

## Due Process Rights and Children: Fifty Years of *In re Gault* – Part One

On May 15, 1967, the U.S. Supreme Court granted due process rights to children in the landmark case of [\*In re Gault\*](#), 387 U.S. 1 (1967). The case involved 15-year-old Gerald Gault, who was taken into police custody without notice to his parents, held for four days, and committed to a juvenile facility for a maximum of six years for making a prank phone call to his neighbor. He received no prior notice of the charges and was adjudicated delinquent following an informal hearing with a judge without any witnesses or representation by counsel. His case would spark outrage today but was the norm for juvenile proceedings at the time. When the Supreme Court reversed Gault's adjudication, it transformed the nature of juvenile court by defining basic requirements of due process that now apply to all delinquency hearings. These rights include:

- the right to notice of the charges;
- the right to an attorney;
- the right to remain silent; and
- the right to confront and cross-examine witnesses.

While this decision marked a watershed moment in children's rights, the language of the Court was not absolute. The Supreme Court did not extend these rights to all juveniles. *Gault* applies only to juveniles whose adjudication of delinquency may result in commitment to a state institution, which excludes undisciplined juveniles. The Court also limited its holding to the adjudicatory stage, leaving states open to define due process in other stages of juvenile proceedings (*i.e.*, pre-adjudication, disposition, and post-disposition). *Gault*, 387 U.S. at 13. As a result, the decision did not completely change the legal landscape but left a legal patchwork among state jurisdictions that continues today. This post is the first in a series of posts that will discuss *Gault's* impact on juvenile delinquency proceedings in NC and whether *Gault's* promise of due process rights for children has been fully achieved.

### Early Juvenile Court Proceedings

Prior to *Gault*, procedural protections such as notice of the charges, the privilege against self-incrimination, and the right to counsel were generally ignored in juvenile proceedings. Under the doctrine of *parens patriae* (the state as parent), delinquent juveniles were viewed as wards of the state and were not considered to be on trial. The juvenile court's goal was not to assign guilt or innocence, but rather to treat or rehabilitate the child. Early reformers thought that applying rigid rules of criminal procedure would only frustrate these benevolent purposes. *Id.* at 15-16. Thus, the state's duty to protect the health and welfare of juveniles outweighed the state's duty to protect their individual liberties.

Children were also denied procedural due process based on the view that, “unlike an adult, [a child] has a right ‘not to liberty but to custody.’” *Id.* at 17. The state’s role as *parens patriae* allowed it to step in and provide custody to children whose parents failed to do so. Writing for the majority in *Gault*, Justice Fortas explained that under this view, “[the state] does not deprive the child of any rights, because he has none. It merely provides the ‘custody’ to which the child is entitled.” *Id.* As a result, the procedural safeguards that protected individual liberty in adult criminal trials were considered to be inapplicable to juveniles. This informality often led to arbitrary and unfair dispositions like the one in *Gault*’s case.

### From *Parens Patriae* to Due Process

Gerald Gault’s “hearing” occurred in the judge’s chambers and included his parents and two probation officers. The only written notice he received was a note from an officer on plain paper given to his mother three days before the hearing. The complaining witness was not present and did not consult with the judge at any time. Gault allegedly confessed to making a “lewd phone call” when the judge questioned him at his initial hearing without advising him of the right to remain silent or the right to an attorney. Based on his confession, he was committed to a state institution for a maximum of six years, although an adult charged with the same offense would have been subject to a fine of \$5.00 to \$50.00 and no more than two months in jail. The adult also would have received the benefit of a full hearing on the merits with adequate prior notice and the right to counsel.

The Supreme Court harshly criticized the denial of procedural protections to Gault under the guise that his commitment was not punitive but rather an attempt “to save him from a downward career.” *Id.* at 26. Despite being called an “industrial school,” the reality is that Gault was committed to an institution where he was subject to confinement for many years. The Court saw no reason why constitutional due process would not apply to such a significant restraint on a child’s liberty, declaring that “the condition of being a boy does not justify a kangaroo court.” *Id.* at 28.

Citing its recent decision in *Kent v. United States*, 383 U.S. 541 (1966), the Court reiterated that the state’s paternalistic role in juvenile proceedings was not “an invitation to procedural arbitrariness.” *Id.* at 30. In *Kent*, the Court held that the juvenile waiver process (or transfer to adult court) resulted in “such tremendous consequences” as to justify a hearing, effective assistance of counsel, and a statement of reasons. *Id.* Thus, like the waiver process, a delinquency hearing “must measure up to the essentials of due process and fair treatment.” *Id.*

*Gault* established that due process in a delinquency hearing, at a minimum, requires:

- **Notice of Charges.** Notice must be given to the juvenile and his or her parents, in writing, of the specific charges or factual allegations sufficiently in advance of the proceeding to allow them a “reasonable opportunity to prepare.” at 33.
- **Right to Counsel.** Juveniles and their parents must be notified of the juvenile’s right to

counsel and the right to appointed counsel if they cannot afford to hire one. at 41.

- **Right to Remain Silent.** A juvenile's admission may not be used against him or her in a delinquency proceeding absent "clear and unequivocal evidence" that the admission was made with knowledge that the juvenile had the right to remain silent and would not be penalized for exercising this right. at 44.
- **Right to Confrontation and Cross-Examination.** Absent a valid confession, an adjudication of delinquency must be based upon "sworn testimony subjected to the opportunity for cross-examination." at 57.

### Due Process Rights Beyond *Gault*

Despite *Gault's* mandate, "due process" still hasn't been clearly defined in juvenile proceedings. Because the decision applies only to adjudication hearings, questions still remain about the scope of due process applicable to other stages of juvenile court. In a previous [post](#), I addressed questions related to a juvenile's due process rights during dispositional hearings, which are still unclear.

The Supreme Court also left open the question of indigence with respect to the right to counsel. In North Carolina, juveniles are presumed to be indigent, and thus, automatically receive appointed counsel when alleged to be delinquent. [G.S. 7B-2000](#). They also have other statutory due process protections that go beyond *Gault's* minimum requirements. [G.S. 7B-2405](#). However, these rights are not guaranteed to juveniles in every state.

Likewise, the Court failed to outline the privilege against self-incrimination for juveniles and allowed states to determine procedures related to a juvenile's waiver of rights. North Carolina has long provided juveniles with the right to have a parent present during a custodial police interrogation. [G.S. 7B-2101](#). However, courts often find that juveniles were not "in custody" during police questioning, and thus, were not entitled to have a parent present. This remains true even though the Court held in *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011), that officers must apply a "[reasonable child](#)" standard when determining whether they must administer warnings to juveniles.

### Recent Reform Efforts in North Carolina

In 2015, the General Assembly passed [House Bill 879](#) which was intended to improve consistency and enhance due process in several juvenile court proceedings. For example, it created new [G.S. 7B-2408.5](#) (modeled after G.S. 15A-977) to establish a procedure for filing motions to suppress in juvenile court. Prior to the enactment of this statute, there was no uniformity in the way juvenile courts handled motions to suppress. Some courts followed the established adult criminal procedure, while others created local solutions with varying degrees of formality.

Similarly, a prosecutor's ability to dismiss a juvenile petition, which was not addressed in the Juvenile Code, varied widely. Some courts only allowed dismissals by order of the court, while

others gave prosecutors some discretion to dismiss the petition if certain conditions were met. Under new [G.S. 7B-2404\(b\)](#), it is clear that prosecutors may voluntarily dismiss a petition with or without leave, similar to their authority in criminal court. These and other procedural reforms promote uniformity and fairness in the juvenile process, consistent with *Gault*'s holding. (See this [post](#) for a full summary of HB 879).

As the 50th anniversary of *Gault* approaches, the National Juvenile Defender Center is commemorating the decision through its "[Gault at 50](#)" campaign which urges juvenile defenders and other juvenile advocates to recommit themselves to protecting the rights of children. The campaign recognizes that while *Gault* was a huge step forward in seeking justice for juveniles, more work is necessary. Stay tuned for additional posts on *Gault* and how its promise is still being fulfilled.

*\*In collaboration with the NC Office of the Juvenile Defender, this post is the first in a series of posts related to In re Gault and its impact on due process rights for juveniles. The blog posts in this series will be posted to both the On the Civil Side Blog and the Juvenile Defender Blog.*

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