

**The Bill Blackwood  
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**The Good and Bad of Zero Tolerance**

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**A Leadership White Paper  
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## **ABSTRACT**

For several decades now, law enforcement agencies throughout the United States has used policies and practices to enforce laws and ordinances involving crimes in which a zero tolerance should be required. However, there are agencies and officers within the agencies who often choose not to enforce certain laws for several reasons. Because of this, victims may be left with feelings of helplessness and no one to turn to or a place to go.

The purpose of this research is to point out why zero tolerance laws should be in effect and enforced for at least three crimes and the issues around those crimes. Determining which laws should have zero tolerance mandates and which should not is something to consider. It is obvious that not all laws can have zero tolerance enforcement attached due to it being against the basic beliefs in which this country was founded. There are critics who would suggest that zero tolerance mandates should not be applied to any of the laws. The three crimes mentioned in this research are often crimes against victims of weaker stature and of innocence. There are times when violations of family violence, driving while intoxication, and hate crimes sometimes end in the death of the victims for these types of crime. Because of this, zero tolerance laws should be in place and enforced for acts of family violence, driving while intoxicated violations, and crimes of hate.

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## INTRODUCTION

For over three decades, law enforcement agencies within the United States have been practicing policies involving zero tolerance. "Zero tolerance" is defined as the practice of applying mandatory enforcement policies for specific offenses ("What is zero tolerance," 2016). While some agencies choose to enforce certain laws and ordinances with a zero tolerance mentality, the federal government and other states make zero tolerance enforcement mandatory for select laws. The federal government, states, and local agencies have recognized the need for zero tolerance arrest policies and understand the need to limit the discretion of officers relative to certain crimes. Unfortunately, some zero tolerance laws result in disproportionate arrests for the members of minority groups, including gender, racial, and sexual minorities. Some critics may argue that zero tolerance policies disproportionately affect minority groups. Zero tolerance laws should be required to protect these individuals, especially in criminal activity involving victims of family violence (assault), driving while intoxicated, and hate crimes (criminal mischief / vandalism).

The zero tolerance concept first came about in 1983, when the Navy researched drug abuse among their sailors. According to Skiba and Peterson (1999), in San Diego in 1986, the U.S. attorney used zero tolerance to develop a program meant to impound any sea going vessels involved in transporting drugs and or narcotics. It was not long until the program caught the attention of the nation, and the U.S. Attorney authorized members of the U.S. Customs to seize vehicles, individual/company passports, and charge individuals in federal court for entering the U.S. with drugs, even if only trace amounts. Skiba and Peterson, (1999) suggested, in a relatively short period of time,

officials began to use zero tolerance practice to enforce a variety of issues, to include “environmental pollution, trespassing, skateboarding, racial intolerance, homelessness, sexual harassment, and boom boxes” (p. 2).

Local and state law enforcement can follow the direction set by the federal government and the United States Navy with zero tolerance policies. Because the United States Navy has such a large area to protect and police, along with their other duties, they were at a disadvantage compared to local law enforcement officers in a comparison of success rates. However, the United States Navy was successful in the narcotics enforcement around the world. Think about how successful a local law enforcement agency can be in efficiently enforcing public service laws to protect the public with their smaller area to patrol.

Zero tolerance policy is based on three points of contention. First, zero tolerance allows the problem to be handled before it becomes a problem. In other words, it does not allow the criminal element to believe they are in control, and it does not allow that part of society to turn communities into areas where crime thrives. Second, with criminal offenses that are considered high social problems, there is a totality of the incident for low social problems and the social problems are less of a concern as it relates to humanity. Finally, zero tolerances also reduces lower level criminal activity, so criminals who commit crimes that are more serious are not comfortable in a particular community (Bratton, Griffiths, Mallon, Orr, & Pollard, 1998).

The success of these local law enforcement agencies can be directly affected with the implementation of a zero tolerance policy for criminal justice enforcement and protection of the public. This success rate can be progressed on a larger scale with the

continued cooperative and joint effort from the local, state, and federal government law enforcement agencies, like municipal and county agencies, state police, the Drug Enforcement Agency, Alcohol Tobacco Firearms and Explosives, and the Federal Bureau of Investigation, to name only a few. Furthermore, task force offices can be established for selective enforcement of zero tolerance laws, especially for those criminal activities involving victims of family violence (assault), driving while intoxicated, and hate crimes (criminal mischief / vandalism). Zero tolerance laws should be required to protect these individuals.

## **POSITION**

Family violence is defined by the Texas State Legislature, namely the family code as “an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, ... but does not include defensive measures to protect oneself” (Family Code, 1997, para. 1). Family violence can range from a Class C Misdemeanor (equivalent to a speeding citation) to a Third Degree Felony (punishable by up to ten years in prison). These punishments are due to an assaultive act by the assaulting party to the victim of the assault. Incidents involving family violence have long-term effects once the bruising disappears. The long-term effects involve, but are not limited to, financial and psychological distress for the victim and family members. Family members can be a category that is subdivided into immediate family members, extended family members, and the social community to which the victim resides. Unfortunately, a stigma is attached to family violence. The stigma has long-lasting disapproval for the victim, their child, if applicable, and even in their workplace. Support programs for victims are

present, but once again, there is a stigma attached to reaching out to one of these programs and funding is not stellar for these programs/centers.

If a victim does reach out to a community outreach program for assistance, the necessary items for human survival are not readily available for long-term assistance. The long-term assistance referred to is not years-- it is just weeks or days, and depends on the community in which a victim resides due to funding to these shelters. Relocating a victim, who has been displaced because of continuous violent acts, and determining where they will reside while searching for a new home, becomes a concern. Victims have other concerns, such as loans or funding for a home, and all legal documents needed may have been left behind in the home where great pain and suffering occurred. A mandatory zero tolerance policy for family violence act(s) is where relief can be provided for these victims.

According to Article 17.291(b) of the Texas Code of Criminal Procedure, this entitles a peace officer to request a four-hour hold (remaining in custody of authorities after releasing from custody documents have been established) to be placed on a suspect of family violence after bond has been posted (made). In addition, the article allows a magistrate to place an extended hold on the suspect up to 48 hours, if the magistrate makes the directive in writing to the person detaining the suspect. In order to do this, the magistrate must believe that the suspect will commit further violence once released, or if the extended detainment is to be longer than 24 hours, have probable cause to believe that the suspect had committed other acts of family violence within ten years of the act in which the suspected person was currently be held (Code of Criminal Procedure, 1991, para. b). This extended time will grant the victim time to recover items

needed to establish a new beginning and safe place to reside. A zero tolerance policy towards acts of family violence will assist with the needed time for victims to establish their new lives if new living arrangements are needed for the safety and the security of the family.

During this same time of detainment, the victim of family violence can request an Emergency Protective Order from the arraigning magistrate. An Emergency Protective Order will grant the victim time to get a new life in order and legal issues in line while ordering the suspect to stay away and not to communicate with the victim for a period of 90 days. At the end of the 90-day period, the victim may request a Protective Order extending the protection out to two years. An Emergency Protective Order is enforceable by criminal law as well. Emergency Protective Orders have a “shall” arrest if they are violated in the presence of a Texas Peace Officer. This “shall” is a zero tolerance policy that has been implemented by the state of Texas. Having a zero tolerance policy for acts of family violence facilitates the acts of Emergency Protective Orders that this state has already established (Code of Criminal Procedure, 1995, para. j).

The criminal offense of Driving While Intoxicated currently classifies the state of Texas as being the victim of the crime. When the state of Texas is listed as the victim of the crime, many individuals have the belief that this is a victimless crime. However, the criminal offense of Driving While Intoxicated has the potential to affect every member of society and specific individuals. Driving While Intoxicated by one individual can have an adverse effect on the entire state with insurance rates, utilization of



resources for motor vehicle crashes that are inevitable with intoxication levels, and time spent in the criminal justice system for prosecution.

Driving While Intoxicated can be separated into three different categories currently in the state of Texas: 16 years of age and under, 17 years of age to 20 years of age, and 21 and older. Depending on the age of the individual being detained for this alleged criminal offense, the officer has the ability to make a decision on how an arrest, if applicable, takes place (Penal Code 49.01, 1993, para B) (Alcohol Beverage Code 106.041, 1997, para a). A zero tolerance policy will remove the gray area that can cause liability to the officer, their agency, and the state of Texas.

Currently, individuals 16 years of age and under who are in the state of Texas and are being detained for an alcoholic criminal offense have a zero tolerance policy of no detectible amount of alcohol on their person. However, the range of punishment is different for each county district attorney interpretation of the law. In addition, individuals being detained from the age of 17 to 20 have a zero tolerance policy of no detectible amount of alcohol on their person. Again, the range of punishment differs for each county or district attorney's interpretation of the law. For adults aged 21 and over, the detectible amount of alcohol on their person is an established amount of .08 (blood alcohol content per liter of breath). The punishment that can correspond to this blood alcohol content applies to county or district attorney's interpretation of the law if this offense is prosecuted (Alcohol Beverage Code 106.041, 1997, para. a) (Penal Code 49.01, 1993, para. B). A zero tolerance policy will remove this doubt from Texas peace officers attempting to enforce this gray law of Driving While Intoxicated. According to McAndrews (2001), "Zero-tolerance policies were enacted to combat the seemingly

overwhelming increase in school violence during the 1990's" (p. 1). A Driving While Intoxicated policy will act in the same scope of school violence laws from the early 1990's.

It makes sense to believe that crimes of hate have been around since man was created. Even in the beginning of time, as far as man is concerned, people have injured and killed each other for differences involving looks, socioeconomic status within the group, or because they were different, unknown, and from another social group with different beliefs. Hate can be an ambiguous statement, so a couple examples of hate crimes will follow to establish a need for a zero tolerance policy towards hate crimes.

In the late 1990's, for example, in the state of Texas, Mr. James Byrd was beaten and then dragged behind a motor vehicle until his death by three white supremacist men (Jenness, 1999). This murder has been classified as a Hate Crime, and subsequent federal and state legislation has been enacted because of this incident and others of similar violence. In addition, in the state of Wyoming, a young man named Matthew Shepard was beat and left to die tied to a fence because he was homosexual (Jenness, 1999, p. 549). The death of Mr. Byrd was racially motivated, while the death of Mr. Shepard was motivated by the hatred of his sexual orientation, hence the hate crime legislation. Mason (2014) said, "Hate crime laws governs criminal conduct that involves an element of prejudice or bias on the part of the perpetrator towards a presumed attribute of the victim" (p. 77). Any act that is conducted by a perpetrator towards a victim because of their race, creed, or sexual relations needs to have a zero tolerance policy. Even events such as "peaceful marches" and demonstrations that are allowed and legal throughout the United States are not peaceful to those who fall into

one of the groups in which the hate is directed. These individuals, including all generations that witness the “peaceful” acts, still feel the hate and fear for the possibilities of their futures. Society needs to take a firm stance towards suspects who purposefully cause injury towards another human being(s) because of an attribute the victim possesses that is not of the suspect’s liking. Victims of hate and acts of hatred often feel a sense of helplessness and become withdrawn from society, have a decrease in self-esteem and confidence, and have difficulties in finding their place in society. Once these traits are lost, the “victim” often becomes dependent on government for a means of existence, and this causes more of a burden on social economics and often requires the intervention of police services for various reasons.

### **COUNTER POSITION**

A reasonable argument that can be made against zero tolerance policies involves a civil liberties claim found within the United States Constitution, namely the 14<sup>th</sup> Amendment (U.S. Const. amend. XIV). This injurious claim would involve equal protection under the law. The criminal justice system and enforcement of applicable laws have interpretations or discretion by law enforcement officials, juries, and the judicial system. A zero tolerance system removes the interpretation and discretion from law enforcement officials who are enforcing applicable state and federal law. Zero tolerance policies make a black and white interpretation of the law from a formerly gray interpretation that was left to a jury of peers. With the idea of creating zero tolerance laws, law enforcement officials will have no discretion and will not become the judge and jury. That would not follow the 14<sup>th</sup> Amendment of the United States Constitution.

However, if a federal and state law is established for the criminal offenses listed in this paper, law enforcement officers are not acting as a judge and jury. They are acting in the scope of their duties through applicable laws that have been established by federal and state legislators, as well as subsequent oversight by judges. The argument that law enforcement officers are making decisions outside of their scope of duties is not valid because they are defending the laws of the state and federal guidelines.

Another area of concern is determining the laws that will have a zero tolerance policy applied and which ones will not because it is not feasible for all laws to have a zero tolerance policy. If all laws had a zero tolerance policy, it might suggest the United States has digressed from the basis the country was established on some 200 years ago. If zero tolerance was implemented for only certain laws, there would have to be a precedence to determine the importance of those laws that are not held to the same standard of laws with a zero tolerance policy. These thoughts and decisions have to be addressed by the community, legislators, and the federal government. The list provided with this paper are merely a suggestion and not an exhaustive list and are following current practice by the state and federal government.

One other area of concern involving zero tolerance policies are civil liberty protests, negative media coverage, and the utilization of resources. Civil liberty protests have been common ground in this country from its inception. This is something that is not new and will continue under a democratic form of government. Negative media attention is also something that will always be present as long as a free media is allowed. Law enforcement is not going to infringe on the First Amendment of the media and it is the duty of law enforcement to properly enforce applicable laws.

In 1993, the mayor of New York, Rudy Giuliani, implemented a zero tolerance policy and took the crime rate from being one of the highest to a successful rate of policing and enforcement with this program (Greene, 1999). Zero tolerance policies are and will continue to be a successful way of enforcing laws by law enforcement. New York State and City is a heavy populated area of citizens. The crime rate has an ability to be high because of its population. Regardless of the population, because of zero tolerance policies, the numbers used to determine crime rates for major crimes dropped considerably.

## **RECOMMENDATION**

According to Grattet and Jenness (2008), "Department policies may have no effect on what law enforcement officers actually do" (p. 504). Federal and state zero tolerance policies towards criminal enforcement are necessary for the successful enforcement of criminal law, protection of victims, and to uphold the civil liberties that were established by the federal government for citizens and non-citizens alike. It is incumbent for state legislators to take the approach of zero tolerance for criminal law infractions to provide a safer community for this country, especially concerning laws and criminal acts involving family violence, driving while intoxicated, and hate. Still, there are some who suggest the zero tolerance laws are an unfair justice or an infringement of rights, but the laws are in place to protect those of lesser strength, of innocence, and often the unknowing, because of the potential possibility of serious injury or even death to them. Law enforcement officials swore an oath that they will uphold the Constitution of the United States, their state's constitution, and defend the citizens of this country. With state and federal mandates of zero tolerance, law enforcement officials will be able

to protect the interest of victims and the state. Without zero tolerance guidelines, law enforcement officials and victims will be left in more of a vicious cycle of violence than is currently being felt around the nation.

While many advocacy groups can argue that a zero tolerance policy can have an adverse effect on the criminal justice system, it has been shown that zero tolerance policies are effective in New York State (Greene, 1999). If all states follow the progressive acts in New York, many criminal incidents can be diverted and stopped. It is therefore recommended that a zero tolerance policy for applicable state and federal laws be mandatory for a safe community and best interest approach to the citizens of this country. An argument can and will be made that a violation of the equal protection clause of the United States Constitution is a direct consequence of zero tolerance. However, as of 2015, this damage claim has not been heard by the United States Supreme Court. This court is the highest court in the country and hand picks the cases to be heard or considered. To date, the court has not deemed that zero tolerance policies are a controversy that needs to be decided.

Family violence assaults, driving while intoxicated, and hate crimes will decrease with an implementation of zero tolerance policies. Scared straight programs were not an effective program, but zero tolerance has been shown to be a successful deterrent and enforcement tool for the judicial system, law enforcement, and victims. Furthering this cause is of utmost importance. Enacting and enforcing zero tolerance laws should be required to protect these individuals, especially in criminal activity involving victims of family violence (assault), driving while intoxicated, and hate crimes (criminal mischief / vandalism).

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