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[Back to Article](#)

Justices Mull Question of Minors' Due Process Rights

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09-18-2009

While wrapping up her argument that a state statute permitting a parent or guardian to involuntarily commit a minor for substance abuse treatment violates a juvenile's due process rights, Chief Justice Ronald D. Castille stopped Marsha Levick, chief counsel for the Juvenile Law Center, and posed a question.

"How would you assure due process procedurally under the facts?" Castille asked during oral arguments in Pittsburgh Tuesday.

Before answering, Levick raised a point she had been hinting at for nearly 15 minutes.

Act 53, found in the Pennsylvania Drug and Alcohol Abuse Control Act, allows for a parent or guardian to have a juvenile involuntarily committed for substance abuse treatment. After the parent or guardian files a petition, the juvenile is assessed and a courtroom hearing takes place.

"One of the things that sort of takes us off track is that [part of this] happens before a judge," Levick said. "That may lull us into thinking there's more process than there is."

The problem, Levick continued, is that the juvenile is not provided an attorney for the assessment and is never given an opportunity to challenge the petition.

"You need a minimal testing of the allegations," Levick said. "This happens all the time in dependency cases."

It also happens in adult commitments brought under the Mental Health Procedures Act, Levick said, while arguing that Act 53 was poorly constructed and could be more in line with MHPA.

She previously said Act 53 has "good intentions," but is "really utilizing the wrong means to get there."

Though Castille's question provoked a lengthy response, it was Justice Max Baer, a former Family Court judge and former chairman of the Juvenile Court Judges Commission, who was far and away the most inquisitive justice during Levick's argument.

Throughout oral arguments Sept. 15, Baer repeatedly challenged Levick to support her position and distinguish the case, *In the Interest of F.C. III*, from previous cases dealing with similar issues.

"Your argument is it is timing that denies you due process," Baer told Levick before his penultimate question. "Why does it violate due process, doing the assessment first? One would argue it gets you where you're going faster."

Levick told Baer it was important to flip the procedure and give a juvenile a chance to have the petition thrown out because the more a juvenile denies during an assessment, the more likely he or she is to receive treatment.

In *F.C.*, a juvenile admitted during his assessment that he used marijuana daily and alcohol occasionally and was committed to a residential treatment program, despite the fact that he had volunteered to attend an out-patient program. His grandmother was able to begin the process by filing a two-sentence petition, which read: "[F.C.] will not go to school and I believe he's doing drugs and he's running away. And he's stealing."

On appeal, a unanimous panel of the Superior Court upheld the act's constitutionality, ruling that due process is "concerned with the procedural safeguards demanded by each particular situation in light of the legitimate goals of the applicable law."

Considering that fact, Senior Judge Robert E. Colville wrote for the panel, the procedures used under Act 53 — namely, not providing juveniles an opportunity to dispute the allegations lodged against them and subjecting them to assessment outside the presence of counsel — are "fundamentally fair" when weighed against the goal of providing treatment to minors.

In a brief response to Levick and her co-counsel, William Roy Crum Jr., Senior Deputy Attorney General Kemal Alexander Mericli said the "irony of the case" lies in the fact that the U.S. Supreme Court ruled long ago on what constituted due process for the involuntary commitment of minors and that Act 53 "goes well beyond that."

His argument to the court was to take guidance from the 1979 U.S. Supreme Court case *Parham v. J.R.*

"We give them more process than what's due," Mericli said. "What the United States Supreme Court [in *Parham*] says is all you need is a decision from a professional after an interview with the child that treatment is necessary. That's all you need. You don't need a court. ... All that's required is an assessment." •