

We negate “Resolved: In United States public K-12 schools, the probable cause standard ought to apply to searches of students.”

We observe that incarceration is one of the worst things that can happen to students. Law professor Jason Nance explains in 2015 that being incarcerated as a juvenile ruins students lives by limiting the future educational and employment opportunities and increasing their chance of future involvement in the justice system.

Contention 1: Reinstating Zero Tolerance Policies

Zero tolerance policies are overly harsh school policies that requires minimum levels of punishment for specific infractions. These laws cause sociologist Nancy Heitzeg to write in 2009 that the school to prison pipeline is most directly due to zero tolerance policies.

Currently, the momentum is against these policies. Thalia Gonzalez of the Journal of Law & Education writes in 2012 that “restorative justice programs, [the opposite of zero tolerance]... have grown exponentially in the last five years.” Yet, problematically, schools are willing to reinstitute zero tolerance if they feel unsafe. John Holloway writes in the Educational Leadership Magazine in 2002 that 9 out of 10 principals view zero tolerance as an important tool for keeping schools safe, despite the clear harms of the policy. Criminal justice professor Eric Madfis explains in 2015 that because administrators overreact to threats, perceived declines in safety prompt them to adopt zero-tolerance policies to compensate. Fortunately, he reports that this culture of fear has dissipated in recent years — while 55% of parents felt their kids were unsafe at school in 1999, just 26% expressed the same fear in 2009.

Instituting probable cause will reignite these fears in two ways.

First, media backlash. Nancy Heitzeg finds in 2009 that the media skews coverage of crime against students, fearmongering acts of violence. Implementing probable cause would make the media portray schools as uniquely less safe, as Education Policy expert Dana Bedden writes in 2006 that the media focuses on schools ability to search students when they cover violence and crime. This fear will force schools to turn to zero tolerance policies. Heitzeg furthers that media driven concerns over school violence have “implications for... policy,” and historically have driven the agenda toward more punitive policies.

Second, a lack of deterrence. Reasonable suspicion deters crime by increasing the likelihood of students getting caught. Currently, Jennifer Mascia of The Trace reports in 2016 that every day a gun is found in the possession of children across America. Law Professor Andrew Taslitz writes in 2010 that instituting probable cause will remove the deterrent effect of reasonable suspicion, leading to more contraband in schools. Empirically, the ACLU reports in 2011 that schools using probable cause before the TLO decision complained that it was “impossible to keep schools running smoothly and safely.” Without the deterrent effect of searches, principals will feel pressure to increase deterrence through overly harsh punishments.

Contention 2: Increasing law enforcement in schools.

School resource officers, or SROs, are police officers hired by schools to offload the burden of searching.

SROs are detrimental because they are much harsher on kids than teachers are. The Justice Policy Institute explains in 2011 that SROs report to their police department first, so unlike teachers who can handle issues internally, SROs have to report everything to the police. Jason Nance quantifies in 2015 that students are up to 1.83 times more likely to be incarcerated in schools with SROs compared to schools without.

Probable cause would increase the prevalence of SROs in three ways.

1. By compensating for less searches. Because probable cause prevents schools from searching as frequently, administrators will be forced to turn to alternative methods of deterring crime. Randall Beger of the University of Wisconsin corroborates in 2014 that an increasingly popular "quick fix" strategy [to increase safety in schools] is to hire police and security guards.
2. By requiring warrants. Benjamin Tiller explains in 2015 that probable cause requires a warrant from the legal system before anyone can be searched. However, only SROs could go out and get those warrants, as legal dictionary FindLaw reports that "The Fourth Amendment requires... that warrants be supported by probable cause offered by a sworn police officer." Thus forcing schools to consult SROs when searching students.
3. By causing schools to fear litigation. Law professor Walter Champion explains in 1997 that "The rationale for [reasonable suspicion]... is that school teachers and administrators can not be expected to school themselves in the subtleties of the probable cause standard." This would cause schools to hire SROs, who are well versed in the law, to conduct searches instead of teachers. Ultimately, criminology professor Brian Sellers finds in 2013 that schools hire more SROs in order to avoid being sued.

Negate