

# FOURTH AMENDMENT RIGHTS OF PRETEENS

by  
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## TYPICAL, MATURE PRETEENS



AGE 9



AGE 11

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## A CHILD'S PORTION OF THE 4<sup>th</sup> AMENDMENT?

- Right to privacy?
- Right to be let alone?
- Right to go where they please when they please?

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**OFFENDER CASES**

**Other cases assume child in need of services, treatment or protection**

**Offender cases have adverse results for preteens**

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**PRETEENS WHO KILL**

**Our most serious crimes.  
Adult rights for preteens?  
Hard cases make bad law.**

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**WHAT UNIQUE FOURTH  
AMENDEMNT ISSUES  
ARISE WHEN  
HOMICIDE OFFENDERS  
ARE UNDER AGE 13?**

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**DO REAL CASES OCCUR?**

**50+ police arrests annually**

**Many more taken into custody informally.**

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**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]**

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**MANSLAUGHTER**

**8-year-old boy beats baby to death because she wouldn't stop crying. [FL, 2005]**

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**MURDER**

**10-year-old lured 3-year-old from library and killed him with a baseball bat. Pled guilty to murder. (NJ, 2003)**

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**CAMERON KOCHER**



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

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**LIONEL TATE**



**Age 12 at crime  
Killed 6-year-old girl  
Convicted of Murder (LWOP)**

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**BROAD PRINCIPLES**

**Evolving 4<sup>th</sup> Amendment  
for toddlers to teens**

**Defense goal is to avoid  
detection & conviction**

**Police more protective of  
preteens than teens**

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**BASIC JUVENILE RIGHTS**

***Kent v. U.S.* (1966) (age 16)**

***In re Gault* (1967) (age 15)**

***McKeiver v. PA* (1971)(age 16)**

***Fare v. Michael* (1979)(age 16)**

***Schall v. Martin* (1984)(age 14)**

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**WHAT ABOUT PRETEENS?**

**Which of these basic  
constitutional rights  
for teens apply to  
preteens?**

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**SCHOOL, HOME, STREET**

Fourth Amendment rights  
differ by child's location?  
Teacher-custodian at school.  
Parent-custodian at home.  
???-custodian on the street?

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**SCHOOL CASES**

*NJ v. T.L.O.* (1985): (age 14)  
School search of purse  
must be reasonable  
Reasonable suspicion,  
not probable cause

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**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"

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**RANDOM DRUG TESTING**

***Veronia v. Acton* (1995):**  
Permits random drug tests for student athletes (7<sup>th</sup> graders)

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**STRIP SEARCHES**

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

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**REDDING FACTORS**

Age/sex of student  
Nature of the infraction  
Child's own reasonable expectation of privacy

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**PRETEEN STRIP SEARCH?**

**Age is relevant.**

**Do preteens get less protection?**

**Is preteen right to privacy ever “reasonable”?**

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**VALID SCHOOL SEARCHES**

**Reasonable basis**

**Not overly intrusive**

**Honor child’s “reasonable expectation of privacy”**

**Compare to other similarly-situated children**

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**PRETEENS AT HOME**

**Parent exercise preteen’s 4<sup>th</sup> Amendment rights**

**Parent can override child’s refusal to consent**

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**HOME ALONE?**

**What if preteen is home alone? (age 3? 8? 12?)**

**Consent to enter/search home?**

**Require probable cause, search warrant, etc.?**

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**ALONE ON THE STREET**

**No teacher or parent to provide custody**

**Concern may range from being in personal danger to posing criminal threat**

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**Probable cause?**  
**Reasonable expectation of privacy?**  
**POLICE BRUTALITY!?**

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**STOP AND FRISK**

**Stopping preteens (*Terry*):**

**Reasonable suspicion  
criminal activity is afoot?**

**Frisk preteens during stop:**

**Armed and dangerous?**

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**ARRESTING PRETEENS**

**Adult standard (probable  
cause, etc.)**

**Higher than schools’  
“reasonable suspicion”  
requirement**

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**PROBABLE CAUSE ISSUES**

- 1) Certain offense has been committed;**
- 2) This child committed that offense.**

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**SEARCH UPON ARREST**

**For weapons and any criminal evidence.  
Same rule as for adults.  
Permitted even following non-criminal custody.**

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**CONSENT BY PRETEENS?**

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

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**COMMUNITY CARETAKING**

**Generalized police power to control public spaces  
Often used to justify “proactive intervention” (police harassment?)**

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**COMMUNITY CARETAKING**

**Much less restrained by 4<sup>th</sup> Amendment restrictions**

**Rouosting older teens on street corners**

**Interfering with preteens without specific reason**

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**QUESTION?**

**DOES THE COMMUNITY CARETAKING OPTION ALLOW POLICE TO IGNORE 4<sup>th</sup> AMENDMENT RIGHTS OF PRETEENS?**

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**CONCLUSIONS**

**THE YOUNGER THE CHILD, THE LOWER THE FOURTH AMENDMENT PROTECTIONS.**

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**MOST BASIC  
CONSTITUTIONAL  
RIGHTS FOR  
JUVENILES APPLY  
LESS TO PRETEENS.**

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

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**CHALLENGING  
EVIDENCE SEIZED  
AGAINST PRETEENS  
IS MORE DIFFICULT  
THAN FOR OLDER  
JUVENILES.**

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**GIVEN SO FEW  
CONSTITUTIONAL  
PROTECTIONS,  
PRETEENS SHOULD  
NOT BE SUBJECTED  
TO OFFENDER  
JURISDICTION.**

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