100 enrolled students or fraction thereof.</li> </ol> </li> </ol>	Assault, manufacture or delivery of a controlled substance, sexual crimes using force, threatened use of force, or against incapacitated person, arson, robbery, hate/bias crime, coercion, and kidnapping.

(continued)

**Appendix (continued)**

State	Criteria	Offenses
Pennsylvania	<p>A persistently dangerous school is any public elementary, secondary, or charter school that meets any of the following criteria in the most recent school year and in one additional year of the two years prior to the most recent school year:</p> <ol style="list-style-type: none"> <li>1. For a school whose enrollment is 250 or less, at least 5 dangerous incidents;</li> <li>2. For a school whose enrollment is 251 to 1000, a number of dangerous incidents that represents at least 2% of the school's enrollment; or</li> <li>3. For a school whose enrollment is over 1000, 20 or more dangerous incidents.</li> </ol>	<p>A dangerous incident is defined as a weapons possession incident resulting in arrest (guns, knives, or other weapons) or a violent incident resulting in arrest (homicide, kidnapping, robbery, sexual offenses, and assaults).</p>
Texas	<p>Report three (3) or more selected mandatory expulsion incidents per 1000 students in each of three consecutive years.</p>	<p>Used, exhibited, or possessed firearm, club, weapon; arson, murder or attempted murder; indecency with a child; aggravated kidnapping; aggravated assault on school employee or student; sexual assault or aggravated sexual assault on school employee or student; felony controlled substance; and felony alcohol violation.</p>