**Due Process: What is fair?**

|  |  |  |
| --- | --- | --- |
| **Procedural Due Process** |  | **Substantive Due Process** |
| The procedures and methods used to conduct hearings and to apply and enforce the laws must be fair and reasonable. All branches of the federal and state government must use fair procedures when they are carrying out the responsibilities. |  | The content of laws that legislatures pass must be fair and reasonable. Congress and state legislatures cannot pass laws that place unfair or unreasonable limitations on people’s rights to life, liberty, or property. |

**Match the following due process rights with the Amendment number wherein they are protected.**

|  |  |  |
| --- | --- | --- |
| **Due Process Rights** | **#** | **Amendments from the Bill of Rights** |
| Protection against unreasonable search and seizure |  | **4th Amendment**: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.**5th Amendment**: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.**6th Amendment**: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.**8th Amendment**: The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. |
| Right to remain silent |  |
| Right to an attorney |  |
| Right to know the charges against oneself |  |
| Right to reasonable bail |  |
| Right to a trial by jury |  |
| Right to a public trial |  |
| Right to a speedy trial |  |
| Right to call witnesses in one’s favor |  |
| Right to cross-examine witnesses against oneself |  |
| Protection against cruel & unusual punishment |  |
| Protection against double jeopardy |  |

The Fourteenth Amendment incorporates many of the procedural guarantees of the 4th, 5th, 6th, and 8th Amendments and requires states to protect these due process rights as well.

***Nor shall any state deprive any person of live, liberty, or property, without due process of law.***

In re Gault (1967): A Case Study of Due Process for Juveniles

*As you read the following case underline all the aspects that seem* ***unfair*** *OR which* ***go against rights*** *guaranteed in the Bill of Rights &14th Amendment. In the box to the side, explain what you believe is unfair about your underlined portions.*

Gerald Gault was fifteen years old. On the morning of June 8, 1964, the sheriff of Gila County, Arizona, arrested Gerald and a friend, Ronald Lewis. The sheriff took the boys to the Children’s Detention Home. The boys were accused of telephoning a neighbor, Mrs. Cook, and saying offensive and obscene things to her. Mrs. Cook has then called the sheriff. While the boys were in detention, Officer Flagg, a deputy probation officer, questioned them. The boys admitted making the calls. Each boy blamed the other.

At the time that Gerald was arrested, his parents were at work. The sheriff who arrested the boys did not tell the parents that Gerald was being taken to a detention home. No one from the sheriff’s office called the Gault home.

When Gerald’s mother arrived home that evening, she sent her older son to look for Gerald. At the home of Ronald Lewis, he learned that Gerald was being held in the detention home. Mrs. Gault went to the detention home and Officer Flagg explained why the sheriff had arrested her son. Officer Flagg informed Mrs. Gualt that there would be a hearing in juvenile court the next afternoon.

Gerald, his mother, Officer Flagg, and the judge were the only ones at the hearing. Mrs. Cook was not present. During the hearing, no one was asked to swear to tell the truth. No record was made of what was said. No lawyers were present. At later hearings, the judge, Mrs. Gault, and Officer Flagg agreed on some things that were said at the first hearing but disagreed about others. They agreed that the judge had asked Gerald about the telephone call. They disagreed about what Gerald had answered. His mother remembered that Gerald said he had dialed Mrs. Cook’s number and then handed the telephone to Ronald. Officer Flagg said that Gerald had admitted making one insulting remark.

Two or three days later, Officer Flagg drove Gerald home. On that day, Gerald’s mother received a note from the court that was written on plain paper. The note said, “Mrs. Gault, Judge McGhee has set Monday, June 15, 1964 at 11 a.m. as the date for further hearings on Gerald’s delinquency.”

On June 15th, the Gaults appeared in court. Mrs. Gault had requested that Mrs. Cook be present but she did not attend. The judge, who had not spoken with Mrs. Cook, said that it was no necessary that she be in court. Again, no one was asked to swear to tell the truth and no record was made of the hearing.

During the hearing, Officer Flagg handed the judge a report saying that Gerald had made insulting phone calls. The Gaults had never seen the report. The judge ruled that Gerald was guilty of violating a state law that said that a person who “in the presence or hearing of any woman or child…uses vulgar, abusive, or obscene language, is guilty of a misdemeanor.” The judge sentenced Gerald to the State Industrial School for delinquents until he reached the age of 21.

If Gerald had been 18, he would have been tried in a regular criminal court. There, the maximum penalty for making “vulgar, abusive, or obscene” calls would have been a $5-50 fine or not more than two months’ imprisonment. The Gaults appealed to the Supreme Court on the grounds that Gerald’s due process rights had been violated. The state claimed that the informal proceedings of juvenile court were meant to protect and help juveniles instead of treating them like regular criminals.

**OYEZ.ORG**

**IN RE GAULT (1967)**

**Facts of the Case**

Gerald Francis Gault, fifteen years old, was taken into custody for allegedly making an obscene phone call. Gault had previously been placed on probation. The police did not leave notice with Gault's parents, who were at work, when the youth was arrested. After proceedings before a juvenile court judge, Gault was committed to the State Industrial School until he reached the age of 21.

**Question**

Were the procedures used to commit Gault constitutionally legitimate under the Due Process Clause of the Fourteenth Amendment?

**Conclusion**

**Decision:** 8 votes for In re Gault, 1 vote(s) against
**Legal provision:** Due Process

No. The proceedings of the Juvenile Court failed to comply with the Constitution. The Court held that the proceedings for juveniles had to comply with the requirements of the Fourteenth Amendment. These requirements included adequate notice of charges, notification of both the parents and the child of the juvenile's right to counsel, opportunity for confrontation and cross- examination at the hearings, and adequate safeguards against self- incrimination. The Court found that the procedures used in Gault's case met none of these requirements.