

# The purpose behind Zero Tolerance: Improving Safety or Creating Harm?

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## Zero Tolerance Polices Journal Project

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The tragic shootings at Colorado's Columbine High School still create distress in the minds of the American people. As a response to several violent incidents occurring in schools during the 1990s, the school district policy known as "Zero Tolerance" was enacted to forestall violence. The Zero Tolerance policy emerged from the Gun-Free Schools Act (GFSA) of 1994, which mandated expulsion for at least one year for students possessing weapons in schools (Smith, 2011). Although the public was highly supportive of the GFSA, when Zero Tolerance mandated predetermined consequences for specific offenses committed by students regardless of circumstances, disciplinary history, or age, the policy transformed into a divisive matter (Stader, 2004). Over the last decade, the Zero Tolerance policy has been highly debated by supporters and opponents.

The predominant arguments on both sides will be presented in this paper following a structure designed for debates. The position in disapproval of Zero Tolerance will first make an argument and support it with evidence. Then, the position in defense will respond to the statement made with a counterclaim and/or supporting data. In this manner, both parties will be able to present their case in a fair format. Based on the exploration of the arguments in opposition and the responses generated by supporters, readers will distinguish the most convincing view.

### **1<sup>st</sup> -Constitutionality vs. Safety Matters**

The first argument presented by Christopher Pelliccioni, a challenger of Zero Tolerance, is: in the hysteria of school shootings, school districts have ignored the protection of the constitutional rights of students (2003). Since the policies operate under an automatic presumption of guilt, the Supreme Court has clearly limited the right for due process (Pelliccioni, 2003). When students are denied the chance to explain their story or to question the accuser, procedural due process—which requires an opportunity to object to a proposed action—is violated. Aaron Lorenz, investigator for *Public Integrity*, argues that refusing to grant formal hearings for disciplinary acts demonstrates to a student that "due process is not a fundamental right implicit in the Fourteenth Amendment" (2010). Furthermore, the Zero-Tolerance policies are unconstitutional because they violate due process.

A significant case that proves disregard for due process is *Seal v. Morgan* (6<sup>th</sup> Cir. 2000). The case describes a student who was automatically expelled when school officials found a knife into the glove box of the car belonging to the student's mom. Allegedly, the knife was placed in

the car without the student's knowledge. The expulsion deprived the student of his liberty and property interests in his education without due process of law. The United States Court of Appeals for the Sixth Circuit determined that "suspending or expelling a student for the possession of weapons even if the student did not know would violate substantive due process" (Pelliccioni, 2003). Thus, Zero Tolerance violated the protection provided by substantive due process because the procedures used to implement safety were unfair and unreasonable. Operating under an automatic assumption of guilt hinders the protections of liberty or property available to an individual. Since policies do not require school authorities to determine whether a student actually intended to possess the weapon in question, a clear violation of constitutional rights can be derived from this case.

The response in defense offered by supporters is: the need to protect the safety of students furthers a legitimate governmental objective. Since educators, parents, and community members are concerned about the safety of students, the government has a responsibility to facilitate safety procedures. The Associated Press found that 80% of Americans supported Zero Tolerance in 2001 to prevent other tragedies from occurring (McCollum, 2004). For this reason, the Federation of Teachers urged the adoption of nationwide policies to curb school violence (Pelliccioni, 2003). Henceforth, in the compelling interest to improve school safety, courts of appeal have upheld Zero Tolerance policies. For instance, the United States Court of Appeal for the Fifth Circuit determined that if school's actions are "compatible with a legitimate state goal of maintaining an atmosphere conducive to learning," they are not violating due process (5<sup>th</sup> Cir.1987). In addition, David Stader discovered that courts are generally supportive of Zero Tolerance policies (2004). Most courts have sided with school districts on the controversy created by due process rights.

In order to prove that due process rights have not been violated by Zero Tolerance policies, advocates highlight the case *Bundick v. Bay City Independent School District* of 2001. Similar to the case presented by opponents, in the *Bundick* case an uncovered knife was found in the student's truck. As a result, the student was expelled and deprived of his liberty and property interests in his education. The court determined that in order to violate substantive due process, the conduct of school officials must be "so offensive that it does not comport with traditional 'decencies of civilized conduct'" (S.D. Tex. 2001). Thus, the judge determined that scienter (intent) is not a requirement of school's district policy. The *Bundick* court also noted that "the

due process clause does not necessarily provide the right [of students] to counsel, the right to confront and cross-examine witnesses supporting the charges, or the right to call witnesses in defense” (S.D.Tex.2001). Supporters argue that the decision of the court indicates that the rights of students have not been violated. Based on this claim, the Zero Tolerance policies are not unconstitutional.

### **2<sup>nd</sup>-Minor Offenses vs. Criminal Acts**

The second argument presented by critics of Zero Tolerance is: minor offenses are interpreted as criminal acts. According to Lorenz, the most common disruptive behaviors such as tardiness, class absence, and noncompliance have been considered “serious” under the Zero Tolerance policies (2010). The following local stories of misconduct were reported by the *Huffington Post*:

“In Colorado schools an 11-year old was charged with harassment and third-degree assault for swinging a beanbag. Another student in 8<sup>th</sup> grade received a municipal ticket for graffiti when he scrawled on his desk. A 10-year old boy who took gum from his teacher’s purse was charged with misdemeanor theft.” (Moreno, 2011)

Since the enforcement of Zero Tolerance, nearly 100,000 students have been referred to law enforcement by schools in Colorado. The majority of these referrals have been for minor offenses that reflect normal adolescent behavior and do not threaten school safety (Hildreth, 2011). To support this claim, Colorado Representative B.J Nikkel acknowledged that Zero Tolerance policies have led to the “over-criminalization” of students and that law enforcement sometimes feels shackled because they are left with little discretion on how to deal with students (Hildreth, 2011). Thus, Zero Tolerance policies have created an environment where behavior places students before judges.

Defenders of Zero Tolerance responded by stating that: the primary targets of the policies are weapons, gangs, and drugs. However, minor offenses are a necessity of the policy itself. Stader refers to evidence suggesting that the Gun-Free School Act and the Zero Tolerance policies have been effective in reducing the possession of weapons in schools (2004). In 1999 the National Center for Education Statistics reported that the policies had a deterrent effect. Based on the reduction of violent deaths from 56 to 5 over a period of ten years (1992-2002), supporters

argue that punishing minor offenses is justified when school safety is a major concern.

### **3<sup>rd</sup> - Moral Obligation vs. Disciplining Student Wastes Time**

The third argument introduced by opponents of Zero Tolerance is: school officials absolve themselves from their legal and moral obligation to determine whether students intentionally committed the acts. For instance, Colorado law determines that school personnel executing Zero Tolerance provisions are immune from civil liability of criminal prosecution unless the person is found to have acted willfully or wantonly (Section 22-32-109-1(9)). Furthermore, opponents criticize schools officials for “shrinking their duty to teach students substantively about the concept of fairness and justice” in the implementation of Zero Tolerance policies (Lorenz, 2010). The main issue arises when innocent students are punished. When injustice takes place, challengers are concerned with the implied decadence of U.S laws. Opponents are even more discouraged with the compliance of school officials in creating an immoral society.

In response to the argument made regarding the legal obligation of school officials, defenders like Ronald Stephens, executive director of the National School Safety Center, argue that: time spent disciplining students causes teachers to become unproductive. Stephens said, “Teachers trying to increase the educational achievement of their students can’t do it effectively if they are spending 25 to 30 percent of their time on discipline” (Schachter, 2010). Educators must be allowed to teach students concerned about their education. When time is spent on discipline matters for students uninterested in learning, an injustice is committed to students who do want to learn. In addition, learning the proper ways to enforce discipline is an additional challenge to educators. Enforcing Zero Tolerance policies removes this extra task to enable instructors to focus on teaching. Thus, Zero Tolerance takes the burden of disciplining students off educators’ backs to allow for academic achievement.

### **4<sup>th</sup>-Efficacy of Zero Tolerance vs. Rates of Suspension**

Another argument raised by opponents of Zero-Tolerance policies is directly related to the efficacy of the policies. Annette Fuentes, reporter for the magazine *Nation* argues that: no research supports that Zero Tolerance improves safety or academic outcomes. In reality, Zero Tolerance breeds failure among the most vulnerable students (2003). Fuentes addresses six studies researched by the organization “End Zero Tolerance” that show a few insignificant

changes in safety. Such changes demonstrated a slight reduction in the possession of weapons. And yet the possession of weapons in schools is relatively rare, according to Stader (2004). In addition, data collected from thirty-seven states reflects that schools with high suspension rates had lower achievement in math, writing, and reading. Also, this study states higher suspension rates were found to correlate to higher juvenile incarceration rates (Fuentes, 2003). Similarly, research indicates that excluding students from school increases the odds of academic failure and dropping out. Opponents allege that suspensions and expulsions are strong predictors of entry into the criminal justice system. Judith Browne, senior attorney for the Advancement Project, which monitors national school discipline, argues that, “We are breeding a generation of children who think they are criminals for the way they are being treated in school...the practices of the criminal justice system are being brought into schools” (Fuentes, 2003). Furthermore, opponents suggest that Zero Tolerance policies have failed their promise to increase school safety.

Advocates of the Zero Tolerance policies refute this argument by pointing out the high rates of suspension and expulsion. Supporters claim that the high rates in schools are the reason for low violence rates. For instance, suspensions have multiplied in the state of Kentucky while maintaining relatively low crime rates. Although suspension rates have increased to 65,508 in 2000 for a student population of 625,000, only 40 firearms offenses were reported (Fuentes, 2003). It is noted that many of the suspensions are accounted for “defiance of authority,” a violation which encompasses many disruptive behaviors. Thus, supporters allege a direct correlation between suspension rates and maintaining safety in schools.

#### **5<sup>th</sup>-Application of Policy vs. Safety as a High Priority**

A major concern for people in disagreement with the Zero Tolerance policies is: the application of policies carries significant consequences for students who pose little threat to school safety. These policies inculcate and severely punish students without taking into account important factors like academic history. Under Zero Tolerance policies, a straight-A student who accidentally brings a pocketknife to school is treated the same as someone carrying a gun (McCullum, 2004). As a result, students end up with criminal records. According to Patrick Malone in the article for *Chieftain*, these records are barriers to high school completion, college admission, employment and military service (2011). In addition, many school districts fail to provide services and counseling to help students who are suspended or expelled to get back on track (McCullum, 2004). The larger implications of the policies are highly significant.

Opponents accentuate that policies teach youth that the law is often unfair especially when innocent students are punished (Pelliccioni, 2003).

To rebuttal this argument, supporters contend that safety matters. The failure to remove a dangerous student from school presents a great risk to students and faculty. Based on this concept, rule-abiding students deserve safe, drug-free environments to succeed. Thus, a one-size-fits-all policy should be applied to remove classmates with problems (Stader, 2004). No additional supporting data was found to further this argument.

### **6<sup>th</sup>-Discrimination vs. No response**

The last argument addressed by the opponents of Zero Tolerance is the existence of discrimination in the application of the policies. Evidence suggests that minorities and students of color are expelled at disproportional rates to their white counterparts (Stader, 2004). According to Seema Ahmad of the Advancement Project, the rates are alarming. African-American students are 3 times more likely as white students to be expelled; correspondingly, Latino students are 1.5 times more likely to be expelled than white students (Malone, 2011). Generally, national expulsion and incarceration rates are higher for African-Americans than for the overall student population. Ahmad also noted that racial disparity is highest in the Midwest (Fuentes, 2003). To support this claim, opponents point out that Colorado changed its discipline policy in 2008 after finding that the numbers of suspensions compared to other districts were disproportionately metered out to minorities (Schachter, 2010). Furthermore, opponents have verified the discrimination of the policies applied with discretion by school officials.

The promoters of the Zero Tolerance policies did not provide a claim or supporting evidence to defend the existence of discrimination.

### **Opinion and Analysis**

The claims presented above offer valid points for analysis. When these arguments are juxtaposed, they facilitate a comprehensive reflection of Zero Tolerance policies. There are significant points to address within each argument. Thus, it is important to respond to each argument individually to formulate an extensive conclusion.

The first argument recognizes the importance of adopting measures to maintain school safety. However, should the constitutional rights of students be eliminated for the sake of safety? The fact that circuit courts of appeal and district courts have reached mixed conclusions does not

provide a definite answer. In my opinion, it is unfair to lose the protections provided by due process especially when an unintentional offense is committed. For example, if the student is victim to a set-up, what protections can he/she count on? None. This is because Zero Tolerance policies do not allow room for exceptions. Thus, the justification for stripping off due process rights is unjust. Although Zero Tolerance as public policy furthers a legitimate interest in safety, it is unfair and unreasonable in content when it hinders the very essence of rights.

The second argument determines that under Zero Tolerance, minor behavior can be referred to legal authorities. I was shocked to learn that students were receiving tickets and going to court while in elementary school! Zero Tolerance misses the important point that swinging a bean bag, being disruptive in class, scrawling on desks and even taking a piece of gum is normal behavior. These policies are too punitive because they fail to take into consideration the old proverb “children will be children.”

The concern for weapons and drugs expressed by supporters is valid, yet how does punishing students for minor offenses advance its interest? Criminalizing students at such a young age is suspicious because it sets students on a path to prison. This is apparent in the statement made by Lt. Gary McLhenny of the Baltimore Police Department: “the effectiveness of the policies does not matter. Unpaid tickets become arrest warrants. What counts is that we’ve got them in the system!” (Lorenz, 2010). An underlying purpose of the Zero Tolerance policies is discovered when we approach the issue by examining the implications and benefits related to criminalization.

The third argument debates whether educators should spend time on disciplining problem students. Most importantly, it addresses the moral and legal obligation to find out if a student committed the offense he/she risks getting expelled for. While I agree that spending time on disciplining a student can be deteriorating to the overall functioning of the class, verifying an offense is crucial to ensure fairness. In addition, reporting students to legal authorities for minor offenses raises a question on an instructors’ capacity to manage students. It was discouraging to find out that instructors are taking advantage of the discretion provided by the policies to remove problem students. I can infer that instructors would rather resort to use the policies to substitute for the lack of resources provided by the school system. Nevertheless, choosing to avoid a moral obligation is unethical.

The fourth argument discusses the existing research to support the efficacy of Zero

Tolerance policies. Apparently, more research verified that the policies have been ineffective in increasing school safety. Although some evidence suggests that the policies have contributed to reducing the possession of weapons in schools, research notes that incidents of weapons are rare. Furthermore, how do high numbers of suspensions and expulsions exhibit a deterrent effect when most suspension rates are for minor offenses? In my opinion, the high rates were anticipated with stringent discipline policies. Furthermore, the supporting evidence about Kentucky is inapplicable because the state has regularly displayed low crime rates. The presumed correlation between high rates of suspension and school safety only proves the existence of hostile school environments.

The fifth argument addresses the repercussions attributed to Zero Tolerance when students commit offenses. I agree that once a student has entered into the criminal system, the odds of academic failure increase. I personally witnessed how my peers in high school would feel discouraged and internalize that they would end up in prison at a later point in life. Also, when students were expelled or suspended for a specific time, they would miss out on learning and engage in drinking and doing drugs. Therefore, I can understand that the consequences from committing a minor offense are substantial obstacles to success. The harm caused to the futures of many students does not justify enforcing an inefficient disciplinary policy for the purpose of safety.

The last claim identifies the existence of discrimination in Zero Tolerance policies. Almost every resource I consulted addressed the discrepancy in the application of the policy. Although the policies might have not been created with intent to discriminate, data proves discriminatory implementation. This information should be considered by courts to reexamine constitutionality. Otherwise, communities composed of minorities will be affected by the incarceration of members. In my opinion, these policies intend to be discriminatory to continue the oppression of communities of color. When children are set on a path to prison, given criminal records—which automatically disqualify from opportunities—this ultimately continues the history of oppression.

### **Conclusion**

Undoubtedly, the regimented Zero Tolerance policies have created a disastrous reality for students and communities. The debate discloses what happens when good intentions run amuck. Based on the comparison of arguments, readers can conclude the opposing side has provided a

more convincing case. Alternative views intersected at the end of the road to assert the detrimental nature of the policies.

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