

## DUE PROCESS CASE LAW

OCGA 15-1-16(b)(4)(A)

See the CACJ Standards

“notice, a hearing on the record, and a fair procedure”

Read the CACJ Standards on your Court

- Meadows 274 Ga. At 860 (3), 561 S.E.2d 105

‘Fundamental fairness is the touchstone of due process.... [It] is clear that the Fourteenth Amendment due process provisions contemplate that [the termination] hearing ... comport with principles of fundamental fairness.’

- Dave v. State 365 Ga. App. 1, 876 2d 882 (Ga. App 2022) (mental health court termination)

Reversed as there was no adequate notice (notice was mailed to participants last known address, but not provided to participants attorney ) according to OCGA 17-1-1(b)(1). Since no judgement/sentence Counsel remained until a withdrawal or substitution of counsel enters and appearance.

- Hughes v. Hinks , 249 Ga. 416, 291 S.E.2d 545 (1982)

Holding that a probation revocation proceeding conducted without notice to the probationer violates due process unless the probationer has knowingly waived the right to notice.

- Santosky v. Kramer

Constitutionally protected liberty interest in the custody of their children “far more precious than any property right”.

On criminal cases due process standards follow those generally regarding due process required in probation revocations (see Adult Drug Court Standards 2.14)

- Gagnon v. Scarpelli 411 U. S. 778, 781 (II), 93 S.Ct. 1756, 36 L.Ed.2d 656 (1973)."

"The United States Supreme Court has recognized that ‘the loss of liberty entailed by a probation revocation proceeding is a serious deprivation requiring that the probationer be accorded due process.’

- State v. Huffman 351 Ga. App. 853, 855, 833 S.E.2d 552 (2019)

"[T]he requirements of due process are flexible and call for such procedural protections as the particular situation demands."

- Johnson v. Boyington , 273 Ga. 420, 421, 541 S.E.2d 355 (2001)

A defendant must have notice and an opportunity to be heard on the issue of probation revocation.

- Ponder v. State , 341 Ga. App. 276, 278 (1), 800 S.E.2d 19 (2017).

To be sufficient, the notice of the hearing must, among other things, inform the defendant of the time and place of the probation revocation hearing. We apply these due process principles here, reviewing de novo the question of whether the proceeding accorded Dave due process.

### **Flow Chart Due Process to Check for Gaps**

Is there a Constitutional Liberty Interest at play? **DUE PROCESS REQUIRED**

**Method of Notice** → In Writing? Provided to the party entitled to notice? Is there a statute that dictates?

**Timing of Notice** → Sufficient time for party entitled to notice to prepare?

**Substance of Notice** → Time and date of hearing? Sufficient information for party to prepare a defense or response?

**Waivers/Notices on the Record** → Has the Judge on the record gone over due process rights, both permanent and temporary, how they are waived and how they are reasserted? (Practice tip – are they in your participant manual or handbook?)

**Opportunity to be heard** → Does the hearing allow for adequate opportunity to be heard, enough time? Consideration of requests to continue the hearing for good cause? Including ALL due process rights normally associated with probation revocation, or the loss of a fundamental constitutional right (such as a termination of the right to parent)

**Fundamental Fairness** → How significant is the outcome for the hearing, does its significance warrant an increase in the timing of notice, the duration of the hearing?

**Systematize** → Do participants receive consistent, fair and equal treatment relative to the constitutional rights at risk?

**Accountability** → Does your team know the due process system the Court uses? Is it available for review or evaluation? Are there different experiences by the participants of the fairness of the due process? Does the Court monitor discrepancies?