

1971

## Juveniles - Adjudication of Delinquency - Maximum Sentences

James R. Miller

Follow this and additional works at: <https://dsc.duq.edu/dlr>



Part of the [Juvenile Law Commons](#)

---

### Recommended Citation

James R. Miller, *Juveniles - Adjudication of Delinquency - Maximum Sentences*, 9 Duq. L. Rev. 689 (1971).  
Available at: <https://dsc.duq.edu/dlr/vol9/iss4/12>

This Recent Decision is brought to you for free and open access by Duquesne Scholarship Collection. It has been accepted for inclusion in Duquesne Law Review by an authorized editor of Duquesne Scholarship Collection.

## Recent Decisions

youth from the ordeal of trial, the ordeal of trial is no more exasperating to the youthful offender than commitment behind a barbed fence. The Sixth Amendment is not concerned with informality; nor with flexibility; rather, it requires a jury trial for all and it does not exclude children. Constitutional rights cannot be balanced upon a scale of flexibility and informality—they are too few and too precious. As Justice Musmanno stated in *Holme's Appeal*:

What a child charged with crime is entitled to, is *justice, not parens patriae* . . . (Emphasis Justice Musmanno.)<sup>51</sup>

Joseph E. Vogrin, III

JUVENILES—ADJUDICATION OF DELINQUENCY—MAXIMUM SENTENCES—The Pennsylvania Supreme Court has held that a juvenile may be sentenced to a longer maximum commitment than an adult tried for the same crime if the following conditions are present: 1.) the juvenile is notified at the outset of the proceedings of all factors upon which the state proposes to base the adjudication; 2.) the facts supporting the ultimate conclusions must be clearly found and set forth; and, 3.) it must be clear that during the longer commitment the juvenile will receive appropriate rehabilitative care.

*Wilson Appeal*, 438 Pa. 425, 264 A.2d 614 (1970).

On June 2, 1968, Charles Laverne Wilson and several other youths became involved in an interracial street fight in Lancaster, Pennsylvania. Although no one was seriously injured in the fray, and Wilson's involvement was confined to throwing a few punches, juvenile delinquency proceedings were subsequently brought against him.

During the delinquency hearing, the judge considered not only the street fight incident, but also Wilson's prior school suspension and burglary conviction as significant factors in finding him a delinquent. Neither Wilson's counsel nor his parents had any notice that these two additional factors would be considered in this hearing.

Wilson was adjudged a delinquent and was sentenced to the State Correctional Institution at Camp Hill, Pennsylvania.<sup>1</sup> His sentence,

---

51. 109 A.2d at 530.

1. 438 Pa. 425, 264 A.2d 614 (1970).

based on two charges of simple assault and battery, was for commitment to Camp Hill for an indefinite period of time, not to extend beyond his twenty-first birthday. Since he was sixteen at the time, the maximum possible commitment was five years. If Wilson had been tried as an adult four years would have been the maximum sentence.<sup>2</sup>

### HISTORY OF THE JUVENILE COURT

From the inception of the first separate court for juveniles, established April 21, 1899 by the Illinois legislature,<sup>3</sup> the legal philosophy of juvenile courts has differed significantly from that of the ordinary criminal tribunal. Juvenile court hearings are termed "civil"; they are designed to spare the child from the psychological ordeal of a criminal trial, and perhaps from being labeled a criminal.<sup>4</sup> No stigma of punishment should pervade the proceeding. Rather it should take place in a friendly, informal atmosphere, where the state, acting as "parens patriae,"<sup>5</sup> uses its rehabilitative facilities to intervene where the natural parent has failed to correct the juvenile's delinquent behavior. Any deleterious effect imprisonment might have on the child should be minimized by the therapeutic rather than the punitive restrictions imposed at the juvenile institution.<sup>6</sup>

Too often however, "parens patriae" has been used to the disadvantage of the juvenile by judges who disregard the ideals on which juvenile courts are based. In informal juvenile proceedings, a judge, acting as a friendly counselor, has sentenced a boy to a state training school because of "the deterrent effect which the commitment would have upon other juveniles."<sup>7</sup> The designation of the proceeding as "civil", not "criminal", has given juvenile courts the ability to deprive a child of his liberty for seven years for petty larceny, a crime carrying a two year sentence for an adult.<sup>8</sup> The rehabilitative and industrial schools, where delinquent children have been sent, "despite their

---

2. Wilson Appeal, 214 Pa. Super. 160, 251 A.2d 671 (1969).

3. Dunne, *The Juvenile Delinquent, Who Is He?*, 49 CHI. B. REC. 62, 63 (1967).

4. Spencer, *Beyond Gault And Whittington—The Best of Both Worlds?*, 22 U. MIAMI L. REV. 906, 911 (1968).

5. *Cinque v. Boyd*, 99 Conn. 70, 121 A. 678 (1923), is the most often cited opinion.

6. Ketcham, *The Unfulfilled Promise of the Juvenile Court*, 7 CRIME AND DELINQUENCY, 97, 101 (1961).

7. *State v. Myers*, 74 N.D. 297, 22 N.W.2d 199 (1946).

8. *Commonwealth v. Fischer*, 213 Pa. 48, 62 A. 198 (1905).

lofty purpose, are frequently little better than prisons for the young.”<sup>9</sup>

By 1966, the philosophy of the juvenile court had come full circle. Due to the failure of the state to even approach the role of “step-parents” of the juvenile, the only real significance that remained of ‘parens patriae’ was completely incongruous with its original purpose. The philosophy was being used as an invalid substitute for procedural due process guaranteed to all by the Fourteenth Amendment.

#### THE PERIOD OF EVOLUTION

The Supreme Court of the United States in *Kent v. United States*, 383 U.S. 541 (1966), took the first step in correcting the constitutional inequities raised by juvenile court proceedings. Justice Fortas, speaking for the majority stated:

(w)hile there can be no doubt of the original laudable purpose of the juvenile courts, studies and critiques in recent years raise serious questions as to whether actual performance measures well enough against theoretical purpose . . . there may be grounds for concern that the child gets the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.<sup>10</sup>

Although the Court declined the invitation to apply all constitutional guarantees applicable to adults charged with serious crimes to juvenile court proceedings,<sup>11</sup> the majority did state: “we do hold that the hearing must measure up to the essentials of due process and fair treatment.”<sup>12</sup> This decision, although a very significant first step in restoring fundamental fairness to the juvenile adjudication process, was far overshadowed a year later when the United States Supreme Court decided *In Re Gault*.<sup>13</sup>

In *Gault*, with Justice Fortas again speaking for the majority, the Court held the following four rights fundamental and necessary in all juvenile proceedings: 1.) Due process requires that adequate written notice be afforded the child and his parents with regard to the

---

9. Hamilton, “*In Re Gault And The Perishing Questions of Procedural Due Process and Legal Ethics In Juvenile Courts*,” 47 NEB. L. REV. 558, 562 (1968); Paulsen, *Fairness To The Juvenile Offender*, 41 MINN. L. REV. 547 (1957).

10. *Kent v. U.S.*, 383 U.S. 541, 555 (1966).

11. *Id.* at 556.

12. *Id.* at 562.

13. *In Re Gault*, 387 U.S. 1 (1967).

specific issues that must be met; 2.) the right to counsel; 3.) the privilege against self-incrimination; and 4.) the right to confront witnesses. The Court, also, reiterated *Kent* by stating that the hearing must measure up to the essentials of due process and fair treatment. The designation of these rights as fundamental caused a tremendous impact on juvenile court proceedings. However, the greatest effect of *Gault* may well be the implications of its language.<sup>14</sup> This will be discussed in the following analysis of the principal case.

### *Wilson*

In the *Wilson* juvenile hearing, the court blatantly disregarded the notice requirement of *Gault* by failing to alert the defendant's parents and his counsel that his prior burglary and school suspension would be considered in the determination of delinquency. Relying on *Gault*, the Supreme Court of Pennsylvania corrected the failure of notice and the procedural errors of the juvenile hearing. However, the court inadequately dealt with the Equal Protection argument advanced by *Wilson's* counsel.

In Pennsylvania, a minor between the ages of 16 and 18 years can, at the discretion of the court, be treated either as an adult criminal offender and be tried in criminal court, or as a juvenile and be tried under the Juvenile Court Act.<sup>15</sup> Usually a juvenile vigorously fights any attempt to place him before the adult court, fearing longer sentence. However, in this case, had *Wilson* been tried in adult criminal court, which was possible because he was sixteen years of age, the maximum sentence for two counts of simple assault and battery would have been four years. Before the juvenile court, his "parens patriae", *Wilson's* sentence was until majority, a period of five years.

He was committed to Camp Hill where only those delinquents "who have committed the most serious and heinous crimes and who have the poorest records are sent . . ." <sup>16</sup> Had Charles *Wilson* been tried as an adult, he probably would have ended up in the same prison, a maximum security facility designed to house hardened criminals, where sixteen-year-old juveniles share common quarters with prisoners up to twenty-five years of age who have been sentenced by adult criminal courts.<sup>17</sup>

---

14. Spencer, *supra* note 4, at 916.

15. Commonwealth *ex rel.* Firmstone v. Myers, 202 Pa. Super. 292, 196 A.2d 209 (1964). Act of June 2, 1933, P.L. 1433 § 14 as amended, PURDON'S PA. STAT. ANN. tit. 11, § 256 (1965).

16. 214 Pa. Super. at 167, 251 A.2d at 675.

17. *Id.* at 170, 251 A.2d at 676.

## Recent Decisions

The Pennsylvania Supreme Court, Justice Roberts speaking for the majority, stated that Charles Wilson had been denied Equal Protection afforded by the Fourteenth Amendment. Citing *Commonwealth v. Daniel*,<sup>18</sup> the court stated, "(i)f the commonwealth wishes to make the individuals guilty of similar conduct eligible for maximum sentences of varying lengths, it must demonstrate that the distinctions which it makes are based on some relevant and reasonable classification."<sup>19</sup> The court concluded: "there can be no constitutionally valid distinction between a juvenile and an adult offender which justifies making one of them subject to a maximum commitment in the same institution for the same conduct."<sup>20</sup>

The court's analysis, to this point, dealt particularly with the facts in the instant case, and, if viewed in this limited context, is substantially correct. Charles Wilson was sentenced by the juvenile court to five years at Camp Hill. If he had been tried in an adult proceeding his maximum sentence would have been four years, probably at the same institution. The mere fact that the offender is a juvenile is not the reasonable distinction needed to prescribe a greater than maximum commitment.

However, the Supreme Court of Pennsylvania dilutes its Equal Protection holding by enunciating three factors, which if present, allow the commitment of a juvenile for a longer maximum sentence than an adult. The three factors are the following:

- 1.) The juvenile must have notice at the outset of the proceeding of any and all factors upon which the state proposes to base the adjudication of delinquency;
- 2.) The ultimate conclusions upon which the finding of delinquency is based, and the facts supporting each of them, must be clearly found and set forth in the adjudication;
- 3.) It must be clear that the longer commitment will result in the juvenile's receiving appropriate rehabilitative care and not just in his being deprived of his liberty for a longer time.<sup>21</sup>

The first two elements considered essential by the court—notice and the clear expression of relevant facts—are fundamental rights guaranteed under *Gault*. Since the first two factors announced are needed in every juvenile court trial, the supreme court's rationale for allowing longer juvenile incarceration must be found in the third element.

---

18. 430 Pa. 642, 243 A.2d 400 (1968).

19. 438 Pa. at 431, 264 A.2d at 617.

20. *Id.*

21. *Id.* at 432, 264 A.2d at 618.

In other words, Charles Wilson, when retried with correct procedural process, may still receive the five-year sentence handed down in his initial hearing. The only difference is that Wilson will not be sent to Camp Hill but to another institution. It is the author's contention that this factual distinction is not a "relevant and reasonable classification." Such action is a regression by the Pennsylvania Supreme Court to a hollow philosophical justification for denying the constitutional rights of a juvenile. While the distinction might be valid in an ideal sense, reality dictates the fundamental unfairness of such a holding. It is in fact a denial of Equal Protection.

Even if juvenile institutions served a strictly rehabilitative rather than penal function, which few do, how will the courts make certain that the child receives proper rehabilitative care once he is committed? In a concurring opinion, Justice Cohen stated: "Use of this approach will require courts to guess what the defendant will be doing and what will be done for him during the period of commitment, and it is being unrealistic to expect that the courts can make such a determination in a meaningful way."<sup>22</sup>

The Supreme Court of the United States in *Gault* considered the distinction between an adult and juvenile institution, which had been used many times in the past in the 'parens patriae' philosophy.

The Court said:

It is of no constitutional consequence—and of limited practical meaning—that the institution to which he is committed is called an Industrial School. The fact of the matter is that, however euphemistic the title "receiving home" or "industrial school" for juveniles is an institution of confinement where the child is incarcerated for a greater or lesser time. His world becomes 'a building with white-washed walls, regimented routine and industrial hours. Instead of a mother and father and brother and sister and friends and classmates, his world is peopled by guards, custodians, state employees and 'delinquents' confined with him for anything from waywardness to rape and homicide'.<sup>23</sup>

Although this is dictum, it is evident that the Supreme Court of the United States no longer is prepared to condone the mere use of the words 'parens patriae' to deny a juvenile his constitutionally guaranteed rights of due process. The words must have some significant meaning, which in Wilson's case means that the institutions to which juveniles

---

22. *Id.* at 434, 264 A.2d at 619.

23. 387 U.S. at 27.

## Recent Decisions

are sent must differ substantially from adult prisons. The fact is that they do not in terms of treatment and surroundings. Assuming that juvenile institutions do, in fact, differ significantly from adult prisons, the rationale for longer incarceration still may not be adequate. The juvenile still is deprived of his liberty—this is the dominant factor in any imprisonment, not whether rehabilitative services are available.

### CONCLUSION

The author submits that the Pennsylvania Supreme Court has acted in a manner contradictory to the clear implication of *Gault* and to the interests of the juvenile. The situation gave the Pennsylvania court an opportunity to continue in the progressive process that marks the juvenile proceedings at this time. While the courts of other states seek to strike the correct balance between the philosophy of juvenile courts and constitutional rights afforded adults, Pennsylvania's highest tribunal seeks to return to a past rationale, the inequity of which is readily apparent.

The nagging question is: "What true purpose can a longer incarceration serve for a juvenile?" The only answer that arises is that it allows more time for the young adult involved to form and nourish a hate for an unfair system.

It is suggested that there is no purposeful and significant reason for withholding Equal Protection of the law from a juvenile who could be either tried in a juvenile or an adult criminal proceeding. Considering the tempo of the times, fair and equal treatment of a juvenile may aid his rehabilitation far more than any period of added incarceration.

*James R. Miller*