



School Policy

Torts

***THE  
GOVERNMENT,  
PRIVACY  
AND YOU  
STUDENT EDITION***

The Constitution

Common Law

Legislation

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# THE GOVERNMENT, PRIVACY AND YOU

## STUDENT EDITION

### GOALS

At the end of this lesson you will be able to:

- Explain the meaning of privacy and what is not private;
- Recognize the importance of privacy law in your own life;
- Put in your own words why it is important for you to protect your own privacy;
- Know several legal terms related to privacy law and policy.

### TERMS FOR YOU TO KNOW

***In Loco Parentis*** - a Latin phrase that means “in the place of a parent in their absence” and refers to the legal responsibility of a person or organization (*i.e.*, schools) to assume some of the functions and responsibilities of a parent in their absence.

**Legitimate Expectation of Privacy** - a belief that there is a thing or place where a person can expect privacy and that society agrees.

**Policy** - a plan or course of action by a government, political party or business intended to influence and determine decisions and actions.

**Probable Cause** - a realistic belief that a crime has been committed, is currently being committed or will be soon be committed, and there is sufficient evidence to warrant an arrest or search and seizure. **Probable cause** has a stronger standard of proof than **reasonable suspicion** and can lead to an arrest. Evidence is the key difference between **probable cause** and **reasonable suspicion**.

**Reasonable Suspicion** - a strong belief that a person might have been, is or is about to be engaged in criminal activity based on specific facts or deductions that can be clearly explained. A police officer has the legal right to stop and ask a person questions under the lower standard of **reasonable suspicion**. The police officer may frisk a suspect or detain the suspect briefly, but may only arrest if evidence is obtained to move to **probable cause** or a warrant is issued.

**Warrant** - a written order by an official of a court authorizing an officer to search in a specific place for specified objects and to seize them if found. The objects sought may be stolen goods or physical evidence of the commission of a crime or crimes (*e.g.*, narcotics, weapons or bloodstains).

### WHAT IS PRIVACY?

As early as 1890, Justice Louis Brandeis defined privacy as simply the right “to be left alone.” In the following years, that definition has grown to mean that privacy is the right

to keep secrets from others as well as the right to keep anyone from intruding into your private space.

*What does the word privacy mean to you?*

### **WHAT IS NOT PRIVATE?**

The definition of privacy sounds simple enough, doesn't it? Okay, what is your private space- your room, your diary, your house, your locker, your backpack, your computer, your cell phone? Not anymore. Under certain circumstances, most often with a **warrant**, law enforcement or school officials can have access to all those things. It is important for you to know that students in public schools, individuals at work, prisoners, immigrants and even celebrities have specific limits on what is private and what is not.

For example, officers can seek a **warrant** signed by a judge that will give them permission to search for specific items in your home, such as your computer or your cell phone. Remember that in a school setting, with only **reasonable suspicion**, school administrators may search your locker, backpack and/or purse.

*What are some important items that you want to keep private?*

### **WHAT EFFECT HAS MODERN TECHNOLOGY HAD ON YOUR PRIVACY?**

The issue of privacy has become even more complicated with the expansion of technology. Who is going to decide what sites you can go to on the Internet or what you can write on your Facebook page, for example? Blogs, Facebook and YouTube are all considered to be public places even if you enter them, write in them or post photos from your own homes.

*Where do you think the government, law enforcement or your school get the authority to determine what is private and what is not?*

### **WHAT ARE THE SOURCES OF PRIVACY LAW AND POLICY?**

Privacy is not mentioned directly in the Constitution. However there are several suggestions in the Bill of Rights, specifically in the First, Third, Fourth, Fifth and Ninth Amendments, as well as the Fourteenth Amendment. These establish that privacy should be a protected right. Other sources include law that has been passed down through the ages called common law, special laws called torts that give people the right to sue if they believe their privacy has been violated, laws passed by the state legislature, and school district policy.

### **DO THESE LAWS AND POLICIES HAVE ANYTHING TO DO WITH ME?**

Yes! Let's examine five cases with decisions that directly impact you.

## CONSIDER THIS CASE

**CONSIDER THIS CASE -DIRECTIONS:** Your teacher will divide your class into five groups with each group assigned one of the cases. It will be the responsibility of your group to **discuss** the case, answer the questions that follow it and **guess** what you think the case decision will be. You will then select a spokesperson or two to **teach the rest of your class about your case**. When you are finished your teacher will tell you the actual decision.

### 1. YOUR CAR

It is often a mistaken belief that police cannot search an individual's car. The first case to address the privacy rights of an individual and his car was in the 1920's when prohibition officers searched a car looking for liquor that was illegal. The simple fact that cars can be moved supports a search without a **warrant** as long as law enforcement has **probable cause**.

**CONSIDER THIS CASE:** *UNITED STATES V. ROSS* (1982)

A reliable informant notified a detective that a man known as "Bandit" was selling illegal drugs out of the trunk of his car. The informant gave detailed information of the appearance of both the car and "Bandit." Other detectives located the car and learned it belonged to Albert Ross, who used the alias "Bandit." After observing the car for awhile, the officers saw a man matching the description of "Bandit" enter the car and drive away. They then pulled the car over and asked Ross to get out. One of the officers found a pistol in the glove compartment and in the trunk, a brown paper bag filled with small bags of powder, \$3,200 and traces of another powder which the police laboratory later determined was heroin. No warrant was obtained.

*What do you think?*

*Do you think the police had the right to search the car and its glove compartment and trunk when their **probable cause** was solely based on information from an informant? If you agree, does that mean that if you told school or police authorities that a student at your school was selling drugs out of his car they would have the right to search it?*

### 2. YOUR SCHOOL

There are many limits to privacy rights within your school. Your right to privacy is lower in schools because there must be a balance between personal rights and the need to maintain a safe learning environment for the students.

School districts have been given great power to establish policies to protect all students. The notion of *in loco parentis* states that school administrators can act in the place of your parents.

**CONSIDER THIS CASE:** *VERNONIA SCHOOL DISTRICT V. ACTON* (1995)

In the late 1980's, Oregon's Vernonia School District saw a spike in drug use in high schools. The students became increasingly bold and unruly in their drug use. The administration learned that the student athletes were not only drug users, but also were popularizing drugs. A variety of methods were used to intervene, but with little success. In 1989, after receiving input from the parents, the school district made the decision to begin drug testing student athletes "to protect their health and safety." In fall 1991, James Acton, then a seventh grader, signed up to play

football but was denied participation because he refused to complete the drug test. His family filed suit on the basis that his privacy was being invaded in the requirement of a urine sample.

*What do you think?*

*What would you expect to be the result of this case? Do you think students involved in extracurricular activities other than athletics should be tested for drug use? Why or why not?*

### **3. YOUR CLOTHES**

School districts are responsible for creating and implementing policies, rules and regulations that govern behavior and promote an environment for learning while still protecting the rights of individual students. Cases have established that students have reduced expectations of privacy in school, partially because staff is acting *in loco parentis* (in place of your parents). In this role, many school decisions can be made that are outside the normal range of governmental involvement.

The range of school policies that pertain to privacy rights is broad. For example, how you choose to dress would seem to be a private decision. Yet, most school districts have established strict dress **policies** for pupils. For example, in Nevada, policies include limitations on the length of skirts and shorts, indicate that students must wear shoes with soles, may not wear crop tops or those with spaghetti straps, or hats. The dress code **policy** explains that outfits must provide “minimum coverage.” The district also prohibits slogans or advertising on clothing that is controversial, religious in nature, or obscene and might disrupt the educational setting.

#### **CONSIDER THIS CASE: *JACOBS V. CLARK COUNTY SCHOOL DISTRICT (2008)***

Liberty High School in Henderson, NV instituted a **policy** requiring all students to wear "solid khaki-colored bottoms and solid-colored polo, tee, or button-down shirts (blue, red or white) with or without Liberty logos."

Kimberly Jacobs, then an eleventh-grader at Liberty, time after time violated the school's uniform **policy** (at least once by wearing a shirt containing a printed message reflecting her religious beliefs). Jacobs was repeatedly referred to the Dean's office and she was suspended from school five times for a total of twenty-five days. Although Liberty provided Jacobs with educational services during her suspensions, she claimed that she missed out on classroom interactions, her reputation was tarnished among her teachers and peers, she had a disciplinary record, and was unconstitutionally deprived of her First Amendment rights to free expression and free exercise of religion because of Liberty's enforcement of its mandatory school uniform **policy**.

Jacobs and her parents sued the District.

*What do you think?*

*Should the way you dress in school be a private matter? Do you believe student uniforms assist school districts in the reduction of gang-related or bullying incidents on your campus? Why or why not?*

#### 4. YOUR BODY

There is no other area around privacy rights that is as controversial and heated as those directly related to the privacy of our own bodies. Parents, police and schools are becoming increasingly concerned about teens swapping more than messages as they face a rising number of ‘sexting’ incidents. A quick click and teens can instantly send nude images or videos of themselves to friends in a text on their cell phones or on computer sites as Facebook.

##### CONSIDER THIS CASE: PHILLIP ALPERT

Eighteen year old Phillip Alpert was a senior at a high school in Orlando, Florida. Angry at his sixteen year old ex-girlfriend and as a way to get back at her, he forwarded some photos of her without clothes that she had given him. They were included in text messages to her family, friends and anyone on his contact list. He immediately realized he had made a dreadful mistake and apologized, but it was too late. The reaction from people receiving the photos was immediate and the police arrested Phillip on child-pornography charges. Child pornography is any visual representation of minors under the age of eighteen that is highly sexual in nature.

*What do you think?*

*Why is sending photos of undressed people to others considered a crime? Do you believe that sending pictures of yourself partially clothed can make you a child pornographer as well? What kinds of punishment do you think Phillip received from the courts?*

#### 5. YOUR BELONGINGS

The courts and school boards have given school administrators and teachers significant freedom in assuring that all students, faculty and staff are kept safe. This means that with **reasonable suspicion** that something illegal and possibly dangerous is in the possession of a student, administrators and sometimes school police have the right to search lockers, backpacks and other personal belongings.

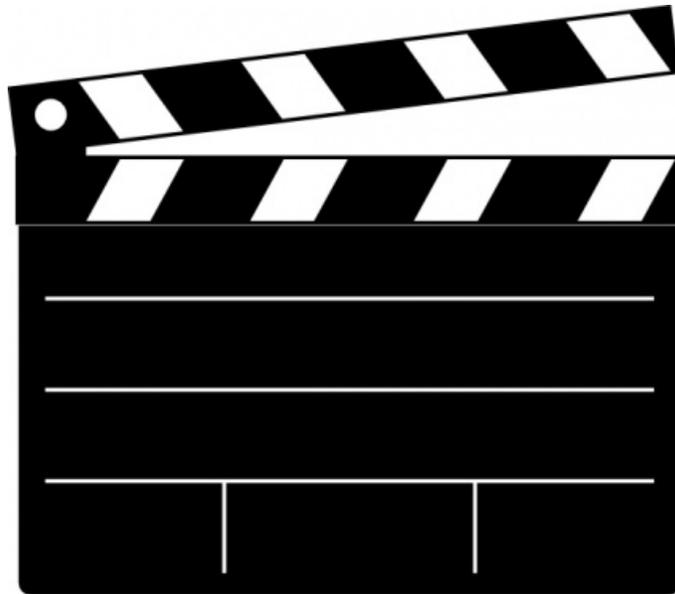
##### CONSIDER THIS CASE: SAFFORD UNIFIED SCHOOL DISTRICT V. REDDING (2009)

After a fellow student told school personnel about a girl with several suspicious items in her day planner, 13-year-old Savannah Redding was taken to the office and accused of bringing prescription strength ibuprofen to school, a direct violation of school **policy**. After searching her backpack and outer clothing and finding nothing, the assistant principal took the girl to the nurse’s office where she was asked to remove her outer clothing. Her undergarments were searched, exposing her body to staff. No pills were found. The girl’s mother filed suit against Safford Unified School District #1 for conducting a strip search, in direct violation of Savannah’s Fourth Amendment rights against unreasonable search.

*What do you think?*

*Do you think this search was unreasonable? Did the principal and the nurse take their responsibility too far? Was the student’s expectation of privacy violated?*

You will now see a short play, *IT'S NONE OF YOUR BUSINESS . . . OR IS IT?*, based on the case of *Hibel v. Nevada 2004*. This case focuses on whether or not an individual **who is not driving** has the right to keep his or her name secret from the police.



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