FOURTH AMENDMENT
RIGHTS OF PRETEENS

by
Victor Streib

TYPICAL, MATURE PRETEENS

AGE 9

AGE 11

A CHILD’S PORTION
OF THE 4th AMENDMENT?

Right to privacy?
Right to be let alone?
Right to go where they please when they please?
OFFENDER CASES
Other cases assume child in need of services, treatment or protection
Offender cases have adverse results for preteens

PRETEENS WHO KILL
Our most serious crimes. Adult rights for preteens? Hard cases make bad law.

WHAT UNIQUE FOURTH AMENDMENT ISSUES ARISE WHEN HOMICIDE OFFENDERS ARE UNDER AGE 13?
DO REAL CASES OCCUR?

50+ police arrests annually
Many more taken into custody informally.

NEGLIGENT HOMICIDE
8-year-old boy arrested after he sneaked onto a school bus and released its parking brake, causing it to kill a 2nd-grader. [NY, 2006]

MANSLAUGHTER
8-year-old boy beats baby to death because she wouldn't stop crying. [FL, 2005]
MURDER
10-year-old lured 3-year-old from library and killed him with a baseball bat. Pled guilty to murder. (NJ, 2003)

CAMERON KOCHER
Age 9 at crime
Killed 7-year-old girl
Murder charge in criminal court (LWOP).

LIONEL TATE
Age 12 at crime
Killed 6-year-old girl
Convicted of Murder (LWOP)
BROAD PRINCIPLES

Evolving 4th Amendment for toddlers to teens
Defense goal is to avoid detection & conviction
Police more protective of preteens than teens

BASIC JUVENILE RIGHTS

*In re Gault* (1967) (age 15)
*McKeiver v. PA* (1971) (age 16)
*Fare v. Michael* (1979) (age 16)

WHAT ABOUT PRETEENS?

Which of these basic constitutional rights for teens apply to preteens?
SCHOOL, HOME, STREET
Fourth Amendment rights differ by child’s location?
Teacher-custodian at school.
Parent-custodian at home.
???-custodian on the street?

SCHOOL CASES
School search of purse must be reasonable
Reasonable suspicion, not probable cause

T.L.O. SEARCH FACTORS
Must not be “excessively intrusive in light of the age and sex of the student and the nature of the infraction”
RANDOM DRUG TESTING

Permits random drug tests for student athletes (7th graders)

---

STRIP SEARCHES

*Safford v. Redding* (2009)
Strip search of 13-year-old girl to find pills
Violated her reasonable expectation of privacy

---

REDDING FACTORS

Age/sex of student
Nature of the infraction
Child’s own reasonable expectation of privacy
PRETEEN STRIP SEARCH?
Age is relevant.
Do preteens get less protection?
Is preteen right to privacy ever “reasonable”?

VALID SCHOOL SEARCHES
Reasonable basis
Not overly intrusive
Honor child’s “reasonable expectation of privacy”
Compare to other similarly-situated children

PRETEENS AT HOME
Parent exercise preteen’s 4th Amendment rights
Parent can override child’s refusal to consent
HOME ALONE?
What if preteen is home alone? (age 3? 8? 12?)
Consent to enter/search home?
Require probable cause, search warrant, etc.?

ALONE ON THE STREET
No teacher or parent to provide custody
Concern may range from being in personal danger to posing criminal threat

Probable cause?
Reasonable expectation of privacy?
POLICE BRUTALITY!?
STOP AND FRISK
Stopping preteens (Terry):
Reasonable suspicion
criminal activity is afoot?
Frisk preteens during stop:
Armed and dangerous?

ARRESTING PRETEENS
Adult standard (probable
cause, etc.)
Higher than schools’
“reasonable suspicion”
requirement

PROBABLE CAUSE ISSUES
1) Certain offense has been
committed;
2) This child committed
that offense.
SEARCH UPON ARREST
For weapons and any criminal evidence.
Same rule as for adults.
Permitted even following non-criminal custody.

CONSENT BY PRETEENS?
Voluntarily given, not result of duress or coercion?
Consider “youth of the accused, or his lack of education” (Schneckloth)

COMMUNITY CARETAKING
Generalized police power to control public spaces
Often used to justify “proactive intervention” (police harassment?)
COMMUNITY CARETAKING
Much less restrained by 4th Amendment restrictions
Rousting older teens on street corners
Interfering with preteens without specific reason

QUESTION?
DOES THE COMMUNITY CARETAKING OPTION ALLOW POLICE TO IGNORE 4th AMENDMENT RIGHTS OF PRETEENS?

CONCLUSIONS
THE YOUNGER THE CHILD, THE LOWER THE FOURTH AMENDMENT PROTECTIONS.
MOST BASIC CONSTITUTIONAL RIGHTS FOR JUVENILES APPLY LESS TO PRETEENS.

WHAT FOURTH AMENDMENT RIGHTS PRETEENS DO HAVE ARE Seldom WITHIN THEIR CONTROL.

CHALLENGING EVIDENCE SEIZED AGAINST PRETEENS IS MORE DIFFICULT THAN FOR OLDER JUVENILES.
GIVEN SO FEW CONSTITUTIONAL PROTECTIONS, PRETEENS SHOULD NOT BE SUBMITTED TO OFFENDER JURISDICTION.