

1977 S.C. Op. Atty. Gen. 72 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-81, 1977 WL 24423

Office of the Attorney General

State of South Carolina

Opinion No. 77-81

March 17, 1977

*1 The constitutional guarantee of due process of law is a flexible concept and so long as the Board of Juvenile Placement and Aftercare conducts its revocation hearings in a manner which is fundamentally fair, due process is not violated by establishing a time limitation for the presentation of these cases.

TO: Mr. Harry W. Davis, Jr.

Director

South Carolina Department of Juvenile Placement and Aftercare

QUESTION PRESENTED

Does the December 16, 1976, resolution by the State Board of Juvenile Placement and Aftercare, which establishes a fifteen (15) minute time limit for parole revocations unless additional time is necessary, violate either the Constitution or the Consent Agreement in Gregory R. v. Reuben, CA #72-1268, December 12, 1973?

STATUTES, CASES, ETC., INVOLVED

[In Re Maricopa County Juvenile Action](#), 19 Ariz. App. 577, 509 P.2d 649 (1973)

[Morrissey v. Brewer](#), 408 U.S. 471 (1972)

[Gagnon v. Scarpelli](#), 411 U.S. 778 (1973)

[Bearden v. S. C.](#), 443 F.2d 1090 (4th Cir., 1971)

[People v. Vickers](#), 8 Cal.3d 451, 105 Cal. Rptr. 305, 503 P.2d 1313 (1972)

Section 55-50.22, et seq., Code of Laws of South Carolina, 1962 (1975 Cum. Supp.)

DISCUSSION OF THE ISSUE:

The State Board of Juvenile Placement and Aftercare has the responsibility for reviewing the cases of juveniles committed to the Department of Youth Services. The Board reviews the cases for the purpose of determining whether they should be conditionally released and when necessary whether those releases should be revoked. These revocation hearings are heard before the full Board and it is my understanding that this has become quite overwhelming in terms of the time it consumes. In order for the Board to meet its responsibilities and insuring an equitable review of all matters brought before it, the Board on December 16, 1976, issued a regulation setting up a tentative limitation of fifteen (15) minutes for the presentation of each case. Your letter of February 11, 1977, requests the opinion of this Office as to whether the resolution is in violation of any constitutional or statutory provision and further whether the resolution violates either the spirit or the terms of a consent agreement entered into by the Department in the case of Gregory R. v. Reuben.

It is clear that no distinction arises from the fact that these are juvenile rather than adult proceedings. The same due process and fair play concepts apply. [In Re Maricopa County Juvenile Action](#), 19 Ariz. App. 577, 509 P.2d 649 (1973).

In [Morrissey v. Brewer](#), 408 U.S. 471, (1972), the Supreme Court made an attempt to discuss what rights one has at parole revocation proceedings. The Court stated:

We begin with the proposition that the revocation of parole is not a part of the criminal prosecution and thus the full panoply of rights due a defendant in such a proceeding does not apply to parole revocations. 408 U.S. at 480.

*2 The Court then went on to emphasize that the procedural safeguards of due process are flexible, saying:
. . . due process is flexible and calls for such procedural protections as the particular situation demands . . . Its flexibility is in its scope once it has been determined that some process is due; it is a recognition that not all situations calling for procedural safeguards call for the same kind of procedure. 408 U.S. at 481.

This flexible approach was again applied in [Gagnon v. Scarpelli](#), 411 U.S. 778 (1973), where the Supreme Court held that the right to counsel in probation revocation proceedings would depend on the complexity of the issues involved. See also [Bearden v. S.C.](#), 443 F.2d 1090 (4th Cir., 1971).

It seems that the flexible approach adopted by the Supreme Court in [Morrissey](#) and [Gagnon](#), and applied to one's right to counsel in the later case, should carry over to a time limit regulation here. The Department of Juvenile Placement and Aftercare is trying to maintain a degree of flexibility by allowing additional time where needed. Although as a general rule most cases should be heard in fifteen (15) minutes, presumably if the juvenile needs more time to adequately present the issues, he will be granted more time. There are undoubtedly many situations where the parole revocation is the result of a juvenile's conviction of some crime, in these cases, it is unlikely that any factual issues need be presented and thus the case may be disposed of in fifteen (15) minutes. There is nothing in [Morrissey](#) which precludes a summary resolution of the issue of revocation if the undisputed conduct constitutes, as a matter of law, a violation of one or more conditions of parole or probation. [People v. Vickers](#), 8 Cal.3d 451, 105 Cal. Rptr. 305, 503 P.2d 1313 (1972).

Therefore it is my conclusion that the fifteen (15) minute policy adopted here by the State Board of Juvenile Placement and Aftercare does not violate any constitutional right as long as it remains flexible enough to give a juvenile an adequate opportunity to present any relevant issues which he desires.

As to violating the 'spirit' of the Consent Agreement in [Gregory R.](#), I see little difference in this and the basic due process considerations discussed above. The Consent Agreement does little more than reassert basic due process and constitutional rights to which a juvenile would be entitled in any event. Therefore, I do not think the fifteen (15) minute rule violates the Consent Agreement.

Generally all of the cases dealing with the extent of due process required in these types of hearings use as similar standard and that standard is usually described by saying that the hearing must be fundamentally fair. Therefore as long as the Board administers the rule in a manner which is fundamentally fair, I cannot see how it is a violation of any constitutional standard. You have not requested and this opinion has not taken into consideration any effect of Act No. 671, 1976 Acts and Joint Resolutions of the General Assembly of the State of South Carolina, page 1758 (Administrative Procedure Act).

CONCLUSION

*3 It is therefore my opinion that the resolution of the Board establishing a fifteen (15) minute guideline does not violate, in and of itself, any constitutional right of the juvenile and is not in violation of the Consent Agreement entered into by the Board.

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