

The Implications of Zero Tolerance in Public Schools on American Youth and the Juvenile Justice System

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The past two decades have seen a gradual evolution in the manner in which United States public schools handle disciplinary manners pertaining to juveniles in the academic setting. The transition from handling punitive transgressions internally on a case-by-case basis to a more aggressive approach involving the juvenile justice system has left a resounding effect on both adolescents and the Juvenile Justice System tasked with the correction of adolescent misbehavior. The validity of Zero Tolerance policies in schools is brought into questions when one asks whether or not such policies truly treat the derivatives of childhood misbehavior or simply attempt to dump the youth into the Juvenile Justice System as a means of avoiding the issue altogether. With insight into the origins of such policies, its documented effects on juvenile offenses, and analysis of its constitutional soundness, one may better understand the role that Zero Tolerance has on America's youth and the Juvenile Justice System as a whole.

The Definition and Origins of Zero Tolerance Policies

According to the National Association of School Psychologists, zero tolerance was initially defined as "...consistently enforced suspension and expulsion policies in response to weapons, drugs, and violent acts in the school setting (NASP, 2001). However, this definition has changed relative to the independent school district to encompass a diverse array of rule violations. Zero Tolerance finds its origin during the 1980s delete the apostrophe as a result of state and federal regulations created in an attempt to combat the escalating fear of substance abuse and drug trafficking. This issue would later be stigmatized as the "War on Drug" (Browne-

Dianis, 2011). National opinion during the period held that the sale, use, or possession of illegal drugs would be met by a judicial system offering no leeway in its utilization of maximum sentencing toward the offenders. Issuing the longest possible sentence and/ or punishment for the infraction was intended to act as a general deterrent against drug users and ultimately thwart the abuse and trafficking of illegal substances.

While federal mandates of Zero Tolerance initially targeted major substance abuse facets of public policy, the umbrella term soon began being applied to other issues, such as environmental protection and sexual harassment. The application of Zero Tolerance in public schools soon followed after doctors James Q. Wilson and George L. Kelling published their broken window theory of crime. This theory is best summarized by Judge Steven C. Teske, juvenile court judge of Clayton County in Jonesboro, Georgia. “The Broken Windows theory argues that communities should get tough on the minor offenses and clean up neighborhoods to deter serious crime. Thus, it becomes necessary to punish minor offense violators” (Teske, 2001). Public schools began adopting their altered versions of zero tolerance in the early 1990s. The skewed manner in which zero tolerance has been interpreted and implemented toward minute disciplinary offenses has led scholars to adopt a more modern definition for zero tolerance. Zero tolerance, as it applies to public schools today, is a “philosophy or policy that mandates the application of predetermined consequences, most often severe and punitive in nature, that are intended to be applied regardless of the seriousness of behavior, mitigating circumstances, or situational context”(Skiba et al., 2006).

The Distortion of Zero Tolerance and the Integration of the Juvenile Justice System

While the more contemporary definition of Zero Tolerance sounds ideal in theory, the practical application becomes flawed due to the vast subjectivity associated with “seriousness of

behavior.” In 1994, the Federal government passed the Gun Free School Act, which granted states federal funds as long as they mandated a one- year expulsion for all students caught with a gun at school. While this law is explicitly targeted at guns, many states and local independent school districts define the term *weapon* much more laxly and include “squirt guns, tiny gun replicas on key chains, and even references to guns in poetry and prose” (Rice, 2009).

Loose ties to weapons are not the only type of student behavior under the scope of Zero Tolerance. On February 1, 2010, 12- year- old Alexa Gonzalez was arrested at her New York City junior high school for writing on her desk with an erasable marker. In 2008, a 13- year- old student was arrested for passing gas in class. If that were not enough, a 15- year- old student in Wisconsin was arrested for wrongly being accused of stealing chicken nuggets from the cafeteria lunch line (Aull-Elbert, 2012). Incidents such as these are not isolated. With the implementation of zero tolerance for minor behavior offenses, the annual suspension of students has nearly doubled from 1.7 million in 1974 to 3.1 million in 2001 (Poe-Yamagata and Jones, 2000). That figure equates to nearly one in every fourteen students suspended. Of these fourteen, less than one in ten were suspended for a violent offense. Most of these were for non- criminal offenses such as tardiness and dress code violations.

Exacerbating the situation, the national trend has shifted from a school administration- centered form of punishment for student misbehavior to a police and juvenile system- centered one, or, as Deputy Director of Texas Appleseed Deborah Fowler so quaintly phrases it, “School discipline has increasingly moved from the schoolhouse to the courthouse” (Fowler, 2011). The application of severe zero tolerance practices have brought about the placement of police on school campus. The introduction of police officers and departments has resulted in an unprecedented number of juveniles arrested and referred to the juvenile courts for offenses that

were once handled by school administrations. While there is no accumulated national data to keep track of the number of student arrests within public schools, one can look at independent states and districts to pick up on the established pattern nationwide. For instance, the number of school- based arrests in the state of Pennsylvania nearly tripled from 4,563 arrests in the year 2000 to 12,918 in 2007. In 2009, law enforcement engaged in 4,400 incidents and took part in 2,900 arrests in the Philadelphia public school system alone (Browne-Dianis, 2011). Similar data from states across the country bring forth similar patterns of increasing hostility toward youth in the school setting.

When the police become involved in student discipline, so does the juvenile court system. In 2009, police officers in the state of Texas issued about 275,000 non-traffic related Class C misdemeanor tickets to juveniles (Fowler, 2011). Of these citations, many were issued by school police officers for disorderly conduct, such as disruption of class and truancy. These referrals to the juvenile justice system not only back up the case loads that must be filtered through the court, but they also serve to criminalize students for what were once simply behavioral issues. According to Fowler, "...Texas students are increasingly receiving misdemeanor tickets for minor misbehavior and being drawn into adult municipal or justice of the peace court where they face fines up to \$500, community service, and a criminal record" (Fowler, 2011).

Types of Students Most Affected by Zero Tolerance

Such drastic increases in the number of juvenile offenses within schools are staggering enough. However, when one takes into account the disproportionate number of minority students reprimanded by zero tolerance, one begins to question the methodology behind the use of such disciplinary actions. According to the Department of Education, African American students were more than three times more likely to be suspended than their white peers in the 2006-2007 school

year (Fowler, 2011). Likewise, American Indian and Hispanic students are facing similar discrimination in the era of zero tolerance (Fowler, 2011). Upon first glance at these statistics, it seems almost evident that minority students would be guilty of more severe behavior infractions than their classmates due to their higher rates of suspension. But such is not the case. Instead, minority students are guilty of the same nature of offenses as their white counterpart.

One can draw attention to a single state to gain a better understanding of Zero Tolerance influences on a more micro level. Texas Appleseed is a network of public interest law centers in sixteen states that has spent three years researching how school discretionary suspensions and expulsions impacted students drop out and push out rates. Their findings indicate that African American and special education students are consistently over represented in Texas schools' disciplinary referral decisions (Fowler, 2011). According to Texas Appleseed, "they are referred for misbehavior that is less serious and more subjective in interpretation than white students" (Fowler, 2011).

Texas Appleseed also took part in the research of a phenomenon that juvenile researchers have called the "school-to-prison pipeline" (Aull-Elbert, 2012). This pipeline refers to the trend of filtering troubled students out of the public school system and into the juvenile and criminal justice system. In the investigation, Texas Appleseed discovered 211 Texas school districts were severely disproportionately referring African American students to Disciplinary Alternative Education Programs (DAEPs) between 2001 and 2006. In the same study, Texas Appleseed also discovered that over 412 districts were referring a vast number of special education students to these alternative schools (Fowler, 2011).

In Texas, zero tolerance appears to be blind to race, mental capacity, and even age. During the 2008-2009 school year "90 kindergarten students and 456 first graders were sent to a

DAEP for discretionary, nonviolent, Student Code of Conduct violations” (Fowler, 2011). Due to this dramatic and arguably inexcusable measure of discipline, The Texas Education Agency was forced to send written notices to three school districts that blatantly disregarded the state’s ban on sending children younger than the age of six to DAEP placements. Moreover, ten districts were sent notices after expelling children under the age of ten, which is a reprimand also restricted by state law. In possibly the most astonishing find by Texas Appleseed, the investigation revealed that children under the age of ten receiving class C Misdemeanor citations were not uncommon. Texas Appleseed conducted this portion of its study for six years, and during that time, more than 2,000 tickets were issued to elementary school students (Fowler, 2011).

The Constitutionality of Zero Tolerance

Historically speaking, children have traditionally been the demographic with the least civil rights. The era of zero tolerance is no exception to this injustice. The increasing criminalization of children to no beneficial end to the education establishment as well as progressive movements from highly publicized political names such as Reverend Jesse Jackson have brought forth a new zeal of attention to the issue of substantive due process rights of students.

The constitutionality of school policies that do not take into consideration whether a student intended to violate a rule pertaining to the possession of a weapon has made for a difficult task for the court system. On October 6, 2000, the United States Court of Appeals for the Sixth Circuit basically classified the main components of zero tolerance as unconstitutional in the case of *Seal v. Morgan*. In this case, the Court of Appeals ruled that the suspension or

expulsion of a student for the possession of a weapon without the student knowingly possessing such a weapon would essentially violate substantive due process. In other words, if a student unknowingly commits such an offense without the knowledge of doing so and without the intent of committing a criminal act, then the school system cannot provide a motive for criminal intent. As such, disciplinary action must be looked at in a contextual basis and not in such a black and white manner. While the Sixth Circuit Court of Appeals did not uphold zero tolerance, there has been inconsistency with other circuit decisions, which has given schools a somewhat obscure outlook on the constitutionality of their zero tolerance policies (Pelliccioni, 2003).

The Rights of Students as They Pertain to Zero Tolerance Policies

According to Christopher D. Pelliccioni of the Case Western Reserve School of Law, students, who already possess no fourth amendment rights on school campuses and have little to no ability to secure counsel or cross examine witnesses presenting the charges, are now faced with the impossibility of actually contesting the sometimes unreasonable punishments accompanied by zero tolerance rules (Pelliccioni, 2003). The bulk of students' rights and the states desire for a secure academic environment are best summarized by Pelliccioni:

Of course the need to protect students and maintain discipline does not allow students to be assured all of the guarantees that are afforded to others. Students, though, should be afforded basic substantive due process protections and, in the hysteria of school shootings, school districts have ignored these basic protections in order to make sure that school shootings that have happened across the country will not happen in their schools. Thus, the balance between the two competing interests has been upset by zero tolerance policies that lack a scientific requirement.
(Pelliccioni 2003)

A Final Thought on Zero Tolerance

The past two decades have seen a dramatic shift in the manner in which public school administrations handle disciplinary issues of minors. The once traditional approach of dealing with students on a personal basis and attempting to understand the derivatives of less than ideal social behavior in an attempt to remedy the problem has been replaced with the now contemporary method of criminalizing children so as to send the problem to be dealt with elsewhere. Data suggests that this technique does not alleviate the matter but instead transports it to another system, albeit, the juvenile justice system. These children, often of a disenfranchised background, do not have the appropriate due process channels to combat the reprimands associated with zero tolerance. The full extent of zero tolerance on the country's youth and the juvenile justice system will be exposed in the years to come. In the meantime, each independent school district must draft and begin implementing alternatives to this unjustly subjective method of discipline.

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