

# In re Gault (1967)

Name: \_\_\_\_\_

## An Unfair Detention

In 1964, an Arizona sheriff took 15-year-old Gerald Gault into custody after a woman complained Gerald and another boy made an indecent phone call. The sheriff left no notice for Gerald's parents, who had to figure out on their own where Gerald went. At the station, the deputy told Gerald's mom there would be a hearing the next day. They kept Gerald in custody overnight. At the hearing, nobody wrote anything down or recorded what was said. Witnesses were not sworn in, and the woman who complained about the phone call wasn't there. The judge said he would think about what to do, and they kept Gerald in custody for two or three more days.

A few days later, Gerald's mom got a note that there would be another hearing. Again, nobody made any record of what happened, and the woman wasn't there. At both hearings, Gerald testified about what happened. At the end of second hearing, the judge found Gerald to be delinquent and said he must stay in juvenile detention until he turned 21.



*Most states have juvenile justice systems that follow special rules for kids who break the law. The idea is to help kids make better choices the next time instead of just punishing them.*

### ISSUE

Is it constitutional to take a child's liberty without following due process?

### DECISION

No. Both children and adults have a right to due process under the 14th Amendment.

## The Argument

The 14th Amendment to the U.S. Constitution says that no state can "deprive any person of life, liberty, or property without due process of law." Due process refers to the procedures that are followed when someone is convicted of a crime. Gerald's lawyers argued that the State of Arizona had deprived him of his liberty without due process of law—meaning, without following procedures that are fair. They argued that the Constitution guarantees due process to both juveniles and adults.

## The Decision

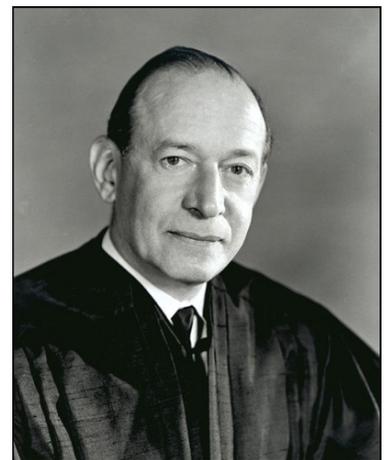
The Supreme Court agreed. Here are the due process procedures the Court said Arizona must give to juveniles as well as adults:

**Notice of Charges.** Both Gerald and his parents should have received written notice of the charges against him. That notice should have been delivered far enough in advance to allow time to prepare a defense.

**Right to Counsel.** Gerald and his parents should have been told that they had a right to a lawyer, and that one would be appointed for them if they could not afford one.

**Right to Remain Silent.** The Court said Gerald did not have to testify against himself. His confession could not be used against him unless it was obtained properly.

**Right to Confrontation.** Without a valid confession, only testimony from witnesses who had been sworn in could be used against Gerald, and he had a constitutional right to confront the witnesses against him.



*Supreme Court Justice Abe Fortas wrote the court's opinion.*



## So What?

When kids get in trouble, should they be treated differently from adults? Most states say yes. The Court's decision did not mean that states can't make special rules for juveniles who break the law and treat juvenile offenders differently from adults. But it does mean that they can't deny kids basic protections of the Constitution.

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**A. Is That Due Process?** Read each action. Based on what you've learned, check whether each action is an example of due process (fair procedures) or not. Then explain why.

Action	Due Process?	This is/isn't fair because...
1. Holding a hearing without giving the juvenile enough time to prepare.	<input type="radio"/> Yes <input type="radio"/> No	
2. Using a juvenile's confession against her without letting her know she had a right to remain silent.	<input type="radio"/> Yes <input type="radio"/> No	
3. Requiring witnesses to raise their right hand and swear to tell the truth.	<input type="radio"/> Yes <input type="radio"/> No	
4. Assigning a free lawyer to a juvenile who could not afford one.	<input type="radio"/> Yes <input type="radio"/> No	
5. Not writing anything down at the hearing or recording what happened there.	<input type="radio"/> Yes <input type="radio"/> No	
6. Filing a legal document against the juvenile without including any alleged facts about what happened.	<input type="radio"/> Yes <input type="radio"/> No	
7. Bringing witnesses to the hearing and asking them to tell what happened.	<input type="radio"/> Yes <input type="radio"/> No	
8. Telling a juvenile's parents that there's going to be a hearing but not giving them anything in writing.	<input type="radio"/> Yes <input type="radio"/> No	

**B. Treating Kids Differently.** The juvenile justice system began in the late 1800's. People were upset that kids could receive long prison sentences and end up in jail with hardened adult criminals. Instead, they thought courts should look at a child's background and try to help the child make better decisions. Think of TWO factors you believe a court should consider and explain why they are important:

**FACTOR #1**

When dealing with kids, a court should think about this:

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This is really important because:

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**FACTOR #2**

When dealing with kids, a court should also think about this:

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This is really important because:

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