Juvenile Transfer

NC Association of District Court Judges

June 21, 2023

1

- Mandatory Transfer
- Discretionary Transfer
- Procedure Following Transfer
- Questions of Constitutionality

2

One month ago, several high school students robbed two of their peers on a wooded path near the high school. Arnold was 17 at the time. It is alleged that he was among the group of students who committed the robbery and that he held one of the victims at knifepoint while another student took the victim's backpack. He is charged with robbery with a dangerous weapon, a Class D felony.

3

Mandatory Transfer

Class A Felony at 13, 14, 15	Class A – C Felony at 16, 17
• On finding of PC • G.S. 7B-2200	• On finding of PC or finding that qualifying indictment returned • G.S. 7B-2200.5(a)

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Mandatory Transfer – Prosecutorial Discretion (effective 12/1/2021)

Class D – G Felony at 16, 17

- On finding of PC or finding that qualifying indictment returned
- If prosecutor elects to transfer
- Prosecutor can transfer any time before adjudication
- G.S. 7B-2200.5(a), (a1)

5

Probable Cause

Class A at ages 13 – 15, 15 days from first appearance

G.S. 7B-2202

Class A – G at ages 16/17, 90 days from first appearance

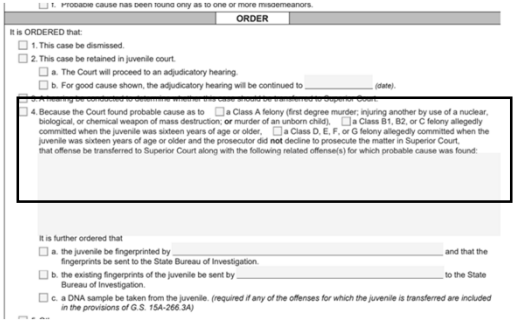
G.S. 7B-2200.5(c)

Can be continued for good cause

6

Form when transfer triggered by PC finding

AOC-J-343



1. Probable cause has been found only as to one or more misdemeanors.

ORDER

It is ORDERED that:

☐ 1. This case be dismissed.

☐ 2. This case be retained in juvenile court.

☐ a. The Court will proceed to an adjudicatory hearing.

☐ b. For good cause shown, the adjudicatory hearing will be continued to _____ *(date)*.

☐ 3. A hearing be conducted to determine whether this case should be transferred to Superior Court.

☐ 4. Because the Court found probable cause as to ☐ a Class A felony (first degree murder; injuring another by use of a nuclear, biological, or chemical weapon of mass destruction; **or** murder of an unborn child), ☐ a Class B1, B2, or C felony allegedly committed when the juvenile was sixteen years of age or older, ☐ a Class D, E, F, or G felony allegedly committed when the juvenile was sixteen years of age or older and the prosecutor did **not** decline to prosecute the matter in Superior Court, that offense be transferred to Superior Court along with the following related offense(s) for which probable cause was found:

It is further ordered that

☐ a. the juvenile be fingerprinted by _____ and that the fingerprints be sent to the State Bureau of Investigation.

☐ b. the existing fingerprints of the juvenile be sent by _____ to the State Bureau of Investigation.

☐ c. a DNA sample be taken from the juvenile. *(required if any of the offenses for which the juvenile is transferred are included in the provisions of G.S. 15A-266.3A)*

7

Indictment Statutory Language

G.S. 7B-2200.5(a)(1)

Notice to the juvenile and a **finding** by the court that a bill of indictment has been returned against the juvenile charging the commission of an offense that constitutes a **Class A, B1, B2, C, D, E, F, or G** felony if committed by an adult.

- Must be alleged to have been committed **at age 16 or 17**
- Change pending to eliminate finding language (H186, H834)

8

A complaint and petition must precede any finding that an indictment has been returned

Cases MUST begin in district court in order to be transferred

State v. Dellinger, 343 N.C. 93 (1996)

9

Indictment Process

15A-621: A grand jury is a body…impaneled by a superior court and constituting part of such court.

15A-628(c)

Bills of indictment submitted by the prosecutor to the grand jury, whether found to be true bills or not, must be returned by the foreman of the grand jury to the presiding judge in open court.

15A-641(a)

Any indictment is a written accusation by a grand jury, filed with a superior court, charging a person with the commission of one or more criminal offenses

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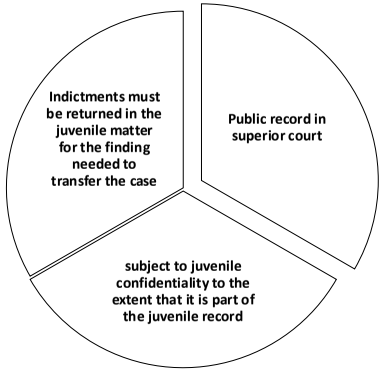
Indictment Confidentiality?

Every part of the juvenile court record is subject to the confidentiality provisions in G.S. 7B-3000

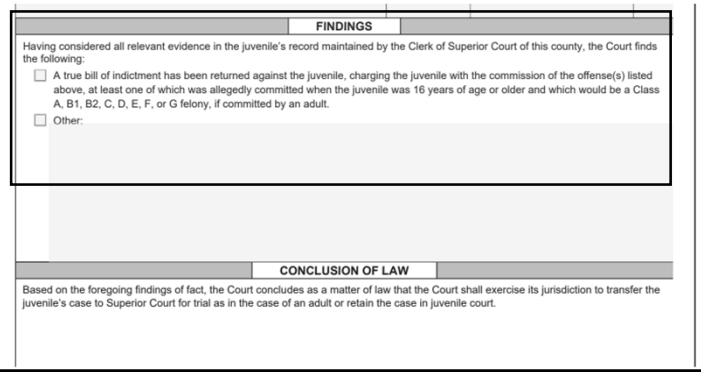
"any written motions, orders, or papers filed in the proceeding"



11

Form when transfer triggered by indictment

AOC-J-444



FINDINGS

Having considered all relevant evidence in the juvenile's record maintained by the Clerk of Superior Court of this county, the Court finds the following:

☐ A true bill of indictment has been returned against the juvenile, charging the juvenile with the commission of the offense(s) listed above, at least one of which was allegedly committed when the juvenile was 16 years of age or older and which would be a Class A, B1, B2, C, D, E, F, or G felony, if committed by an adult.

☐ Other:

CONCLUSION OF LAW

Based on the foregoing findings of fact, the Court concludes as a matter of law that the Court shall exercise its jurisdiction to transfer the juvenile's case to Superior Court for trial as in the case of an adult or retain the case in juvenile court.

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An indictment was returned for the Class D felony and the court ordered transfer on the AOC-J-444. Arnold did not file an appeal of the transfer order. Three weeks later, the State obtained additional evidence that Arnold punched the victim several times after his friends took the backpack, causing bruising and bleeding on the victim and leaving him unconscious. The prosecutor wants to add the charge of assault inflicting serious injury.

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Charges can be added after transfer if related

- Prosecutor can file indictments for related offenses after transfer, even if no petition was filed in juvenile court.
  - *State v. Jackson*, 165 N.C. App. 763, 600 S.E.2d 16 (2004)

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Mandatory Transfer

Discretionary Transfer

Procedure Following Transfer

Questions of Constitutionality

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Willis is charged with second-degree murder, a Class B2 felony. It is alleged that, when Willis was 15, he was left alone to care for his infant brother. When Willis's father, Phillip, returned home, he found the baby unresponsive with bruising around his head. The baby subsequently died at the hospital. It is alleged that Willis caused blunt force trauma to the baby's head, resulting in the baby's death.

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Discretionary Transfer

Class B1 - I Felony at 13, 14, 15

Class H – I Felony at 16, 17

G.S. 7B-2200, -2200.5(b)

Finding of PC

Motion to transfer

Transfer hearing

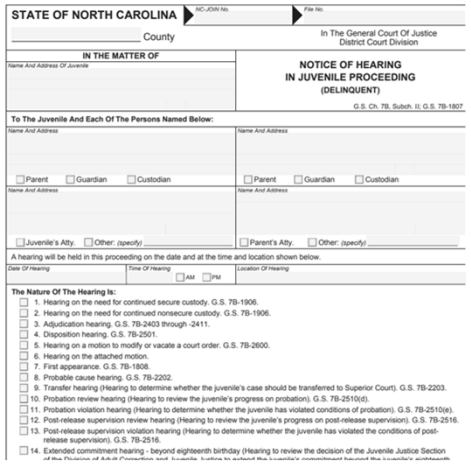
17

Transfer Hearing

Juvenile entitled to 5-days notice

G.S. 7B-1807

AOC-J-240A



STATE OF NORTH CAROLINA

County

In The General Court Of Justice
District Court Division

IN THE MATTER OF

Name And Address Of Juvenile

NOTICE OF HEARING
IN JUVENILE PROCEEDING
(DELINQUENT)

G.S. Ch. 7B, Subch. II; G.S. 7B-1807

To The Juvenile And Each Of The Persons Named Below:

Name And Address

Parent Guardian Custodian

Name And Address

Parent Guardian Custodian

Name And Address

Juvenile's Atty. Other: (specify)

Name And Address

Parent's Atty. Other: (specify)

A hearing will be held in this proceeding on the date and at the time and location shown below.

Date Of Hearing | Time Of Hearing AM PM | Location Of Hearing

The Nature Of The Hearing Is:

1. Hearing on the need for continued secure custody. G.S. 7B-1906.
2. Hearing on the need for continued nonsecure custody. G.S. 7B-1906.
3. Adjudication hearing. G.S. 7B-2403 through -2411.
4. Disposition hearing. G.S. 7B-2501.
5. Hearing on a motion to modify or vacate a court order. G.S. 7B-2600.
6. Hearing on the attached motion.
7. First appearance. G.S. 7B-1808.
8. Probable cause hearing. G.S. 7B-2202.
9. Transfer hearing (Hearing to determine whether the juvenile's case should be transferred to Superior Court). G.S. 7B-2203.
10. Probation review hearing (Hearing to review the juvenile's progress on probation). G.S. 7B-2510(d).
11. Probation violation hearing (Hearing to determine whether the juvenile has violated conditions of probation). G.S. 7B-2510(e).
12. Post-release supervision review hearing (Hearing to review the juvenile's progress on post-release supervision). G.S. 7B-2516.
13. Post-release supervision violation hearing (Hearing to determine whether the juvenile has violated the conditions of post-release supervision). G.S. 7B-2516.
14. Extended commitment hearing - beyond eighteenth birthday (Hearing to review the decision of the Juvenile Justice Section

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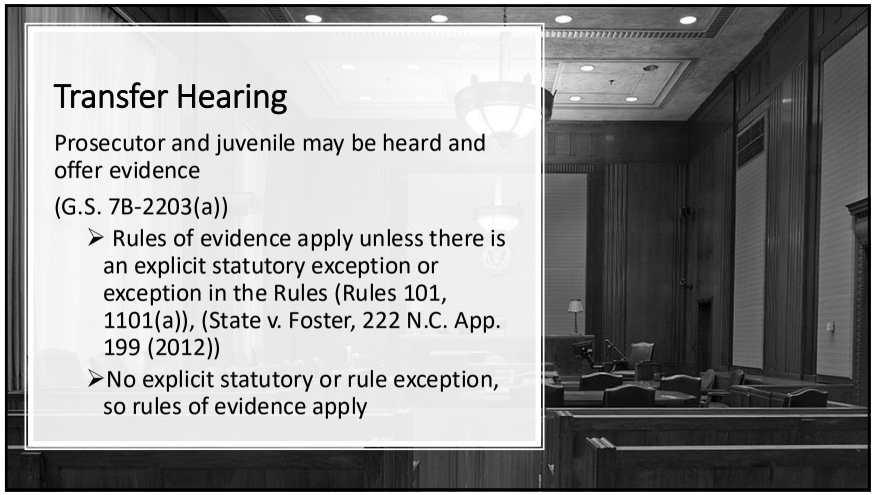

Transfer Hearing

Prosecutor and juvenile may be heard and offer evidence

(G.S. 7B-2203(a))

- Rules of evidence apply unless there is an explicit statutory exception or exception in the Rules (Rules 101, 1101(a)), (State v. Foster, 222 N.C. App. 199 (2012))
- No explicit statutory or rule exception, so rules of evidence apply

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Transfer Determination

Whether the protection of the public and the needs of the juvenile will be served by transfer

G.S. 7B-2203(b)

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Factors that MUST be considered in determining transfer

G.S.7B-2203(b)

- age
- maturity
- intellectual functioning
- prior record
- prior rehabilitation attempts
- available juvenile facilities and programs and likelihood of benefit from treatment and rehabilitative efforts
- whether alleged offense was committed in an aggressive, violent, premeditated, or willful manner
- Seriousness of the offense and whether protection of the public requires adult prosecution

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Transfer Order

Specify	**Order must specify reasons for transfer** **In re E.S., 191 N.C. App. 568, 572–73 (2008)**
DO NOT need	**DO NOT need findings of fact to support conclusion that needs of juvenile or protection of public would be served by transfer** **State v. Green, 124 N.C. App. 269, 276 (1996).**
DO NEED	**DO NEED to reflect that court considered all 8 factors** **In re J.L.W., 136 N.C. App. 596, 600–01 (2000).**

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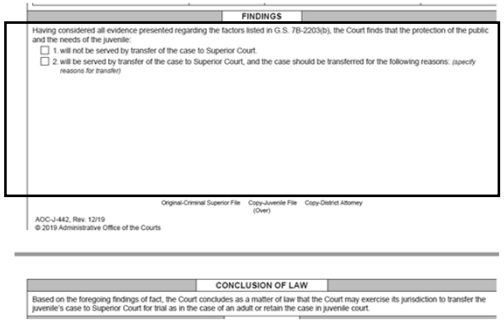
Form when transfer triggered by transfer hearing

AOC-J-442



FINDINGS

Having considered all evidence presented regarding the factors listed in G.S. 7B-2203(b), the Court finds that the protection of the public and the needs of the juvenile:

☐ 1. will not be served by transfer of the case to Superior Court.

☐ 2. will be served by transfer of the case to Superior Court, and the case should be transferred for the following reasons: *(specify reasons for transfer)*

Original-Criminal Superior File Copy-Juvenile File Copy-District Attorney

(Over)

AOC-J-442, Rev. 12/19

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CONCLUSION OF LAW

Based on the foregoing findings of fact, the Court concludes as a matter of law that the Court may exercise its jurisdiction to transfer the juvenile's case to Superior Court for trial as in the case of an adult or retain the case in juvenile court.

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- Mandatory Transfer
- Discretionary Transfer
- Procedure Following Transfer
- Questions of Constitutionality

24

Arnold turned 18 two weeks before his case was transferred. The court released Arnold on electronic monitoring after issuing the transfer order. Four days after release, Arnold cut off his monitor in violation of his conditions of pretrial release.

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After Transfer is Ordered

- **Must set conditions for pretrial release** (G.S. 7B-2204(a))
- **Fingerprinting and DNA (if applicable) required** (G.S. 7B-2201)
- **Right to immediate appeal to superior court** (G.S. 7B-2603)

26

Pretrial Release

Governed by G.S. 15A-533, -534

Release order must specify person to whom youth may be released (G.S. 7B-2204(a))

https://benchbook.sog.unc.edu/criminal/pretrial-release

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AOC-CR-922

STATE OF NORTH CAROLINA

County

In The General Court Of Justice
Superior Court Division

STATE VERSUS

RELEASE ORDER FOR JUVENILE TRANSFERRED TO SUPERIOR COURT FOR TRIAL

G.S. 7B-2204, 15A-533, 15A-534

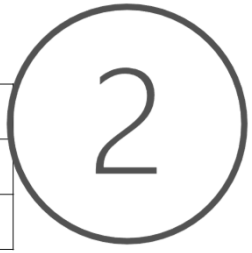
ORDER OF COMMITMENT

WRITTEN PROMISE TO APPEAR OR CUSTODY RELEASE

JUVENILE/DEFENDANT RELEASED ON BAIL

28

The Rule of 2



AOC-J-343	AOC-CR-922
AOC-J-444	AOC-CR-922
AOC-J-442	AOC-CR-922

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Counsel?

30

Right to interlocutory appeal of every transfer decision

- **To superior court for a hearing on the record**
- **Notice required in open court or in writing within 10 days after entry of the transfer order**

G.S. 7B-2603

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Superior Court Appellate Review - G.S. 7B-2603(a)

Standard = abuse of discretion by the juvenile court in the issue of transfer

"A superior court reviewing an appeal of a transfer order may not, however, re-weigh the evidence, decide which factors are more important, and reverse the district court on that basis... Put simply, a superior court may not substitute its judgment for that of the district court."

In re E.S., 191 N.C.App. 568 (2008)

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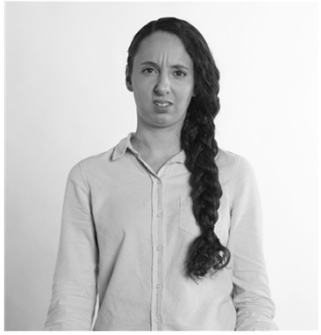
Superior Court Appellate Review- G.S. 7B-2603(a)

No review on findings of probable cause allowed

In re Ford, 49 N.C. App. 680, 683 (1980);
In re K.R.B., 134 N.C. App. 328, 331 (1999);
In re J.L.W., 136 N.C. App. 596, 598 (2000).

33



10-Day Appeal Window

Glvsrvlqj#Wudqvihu# Frqixvlrq=#30Gd|# Dsshdo#Z lqgrz/# Rughuv#ru#Duuhvw

https://civil.sog.unc.edu/dispelling-transfer-confusion-10-day-appeal-window-orders-for-arrest/

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Key Points

- Criminal matter under jurisdiction of the superior court
- CRS numbers can and should be manually generated
- No orders for arrest based on returned indictment

35

Preserving Right to Appeal to the COA

Initial appeal to superior court is required

G.S. 7B-2603(d), *State v. Wilson*, 151 N.C. App. 219, 226 (2002)

No appeal after guilty plea in superior court

***State v. Evans*, 184 N.C. App. 736 (2007)**

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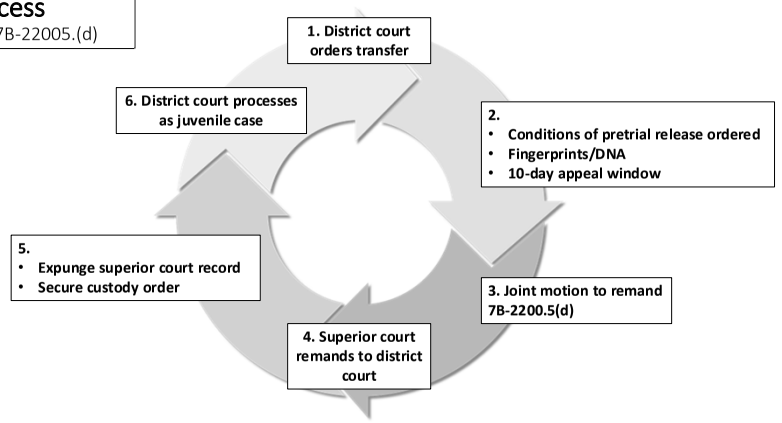
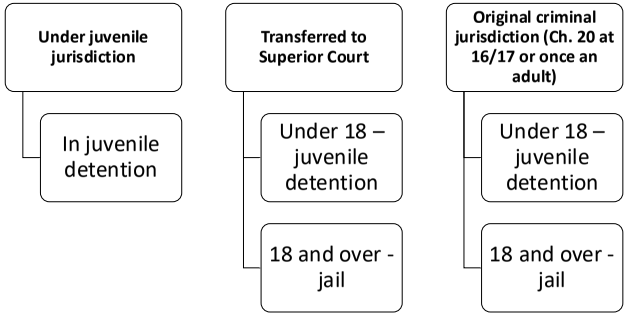
Remand Process
G.S. 7B-22005.(d)



37

Place of Confinement Pending Adjudication/Trial



38

Mandatory Transfer

Discretionary Transfer

Procedure Following Transfer

Questions of Constitutionality

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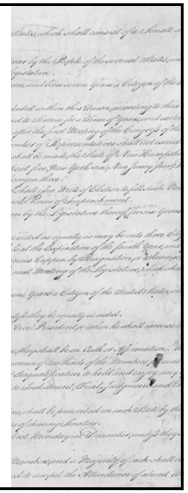
Is Mandatory Transfer Constitutional?



40

Kent v. U.S.
(1966)

Woodard v.
Wainwright
(1977)

State v. Garrett
(2021)

41

Exit Ticket

How are the names in the hypos from this presentation related?

Arnold

Willis

Phillip

42

STATE OF NORTH CAROLINA

NC-JOIN No.

File No.

_____ County

In The General Court Of Justice
District Court Division

IN THE MATTER OF

Name And Address Of Juvenile

JUVENILE ORDER - PROBABLE CAUSE HEARING

G.S. 7B-2202

Date Of Birth	*Age*	*Attorney For Juvenile*

Alleged Offense(s)

The Court finds that the juvenile named above is alleged to have committed an offense that would be a felony if committed by an adult, and that the juvenile was thirteen years of age or older at the time the juvenile allegedly committed the offense.

WAIVER OF HEARING AND STIPULATION TO PROBABLE CAUSE

The undersigned attorney for the juvenile waives the juvenile's right to a probable cause hearing and stipulates to a finding of probable cause as to the offense(s) listed above.

Date	*Signature Of Attorney For Juvenile*

FINDINGS

Based upon evidence presented at a probable cause hearing at which the juvenile was represented by the attorney named above, or based on the above stipulation:

☐ 1. The Court DOES NOT FIND probable cause to believe the juvenile committed the following offense(s):

☐ 2. The Court FINDS probable cause to believe the juvenile committed the following offense(s):

☐ a. Probable cause has been found as to at least one felony, but not a Class A felony, and the juvenile was 13, 14, or 15 years of age when the juvenile allegedly committed the offense, and:

- ☐ (1) the prosecutor has moved that the case be transferred to Superior Court.
- ☐ (2) the juvenile has moved that the case be transferred to Superior Court.
- ☐ (3) the Court on its own motion schedules a transfer hearing in this matter.
- ☐ (4) no transfer hearing has been requested.

☐ b. Probable cause has been found as to a Class H or I felony and the juvenile was 16 years of age or older when the juvenile allegedly committed the offense, and:

- ☐ (1) the prosecutor has moved that the case be transferred to Superior Court.
- ☐ (2) the juvenile has moved that the case be transferred to Superior Court.
- ☐ (3) the Court on its own motion schedules a transfer hearing in this matter.
- ☐ (4) no transfer hearing has been requested.

(Over)

FINDINGS (continued)

☐ c. Probable cause has been found as to a Class A felony (first degree murder; injuring another by use of a nuclear, biological, or chemical weapon of mass destruction; or murder of an unborn child) and the case must be transferred to Superior Court.

☐ d. Probable cause has been found as to a Class B1, B2, or C felony allegedly committed while the juvenile was 16 years of age or older, and the case must be transferred to Superior Court.

☐ e. Probable cause has been found as to a Class D, E, F, or G felony allegedly committed while the juvenile was 16 years of age or older, and ☐ the prosecutor has declined to prosecute the case in Superior Court, so jurisdiction remains in juvenile court. ☐ the prosecutor has **not** declined to prosecute the case in Superior Court, so the case must be transferred to Superior Court.

☐ f. Probable cause has been found only as to one or more misdemeanors.

ORDER

It is ORDERED that:

☐ 1. This case be dismissed.

☐ 2. This case be retained in juvenile court.

☐ a. The Court will proceed to an adjudicatory hearing.

☐ b. For good cause shown, the adjudicatory hearing will be continued to _____ *(date)*.

☐ 3. A hearing be conducted to determine whether this case should be transferred to Superior Court.

☐ 4. Because the Court found probable cause as to ☐ a Class A felony (first degree murder; injuring another by use of a nuclear, biological, or chemical weapon of mass destruction; **or** murder of an unborn child), ☐ a Class B1, B2, or C felony allegedly committed when the juvenile was sixteen years of age or older, ☐ a Class D, E, F, or G felony allegedly committed when the juvenile was sixteen years of age or older and the prosecutor did **not** decline to prosecute the matter in Superior Court, that offense be transferred to Superior Court along with the following related offense(s) for which probable cause was found:

It is further ordered that

☐ a. the juvenile be fingerprinted by _____ and that the fingerprints be sent to the State Bureau of Investigation.

☐ b. the existing fingerprints of the juvenile be sent by _____ to the State Bureau of Investigation.

☐ c. a DNA sample be taken from the juvenile. *(required if any of the offenses for which the juvenile is transferred are included in the provisions of G.S. 15A-266.3A)*

☐ 5. Other:

Date Order Entered	*Date Signed*	*Name Of Presiding Judge (type or print)*	*Signature Of Presiding Judge*

NOTE: *Once transfer is ordered, the juvenile has the right to pretrial release as provided in G.S. 7B-2204. See form AOC-CR-922, "Release Order For Juvenile Transferred To Superior Court For Trial."*

STATE OF NORTH CAROLINA

NC-JOIN No.

File No.

_____ County

In The General Court Of Justice
District Court Division

IN THE MATTER OF

Name And Address Of Juvenile

JUVENILE ORDER - TRANSFER AFTER BILL OF INDICTMENT

G.S. 7B-2200.5(a)(1)

Juvenile's Date Of Birth	*Age*	*Race*	*Sex*	*Name Of Petitioner*

Attorney For Juvenile	*Department (if applicable)*	*Telephone No.*

Pursuant to the requirements of G.S. 7B-2200.5(a)(1), the Court considered whether the juvenile's case must be transferred to Superior Court for trial as in the case of an adult for the following offense(s).

Indicted Offense	Date Of Offense	G.S. No.	F/M

FINDINGS

Having considered all relevant evidence in the juvenile's record maintained by the Clerk of Superior Court of this county, the Court finds the following:

☐ A true bill of indictment has been returned against the juvenile, charging the juvenile with the commission of the offense(s) listed above, at least one of which was allegedly committed when the juvenile was 16 years of age or older and which would be a Class A, B1, B2, C, D, E, F, or G felony, if committed by an adult.

☐ Other:

CONCLUSION OF LAW

Based on the foregoing findings of fact, the Court concludes as a matter of law that the Court shall exercise its jurisdiction to transfer the juvenile's case to Superior Court for trial as in the case of an adult or retain the case in juvenile court.

Original-Criminal Superior File Copy-Juvenile File Copy-District Attorney

(Over)

ORDER

It is ORDERED that:

☐ 1. This case be transferred to Superior Court for trial as in the case of an adult for the offense(s) listed on the reverse.

☐ a. The juvenile be fingerprinted by _____ and that the fingerprints be sent to the State Bureau of Investigation.

☐ b. The existing fingerprints of the juvenile be sent by _____ to the State Bureau of Investigation.

☐ c. A DNA sample be taken from the juvenile. *(required if any of the offenses for which the juvenile is transferred are included in the provisions of G.S. 15A-266.3A)*

☐ 2. This case be retained in juvenile court, pending proper notice to the juvenile.

☐ 3. Other:

Date Order Entered	*Date Signed*	*Name Of Presiding Judge (type or print)*	*Signature Of Presiding Judge*

NOTE: *Once transfer is ordered, the juvenile has the right to pretrial release as provided in G.S. 7B-2204. See form AOC-CR-922, "Release Order For Juvenile Transferred To Superior Court For Trial."*

NOTE TO CLERK: *If the Court elected to hold a hearing on transfer to superior court, and the Transfer Order is appealed, use form AOC-G-115 to order a transcript of the juvenile proceeding transferred to superior court.*

STATE OF NORTH CAROLINA

NC-JOIN No.

File No.

_____ County

In The General Court Of Justice
District Court Division

IN THE MATTER OF

Name And Address Of Juvenile

JUVENILE ORDER - TRANSFER HEARING

G.S. 7B-2201, -2203

Juvenile's Date Of Birth	*Age*	*Race*	*Sex*	*Name Of Petitioner*

Attorney For Juvenile	*Department (if applicable)*	*Telephone No.*

Having found probable cause to believe the juvenile named above committed the offense(s) listed below while age thirteen or older, the Court conducted a transfer hearing pursuant to G.S. 7B-2203 to determine whether the juvenile's case should be transferred to Superior Court for trial for the following offense(s).

Offense	Date Of Offense	G.S. No.	F/M

Present in court were:

Name	Relationship/Title	Name	Relationship/Title

FINDINGS

Having considered all evidence presented regarding the factors listed in G.S. 7B-2203(b), the Court finds that the protection of the public and the needs of the juvenile:

☐ 1. will not be served by transfer of the case to Superior Court.

☐ 2. will be served by transfer of the case to Superior Court, and the case should be transferred for the following reasons: *(specify reasons for transfer)*

Original-Criminal Superior File Copy-Juvenile File Copy-District Attorney

(Over)

CONCLUSION OF LAW

Based on the foregoing findings of fact, the Court concludes as a matter of law that the Court may exercise its jurisdiction to transfer the juvenile's case to Superior Court for trial as in the case of an adult or retain the case in juvenile court.

ORDER

It is ORDERED that:

☐ 1. This case be transferred to Superior Court for trial as in the case of an adult for the offense(s) listed on the reverse.

- ☐ a. The juvenile be fingerprinted by _____ and that the fingerprints be sent to the State Bureau of Investigation.
- ☐ b. The existing fingerprints of the juvenile be sent by _____ to the State Bureau of Investigation.
- ☐ c. A DNA sample be taken from the juvenile. *(required if any of the offenses for which the juvenile is transferred are included in the provisions of G.S. 15A-266.3A)*

☐ 2. This case be retained in juvenile court.

- ☐ a. The Court will proceed to an adjudicatory hearing.
- ☐ b. For good cause shown, the adjudicatory hearing will be continued to _____ *(date)*.

3. Other:

Date Order Entered	*Date Signed*	*Name Of Presiding Judge (type or print)*	*Signature Of Presiding Judge*

NOTE: *Once transfer is ordered, the juvenile has the right to pretrial release as provided in G.S. 7B-2204. See form AOC-CR-922, "Release Order For Juvenile Transferred To Superior Court For Trial."*

NOTE TO CLERK: *If the Transfer Order is appealed, use form AOC-G-115 to order a transcript of the juvenile proceeding transferred to superior court.*

State of North Carolina

Mecklenburg County

In the General Court of Justice

District Court Division

File #: [redacted]

In the Matter of:

[redacted]

Juvenile Transfer Hearing Findings

(to be attached to Order)

Additional Pages for Findings for AOC-J-442 paragraph #2:

Based on the evidence presented at the transfer hearing, this court must determine **whether the protection of the public and the needs of the juvenile will be served by transfer of the case to Superior Court**, and in doing so, the court must consider the eight factors identified in NCGS 7B-2203:

(1) Age of the juvenile: the JV is 14 years old and he will be 15 on May 26th, 2022. JV was between 14 years and 4 months and 14 years and 7 months old at the time of the alleged offenses.

(2) Maturity of the juvenile: the court recognizes, consistent with Dr. [redacted]'s expert testimony, that human brains do not fully develop until the age of between 23 and 25, and that therefore, JV's brain at age 14 is not fully developed and, consistent with Dr. [redacted]'s transfer evaluation, JV lacks effective judgement and decision-making skills. However, also consistent with Dr. [redacted]'s transfer evaluation, JV's maturity testing placed him in the middle range relative to other male youth in custody, and his scores reflect his general capacity for foresight and to anticipate potential consequences of his actions. This typical maturity level of a 14 year old for this JV was also recognized by JV's court counselor, the interviewing CMPD detective and the detention center supervisor.

(3) Intellectual functioning of the juvenile: JV tested in the borderline to low average range with verbal reasoning skills at worse than 98% of others his age. And Dr. [redacted]'s evaluation and expert testimony indicates that JV's performance on the nonverbal reasoning skills were likely impaired and compromised by his wrist restraints and the sedative side effects of his medications he was taking at the time of the evaluation, as the data from prior tests suggests those skills are probably better preserved. The detention center

supervisor's perception of the JV's intellectual functioning was that he would answer questions directly. The JV's court counselor and the interviewing CMPD detective had no concerns about JV's intellectual functioning or his ability to understand.

(4) Prior record of the juvenile: JV has been adjudicated once previously for misdemeanor breaking/entering a building, 3 counts of breaking/entering of motor vehicle, felony larceny, resisting public officer, and possession of handgun by a minor, but JV's behavior has escalated since that time resulting in aggressive behavior and higher-level, violent charges.

(5) Prior attempts at rehabilitation of the juvenile: Since JV became involved in the Juvenile Justice System, there were several attempts to engage JV in treatment once he complied with placement, including but not limited to probation that ordered JV to comply with recommended treatment for his mental health and substance use disorders. However, he continuously went AWOL, engaged in further delinquent behavior, was detained for significant periods of time, and engaged in aggressive behaviors, all of which was a barrier to accessing treatment for rehabilitation purposes. This escalated, aggressive and delinquent behavior also occurred while JV was on probation.

(6) Facilities and programs available to the court (prior to the court losing jurisdiction), and the likelihood the juvenile would benefit from treatment or rehabilitative efforts: If kept in JV court, and if JV is adjudicated responsible, the facilities and programs available to the court based on the JV's prior record and treatment recommendations would be either probation, PRTF or YDC. JV has demonstrated through his significant AWOL behavior, and consistent with Dr. [redacted]s opinion, that JV needs to be in a locked facility because he will not comply with probation and community-based programs.

It is possible that the JV would benefit from treatment or rehabilitative efforts that can be provided by a PRTF or YDC, as he scored high relative to other justice involved youth on the Treatment Amenability test. However, over 13 PRTFs have denied JV due to his aggressive behavior and AWOL history, PRTFs are locked facilities, but not as secure as a YDC facility, and PRTFs have the ability to unsuccessfully discharge individuals for aggressive behavior.

YDCs cannot discharge for aggressive behavior and YDC is a locked and secure facility and JV could be at YDC until he is 19 years old given this offense, however, JV court would not have authority to determine when JV is released because that is done by the YDC. JV could be at YDC as short as 18 months, or less, (which is shorter than the recommended "at least 2 to 3 years" of interventions recommended by Dr. [redacted]). Additionally, JV's are not required to engage in treatment at YDC, which according to Dr. [redacted] could

delay release, however, also according to Dr. [redacted] the team could also consider a release to a step down placement where the JV may be willing to engage in services.

Even if the JV was confined until age 19 at the YDC, the transfer evaluation not only recommends "at least 2 to 3 years" of interventions to address his high treatment needs and reduce his risk to the community, but also indicates that these interventions, along with JV's neurological maturation will offer the greatest potential to reduce the likelihood of general and violent recidivism, which is not likely to happen for JV until sometime in JV's early 20s.

Superior Court will be able to exert longer jurisdiction over the JV.

Juvenile has a history of escape planning and an escape attempt on April 26, 2022 from custody of Department of Juvenile Justice.

(7) Whether the offense was committed in a violent, aggressive, premeditated, or willful manner: the offense was violent, which was admitted to by defense, and the offense was aggressive and the offense was willful. JV is familiar with guns and he used a gun/a deadly weapon to shoot a police officer and caused injury to the police officer, which JV admitted to doing in an effort to escape police. Additionally, JV suggested that he didn't shoot a second police officer because he didn't have enough bullets.

(8) Seriousness of the offense, and whether protection of the public requires that the juvenile be prosecuted as an adult: the offense was serious, as JV is familiar with guns and he used a gun/a deadly weapon to shoot a police officer and caused injury to the police officer, which JV admitted to doing in an effort to escape police. Additionally, JV suggested that he didn't shoot a second police officer because he didn't have enough bullets. Also, the JV himself could have been seriously injured or killed when the officer returned fire multiple times. This occurred outside an apartment complex where members of the public were also placed at risk. Pursuant to the transfer evaluation, it is estimated that it will take "at least 2 to 3 years" for recommended interventions to address his high treatment needs and reduce JV's risk to the community. In addition, JV's continued neurological maturation will offer the greatest potential to reduce the likelihood of both general and violent recidivism, but that neurological maturation is not likely to happen until JV is in his early 20s. Although JV could be confined until age 19 at YDC, Juvenile Court does not have authority to determine when JV is released because that is done by YDC, and it could be as short as 18 months, or less (which is shorter than the recommended "at least 2 to 3 years" of interventions recommended by Dr. [redacted]). Additionally, JVs are not required to engage in treatment at YDC, which according to Dr. [redacted] could delay release, however, according to Dr.

[redacted], the team could also consider a release to a step down placement where the JV may be willing to engage in services.

Superior Court will be able to exert longer jurisdiction over the JV.

Testing on JV by Dr. [redacted] indicates JV's score on testing risk for dangerousness is high indicating that JV's risk of dangerousness in the near future is above average compared to other male youth in custody.

If convicted in adult court, JV will be placed at Foothills where he will have access to psychologists for therapeutic needs, group therapy, medication management, vocational training, education including the EC classes that the JV needs, college correspondence courses, sight and sound barrier from 18 year old and older offenders, when JV turns 18, he will be moved to 18 to 25 year old unit, and there are currently only 17 youthful offenders. All of these interventions will address the needs of the JV and provide rehabilitation services for JV, which will also protect the public.

Therefore, needs of JV and protection of public will be served by transfer to Superior Court.

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
Superior Court Division

STATE VERSUS

Name And Address Of Juvenile/Defendant

RELEASE ORDER FOR JUVENILE TRANSFERRED TO SUPERIOR COURT FOR TRIAL

G.S. 7B-2204, 15A-533, 15A-534

Date Of Birth	*Age*	*Amount Of Bond*
		$

File Numbers And Offenses

See *Table Of Offenses* on Side Two.

Location Of Court	*Court*	*Date*	*Time*
	Superior		☐ AM ☐ PM

To The Juvenile/Defendant Named Above: you are ORDERED to appear before the Court as provided above and at all subsequent continued dates. If you fail to appear, you will be arrested and you may be charged with the crime of willful failure to appear. You also may be arrested without a warrant if you violate any condition of release in this Order or in any document incorporated by reference.
The juvenile/defendant has been advised of the charge(s) against him/her and his/her right to communicate with counsel and friends.

☐ Your release to _____ is authorized upon execution of your:
- ☐ WRITTEN PROMISE to appear
- ☐ CUSTODY RELEASE
- ☐ UNSECURED BOND in the amount shown above
- ☐ SECURED BOND in the amount shown above
- ☐ HOUSE ARREST with ELECTRONIC MONITORING administered by *(agency)* _____ and the SECURED BOND above. You may leave your residence for the purpose(s) of ☐ employment ☐ counseling ☐ course of study ☐ vocational training

☐ Your release is not authorized.
☐ The juvenile/defendant is required to provide fingerprints under G.S. 7B-2201 and G.S. 15A-502(a1). Prior to release, the juvenile/defendant shall provide fingerprints.
☐ The juvenile/defendant is required to provide a DNA sample under G.S. 7B-2201 and G.S. 15A-266.3A. Prior to release, the juvenile/defendant shall provide a DNA sample.
☐ This Order is entered upon the juvenile/defendant's warrantless arrest for violation of conditions of release entered previously for the above-captioned case in the Order dated _____.
☐ The juvenile/defendant was arrested or surrendered after failing to appear as required under a prior release order.
☐ This was the juvenile/defendant's second or subsequent failure to appear in this case.
☐ Your release is subject to the conditions shown on the attached ☐ AOC-CR-630. ☐ AOC-CR-631 ☐ Other: _____.

Date	*Name Of Judicial Official (type or print)*	*Signature Of Judicial Official*

☐ *Magistrate* ☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court* ☐ *District Court Judge* ☐ *Superior Court Judge*

ORDER OF COMMITMENT

To The Custodian Of The Juvenile Detention Facility Named Below: You are ORDERED to receive in your custody the juvenile/defendant named above who may be released if authorized above. If not released, you are ORDERED to produce the juvenile/defendant in court as required and provide transportation to and from the juvenile detention facility. If the juvenile/defendant reaches the age of 18 while awaiting the completion of proceedings in superior court, you are ORDERED to transport the juvenile/defendant to the custody of the sheriff of the county where the charges arose.

To the Sheriff of _____ County: If the juvenile/defendant reaches the age of 18 years while awaiting the completion of proceedings in superior court, you are ORDERED to receive in your custody the juvenile/defendant who may be released if authorized above. If not released, you are ORDERED to produce the juvenile/defendant in court as required and provide transportation to and from the detention facility.

Name Of Juvenile Detention Facility	*Date*	*Signature Of Judicial Official*

WRITTEN PROMISE TO APPEAR OR CUSTODY RELEASE

I, the undersigned juvenile/defendant, promise to appear at all hearings, trials or otherwise as the Court may require and to abide by any restrictions set out above. I understand and agree that this promise is effective until the entry of judgment in Superior Court. If I am released to the custody of another person, I agree to be placed in that person's custody, and that person agrees by his/her signature to supervise me.

Date	*Signature Of Juvenile/Defendant*	*Signature Of Person Agreeing To Supervise Juvenile/Defendant*

Name Of Person Agreeing to Supervise Juvenile/Defendant (type or print)	*Address Of Person Agreeing To Supervise Juvenile/Defendant*

JUVENILE/DEFENDANT RELEASED ON BAIL

Date	*Time*	*Name Of Detention Facility Official (type or print)*	*Signature Of Detention Facility Official*
	☐ AM ☐ PM		

ORIGINAL
(Over)

TABLE OF OFFENSES

File No.(s)	Offense(s)

STATE VERSUS	File No.
Name Of Juvenile/Defendant	

CONDITIONS OF RELEASE MODIFICATIONS

The Conditions of Release on Page One, Side One are modified as follows:

Modification	Date	Signature Of Judge

SUPPLEMENTAL ORDERS FOR COMMITMENT

The juvenile/defendant is next Ordered produced in Court as follows:

Date	Time	Place	Purpose	Signature Of Judge

JUVENILE/DEFENDANT RECEIVED BY DETENTION FACILITY

Date	Time	Signature Of Detention Facility Official

JUVENILE/DEFENDANT RELEASED FOR COURT APPEARANCE

Date	Time	Signature Of Detention Facility Official

NOTE TO CUSTODIAN: *This form shall accompany the juvenile/defendant to court for all appearances.*

Cases Related to the Constitutionality of Mandatory Transfer

Kent v. U.S., 383 U.S. 541 (1966)

- A juvenile was accused of committing rape, house breaking, and robbery when he was 16.
- The D.C. waiver statute read: "'If a child sixteen years of age or older is charged with an offense which would amount to a felony in the case of an adult, or any child charged with an offense which if committed by an adult is punishable by death or life imprisonment, the judge may, after full investigation, waive jurisdiction and order such child held for trial under the regular procedure of the court which would have jurisdiction of such offense if committed by an adult; or such other court may exercise the powers conferred upon the juvenile court in this subchapter in conducting and disposing of such cases."
- The juvenile filed motions for access to the social service file and a motion for a hearing on the question of waiver of juvenile jurisdiction (including an affidavit from a psychiatrist certifying that the juvenile was the victim of sever psychopathology and recommending hospitalization for psychiatric observation).
- The court did not hold a hearing and issued an order stating after "full investigation, I do hereby waive' jurisdiction of petitioner and directing that he be 'held for trial for (the alleged) offenses under the regular procedure of the U.S. District Court for the District of Columbia." There were no findings and no reason for the waiver. There was also no reference to the motions that were filed.
- The Court held that the order of the Juvenile Court transferring to criminal court was invalid.
    - The statute contemplates that the Juvenile Court should have wide latitude, but this is not complete. It assumes procedural regularity to comply with basic requirements of due process and fairness and compliance with the statutory requirement of a full investigation.
    - The statute does not allow for answering the "critically important" question of whether the juvenile will be transferred without the participation or any representation of the child.
    - "[T]here is no place in our system of law for reaching a result of such tremendous consequences without ceremony—without hearing, without effective assistance of counsel, without a statement of reasons. It is inconceivable that a court of justice dealing with adults, with respect to a similar issue, would proceed in this manner. It would be extraordinary if society's special concern for children, as reflected in the District of Columbia's Juvenile Court Act, permitted this procedure. We hold that it does not." At 1053-54.
    - The Juvenile Court's function was not adversarial, but parens patriae (this decision came before *In re Gault*). The child may receive "the worst of both worlds" under the Juvenile Court structure—getting "neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children." At 1054.
    - "In these circumstances, considering particularly that decision as to waiver of jurisdiction and transfer of the matter to the District Court was potentially as important to petitioner as the difference between five years' confinement and a death sentence, we conclude that, as a condition to a valid waiver order, petitioner was entitled to a

hearing, including access by his counsel to the social records and probation or similar reports which presumably are considered by the court, and to a statement of reasons for the Juvenile Court's decision. We believe that this result is required by the statute read in the context of constitutional principles relating to due process and the assistance of counsel." At 1055.

- The decision explicitly holds that
  - transfer determination is a critically important proceeding (at 1057).
  - it is incumbent on the Juvenile Court to accompany waiver order with a statement of the reasons or considerations therefor (at 1057). Under the statute, the statement need not be formal or include findings of fact but should demonstrate that the requirement of "full investigation has been met; and that the question has received the careful consideration of the Juvenile Court; and it must set forth the basis for the order with sufficient specificity to permit meaningful review." At 1057.
  - the Juvenile must have opportunity for a hearing (which can be informal) and is entitled to counsel. Counsel is entitled to see the juvenile's social records. The hearing must comply with the essentials of due process and fair treatment. It does not have to rise to the level of criminal trials or even administrative hearings.
- AT the time of this decision, the juvenile had reached the age of 21. The case was remanded for a new transfer proceeding with direction that if the court determined transfer was appropriate, the criminal court could enter an appropriate judgment. If the court found that transfer was not appropriate, the conviction was to be vacated.
- An appendix to the decision is included. It is "Policy Memorandum No. 7, November 30, 1959," and reflects criteria and principles concerning waiver that were developed in relation to this statute by U.S. District Court judges for the District of Columbia, the U.S. Attorney, and representatives from the Bar Association and other concerned groups. The memo includes 8 determinative factors to be considered under the statute.

Woodard v. Wainwright, 556 F.2d 781 (1977) (5th Cir.)

- This case addressed the constitutionality of a Florida statute that automatically divested the Juvenile Court from jurisdiction over a juvenile when the juvenile was indicted for offenses punishable by death or life imprisonment. Florida also had a discretionary waiver statute for juveniles aged 14 or older.
- The argument was that automatic waiver resulting from the return of an indictment violated the due process standards mandated by *Kent*.
- The exact basis of the holding in *Kent* is not clear (statutory or constitutional). This does not matter when answering the question in this case, because it is distinguishable from *Kent*. *Kent* was about the court's statutory duty to investigate and hear waiver matters. This case is about the prosecutor's discretion to present the case to the grand jury.
- The decision references holdings by several other circuits upholding the constitutionality of similar statutes that allowed juveniles to be treated as adults without a hearing in certain circumstances.

    - United States v. Bland, 153 U.S.App.D.C. 254, 472 F.2d 1329 (1972), cert. denied, 412 U.S. 909, 93 S.Ct. 2294, 36 L.Ed.2d 975 (1973), (upholding a new D.C. statute permitting a prosecutor to charge a juvenile as an adult for certain offenses); Cox v. United States, 473 F.2d 334 (4th Cir.), cert. denied, 414 U.S. 869, 94 S.Ct. 183, 38 L.Ed.2d 116 (1973) (holding that the decision to charge a juvenile as an adult was a prosecutorial decision beyond the reach of due process rights to counsel and a hearing); United States v. Quinones, 516 F.2d 1309 (1st Cir.), cert. denied, 423 U.S. 852, 96 S.Ct. 97, 46 L.Ed.2d 76 (1975) (holding that the Attorney General can decide whether to prosecute a juvenile as an adult without a due process hearing); and Russel v. Parratt, 543 F.2d 1214 (8th Cir. 1976) (holding that a Nebraska statute permitting a minor to be charged either as a juvenile or an adult was constitutional).
- "[T]reatment as a juvenile is not an inherent right but one granted by the state legislature, therefore the legislature may restrict or qualify that right as it sees fit, as long as no arbitrary or discriminatory classification is involved." At 785.
- Providing original juvenile jurisdiction does not create a right to juvenile treatment that can't be divested without a hearing. The statute must be read as a whole. "Therefore, the statute clearly limits jurisdiction from the start. It is true that these same petitioners might have been treated as juveniles in previous encounters with the law, but everyone outgrows juvenile treatment sooner or later; these petitioners, through acts alleged or admitted, have just outgrown it sooner." At 785.
- "Also, under the balancing of public and private interests approved in Eldridge, we cannot conclude that due process has been violated, especially because in the instant case it was the Florida legislature, not the Department of Health, Education and Welfare, who declared, in a presumptively convincing voice, where the public interest lies." At 786.

State v. Garrett, 280 N.C.APP. 220 (2021)

- The defendant was charged with two class H felonies (felonious breaking or entering and larceny after breaking or entering) in October of 2016, when he was 16 years of age and before raise the age was implemented. The charges were under the exclusive jurisdiction of the criminal law under the statutory scheme in place at the time of the offense.
- Raise the age was passed in 2017 and took effect beginning with offenses committed on December 1, 2019. The expansion of juvenile jurisdiction was not retroactive. This case was set for trial in late 2017 and the defendant failed to appear. The defendant was arrested in 2019 and his case proceeded. The trial court granted a pretrial motion to dismiss, finding that the defendant's constitutional rights to equal protection, protection from cruel and unusual punishment, and due process were violated by prosecution as an adult.
- The Court of Appeals held that there were no violations of constitutional rights resulting from trying Garrett as an adult.
- "To the extent that the trial court concluded a fundamental right to or a protected interest in being prosecuted as a juvenile existed, it erred. Defendant does not present, and our research does not reveal, any case that holds there is a protected interest in, or fundamental right related to, being tried as a juvenile in criminal cases, as opposed to being tried as an adult. We decline to create such a right under the veil of the penumbra of due process." At ¶ 24.

- "[I]it is clear Kent does not require a hearing and findings to support trying any juvenile as an adult; instead, Kent requires hearings and findings to support the transfer of a juvenile from juvenile court to adult court when that is the existing statutory scheme... Kent did not create a fundamental constitutional right or constitutionally protected interest to a juvenile hearing or being tried as a juvenile. Furthermore, our Supreme Court, in interpreting Kent, has stated:

  > In Kent, the Supreme Court enunciated a list of factors for the Juvenile Court of the District of Columbia to consider in making transfer decisions. . . . [I]t is important to note that the Supreme Court nowhere stated in Kent that the above factors were constitutionally required. In appending this list of factors [to consider in making transfer determinations] to its opinion, the Kent Court was merely exercising its supervisory role over the inferior court created by Congress for the District of Columbia. Thus, the factors in the Appendix to Kent have no binding effect on this Court.

  State v. Green, 348 N.C. 588, 600-01, 502 S.E.2d 819, 826-27 (1998) (emphases added), cert. denied, 525 U.S. 1111, 142 L. Ed. 2d 783 (1999), superseded by statute on other ground as stated in In re J.L.W., 136 N.C. App. 596, 525 S.E.2d 500 (2000). Our Supreme Court's interpretation of *Kent* in *Green*, as not concerning constitutionally required factors for the transfer of juveniles from juvenile court to adult court, further supports our conclusion that *Kent* was not concerned with constitutional requirements." At ¶ 26.

86 S.Ct. 1045
Supreme Court of the United States

Morris A. KENT, Jr., Petitioner,
v. TI UNITED STATES.

No. 104.
|
Argued Jan. 19, 1966.
|
Decided March 21, 1966.

Synopsis
Prosecution for housebreaking, robbery and rape. The United States District Court for the District of Columbia entered judgments of conviction on counts of housebreaking and robbery and the defendant appealed. The United States Court of Appeals for the District of Columbia Circuit, 119 U.S.App.D.C. 378, 343 F.2d 247, affirmed and certiorari was granted. The Supreme Court, Mr. Justice Fortas, held that under District of Columbia Juvenile Court Act allowing Juvenile Court to waive jurisdiction over juvenile after full investigation, as a condition to a valid waiver order, juvenile was entitled to a hearing, including access by his counsel to the social records and probation or similar reports which presumably were considered by court, and to a statement of reasons for the Juvenile Court's decision.

Reversed and remanded.

Mr. Justice Stewart, Mr. Justice Black, Mr. Justice Harlan and Mr. Justice White dissented.

West Headnotes (25)

[1] **Infants**Interrogation and Investigatory Questioning

Statements elicited from 16-year-old minor by police while minor was subject to the jurisdiction of juvenile court were inadmissible in subsequent criminal prosecution. D.C.Code 1961, §§ 11–1551, 16–2306.

3 Cases that cite this headnote

[2] **Criminal Law**Necessity of Arraignment and Plea

In case of adults, arraignment before a magistrate for determination of probable cause and advice to arrested person as to his rights are provided by law, and are regarded as fundamental. D.C.Code 1961, § 11–1553; Fed.Rules Crim.Proc. rule 5(a, b), 18 U.S.C.A.

2 Cases that cite this headnote

[3] **Criminal Law**In general; complaint, warrant, and preliminary examination
Criminal Law Judgment, sentence, and punishment

Supreme Court must assume that juvenile court judge denied, sub silentio, motions by minor's counsel for a hearing, for hospitalization for psychiatric observation, for access to social service file and for leave to prove that petitioner was a fit subject for rehabilitation under the juvenile court's jurisdiction.

21 Cases that cite this headnote

[4] **Indictments and Charging Instruments**Proceedings to Dismiss

Order of Juvenile Court of the District of Columbia waiving its jurisdiction and transferring petitioner for trial in the United States District Court was reviewable on a motion to dismiss the indictment in the District Court. D.C.Code 1961, § 11–1553.

6 Cases that cite this headnote

[5] **Infants**🔑Waiver by Court for Adult Prosecution

District of Columbia statute contemplates that Juvenile Court should have considerable latitude within which to determine whether it should retain jurisdiction over a child or, subject to statutory delimitation, should waive jurisdiction. D.C.Code 1961, § 11–1553.

21 Cases that cite this headnote

[6] **Constitutional Law**🔑Transfer to and from adult court
Infants🔑Investigation and inquiry in general
Infants🔑Grounds, factors, and considerations

The latitude accorded to District of Columbia Juvenile Court with respect to whether it should retain jurisdiction over child or waive it assumes procedural regularity sufficient in particular circumstances to satisfy basic requirements of due process and fairness, as well as compliance with the statutory requirement of a full investigation. D.C.Code 1961, § 11–1553.

227 Cases that cite this headnote

[7] **Infants**🔑Investigation and inquiry in general
Infants🔑Grounds, factors, and considerations

The requirement of a full investigation by District of Columbia Juvenile Court before a waiver of jurisdiction prevents a routine waiver and requires a judgment in each case based on inquiry not only into the facts of the alleged offense but also into the question of whether the parens patriae plan of procedure is desirable and proper in particular case. D.C.Code 1961, § 11–1553.

127 Cases that cite this headnote

[8] **Infants**🔑Waiver by Court for Adult Prosecution

Statute respecting right of District of Columbia Juvenile Court to waive jurisdiction gives court a substantial degree of discretion as to factual considerations to be evaluated, weight to be given to them, and conclusion reached, but this does not confer upon the Juvenile Court a license for arbitrary procedure. D.C.Code 1961, § 11–1553.

23 Cases that cite this headnote

[9] **Infants**🔑Hearing in general and time therefor
Infants🔑Counsel or guardian ad litem

Statute authorizing District of Columbia Juvenile Court to waive jurisdiction over child does not permit the Juvenile Court to determine in isolation and without participation or any representation of child the critically important question of whether child will be deprived of special protections and provisions of the Juvenile Court Act. D.C.Code 1961, § 11–1553.

76 Cases that cite this headnote

[10] **Infants**🔑Hearing in general and time therefor

District of Columbia Juvenile Court Act permitting waiver of Juvenile Court's jurisdiction over child did not authorize court, in total disregard of motion for hearing filed by counsel and without any hearing or statement or reasons, to decide that the 16-year-old minor should be taken from the receiving home for children and transferred to jail along with adults, and that minor, charged with housebreaking, robbery and rape, be exposed to the possibility of a death sentence instead of treatment for a maximum, in the particular case, of five years,

until he was 21. D.C.Code 1961, §§ 11–1551, 11–1553.

142 Cases that cite this headnote

[11] **Infants**🔑Hearing in general and time therefor

District of Columbia Juvenile Court Act did not permit Juvenile Court to waive jurisdiction over juvenile without hearing, without effective assistance of counsel, and without a statement or reasons for waiver and in total disregard of counsel's motion for hearing. D.C.Code 1961, § 11–1553.

175 Cases that cite this headnote

[12] **Infants**🔑Purpose, construction, and interpretation in general

Theory of District of Columbia Juvenile Court Act is rooted in social welfare philosophy rather than in the corpus juris. D.C.Code 1961, § 11–1553.

24 Cases that cite this headnote

[13] **Infants**🔑Role, power, and authority of courts; discretion

The District of Columbia Juvenile Court is theoretically engaged in determining needs of child and of society rather than adjudicating criminal conduct, and the objectives are to provide measures of guidance and rehabilitation for the child and protection for society, not to fix criminal responsibility, guilt and punishment. D.C.Code 1961, § 11–1553.

126 Cases that cite this headnote

[14] **Infants**🔑Interest, role, and authority of government in general

In District of Columbia Juvenile Court proceedings state is parens patriae rather than prosecuting attorney and judge.

43 Cases that cite this headnote

[15] **Infants**🔑Proceedings in general

The District of Columbia Juvenile Court's waiver of jurisdiction over 16-year-old defendant charged with housebreaking, robbery and rape was a critically important action determining vitally important statutory rights of juvenile. D.C.Code 1961, § 11–1553.

118 Cases that cite this headnote

[16] **Infants**🔑Presumptions, inferences, and burden of proof

Under District of Columbia Juvenile Court Act allowing Juvenile Court to waive jurisdiction over juvenile after full investigation, as a condition to a valid waiver order, juvenile, charged with housebreaking, robbery and rape, was entitled to a hearing, including access by his counsel to the social records and probation or similar reports which presumably were considered by court, and to a statement of reasons for the Juvenile Court's decision. D.C.Code 1961, § 11–1553.

238 Cases that cite this headnote

[17] **Federal Courts**🔑Decisions Reviewable

While Supreme Court does not ordinarily review decisions of the United States Court of Appeals for the District of Columbia Circuit which are based upon statutes limited to the District,

Supreme Court will not defer to decisions on local law where to do so would require adjudication of difficult constitutional questions.

9 Cases that cite this headnote

[18] **Infants** Right to juvenile prosecution or treatment

The District of Columbia Juvenile Court Act confers on child a right to avail himself of that court's exclusive jurisdiction, and it is implicit in the scheme that noncriminal treatment is to be the rule and adult criminal treatment the exception which must be governed by the particular factors of individual cases. D.C.Code 1961, § 11–1553.

19 Cases that cite this headnote

[19] **Infants** Determination and findings

The statement of reasons which District of Columbia Juvenile Court must give for its waiver of jurisdiction order need not be formal or necessarily include conventional findings of fact, but should be sufficient to demonstrate that the statutory requirement of full investigation has been met and that the question has received careful consideration of the Juvenile Court, and statement must set forth basis for order with sufficient specificity to permit meaningful review. D.C.Code 1961, § 11–1553.

236 Cases that cite this headnote

[20] **Constitutional Law** Transfer to and from adult court
Infants Hearing in general and time therefor

An opportunity for a hearing, which may be informal, must be given child by the District of Columbia Juvenile Court prior to entry of a waiver order, and child is entitled to counsel who is entitled to see child's social records, and while hearing need not conform to all the requirements of a criminal trial or even of the usual administrative hearing, it must measure up to the essentials of due process and fair treatment. D.C.Code 1961, § 11–1553.

552 Cases that cite this headnote

[21] **Infants** Counsel or guardian ad litem

The role of counsel in representing child in proceedings respecting waiver of District of Columbia Juvenile Court's jurisdiction is not limited to merely presenting to court anything on behalf of child which might help court in arriving at decision and if staff's submissions include materials which are susceptible to challenge or impeachment, it is precisely the role of counsel to denigrate such matter. D.C.Code 1961, § 11–1553.

7 Cases that cite this headnote

[22] **Evidence** Courts and Judicial Proceedings

There is no irrebuttable presumption of accuracy attached to District of Columbia Juvenile Court's staff reports. D.C.Code 1961, § 11–1586 and (b).

8 Cases that cite this headnote

[23] **Infants** Evidence

While District of Columbia Juvenile Court judge may receive ex parte analyses and recommendations from his staff concerning matter of waiver of jurisdiction over infant he may not for purpose of decision receive and rely on secret information whether emanating from its staff or otherwise, and Juvenile Court is governed in this respect by the established principles which control courts and

quasi-judicial agencies of government.

16 Cases that cite this headnote

[24] **Infants**Hearing in general and time therefor

The consideration by United States District Court for the District of Columbia and the denial of a motion to dismiss indictment against minor on grounds of invalidity of waiver order of Juvenile Court did not cure the invalid proceedings before the Juvenile Court which had entered order of waiver of jurisdiction of defendant without hearing and without giving stated reasons. D.C.Code 1961, § 11–1553.

19 Cases that cite this headnote

[25] **Infants**Determination and remand

Where juvenile had passed the age of 21 and the District of Columbia Juvenile Court, which had followed improper procedure in waiving jurisdiction, could no longer exercise jurisdiction over him, under the circumstances the Supreme Court would vacate order of Court of Appeals and judgment of District Court and remand case to District Court for a hearing de novo on waiver, consistent with opinion, and if that court found waiver to be inappropriate, petitioner's conviction must be vacated, but if waiver was proper when originally made, District Court would then proceed with such further proceedings as may be warranted, and enter an appropriate judgment.

47 Cases that cite this headnote

Attorneys and Law Firms

****1048 *542** Myron G. Ehrlich and Richard Arens, Washington, D.C., for petitioner.

Theodore G. Gilinsky, Washington, D.C., for respondent.

Opinion

Mr. Justice FORTAS delivered the opinion of the Court.

This case is here on certiorari to the United States Court of Appeals for the District of Columbia Circuit. The facts and the contentions of counsel raise a number ***543** of disturbing questions concerning the administration by the police and the Juvenile Court authorities of the District of Columbia laws relating to juveniles. Apart from raising questions as to the adequacy of custodial and treatment facilities and policies, some of which are not within judicial competence, the case presents important challenges to the procedure of the police and Juvenile Court officials upon apprehension of a juvenile suspected of serious offenses. Because we conclude that the Juvenile Court's order waiving jurisdiction of petitioner was entered without compliance with required procedures, we remand the case to the trial court.

Morris A. Kent, Jr., first came under the authority of the Juvenile Court of the District of Columbia in 1959. He was then aged 14. He was apprehended as a result of several housebreakings and an attempted purse snatching. He was placed on probation, in the custody of his mother who had been separated from her husband since Kent was two years old. Juvenile Court officials interviewed Kent from time to time during the probation period and accumulated a 'Social Service' file.

On September 2, 1961, an intruder entered the apartment of a woman in the District of Columbia. He took her wallet. He raped her. The police found in the apartment latent fingerprints. They were developed and processed. They matched the fingerprints of Morris Kent, taken when he was 14 years old and under the jurisdiction of the Juvenile Court. At about 3 p.m. on September 5, 1961, Kent was taken into custody by the police. Kent was then 16 and therefore subject to the 'exclusive jurisdiction' of the Juvenile Court. D.C.Code s 11—907 (1961), now s 11—1551 (Supp. IV, 1965). He was still on probation to that court as a result of the 1959 proceedings.

[1] Upon being apprehended, Kent was taken to police headquarters where he was interrogated by police officers. ***544** It appears that he admitted his involvement in the offense which led to his apprehension and volunteered information as to similar offenses involving housebreaking, robbery, and rape. His interrogation proceeded from about 3 p.m. to 10 p.m. the same evening.[1]

Some time after 10 p.m. petitioner was taken to the Receiving Home for Children. The next morning he was released to the police for further interrogation at police headquarters, which lasted until 5 p.m.[2]

The record does not show when his mother became aware that the boy was in custody but shortly after 2 p.m. on September 6, 1961, the day following **1049 petitioner's apprehension, she retained counsel.

Counsel, together with petitioner's mother, promptly conferred with the Social Service Director of the Juvenile Court. In a brief interview, they discussed the possibility that the Juvenile Court might waive jurisdiction under D.C.Code s 11-914 (1961), now s 11—1553 (Supp. IV, 1965) and remit Kent to trial by the District Court. Counsel made known his intention to oppose waiver.

[2] Petitioner was detained at the Receiving Home for almost a week. There was no arraignment during this *545 time, no determination by a judicial officer of probable cause for petitioner's apprehension.[3]

During this period of detention and interrogation, petitioner's counsel arranged for examination of petitioner by two psychiatrists and a psychologist. He thereafter filed with the Juvenile Court a motion for a hearing on the question of waiver of Juvenile Court jurisdiction, together with an affidavit of a psychiatrist certifying that petitioner 'is a victim of servere psychopathology' and recommending hospitalization for psychiatric observation. Petitioner's counsel, in support of his motion to the effect that the Juvenile Court should retain jurisdiction of petitioner, offered to prove that if petitioner were given adequate treatment in a hospital under the aegis of the Juvenile Court, he would be a suitable subject for rehabilitation.

*546 At the same time, petitioner's counsel moved that the Juvenile Court should give him access to the Social Service file relating to petitioner which had been accumulated by the staff of the Juvenile Court during petitioner's probation period, and which would be available to the Juvenile Court judge in considering the question whether it should retain or waive jurisdiction. Petitioner's counsel represented that access to this file was essential to his providing petitioner with effective assistance of counsel.

[3] The Juvenile Court judge did not rule on these motions. He held no hearing. He did not confer with petitioner or petitioner's parents or petitioner's counsel. He entered an order reciting that after 'full investigation, I do hereby waive' jurisdiction of petitioner and directing that he be 'held for trial for (the alleged) offenses under the regular procedure of the U.S. District Court for the District of Columbia.' He made no findings. He did not recite any reason for the waiver.[4] He made no reference **1050 to the motions filed by petitioner's counsel. We must assume that he denied, sub silentio, the motions for a hearing, the recommendation for hospitization for psychiatric observation, the request for access to the Social Service file, and the offer to prove that petitioner was a fit subject for rehabilitation under the Juvenile Court's jurisdiction.[5]

*547 Presumably, prior to entry of his order, the Juvenile Court judge received and considered recommendations of the Juvenile Court staff, the Social Service file relating to petitioner, and a report dated September 8, 1961 (three days following petitioner's apprehension), submitted to him by the Juvenile Probation Section. The Social Service file and the September 8 report were later sent to the District Court and it appears that both of them referred to petitioner's mental condition. The September 8 report spoke of 'a rapid deterioration of (petitioner's) personality structure and the possibility of mental illness.' As stated, neither this report nor the Social Service file was made available to petitioner's counsel.

The provision of the Juvenile Court Act governing waiver expressly provides only for 'full investigation.' It states the circumstances in which jurisdiction may be waived and the child held for trial under adult procedures, but it does not state standards to govern the Juvenile Court's decision as to waiver. The provision reads as follows:

'If a child sixteen years of age or older is charged with an offense which would amount to a felony in the case of an adult, or any child charged with an offense which if committed by an adult is punishable by death or life imprisonment, the judge may, after full investigation, waive jurisdiction and order *548 such child held for trial under the regular procedure of the court which would have jurisdiction of such offense if committed by an adult; or such other court may exercise the powers conferred upon the juvenile court in this subchapter in conducting and disposing of such cases.'[6]

Petiioner appealed from the Juvenile Court's waiver order to the Municipal Court of Appeals, which affirmed, and also applied to the United States District Court for a writ of habeas corpus, which was denied. On appeal from these judgments, the United States Court of Appeals held on January 22, 1963, that neither appeal to the Municipal Court of Appeals nor habeas corpus was available. In the Court of Appeals' view, the exclusive method of reviewing the Juvenile Court's waiver order was a motion to dismiss the indictment in the District Court. Kent v.

Reid, 114 U.S.App.D.C. 330, 316 F.2d 331 (1963).
Meanwhile, on September 25, 1961, shortly after the Juvenile Court order **1051 waiving its jurisdiction, petitioner was indicted by a grand jury of the United States District Court for the District of Columbia. The indictment contained eight counts alleging two instances of housebreaking, robbery, and rape, and one of housebreaking and robbery. On November 16, 1961, petitioner moved the District Court to dismiss the indictment on the grounds that the waiver was invalid. He also moved the District Court to constitute itself a Juvenile Court as authorized by D.C.Code s 11—914 (1961), now s 11—1553 (Supp. IV, 1965). After substantial delay occasioned by petitioner's appeal and habeas corpus proceedings, the District Court addressed itself to the motion to dismiss on February 8, 1963.[7]

*549 The District Court denied the motion to dismiss the indictment. The District Court ruled that it would not 'go behind' the Juvenile Court judge's recital that his order was entered 'after full investigation.' It held that 'The only matter before me is as to whether or not the statutory provisions were complied with and the Courts have held * * * with reference to full investigation, that that does not mean a quasi judicial or judicial hearing. No hearing is required.'
On March 7, 1963, the District Court held a hearing on petitioner's motion to determine his competency to stand trial. The court determined that petitioner was competent.[8]
*550 At trial, petitioner's defense was wholly directed toward proving that he was not criminally responsible because 'his unlawful act was the product of mental disease or mental defect.' Durham v. United States, 94 U.S.App.D.C. 228, 241, 214 F.2d 862, 875, 45 A.L.R.2d 1430 (1954). Extensive evidence, including expert testimony, was presented to support this defense. The jury found as to the counts alleging rape that petitioner was 'not guilty by reason of insanity.' Under District of Columbia law, this made it mandatory that petitioner be transferred to St. Elizabeths Hospital, a mental institution, until his sanity is restored.[9] On the six counts of housebreaking and robbery, the jury found that petitioner was guilty.[10]
**1052 Kent was sentenced to serve five to 15 years on each count as to which he was found guilty, or a total of 30 to 90 years in prison. The District Court ordered that the time to be spent at St. Elizabeths on the mandatory commitment after the insanity acquittal be counted as part of the 30-to 90-year sentence. Petitioner appealed to the United States Court of Appeals for the District of Columbia Circuit. That court affirmed. 119 U.S.App.D.C. 378, 343 F.2d 247 (1964).[11]
*551 Before the Court of Appeals and in this Court, petitioner's counsel has urged a number of grounds for reversal. He argues that petitioner's detention and interrogation, described above, were unlawful. He contends that the police failed to follow the procedure prescribed by the Juvenile Court Act in that they failed to notify the parents of the child and the Juvenile Court itself, note 1, supra; that petitioner was deprived of his liberty for about a week without a determination of probable cause which would have been required in the case of an adult, see note 3, supra; that he was interrogated by the police in the absence of counsel or a parent, cf. Harling v. United States, 111 U.S.App.D.C. 174, 176, 295 F.2d 161, 163, n. 12 (1961), without warning of his right to remain silent or advice as to his right to counsel, in asserted violation of the Juvenile Court Act and in violation of rights that he would have if he were an adult; and that petitioner was fingerprinted in violation of the asserted intent of the Juvenile Court Act and while unlawfully detained and that the fingerprints were unlawfully used in the District Court proceeding.[12]
These contentions raise problems of substantial concern as to the construction of and compliance with the Juvenile Court Act. They also suggest basic issues as to the justifiability of affording a juvenile less protection than is accorded to adults suspected of criminal offenses, particularly where, as here, there is an absence of any indication that the denial of rights available to adults was offset, mitigated or explained by action of the Government, as parens patriae, evidencing the special *552 solicitude for juveniles commanded by the Juvenile Court Act. However, because we remand the case on account of the procedural error with respect to waiver of jurisdiction, we do not pass upon these questions.[13]

It is to petitioner's arguments as to the infirmity of the proceedings by which the Juvenile Court waived its otherwise exclusive jurisdiction that we address our **1053 attention. Petitioner attacks the waiver of jurisdiction on a number of statutory and constitutional grounds. He contends that the waiver is defective because no hearing was held; because no findings were made by the Juvenile Court; because the Juvenile Court stated no reasons for waiver; and because counsel was denied access to the Social Service file which presumably was considered by the Juvenile Court in determining to waive jurisdiction.
[4] We agree that the order of the Juvenile Court waiving its jurisdiction and transferring petitioner for trial in the United States District Court for the District of Columbia was invalid. There is no question that the order is reviewable on motion to dismiss the indictment in the District Court, as specified by the Court of Appeals in this case. Kent v. Reid, supra. The issue is the standards to be applied upon such review.

[5] [6] [7] [8] [9] [10] We agree with the Court of Appeals that the statute contemplates that the Juvenile Court should have considerable ***553** latitude within which to determine whether it should retain jurisdiction over a child or—subject to the statutory delimitation[14]—should waive jurisdiction. But this latitude is not complete. At the outset, it assumes procedural regularity sufficient in the particular circumstances to satisfy the basic requirements of due process and fairness, as well as compliance with the statutory requirement of a 'full investigation.' Green v. United States, 113 U.S.App.D.C. 348, 308 F.2d 303 (1962).[15] The statute gives the Juvenile Court a substantial degree of discretion as to the factual considerations to be evaluated, the weight to be given them and the conclusion to be reached. It does not confer upon the Juvenile Court a license for arbitrary procedure. The statute does not permit the Juvenile Court to determine in isolation and without the participation or any representation of the child the 'critically important' question whether a child will be deprived of the special protections and provisions of the Juvenile Court Act.[16] It does not authorize the Juvenile Court, in total disregard of a motion for hearing filed by counsel, and without any hearing or statement or reasons, to decide—as in this case—that the child will be taken from the Receiving Home for Children ***554** and transferred to jail along with adults, and that he will be exposed to the possibility of a death sentence[17] instead of treatment for a maximum, in Kent's case, of five years, until he is 21.[18]

[11] We do not consider whether, on the merits, Kent should have been transferred; but there is no place in our system of law for reaching a result of such tremendous consequences without ceremony—without hearing, without effective assistance of counsel, without a ****1054** statement of reasons. It is inconceivable that a court of justice dealing with adults, with respect to a similar issue, would proceed in this manner. It would be extraordinary if society's special concern for children, as reflected in the District of Columbia's Juvenile Court Act, permitted this procedure. We hold that it does not.

[12] [13] [14] 1. The theory of the District's Juvenile Court Act, like that of other jurisdictions,[19] is rooted in social welfare philosophy rather than in the corpus juris. Its proceedings are designated as civil rather than criminal. The Juvenile Court is theoretically engaged in determining the needs of the child and of society rather than adjudicating criminal conduct. The objectives are to provide measures of guidance and rehabilitation for the child and protection for society, not to fix criminal responsibility, guilt and punishment. The State is parens ***555** patriae rather than prosecuting attorney and judge.[20] But the admonition to function in a 'parental' relationship is not an invitation to procedural arbitrariness.

2. Because the State is supposed to proceed in respect of the child as parens patriae and not as adversary, courts have relied on the premise that the proceedings are 'civil' in nature and not criminal, and have asserted that the child cannot complain of the deprivation of important rights available in criminal cases. It has been asserted that he can claim only the fundamental due process right to fair treatment.[21] For example, it has been held that he is not entitled to bail; to indictment by grand jury; to a speedy and public trial; to trial by jury; to immunity against self-incrimination; to confrontation of his accusers; and in some jurisdictions (but not in the District of Columbia, see Shioutakon v. District of Columbia, 98 U.S.App.D.C. 371, 236 F.2d 666 (1956), and Black v. United States, supra) that he is not entitled to counsel.[22] While there can be no doubt of the original laudable purpose of juvenile courts, studies and critiques in recent years raise serious questions as to whether actual performance measures well enough against theoretical purpose to make tolerable the immunity of the process from the reach of constitutional guaranties applicable to adults.[23] There is much evidence that some juvenile courts, including that of the District of Columbia, lack ***556** the personnel, facilities and techniques to perform adequately as representatives of the State in a parens patriae capacity, at least with respect to children charged with law violation. There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.[24]

This concern, however, does not induce us in this case to accept the invitation[25] to rule that constitutional guaranties which would be applicable to adults charged with the serious offenses for ****1055** which Kent was tried must be applied in juvenile court proceedings concerned with allegations of law violation. The Juvenile Court Act and the decisions of the United States Court of Appeals for the District of Columbia Circuit provide an adequate basis for decision of this case, and we go no further.

[15] 3. It is clear beyond dispute that the waiver of jurisdiction is a 'critically important' action determining vitally important statutory rights of the juvenile. The Court of Appeals for the District of Columbia Circuit has so held. See Black v. United States, supra; Watkins v. United States, 119 U.S.App.D.C. 409, 343 F.2d 278 (1964). The statutory scheme makes this plain. The Juvenile Court is vested with 'original and exclusive jurisdiction' of the child. This jurisdiction confers special rights and immunities. He is, as specified by the statute, shielded from publicity. He may be confined, but with

rare exceptions he may not be jailed along with adults. He may be detained, but only until he is 21 years of age. The court is admonished by the statute to give preference to retaining the child in the custody of his parents 'unless his welfare and the safety and protection ***557** of the public can not be adequately safeguarded without * * * removal.' The child is protected against consequences of adult conviction such as the loss of civil rights, the use of adjudication against him in subsequent proceedings, and disqualification for public employment. D.C.Code ss 11—907, 11—915, 11—927, 11—929 (1961).[26]

[16] [17] The net, therefore, is that petitioner—then a boy of 16—was by statute entitled to certain procedures and benefits as a consequence of his statutory right to the 'exclusive' jurisdiction of the Juvenile Court. In these circumstances, considering particularly that decision as to waiver of jurisdiction and transfer of the matter to the District Court was potentially as important to petitioner as the difference between five years' confinement and a death sentence, we conclude that, as a condition to a valid waiver order, petitioner as entitled to a hearing, including access by his counsel to the social records and probation or similar reports which presumably are considered by the court, and to a statement of reasons for the Juvenile Court's decision. We believe that this result is required by the statute read in the context of constitutional principles relating to due process and the assistance of counsel.[27]

The Court of Appeals in this case relied upon Wilhite v. United States, 108 U.S.App.D.C. 279, 281 F.2d 642 (1960). In that case, the Court of Appeals held, for purposes of a determination as to waiver of jurisdiction, ***558** that no formal hearing is required and that the 'full investigation' required of the Juvenile Court need only be such 'as is needed to satisfy that court * * * on the question of waiver.'[28] (Emphasis supplied.) The authority of Wilhite, however, is substantially undermined by other, more recent, decisions of the Court of Appeals.

****1056** In Black v. United States, decided by the Court of Appeals on December 8, 1965, the court[29] held that assistance of counsel in the 'critically important' determination of waiver is essential to the proper administration of juvenile proceedings. Because the juvenile was not advised of his right to retained or appointed counsel, the judgment of the District Court, following waiver of jurisdiction by the Juvenile Court, was reversed. The court relied upon its decision in Shioutakon v. District of Columbia, 98 U.S.App.D.C. 371, 236 F.2d 666 (1956), in which it had held that effective assistance of counsel in juvenile court proceedings is essential. See also McDaniel v. Shea, 108 U.S.App.D.C. 15, 278 F.2d 460 (1960). In Black, the court referred to the Criminal Justice Act, enacted four years after Shioutakon, in which Congress provided for the assistance of counsel 'in proceedings before the juvenile court of the District of Columbia.' D.C.Code s 2—2202 (1961). The court held that 'The need is even greater in the adjudication of waiver (than in a case like Shioutakon) since it contemplates the imposition of criminal sanctions.' 122 U.S.App.D.C., at 395, 355 F.2d, at 106.

In Wakins v. United States, 119 U.S.App.D.C. 409, 343 F.2d 278 (1964), decided in November 1964, the ***559** Juvenile Court had waived jurisdiction of appellant who was charged with housebreaking and larceny. In the District Court, appellant sought disclosure of the social record in order to attack the validity of the waiver. The Court of Appeals held that in a waiver proceeding a juvenile's attorney is entitled to access to such records. The court observed that

'All of the social records concerning the child are usually relevant to waiver since the Juvenile Court must be deemed to consider the entire history of the child in determining waiver. The relevance of particular items must be construed generously. Since an attorney has no certain knowledge of what the social records contain, he cannot be expected to demonstrate the relevance of particular items in his request.

'The child's attorney must be advised of the information upon which the Juvenile Court relied in order to assist effectively in the determination of the waiver question, by insisting upon the statutory command that waiver can be ordered only after 'full investigation,' and by guarding against action of the Juvenile Court beyond its discretionary authority.' 119 U.S.App.D.C., at 413, 343 F.2d, at 282.

The court remanded the record to the District Court for a determination of the extent to which the records should be disclosed.

The Court of Appeals' decision in the present case was handed down on October 26, 1964, prior to its decisions in Black and Watkins. The Court of Appeals assumed that since petitioner had been a probationer of the Juvenile Court for two years, that court had before it sufficient evidence to make an informed judgment. It therefore concluded that the statutory requirement of a 'full investigation' had been met. It noted the absence of ***560** 'a specification by the Juvenile Court Judge of precisely why he concluded to waive jurisdiction.' 119 U.S.App.D.C., at 384, 343 F.2d at 253. While it indicated

that 'in some cases at least' a useful purpose might be served 'by a discussion of the reasons motivating the determination,' id., at 384, 343 F.2d, at 253, n. 6, it did not conclude that the absence thereof invalidated the waiver.

As to the denial of access to the social records, the Court of Appeals stated that 'the statute is ambiguous.' It said that petitioner's claim, in essence, is 'that counsel should have the opportunity to challenge them, presumably in a manner akin to cross-examination.' Id., at 389, 343 F.2d, at 258. It held, however, that this is 'the kind of adversarial tactics which the system is designed to avoid.' **1057 It characterized counsel's proper function as being merely that of bringing forward affirmative information which might help the court. His function, the Court of Appeals said, 'is not to denigrate the staff's submissions and recommendations.' Ibid. Accordingly, it held that the Juvenile Court had not abused its discretion in denying access to the social records.

[18] We are of the opinion that the Court of Appeals misconceived the basic issue and the underlying values in this case. It did note, as another panel of the same court did a few months later in Black and Watkins, that the determination of whether to transfer a child from the statutory structure of the Juvenile Court to the criminal processes of the District Court is 'critically important.' We hold that it is, indeed, a 'critically important' proceeding. The Juvenile Court Act confers upon the child a right to avail himself of that court's 'exclusive' jurisdiction. As the Court of Appeals has said, '(I)t is implicit in (the Juvenile Court) scheme that non-criminal treatment is to be the rule—and the adult criminal treatment, the exception which must be governed *561 by the particular factors of individual cases.' Harling v. United States, 111 U.S.App.D.C. 174, 177—178, 295 F.2d 161, 164—165 (1961).

[19] Meaningful review requires that the reviewing court should review. It should not be remitted to assumptions. It must have before it a statement of the reasons motivating the waiver including, of course, a statement of the relevant facts. It may not 'assume' that there are adequate reasons, nor may it merely assume that 'full investigation' has been made. Accordingly, we hold that it is incumbent upon the Juvenile Court to accompany its waiver order with a statement of the reasons or considerations therefor. We do not read the statute as requiring that this statement must be formal or that it should necessarily include conventional findings of fact. But the statement should be sufficient to demonstrate that the statutory requirement of 'full investigation' has been met; and that the question has received the careful consideration of the Juvenile Court; and it must set forth the basis for the order with sufficient specificity to permit meaningful review.

[20] Correspondingly, we conclude that an opportunity for a hearing which may be informal, must be given the child prior to entry of a waiver order. Under Black, the child is entitled to counsel in connection with a waiver proceeding, and under Watkins, counsel is entitled to see the child's social records. These rights are meaningless—an illusion, a mockery—unless counsel is given an opportunity to function.

The right to representation by counsel is not a formality. It is not a grudging gesture to a ritualistic requirement. It is of the essence of justice. Appointment of counsel without affording an opportunity for hearing on a 'critically important' decision is tantamount to denial of counsel. There is no justification *562 for the failure of the Juvenile Court to rule on the motion for hearing filed by petitioner's counsel, and it was error to fail to grant a hearing.

We do not mean by this to indicate that the hearing to be held must conform with all of the requirements of a criminal trial or even of the usual administrative hearing; but we do hold that the hearing must measure up to the essentials of due process and fair treatment. Pee v. United States, 107 U.S.App.D.C. 47, 50, 274 F.2d 556, 559 (1959).

With respect to access by the child's counsel to the social records of the child, we deem it obvious that since these are to be considered by the Juvenile Court in making its decision to waive, they must be made available to the child's counsel. This is what the Court of Appeals itself held in Watkins. There is no doubt as to the statutory basis for this conclusion, as the Court of Appeals pointed out in Watkins. We cannot agree with the Court of Appeals in the present case that the statute is 'ambiguous.' The statute **1058 expressly provides that the record shall be withheld from 'indiscriminate' public inspection, 'except that such records or parts thereof shall be made available by rule of court or special order of court to such persons * * * as have a legitimate interest in the protection* * * of the child * * *.' D.C.Code s 11—929(b) (1961), now s 11—1586(b) (Supp. IV, 1965). (Emphasis supplied.)[30] The Court of Appeals has held in Black, and we agree, that counsel must be afforded to the child in waiver proceedings. Counsel, therefore, *563 have a 'legitimate interest' in the protection of the child, and must be afforded access to these records.[31]

[21] [22] [23] We do not agree with the Court of Appeals' statement, attempting to justify denial of access to these records, that counsel's role is limited to presenting 'to the court anything on behalf of the child which might help the court in arriving at a decision; it is not to denigrate the

staff's submissions and recommendations.' On the contrary, if the staff's submissions include materials which are susceptible to challenge or impeachment, it is precisely the role of counsel to 'denigrate' such matter. There is no irrebuttable presumption of accuracy attached to staff reports. If a decision on waiver is 'critically important' it is equally of 'critical importance' that the material submitted to the judge—which is protected by the statute only against 'indiscriminate' inspection—be subjected, within reasonable limits having regard to the theory of the Juvenile Court Act, to examination, criticism and refutation. While the Juvenile Court judge may, of course, receive ex parte analyses and recommendations from his staff, he may not, for purposes of a decision on waiver, receive and rely upon secret information, whether emanating from his staff or otherwise. The Juvenile Court is governed in this respect by the established principles which control courts and quasi-judicial agencies of the Government.

[24] For the reasons stated, we conclude that the Court of Appeals and the District Court erred in sustaining the validity of the waiver by the Juvenile Court. The Government urges that any error committed by the Juvenile ***564** Court was cured by the proceedings before the District Court. It is true that the District Court considered and denied a motion to dismiss on the grounds of the invalidity of the waiver order of the Juvenile Court, and that it considered and denied a motion that it should itself, as authorized by statute, proceed in this case to 'exercise the powers conferred upon the juvenile court.' D.C.Code s 11—914 (1961), now s 11—1553 (Supp. IV, 1965). But we agree with the Court of Appeals in Black, that 'the waiver question was primarily and initially one for the Juvenile Court to decide and its failure to do so in a valid manner cannot be said to be harmless error. It is the Juvenile Court, not the District Court, which has the facilities, personnel and expertise for a proper determination of the waiver issue.' 122 U.S.App.D.C., at 396, 355 F.2d, at 107.[32]

****1059** [25] Ordinarily we would reverse the Court of Appeals and direct the District Court to remand the case to the Juvenile Court for a new determination of waiver. If on remand the decision were against waiver, the indictment in the District Court would be dismissed. See Black v. United States, supra. However, petitioner has now passed the age of 21 and the Juvenile Court can no longer exercise jurisdiction over him. In view of the unavailability of a redetermination of the waiver question by the Juvenile Court, it is urged by petitioner that the conviction should be vacated and the indictment dismissed. In the circumstances of this case, and in light of the remedy which the Court of Appeals fashioned in ***565** Black, supra, we do not consider it appropriate to grant this drastic relief.[33] Accordingly, we vacate the order of the Court of Appeals and the judgment of the District Court and remand the case to the District Court for a hearing de novo on waiver, consistent with this opinion.[34] If that court finds that waiver was inappropriate, petitioner's conviction must be vacated. If, however, it finds that the waiver order was proper when originally made, the District Court may proceed, after consideration of such motions as counsel may make and such further proceedings, if any, as may be warranted, to enter an appropriate judgment. Cf. Black v. United States, supra.

Reversed and remanded.

APPENDIX TO OPINION OF THE COURT

Policy Memorandum No. 7, November 30, 1959.

The authority of the Judge of the Juvenile Court of the District of Columbia to waive or transfer jurisdiction to the U.S. District Court for the District of Columbia is contained in the Juvenile Court Act (s 11—914 D.C.Code, 1951 Ed.). This section permits the Judge to waive jurisdiction 'after full investigation' in the case of any child 'sixteen years of age or older (who is) charged with an offense which would amount to a felony in the case of an adult, or any child charged with an ***566** offense which if committed by an adult is punishable by death or life imprisonment.'

The statute sets forth no specific standards for the exercise of this important discretionary act, but leaves the formulation of such criteria to the Judge. A knowledge of the Judge's criteria is important to the child, his parents, his attorney, to the judges of the U.S. District Court for the District of Columbia, to the United States Attorney and his assistants and to the Metropolitan Police Department, as well as to the staff of this court, especially the Juvenile Intake Section.

Therefore, the Judge has consulted with the Chief Judge and other judges of the U.S. District Court for the District of Columbia, with the United States Attorney, with representatives of the Bar, and with other groups concerned and has formulated the following criteria and

principles concerning waiver of jurisdiction which are consistent with the basic aims and purpose of the Juvenile Court Act.

An offense falling within the statutory limitations (set forth above) will be waived if it has prosecutive merit and if it is heinous or of an aggravated character, or—even though less serious—if it represents ****1060** a pattern of repeated offenses which indicate that the juvenile may be beyond rehabilitation under Juvenile Court procedures, or if the public needs the protection afforded by such action.

The determinative factors which will be considered by the Judge in deciding whether the Juvenile Court's jurisdiction over such offenses will be waived are the following:

1. The seriousness of the alleged offense to the community and whether the protection of the community requires waiver.

***567** 2. Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner.

3. Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted.

4. The prosecutive merit of the complaint, i.e., whether there is evidence upon which a Grand Jury may be expected to return an indictment (to be determined by consultation with the United States Attorney).

5. The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults who will be charged with a crime in the U.S. District Court for the District of Columbia.

6. The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living.

7. The record and previous history of the juvenile, including previous contacts with the Youth Aid Division, other law enforcement agencies, juvenile courts and other jurisdictions, prior periods of probation to this Court, or prior commitments to juvenile institutions.

8. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services and facilities currently available to the Juvenile Court.

It will be the responsibility of any officer of the Court's staff assigned to make the investigation of any complaint in which waiver of jurisdiction is being considered to develop fully all available information which may bear upon the criteria and factors set forth above. Although not all such factors will be involved in an individual case, the Judge will consider the relevant factors in a ***568** specific case before reaching a conclusion to waive juvenile jurisdiction and transfer the case to the U.S. District Court for the District of Columbia for trial under the adult procedures of that Court.

Mr. Justice STEWART, with whom Mr. Justice BLACK, Mr. Justice HARLAN and Mr. Justice WHITE join, dissenting.

This case involves the construction of a statute applicable only to the District of Columbia. Our general practice is to leave undisturbed decisions of the Court of Appeals for the District of Columbia Circuit concerning the import of legislation governing the affairs of the District. General Motors Corp. v. District of Columbia, 380 U.S. 553, 556, 85 S.Ct. 1156, 14 L.Ed.2d 68. It appears, however, that two cases decided by the Court of Appeals subsequent to its decision in the present case may have considerably modified the court's construction of the statute. Therefore, I would vacate this judgment and remand the case to the Court of Appeals for reconsideration in the light of its subsequent decisions, Watkins v. United States, 119 U.S.App.D.C. 409, 343 F.2d 278, and Black v. United States, 122 U.S.App.D.C. 393, 355 F.2d 104.

All Citations

383 U.S. 541, 11 Ohio Misc. 53, 86 S.Ct. 1045, 16 L.Ed.2d 84, 40 O.O.2d 270

Footnotes

[1] There is no indication in the file that the police complied with the requirement of the District Code that a child taken into custody, unless released to his parent, guardian or custodian, 'shall be placed in the custody of a probation

officer or other person designated by the court, or taken immediately to the court or to a place of detention provided by the Board of Public Welfare, and the officer taking him shall immediately notify the court and shall file a petition when directed to do so by the court.' D.C.Code s 11—912 (1961), now s 16—2306 (Supp. IV, 1965).

[2] The elicited statements were not used in the subsequent trial before the United States District Court. Since the statements were made while petitioner was subject to the jurisdiction of the Juvenile Court, they were inadmissible in a subsequent criminal prosecution under the rule of Harling v. United States, 111 U.S.App.D.C. 174, 295 F.2d 161 (1961).

[3] In the case of adults, arraignment before a magistrate for determination of probable cause and advice to the arrested person as to his rights, etc., are provided by law and are regarded as fundamental. Cf. Fed.Rules Crim.Proc. 5(a), (b); Mallory v. United States, 354 U.S. 449, 77 S.Ct. 1356, 1 L.Ed.2d 1479. In Harling v. United States, supra, the Court of Appeals for the District of Columbia has stated the basis for this distinction between juveniles and adults as follows:

'It is, of course, because children are, generally speaking, exempt from criminal penalties that safeguards of the criminal law, such as Rule 5 and the exclusionary Mallory rule, have no general application in juvenile proceedings.' 111 U.S.App.D.C., at 176, 295 F.2d, at 163.

In Edwards v. United States, 117 U.S.App.D.C. 383, 384, 330 F.2d 849, 850 (1964) it was said that: '* * * special practices * * * follow the apprehension of a juvenile. He may be held in custody by the juvenile authorities—and is available to investigating officers—for five days before any formal action need be taken. There is no duty to take him before a magistrate, and no responsibility to inform him of his rights. He is not booked. The statutory intent is to establish a non-punitive, non-criminal atmosphere.'

We indicate no view as to the legality of these practices. Cf. Harling v. United States, supra, 111 U.S.App.D.C., at 176, 295 F.2d, at 163, n. 12.

[4] At the time of these events, there was in effect Policy Memorandum No. 7 of November 30, 1959, promulgated by the judge of the Juvenile Court to set forth the criteria to govern disposition of waiver requests. It is set forth in the Appendix. This Memorandum has since been rescinded. See United States v. Caviness, 239 F.Supp. 545, 550 (D.C.D.C.1965).

[5] It should be noted that at this time the statute provided for only one Juvenile Court judge. Congressional hearings and reports attest the impossibility of the burden which he was supposed to carry. See Amending the Juvenile Court Act of the District of Columbia. Hearings before Subcommittee No. 3 of the House Committee on the District of Columbia, 87th Cong., 1st Sess. (1961); Juvenile Delinquency, Hearings before the Subcommittee to Investigate Juvenile Delinquency of the Senate Committee on the Judiciary, 86th Cong., 1st Sess. (1959—1960); Additional Judges for Juvenile Court, Hearing before the House Committee on the District of Columbia, 86th Cong., 1st Sess. (1959); H.R.Rep.No.1041, 87th Cong., 1st Sess. (1961); S.Rep.No.841, 87th Cong., 1st Sess. (1961); S.Rep.No.116, 86th Cong., 1st Sess. (1959). The statute was amended in 1962 to provide for three judges for the court. 76 Stat. 21; D.C.Code s 11—1502 (Supp. IV, 1965).

[6] D.C.Code s 11—914 (1961), now s 11—1553 (Supp. IV, 1965).

[7] On February 5, 1963, the motion to the District Court to constitute itself a Juvenile Court was denied. The motion was renewed orally and denied on February 8, 1963, after the District Court's decision that the indictment should not be dismissed.

[8] The District Court had before it extensive information as to petitioner's mental condition, hearing upon both competence to stand trial and the defense of insanity. The court had obtained the 'Social Service' file from the Juvenile Court and had made it available to petitioner's counsel. On October 13, 1961, the District Court had granted petitioner's motion of October 6 for commitment to the Psychiatric Division of the General Hospital for 60 days. On December 20, 1961, the hospital reported that 'It is the concensus (sic) of the staff that Morris is emotionally ill and severely so * * * we feel that he is incompetent to stand trial and to participate in a mature way in his own defense. His illness has interfered with his judgment and reasoning ability * * *.' The prosecutor opposed a finding of incompetence to stand trial, and at the prosecutor's request, the District Court referred petitioner to St. Elizabeths Hospital for psychiatric observation. According to a letter from the Superintendent of St. Elizabeths of April 5, 1962, the hospital's staff found that petitioner was 'suffering from mental disease at the presen time, Schizophrenic Reaction, Chronic Undifferentiated Type,' that he had been suffering from this disease at the time of the charged offenses, and that 'if committed by him (those criminal acts) were the product of this disease.' They stated, however, that petitioner was 'mentally competent to understand the nature of the proceedings against him and to consult properly with counsel in his own defense.'

[9] D.C.Code s 24—301 (1961).

[10] The basis for this distinction—that petitioner was 'sane' for purposes of the housebreaking and robbery but 'insane' for the purposes of the rape—apparently was the hypothesis, for which there is some support in the record, that the jury might find that the robberies had anteceded the rapes, and in that event, it might conclude that the housebreakings and robberies were not the products of his mental disease or defect, while the rapes were produced thereby.

[11] Petitioner filed a petition for rehearing en banc, but subsequently moved to withdraw the petition in order to prosecute his petition for certiorari to this Court. The Court of Appeals permitted withdrawal. Chief Judge Bazelon filed a dissenting opinion in which Circuit Judge Wright joined. 119 U.S.App.D.C., at 395, 343 F.2d, at 264 (1964).

[12] Cf. Harling v. United States, 111 U.S.App.D.C. 174, 295 F.2d 161 (1961); Bynum v. United States, 104 U.S.App.D.C. 368, 262 F.2d 465 (1958). It is not clear from the record whether the fingerprints used were taken during the detention period or were those taken while petitioner was in custody in 1959, nor is it clear that petitioner's counsel objected to the use of the fingerprints.

[13] Petitioner also urges that the District Court erred in the following respects:

(1) It gave the jury a version of the 'Allen' charge. See Allen v. United States, 164 U.S. 492, 17 S.Ct. 154, 41 L.Ed. 528.

(2) It failed to give an adequate and fair competency hearing.

(3) It denied the motion to constitute itself a juvenile court pursuant to D.C.Code s 11—914 (1961), now s 11—1553. (Supp. IV, 1965.)

(4) It should have granted petitioner's motion for acquittal on all counts, n.o.v., on the grounds of insanity.

We decide none of these claims.

[14] The statute is set out at p. 1050, supra.

[15] 'What is required before a waiver is, as we have said, 'full investigation.' * * * It prevents the waiver of jurisdiction as a matter of routine for the purpose of easing the docket. It prevents routine waiver in certain classes of alleged crimes. It requires a judgment in each case based on 'an inquiry not only into the facts of the alleged offense but also into the question whether the parens patriae plan of procedure is desirable and proper in the particular case.' Pee v. United States, 107 U.S.App.D.C. 47, 50, 274 F.2d 556, 559 (1959).' Green v. United States, supra, at 350, 308 F.2d, at 305.

[16] See Watkins v. United States, 119 U.S.App.D.C. 409, 413, 343 F.2d 278, 282 (1964); Black v. United States, 122 U.S.App.D.C. 393, 355 F.2d 104 (1965).

[17] D.C.Code s 22—2801 (1961) fixes the punishment for rape at 30 years, or death if the jury so provides in its verdict. The maximum punishment for housebreaking is 15 years, D.C.Code s 22—1801 (1961); for robbery it is also 15 years, D.C.Code s 22—2901 (1961).

[18] The jurisdiction of the Juvenile Court over a child ceases when he becomes 21. D.C.Code s 11—907 (1961), now s 11—1551 (Supp. IV, 1965).

[19] All States have juvenile court systems. A study of the actual operation of these systems is contained in Note, Juvenile Delinquents: The Police, State Courts, and Individualized Justice, 79 Harv.L.Rev. 775 (1966).

[20] See Handler, The Juvenile Court and the Adversary System: Problems of Function and Form, 1965 Wis.L.Rev. 7.

21 Pee v. United States, 107 U.S.App.D.C. 47, 274 F.2d 556 (1959).

22 See Pee v. United States, supra, at 54, 274 F.2d, at 563; Paulsen, Fairness to the Juvenile Offender, 41 Minn.L.Rev. 547 (1957).

23 Cf. Harling v. United States, 111 U.S.App.D.C. 174, 177, 295 F.2d 161, 164 (1961).

24 See Handler, op. cit. supra, note 20; Note, supra, note 19; materials cited in note 5, supra.

25 See brief of amicus curiae. 16—2313, 11—1586 (Supp. IV, 1965).

26 These are now, without substantial changes, ss 11—1551, 16—2307, 16—2308, 16—2313, 11—1586 (Supp. IV, 1965).

27 While we 'will not ordinarily review decisions of the United States Court of Appeals (for the District of Columbia Circuit), which are based upon statutes * * * limited (to the District) * * *,' Del Vecchio v. Bowers, 296 U.S. 280, 285, 56 S.Ct. 190, 192, 80 L.Ed. 229, the position of that court, as we discuss infra, is self-contradictory. Nor have we deferred to decisions on local law where to do so would require adjudication of difficult constitutional questions. See District of Columbia v. Little, 339 U.S. 1, 70 S.Ct. 468, 94 L.Ed. 599.

28 The panel was composed of Circuit Judges Miller, Fahy and Burger. Judge Fahy concurred in the result. It appears that the attack on the regularity of the waiver of jurisdiction was made 17 years after the event, and that no objection to waiver had been made in the District Court.

29 Bazelon, C.J., and Fahy and Leventhal, JJ.

30 Under the statute, the Juvenile Court has power by rule or order, to subject the examination of the social records to conditions which will prevent misuse of the information. Violation of any such rule or order, or disclosure of the information 'except for purposes for which * * * released,' is a misdemeanor. D.C.Code s 11—929 (1961), now, without substantial change, s 11—1586 (Supp. IV, 1965).

31 In Watkins, the Court of Appeals seems to have permitted withholding of some portions of the social record from examination by petitioner's counsel. To the extent that Watkins is inconsistent with the standard which we state, it

cannot be considered as controlling.

32 It also appears that the District Court requested and obtained the Social Service file and the probation staff's report of September 8, 1961, and that these were made available to petitioner's counsel. This did not cure the error of the Juvenile Court. Perhaps the point of it is that it again illustrates the maxim that while nondisclosure may contribute to the comfort of the staff, disclosure does not cause heaven to fall.

33 Petitioner is in St. Elizabeths Hospital for psychiatric treatment as a result of the jury verdict on the rape charges.

34 We do not deem it appropriate merely to vacate the judgment and remand to the Court of Appeals for reconsideration of its present decision in light of its subsequent decisions in Watkins and Black, supra. Those cases were decided by different panels of the Court of Appeals from that which decided the present case, and in view of our grant of certiorari and of the importance of the issue, we consider it necessary to resolve the question presented instead of leaving it open for further consideration by the

KeyCite Yellow Flag - Negative Treatment
Distinguished by Lane v. Jones, 5th Cir.(Ga.), October 2, 1980

556 F.2d 781
United States Court of Appeals,
Fifth Circuit.

Wayne WOODARD, Petitioner-Appellant,
v.
Louis L. WAINWRIGHT, Respondent-Appellee.
Eddie BELL, Petitioner-Appellant,
v.
Louis L. WAINWRIGHT, Secretary of Department of Offender Rehabilitation, Respondent-Appellee.

Nos. 76-3418, 76-3664.
|
July 29, 1977.

Synopsis
The United States District Courts for the Middle and Southern Districts of Florida, George C. Young and Charles B. Fulton, Chief Judges, denied separate applications for writs of habeas corpus, and petitioners appealed. The Court of Appeals, James Lawrence King, District Judge, sitting by designation, held that state prosecutor may properly select which juveniles he intends to seek indictments against, even though his success in certain cases may operate to divest juvenile court of jurisdiction, and thus Florida statute divesting juvenile court of jurisdiction over offenders indicted by grand jury for crimes punishable by death or life imprisonment is not unconstitutional in failing to require hearing before a juvenile can be tried as an adult.

Affirmed.

Procedural Posture(s): On Appeal.

West Headnotes (8)

[1] Infants Nature of crime or offense

Treatment as a juvenile is not inherent right but one granted by state legislature, which may therefore restrict or qualify that right as it sees fit, as long as no arbitrary or discriminatory classification is involved.

41 Cases that cite this headnote

[2] Constitutional Law Criminal law

Legislative classification set forth in Florida statute, which granted to certain persons age 18 or younger the right to be charged and tried as juveniles but which did not grant that right to persons indicted by grand jury for crimes punishable by life imprisonment or death, was entitled to strong presumption of validity and could be set aside only if no grounds could be conceived to justify it. West's F.S.A. § 39.001 et seq.

7 Cases that cite this headnote

[3] Infants Juvenile transfers and certifications; adult prosecution

Florida Legislature, which enacted statute granting to certain persons age 18 or younger right to be charged and tried as juveniles but which did not grant that right to persons indicted by grand jury for crimes punishable by life imprisonment or death, was entitled to conclude that parens patriae function of juvenile system would not work for certain juveniles, or that society demanded greater protection from these offenders than that provided by that system. West's F.S.A. §§ 39.001(1), 39.02(1), (5)(c).

16 Cases that cite this headnote

[4] Constitutional Law Transfer to and from adult court

Failure to afford 16-year-old petitioners, who were indicted as adults under Florida statute which automatically divests juvenile courts of

their normal jurisdiction over juveniles upon latter's indictment by grand jury for offenses punishable by death or life imprisonment, who had never been "given" right to juvenile treatment in any realistic sense, and who did not have any "brutal need" to be treated as juveniles since Florida system of adult justice was well appointed in accoutrements of due process, a hearing did not violate their due process rights. West's F.S.A. § 39.02(1), (5)(a–c); West's F.S.A.Const. art. 1, § 15(b).

14 Cases that cite this headnote

[5] **Infants** Right to juvenile prosecution or treatment

Since juvenile treatment is a creation of state legislatures, permitting state prosecutors to employ their discretion to seek indictments against those juveniles who have allegedly committed serious crimes results in no federal constitutional infirmity. West's F.S.A. § 39.02(5)(c).

16 Cases that cite this headnote

[6] **Federal Courts** State or federal matters in general

Question whether delegation from a state legislature to a state attorney is invalid as vague and overbroad seems to be, in absence of federal constitutional problems, a state question.

1 Case that cites this headnote

[7] **Infants** Juvenile transfers and certifications; adult prosecution

State prosecutor may properly select which juveniles he intends to seek indictments against, even though his success in certain cases may operate to divest juvenile court of jurisdiction, and thus Florida statute which divests juvenile court of jurisdiction over offenders indicted by grand jury for crimes punishable by death or life imprisonment is not unconstitutional in failing to require hearing before a juvenile can be tried as an adult. West's F.S.A. § 39.02(5)(c).

13 Cases that cite this headnote

[8] **Infants** Right to juvenile prosecution or treatment

There is no specific constitutional right to juvenile treatment in a state's criminal justice system.

11 Cases that cite this headnote

Attorneys and Law Firms

***782** Craig S. Barnard, Asst. Public Defender, 15th Judicial Circuit of Florida, Richard L. Jorandby, Public Defender, West Palm Beach, Fla., for Woodard and Bell.

Robert L. Shevin, Atty. Gen., Anthony J. Golden, Asst. Atty. Gen., West Palm Beach, Fla., for Wainwright in both cases.

Richard P. Zaretsky, Asst. Atty. Gen. (Dept. of Legal Affairs), West Palm Beach, Fla., for Wainwright in 76-3418.

Appeal from the United States District Court for the Southern District of Florida.
Appeal from the United States District Court for the Middle District of Florida.

Before MORGAN and RONEY, Circuit Judges, and KING,* District Judge.

Opinion

JAMES LAWRENCE KING, District Judge:

In these cases we review orders of two United States District Courts denying separate applications for writs of habeas corpus pursuant to 28 U.S.C. Section 2254. Both cases present the single issue of the constitutionality of Fla.Stat. Section 39.02(5)(c) which automatically divests Florida Juvenile Courts from their normal jurisdiction over juveniles upon the latter's indictment by a grand jury for offenses punishable by death or life imprisonment.[1]

Petitioner Woodard was indicted as an adult for false imprisonment, assault and robbery, the latter offense punishable by imprisonment for life.[2] At the time Woodard was indicted by the grand jury, he was 16 years of age and would normally have been treated as a juvenile.[3] He unsuccessfully challenged, in the trial court, the constitutionality of Section 39.02(5)(c) which authorized the state to indict and try him as an adult. Subsequently, Woodard pleaded guilty to the robbery charge and was sentenced as an adult to five years in the Division of Corrections. The conviction was affirmed by the Florida Supreme Court,[4] and Woodard's habeas petition was denied by the District Court for the Southern District of Florida.

Petitioner Bell was 16 years old when he was indicted by a grand jury for one count of robbery. He pleaded guilty to assault ***783** with intent to commit robbery, an offense punishable by up to 20 years imprisonment,[5] and received a sentence of six months to 15 years. The District Court of Appeal affirmed Bell's conviction and upheld the constitutionality of Section 39.02(5)(c).[6] Bell petitioned the Middle District of Florida for habeas corpus relief. That court correctly decided that Bell's failure to appeal to the Florida Supreme Court did not amount to a failure to exhaust state remedies, because controlling state precedent[7] made such an appeal futile.[8] The habeas petition was denied, and Bell appealed.

In Chapter 39, Florida Statutes (1975), the Florida legislature enacted a comprehensive procedure for the treatment of offenders 18 years of age or younger.[9] The Juvenile Division of the Circuit Court is given "exclusive original jurisdiction of proceedings in which a child is alleged to be dependent, delinquent, or in need of supervision." Fla.Stat. s 39.02(1) (1975). There are three exceptions to this exclusive original jurisdiction which provide for treatment of a juvenile as an adult. Under the first exception, a child 14 years of age or older may be certified for trial as an adult by a juvenile judge following a waiver hearing.[10] s 39.02(5)(a). Or a child may, joined by his parent or guardian, demand to be tried as an adult. s 39.02(5)(b). Finally, "(a) child of any age charged with a violation of Florida law punishable by death or life imprisonment" shall be tried as an adult "(if) an indictment on such charge is returned by the grand jury". s 39.02(5)(c). It is the constitutionality of the third exception that is challenged on appeal.

In essence petitioners assert that Section 39.02(5)(c) is unconstitutional because the decision to treat a juvenile offender as an adult should not be made without a hearing, with attendant right to counsel, confrontation of adverse witnesses, and findings of fact by a judge. In contrast to Section 39.02(5)(a) which provides for a hearing, Section 39.02(5)(c) requires only that a grand jury returned an indictment on a serious charge, whereupon the juvenile is automatically removed from the jurisdiction of the Juvenile Court. A prosecutor in the exercise of his discretion, may seek such an indictment against a juvenile, and if he is successful, the juvenile will be treated as an adult.

Petitioners argue that this automatic waiver of juvenile jurisdiction resulting from a grand jury indictment violates the due process standards mandated by the Supreme Court in Kent v. United States, 383 U.S. 541, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966). They assert that those standards include a hearing with right to counsel, confrontation, and findings of fact.

In Kent, a minor in custody admitted several incidents of housebreaking, robbery and rape. The Juvenile Court for the District of Columbia waived jurisdiction without hearing and ordered the defendant tried as an adult. A statute then in force in the District of Columbia permitted such waivers "after full investigation" for minors over sixteen charged with felonies.[11] The defendant's conviction as an adult in the District Court was affirmed by the Court of Appeals, but the Supreme Court reversed, holding that the "critical question" of whether a minor should be treated as an adult should not be answered without

***784** a hearing, including access by his counsel to the social records and probation or similar reports . . . and to a statement of reasons for the Juvenile Court's decision. We believe that this result is required by the statute read in the context of constitutional principles relating to due process and the assistance of counsel. 383 U.S. at 557, 86 S.Ct. at 1055, 16 L.Ed.2d at 95 (footnote omitted).

The exact basis for this holding is not clear; however, as we noted in Brown v. Wainwright, 537 F.2d 154, 155 n. 1 (5th Cir. 1976),

> (a)lthough the Supreme Court does not make explicit whether its holding in Kent is based on the District of Columbia statute involved in that case or on a constitutional mandate, courts have interpreted Kent to hold that the requirement of counsel at a juvenile waiver hearing is constitutionally required. (citing cases)

There is support for this interpretation in Kent where the Court said, "we do hold that the hearing (to be held) must measure up to the essentials of due process and fair treatment." 383 U.S. at 562, 86 S.Ct. at 1057, 16 L.Ed.2d at 97-98 (citation omitted). However, it remains unclear whether the hearing required in Kent was constitutionally mandated or whether it was based on the "full investigation" requirement of the former District of Columbia Statute.

In any event, we do not have to decide that issue because Kent is distinguishable from the instant case. Kent concerned a statutory duty by a juvenile court judge to investigate and hear matters relevant to the waiver of juvenile jurisdiction, whereas this case concerns the prosecutor's discretionary act to present his case to a grand jury.[12]

Facing the Kent decision, several of our sister circuits have upheld the constitutionality of statutes similar to Florida's which permit juveniles to be treated as adults without a hearing in certain instances. In United States v. Bland, 153 U.S.App.D.C. 254, 472 F.2d 1329 (1972), cert. denied, 412 U.S. 909, 93 S.Ct. 2294, 36 L.Ed.2d 975 (1973), the District of Columbia Court of Appeals upheld the constitutionality of a new District of Columbia Juvenile Code which permitted a prosecutor, for certain enumerated offenses, to charge juvenile offenders as adults without need for a hearing. Then in Cox v. United States, 473 F.2d 334 (4th Cir.), cert. denied, 414 U.S. 869, 94 S.Ct. 183, 38 L.Ed.2d 116 (1973), the Fourth Circuit held that the decision by a United States Attorney to charge a juvenile as an adult was "a prosecutorial decision beyond the reach of the due process rights of counsel and a hearing." 473 F.2d at 335. The panel in United States v. Quinones, 516 F.2d 1309 (1st Cir.), cert. denied, 423 U.S. 852, 96 S.Ct. 97, 46 L.Ed.2d 76 (1975), agreed with Cox that "the Attorney General (can) decide whether to proceed against a juvenile as an adult (without) a due process hearing." 516 F.2d at 1311. Finally, in Russel v. Parratt, 543 F.2d 1214 (8th Cir. 1976), the Eighth Circuit agreed that under the "widely accepted concept of prosecutorial discretion, which derives from the constitutional principle of separation of powers(,)" a Nebraska statute permitting a minor to be charged either as an adult or a juvenile was not unconstitutional. 543 F.2d at 1216. Nor have state courts been inclined to find that juvenile jurisdiction waiver statutes without provision for a hearing are necessarily unconstitutional in view of Kent.[13]

***785** [1] [2] [3] We are persuaded by respondents' argument that treatment as a juvenile is not an inherent right but one granted by the state legislature, therefore the legislature may restrict or qualify that right as it sees fit, as long as no arbitrary or discriminatory classification is involved.[14] Chapter 39, Florida Statutes, grants to certain persons age eighteen or younger the right to be charged and tried as juveniles. The section does not grant that right to persons indicted by the grand jury for crimes punishable by life imprisonment or death. This is a legislative classification "entitled to a strong presumption of validity (which) may be 'set aside only if no grounds can be conceived to justify (it).' "[15] No showing has been made that the classification is arbitrary or discriminatory. Doubtless the Florida legislature considered carefully the rise in the number of crimes committed by juveniles as well as the growing recidivist rate among this group.[16] The legislature was entitled to conclude that the parens patriae function of the juvenile system would not work for certain juveniles,[17] or that society demanded greater protection from these offenders than that provided by that system. We should not second-guess this conclusion.

Petitioners argue, however, that although the right to juvenile treatment is a legislative gift, once given it is an important right that cannot be taken without due process safeguards. In Goldberg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970), the Supreme Court held that the important right to receive welfare benefits from state and federal sources, so long as the recipient had a "brutal need" for those benefits, could not be removed by city authorities without a due process hearing. The Court retreated somewhat from the Goldberg posture, however, in Mathews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), holding that due process did not require an evidentiary hearing before Social Security disability benefits could be terminated. There the Court adopted a more "flexible" view of due process, one which balances the public and private interests involved.

[4] In the first place, we do not believe that petitioners have ever been " given" the right to juvenile treatment in any realistic sense.[18] They argue that Section 39.02(1), vesting exclusive original jurisdiction in the Juvenile Division of "proceedings in which a child is alleged to be . . . delinquent(,)" gives them an absolute right to juvenile

treatment, which then cannot be divested without a hearing. The entire statute, however, must be read as a whole, and express limitations of jurisdiction are contained in Sections 39.02(5)(a), (b) and (c). Therefore, the statute clearly limits jurisdiction from the start. It is true that these same petitioners might have been treated as juveniles in previous encounters with the law, but everyone outgrows juvenile treatment sooner or later; these petitioners, through acts alleged or admitted, have just outgrown it sooner.

Furthermore, although we agree that juvenile treatment is an "important right" which may imply a lighter sentence or preferential treatment, we cannot agree that petitioners have any "brutal need" to be ***786** treated as juveniles. Certainly the system of adult justice in Florida is well appointed in the accoutrements of due process. Also, under the balancing of public and private interests approved in Eldridge, we cannot conclude that due process has been violated, especially because in the instant case it was the Florida legislature, not the Department of Health, Education and Welfare, who declared, in a presumptively convincing voice, where the public interest lies.

[5] Petitioners argue further that even if the legislature possessed the power to enact Section 39.02(5)(c), that section is unconstitutional as an invalid and overbroad delegation of legislative authority to the prosecutor. The statute contains no guidelines a prosecutor may apply in determining whether to seek an indictment as an adult against a given juvenile offender. In light of our previous holding that juvenile treatment is a creation of state legislatures, we find no federal constitutional infirmity in permitting state prosecutors to employ their discretion to seek indictments against those juveniles who have allegedly committed serious crimes.

We note first, however, that the Florida procedure in question is a poor example of unbridled prosecutorial discretion, because if the evidence presented does not support an indictment of an offense punishable by death or life imprisonment, presumably no indictment will be issued by the grand jury, and the juvenile will remain under juvenile jurisdiction. This evidentiary requirement constrains the vehement prosecutor who might otherwise attempt to defeat juvenile jurisdiction through a single unsupportable charge of a life-imprisonment offense embedded within a group of supportable charges of lesser offenses.

[6] Furthermore, the question of whether delegation from a state legislature to a state attorney is invalid as vague and overbroad seems to be, in the absence of federal constitutional problems, a state question. On this question the Supreme Court for the State of Florida has spoken in Johnson v. State, 314 So.2d 573 (Fla.1975), upholding Section 39.02(5)(c) under the federal and Florida constitutions. The court specifically rejected a delegation challenge to the statute on the grounds that prosecutorial discretion was traditionally broad and not in need of standards:

> In both the adult and juvenile divisions of our court system, the State Attorney is the prosecuting officer. In any particular case he may elect to prosecute or not. The prosecutorial discretion to which the appellant objects is no more than that which is inherent in our system of criminal justice. 314 So.2d at 577.

[7] [8] Approval of broad prosecutorial authority did not begin in Johnson. In United States v. Bland, 153 U.S.App.D.C. 254, 472 F.2d 1329, 1335, 1337 (1972), the court held:

> We cannot accept the hitherto unaccepted argument that due process requires an adversary hearing before the prosecutor can exercise his age-old function of deciding what charge to bring against whom. Grave consequences have always flowed from this, but never has a hearing been required."

Similar holdings were expressed in Cox v. United States, 473 F.2d 334 (4th Cir. 1973), and Russel v. Parratt, 543 F.2d 1214 (8th Cir. 1976). In Russel, the court quoted the reasoning in Bland thus:

> (A)ppellee's assertion . . . that the exercise of the discretion vested by Section 2301(3)(A) in the United States Attorney to charge a person 16 years of age or older with certain enumerated offenses, thereby initiating that person's prosecution as

> an adult, violates due process ignores the long and widely accepted concept of prosecutorial discretion, which derives from the constitutional principle of separation of powers. 543 F.2d at 1216.

We agree and hold that a state prosecutor may properly select which juveniles he intends to seek indictments against, even though his success in certain cases may ***787** operate to divest the juvenile court of jurisdiction.[19]

Accordingly, we hold that Section 39.02(5)(c), Florida Statutes, divesting the juvenile court of jurisdiction over offenders indicted by a grand jury for crimes punishable by death or life imprisonment, is not unconstitutional in failing to require a hearing before a juvenile can be tried as an adult.

AFFIRMED.

All Citations

556 F.2d 781

Footnotes

* District Judge, Southern District of Florida sitting by designation.

1 Fla.Stat. s 39.02(5)(c) provides as follows:

A child of any age charged with a violation of Florida law punishable by death or by life imprisonment shall be subject to the jurisdiction of the court as set out in s 39.06(7) unless and until an indictment on such charge is returned by the grand jury, in which event and at which time the court shall be divested of jurisdiction under this statute and the charge shall be made and the child shall be handled in every respect as if he were an adult. No adjudicatory hearing shall be held within fourteen days from the date that the child is taken into custody unless the state attorney advises the court in writing that he does not intend to present the case to the grand jury or that he has presented it to the grand jury but that that the grand jury has declined to return an indictment. Should the court receive such a notice from the state attorney, or should the grand jury fail to act within the fourteen-day period, the court may proceed as otherwise required by law.

2 Fla.Stat. s 813.011 (1973).

3 The Juvenile Division normally has jurisdiction of offenders under eighteen years of age. Fla.Stat. ss 39.02(1), 39.01(6).

4 Bowen v. State, 328 So.2d 199 (Fla.1976) (per curiam).

5 Fla.Stat. s 784.06 (1973).

[6] Bell v. State, 316 So.2d 301 (4th D.C.A.Fla.1975) (per curiam).

[7] Johnson v. State, 314 So.2d 573 (Fla.1975), explicitly upheld the constitutionality of Fla.Stat. s 39.02(5)(c) (1975).

[8] On the propriety of the District Court's action, see United States ex rel. Reis v. Wainwright, 525 F.2d 1269 (5th Cir. 1976).

[9] Fla.Stat. s 39.01(6) (1975).

[10] Fla.Stat. s 39.01(26) (1975) provides as follows:

"Waiver hearing" means a hearing at which the court determines whether it shall continue to exercise the jurisdiction given it by this statute over the child alleged to be delinquent or waive that jurisdiction in order that the state may proceed against the child as it would were he an adult.

[11] D.C.Code s 11-914 (1961).

[12] Other courts have distinguished Kent thus: see, e. g., Russel v. Parratt, 543 F.2d 1214, 1217 (8th Cir. 1976) ("(W)e cannot equate the prosecutorial decision with judicial proceedings, absent legislative direction.") (footnote omitted); Cox v. United States, 473 F.2d 334, 335 (4th Cir. 1973) (Prosecutorial decisions have no tradition, as do judicial decisions, that a hearing must be given before decision is rendered.)

[13] E. g., Myers v. District Court, 184 Colo. 81, 518 P.2d 836 (1974); Johnson v. State, 314 So.2d 573 (Fla.1975); People v. Sprinkle, 56 Ill.2d 257, 307 N.E.2d 161 (1974); State v. Sherk, 217 Kan. 726, 538 P.2d 1399 (1975); Jackson v. State, 311 So.2d 658 (Miss.1975); State v. Grayer, 191 Neb. 523, 215 N.W.2d 859 (1974); People v. Drayton, 39 N.Y.2d 580, 385 N.Y.S.2d 1, 350 N.E.2d 377 (1976); contra, People v. Fields, 388 Mich. 66, 199 N.W.2d 217, on reh., 391 Mich. 206, 216 N.W.2d 51 (1974).

[14] See, e. g., Lamb v. Brown, 456 F.2d 18 (10th Cir. 1972) (holding an Oklahoma statute unconstitutional because of a sex-based discriminatory provision allowing male youths 16 and 17 years old to be prosecuted as adults while requiring that females of the same ages be treated as juveniles unless certified to be tried as adults).

[15] United States v. Bland, 153 U.S.App.D.C. 254, 472 F.2d 1329, 1333-34 (1972).

16 See id., 472 F.2d at 1334.

17 The Florida legislature has declared that one of the purposes of the juvenile system is to "substitut(e) for retributive punishment methods of training and treatment directed toward the correction and rehabilitation of children who violate the laws . . . ." Fla.Stat. s 39.001(1) (1975).

18 Under the Florida Constitution, "(w)hen authorized by law, a child as therein defined may be charged . . . and tried (as a juvenile)." Fla.Const. Art. I s 15(b) (emphasis supplied). The provision clearly leaves to the legislature the power to confer the right to juvenile treatment.

19 There are of course limits to prosecutorial discretion. When a prosecutor's discretionary action infringes upon or usurps a constitutionally mandated function of a magistrate, for instance, such discretion has been held unconstitutional. Shadwick v. City of Tampa, 407 U.S. 345, 92 S.Ct. 2119, 32 L.Ed.2d 783 (1972) (prosecutor's discretionary determination of probable cause for issuance of an arrest warrant invalid;) Gerstein v. Pugh, 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975) (prosecutor's discretionary determination of probable cause to detain accused awaiting trial invalid). In those cases the petitioners had a specific constitutional right to have probable cause tested by a neutral and detached magistrate. In this case, as we now hold, there is no specific constitutional right to juvenile treatment in a state's criminal justice system.

IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-591

No. COA19-1171

Filed 2 November 2021

Mecklenburg County No. 15 CRS 245691-92

STATE OF NORTH CAROLINA

v.

HALO GARRETT, Defendant.

Appeal by the State from order entered 19 September 2019 by Judge Donnie Hoover in Mecklenburg County Superior Court. Heard in the Court of Appeals 9 September 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Kimberly N. Callahan, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender David W. Andrews, for defendant-appellee.

MURPHY, Judge.

¶ 1 On a motion to dismiss pursuant to N.C.G.S. § 15A-954(a)(4), a defendant bears the burden of showing his constitutional rights were flagrantly violated, causing irreparable prejudice to the preparation of his case that can only be remedied by dismissal of the prosecution. Here, Defendant cannot show that he experienced any flagrant violation of his constitutional rights, and as such he was not irreparably prejudiced. We reverse the trial court's order dismissing Defendant's charges and

remand to the trial court.

BACKGROUND

¶ 2 Defendant Halo Garrett was born on 24 September 1999. On 13 December 2015, Defendant, at sixteen years old, allegedly broke into a home and stole several items.

¶ 3 On 24 October 2016, Defendant was charged in Mecklenburg County Superior Court as an adult pursuant to the then effective version of N.C.G.S. § 7B-1604(a) with felonious breaking or entering and larceny after breaking or entering, both Class H felonies. *See* N.C.G.S. § 7B-1604(a) (2015) ("Any juvenile, including a juvenile who is under the jurisdiction of the court, who commits a criminal offense on or after the juvenile's sixteenth birthday is subject to prosecution as an adult."). In 2017, after Defendant was charged, the General Assembly passed the Juvenile Justice Reinvestment Act, which changed how and when a juvenile could be prosecuted as an adult in Superior Court.[1] *See* 2017 S.L. 57 § 16D.4(c)-(e). The Juvenile Justice

[1] Most relevant to the facts of this case, the Juvenile Justice Reinvestment Act changed how sixteen-year-old and seventeen-year-old juveniles charged with Class H and Class I felonies could be prosecuted. *Compare* N.C.G.S. § 7B-1604(a) (2015), *with* N.C.G.S. § 7B-2200.5(b) (2019). Prior to the enactment of the Juvenile Justice Reinvestment Act, any juvenile who was sixteen or older when committing an alleged criminal offense was automatically prosecuted as an adult. *See* N.C.G.S. § 7B-1604(a) (2015) ("Any juvenile, including a juvenile who is under the jurisdiction of the court, who commits a criminal offense on or after the juvenile's sixteenth birthday is subject to prosecution as an adult."). After the enactment of the Juvenile Justice Reinvestment Act, the same juveniles are under the jurisdiction of Juvenile Court, and an assessment must be made prior to transferring

Reinvestment Act became effective on 1 December 2019 and does not apply retroactively. *See* 2017 S.L. 57 § 16D.4(tt). Had Defendant's offense date for the same Class H felonies occurred after 1 December 2019, Defendant would have initially been within the jurisdiction of the Juvenile Court[2] and an assessment would have been made to determine if he should be sentenced as an adult in Superior Court. *See* N.C.G.S. §§ 7B-2200.5(b); 7B-2203 (2019). Pursuant to the law at the time of his alleged offense in 2015, Defendant must be tried and potentially sentenced as an adult in Superior Court. *See* N.C.G.S. § 7B-1604(a) (2015).

¶ 4 The case was set for trial in late 2017, but Defendant failed to appear for trial on that date. Due to Defendant's failure to appear, he was arrested in 2019 and his case proceeded towards trial. At a pretrial hearing, Defendant was heard on a *Motion to Dismiss* pursuant to N.C.G.S. § 15A-954(a)(4), alleging flagrant violations of his constitutional rights to equal protection, due process, and protection from cruel and unusual punishment under the United States Constitution and the North Carolina Constitution as a result of being prosecuted as an adult in Superior Court.

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jurisdiction to Superior Court. *See* N.C.G.S. § 7B-2200.5(b) (2019) ("If the juvenile was 16 years of age or older at the time the juvenile allegedly committed an offense that would be a Class H or I felony if committed by an adult, after notice, hearing, and a finding of probable cause, the court may, upon motion of the prosecutor or the juvenile's attorney or upon its own motion, transfer jurisdiction over a juvenile to [S]uperior [C]ourt pursuant to [N.C.G.S. §] 7B-2203."). N.C.G.S. § 7B-2203(b) includes eight factors for the Juvenile Court to consider in determining "whether the protection of the public and the needs of the juvenile will be served by transfer of the case to [S]uperior [C]ourt[.]" *See* N.C.G.S. § 7B-2203(b) (2019).

[2] For ease of reading, we refer to the District Court as "Juvenile Court."

¶ 5 After analyzing the constitutionality of Defendant's prosecution as an adult for crimes he allegedly committed while sixteen years old, the trial court granted Defendant's *Motion to Dismiss* and memorialized its ruling in its *Order Granting Defendant's Motion to Dismiss* ("Order"). The Order included the following "findings of fact":

> 1. Halo Garrett, hereinafter Defendant, is charged with Breaking and/or Entering and Larceny after Breaking and/or Entering in 15CRS245691 and 15CRS245692.
>
> 2. Breaking and/or Entering is a class H felony and Larceny after Breaking and/or Entering is a class H felony.
>
> 3. The State alleges that on [13 December 2015], Defendant broke into the apartment of [the alleged victim] and stole items from within.
>
> 4. Defendant was born on [24 September 1999] and was sixteen at the time of this alleged offense.
>
> 5. Defendant's cases were originally scheduled for trial during the fall of 2017, but Defendant failed to appear for calendar call. The State called the case for trial on [14 August 2019], after Defendant had been arrested on the Order for Arrest from the missed court date.
>
> 6. North Carolina is currently the last state in the country to automatically prosecute sixteen- and seventeen- year-olds as adults.
>
> 7. In 2017, the Juvenile Justice Reinvestment Act passed with bipartisan support. In N.C.G.S. [§] 7B-1601, The Juvenile Justice Reinvestment Act increased the age of [J]uvenile [C]ourt jurisdiction to eighteen effective [1 December 2019]. For class H and I felonies committed by sixteen-year-olds, the court must affirmatively find after

hearing that "the protection of the public and the needs of the juvenile will be served by transfer to [S]uperior [C]ourt;" otherwise the [J]uvenile [C]ourt retains exclusive jurisdiction.

8. Despite Defendant's age at the time of the alleged offense, he is not eligible for [J]uvenile [C]ourt under N.C.G.S. [§] 7B-1601 because the law does not go into effect until [1 December 2019].

9. In juvenile transfer hearings, the court must consider eight factors in determining whether a case should remain in [J]uvenile [C]ourt or be transferred to adult court. Those eight factors are the age of the juvenile, the maturity of the juvenile, the intellectual functioning of the juvenile, the prior record of the juvenile, prior attempts to rehabilitate the juvenile, facilities or programs available to the court prior to the expiration of the court's jurisdiction and the potential benefit to the juvenile of treatment or rehabilitation, the manner in which the offense was committed, and the seriousness of the offense and protection of the public.

10. In a 2015 report issued by the North Carolina Commission on the Administration of Law, the Commission compared adult and juvenile criminal proceedings. Juveniles prosecuted in adult court face detention in jail and the heightened risk of sexual violence posed to youthful inmates, no requirement of parental notice or involvement, active time in adult prison, risk of physical violence, public records of arrest, prosecution and conviction, and collateral consequences imposed by a conviction. Juvenile [C]ourt, on the other hand, requires an evaluation of a complaint that includes interviews with juveniles and parents, mandatory parental involvement, individualized consequences, treatment, training and rehabilitation, monthly progress meetings, and a confidential record of delinquency proceedings.

11. Defendant alleged that his constitutional rights have

been flagrantly violated and that there is such irreparable prejudice to Defendant's preparation of his case that there is no remedy but to dismiss the prosecution under N.C.G.S. [§] 15A-954(a)(4).

12. Defendant alleged three grounds under which his constitutional rights have been violated. Each ground would be sufficient for dismissal under N.C.G.S. [§] 15A-954(a)(4). The three grounds are cruel and unusual punishment under the [Eighth] Amendment, violation of Defendant's due process rights, and a violation of Defendant's equal protection rights. Defendant asserted his rights under the corresponding provisions of the North Carolina Constitution as stated in his Motion.

13. Defendant alleged that his [Eighth] Amendment rights have been violated in that his prosecution in adult court for an offense allegedly committed when he was sixteen constitutes cruel and unusual punishment.

14. The [Eighth] Amendment draws its meaning from the evolving standards of decency that mark the progress of a maturing society.

15. The [United States] Supreme Court has addressed the treatment of juveniles in the criminal justice system in a recent line of cases.

16. In its analysis in this line of cases, the Court looked to the consensus of legislative action in states around the country because consistency in the direction of change is powerful evidence of evolving standards of decency.

17. Every state in the country to have addressed the age of juvenile prosecution has raised the age, not lowered it or left it the same.

18. The Supreme Court held in *Roper v. Simmons*, 543 U.S. 551 (2005) that American society views juveniles as categorically less culpable than adult offenders due to their

lack of maturity and underdeveloped sense of responsibility, vulnerability to negative influences and outside pressures, and malleable character.

19. In *Roper*, the Court held that in regard to juveniles, the death penalty did not serve its intended aims of deterrence or retribution.

20. In *Graham v. Florida*, 560 U.S. 48 (2010), the Court held that juveniles convicted of non-homicidal offenses should not be sentenced to life without parole.

21. In *Miller v. Alabama*, 567 U.S. 460 (2012), the Supreme Court held that sentencing juvenile defendants to mandatory life in prison without parole violated the [Eighth] Amendment.

22. In *Montgomery v. Louisiana*, 577 U.S. ___ (2016), the Supreme Court held that *Miller* applied retroactively to defendants sentenced to life without parole prior to 2012 and that hearings could be conducted in these cases to consider eligibility for parole status.

23. The [caselaw] discussed in the Report and in the cases cited heavily on scientific research. The scientific research indicates that the development of neurobiological systems in the adolescent brain cause teens to engage in greater risk-taking behavior; that teenage brains are not mature enough to adequately govern self-regulation and impulse control; that teens are more susceptible to peer influence than adults; that teens have a lesser capacity to assess long-term consequences; that as teens mature, they become more able to think to the future; and that teens are less responsive to the threat of criminal sanctions.

24. Defendant alleges that his due process rights have been violated in that he has been automatically prosecuted in adult criminal court without a hearing and findings in support of transfer.

25. As of [1 December 2019], North Carolina will no longer permit a sixteen-year-old charged with class H felonies to be automatically prosecuted, tried and sentenced as an adult.

26. In *Kent v. United States*, 383 U.S. 541 (1966), the Supreme Court held that the process of transferring a juvenile to adult court is one with such tremendous consequences that it should require attendant ceremony such as a hearing, assistance of counsel, and a statement of reasons.

27. Defendant alleges that his right to equal protection under the Constitution has been violated.

28. The Equal Protection clause of the Constitution protects against disparity in treatment by a State between classes of individuals with largely indistinguishable circumstances.

29. Legislation is presumed valid and will be sustained if classification is rationally related to a legitimate state interest.

30. A criminal statute is invalid under the NC Constitution if it provides different punishment for the same acts committed under the same circumstances by persons in like situations.

31. There is no rational basis for distinguishing between automatic prosecution and punishment of Defendant in adult court now and punishment of a sixteen-year-old after [1 December 2019].

32. Each of the constitutional violations raised by Defendant and found by the [trial court] have caused irreparable prejudice to Defendant in that the State has denied Defendant the age-appropriate procedures of [J]uvenile [C]ourt and, correspondingly, exposed him to the more punitive direct and collateral consequences of adult

court.

¶ 6 The Order included the following "conclusions of law":

> 1. The holding in *State v. Wilkerson*, [232 N.C. App. 482, 753 S.E.2d 829] (2014), is not controlling and the underlying rationale is not applicable to the case at bar.
>
> 2. That Defendant is not covered by the [Juvenile Justice Reinvestment Act] in North Carolina; however, based upon the same reasoning that went into the [Juvenile Justice Reinvestment Act], "evolving standards of decency," and the reasoning contained in the cases cited by [] Defendant, that his prosecution in adult court violates his rights.
>
> 3. By his being prosecuted as an adult in this case, Defendant's [Eighth] Amendment right against cruel and unusual punishment is being violated.
>
> 4. By his being prosecuted as an adult in this case, Defendant's right to due process is being violated.
>
> 5. By his being prosecuted as an adult in this case, Defendant's right to equal protection under the laws is being violated.
>
> 6. Once an equal protection violation has been established, the burden shifts to the State to demonstrate an inability to remedy the violation in a timely fashion.
>
> 7. The State did not meet its burden in this case.
>
> 8. As a result of the continuing attempts to prosecute [] Defendant as an adult in these cases, Defendant's constitutional rights have been flagrantly violated and there is such irreparable prejudice to [] Defendant's preparation of his case that there is no remedy but to dismiss the prosecution pursuant to N.C.G.S. [§] 15A-954.
>
> 9. Defendant is being deprived of his right to be treated as a juvenile, which he was at the time he allegedly committed

> these crimes, with all of the attendant benefits granted to juveniles to reform their lives.
>
> 10. That Assistant District Attorney, on behalf of the State, has had an opportunity to review these FINDINGS OF FACT[], CONCLUSIONS OF LAW AND ORDER.

¶ 7 In the Order, the trial court concluded Defendant's constitutional rights to equal protection, protection from cruel and unusual punishment, and due process were violated by the prosecution of Defendant as an adult. The trial court went on to conclude the loss of the benefits of Juvenile Court irreparably prejudiced the preparation of his case such that dismissal was the only remedy. The State timely appealed in accordance with N.C.G.S. § 15A-1445(a)(1). *See* N.C.G.S. § 15A-1445(a)(1) (2019) (permitting the State to appeal from the Superior Court to the appellate division when "there has been a decision or judgment dismissing criminal charges as to one or more counts").

ANALYSIS

¶ 8 On appeal, the State challenges the trial court's grant of Defendant's *Motion to Dismiss* pursuant to N.C.G.S. § 15A-954(a)(4), contending there were no flagrant violations of Defendant's constitutional rights and no irreparable prejudice to the preparation of his case requiring dismissal. The State challenges Findings of Fact 14-31 and Conclusions of Law 3-9. Some of these challenged findings of fact may be erroneous, or more properly characterized as conclusions of law. However, for the purposes of our analysis we assume, without deciding, that all findings of fact

properly characterized as such were supported by competent evidence. Additionally, we treat any findings of fact that are more properly characterized as conclusions of law as such, rather than as binding findings of fact. *See State v. Campola*, 258 N.C. App. 292, 298, 812 S.E.2d 681, 687 (2018) ("If the trial court labels as a finding of fact what is in substance a conclusion of law, we review that 'finding' *de novo*.").[3] We reverse the Order as Defendant's constitutional rights were not violated, let alone flagrantly violated.

¶ 9 Defendant's *Motion to Dismiss* was made pursuant to N.C.G.S. § 15A-954(a)(4), which reads:

> (a) The court on motion of the defendant must dismiss the charges stated in a criminal pleading if it determines that:
>
> . . . .
>
> (4) The defendant's constitutional rights have been flagrantly violated and there is such irreparable prejudice to the defendant's preparation of his case that there is no remedy but to dismiss the prosecution.

N.C.G.S. § 15A-954(a)(4) (2019). "As the movant, [D]efendant bears the burden of showing the flagrant constitutional violation and of showing irreparable prejudice to the preparation of his case. This statutory provision 'contemplates drastic relief,'

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[3] While other findings of fact in the Order may be properly characterized as conclusions of law, we specifically note that Finding of Fact 31 is more properly characterized as a conclusion of law. *See In re Helms*, 127 N.C. App. 505, 510, 491 S.E.2d 672, 675 (1997) (citations omitted) (holding "any determination requiring the exercise of judgment or the application of legal principles is more properly classified a conclusion of law").

such that 'a motion to dismiss under its terms should be granted sparingly.'" *State v. Williams*, 362 N.C. 628, 634, 669 S.E.2d 290, 295 (2008) (quoting *State v. Joyner*, 295 N.C. 55, 59, 243 S.E.2d 367, 370 (1978)).

¶ 10 In reviewing motions to dismiss made pursuant to N.C.G.S. § 15A-954(a)(4), our Supreme Court has applied the following relevant principles:

> The decision that [a] defendant has met the statutory requirements of N.C.G.S. § 15A-954(a)(4) and is entitled to a dismissal of the charge against him is a conclusion of law. Conclusions of law drawn by the trial court from its findings of fact are reviewable *de novo* on appeal. Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal.

Williams, 362 N.C. at 632-33, 669 S.E.2d at 294 (marks and citations omitted).

¶ 11 In terms of flagrant constitutional violations, the trial court concluded:

> 3. By his being prosecuted as an adult in this case, Defendant's [Eighth] Amendment right against cruel and unusual punishment is being violated.
>
> 4. By his being prosecuted as an adult in this case, Defendant's right to due process is being violated.
>
> 5. By his being prosecuted as an adult in this case, Defendant's right to equal protection under the laws is being violated.

The trial court specifically found that "[e]ach of the constitutional violations raised by Defendant and found by the [trial court] have caused irreparable prejudice to Defendant in that the State has denied Defendant the age-appropriate procedures of

[J]uvenile [C]ourt and, correspondingly, exposed him to the more punitive direct and collateral consequences of adult court." As a result, each of the constitutional violations independently supported the trial court's ruling, and each constitutional violation must be addressed.

A. Equal Protection

¶ 12 Here, the trial court found an equal protection violation based on the lack of a rational basis for treating sixteen-year-old juveniles differently depending on the date of the alleged Class H felony. Sixteen-year-old juveniles alleged to have committed a Class H felony before the effective date of the Juvenile Justice Reinvestment Act, like Defendant, are automatically prosecuted as adults in Superior Court; whereas, sixteen-year-old juveniles alleged to have committed a Class H felony after the effective date of the Juvenile Justice Reinvestment Act are initially prosecuted in Juvenile Court, and then a determination is made as to whether the juvenile should be prosecuted as an adult in Superior Court.

¶ 13 "[T]he Fourteenth Amendment does not forbid statutes and statutory changes to have a beginning, and thus to discriminate between the rights of an earlier and later time." *Sperry & Hutchinson Co. v. Rhodes*, 220 U.S. 502, 505, 55 L. Ed. 561, 563 (1911).

¶ 14 The basis of the alleged equal protection violation here is unpersuasive. In *State v. Howren*, our Supreme Court addressed a claimed equal protection violation

based on "the fact that after 1 January 1985 an individual charged with driving while impaired must [have been] given two chemical breath analyses[,]" whereas at the time of the appeal "only one analysis [was] required, and [the] defendant was only given one breathalyzer test." *State v. Howren*, 312 N.C. 454, 457, 323 S.E.2d 335, 337 (1984). Our Supreme Court held:

> A statute is not subject to the [E]qual [P]rotection [C]lause of the [F]ourteenth [A]mendment of the United States Constitution or [A]rticle I § 19 of the North Carolina Constitution unless it creates a classification between different groups of people. In this case no classification between different groups has been created. All individuals charged with driving while impaired before 1 January 1985 will be treated in exactly the same way as will all individuals charged after 1 January 1985. The statute merely treats the same group of people in different ways at different times. It is applied uniformly to all members of the public and does not discriminate against any group. If [the] defendant's argument were accepted the State would never be able to create new safeguards against error in criminal prosecutions without invalidating prosecutions conducted under prior less protective laws. Article I § 19 and the [E]qual [P]rotection [C]lause do not require such an absurd result.

Id. at 457-58, 323 S.E.2d at 337-38.

¶ 15 Defendant's claimed equal protection violation here is based on the same principle as the claimed equal protection violation our Supreme Court rejected in *Howren*—that treating the same group of people differently at different times constitutes an equal protection violation. Defendant's equal protection rights were

not violated where no classification was created between different groups of people, and we reverse the Order as to the equal protection violation.

B. Cruel and Unusual Punishment

¶ 16 Here, the trial court concluded "[b]y his being prosecuted as an adult in this case, Defendant's [Eighth] Amendment right against cruel and unusual punishment is being violated." Defendant's *Motion to Dismiss* contended his right to be protected from cruel and/or unusual punishment was violated under the North Carolina Constitution and the United States Constitution and stated "our Court 'historically has analyzed cruel and/or unusual punishment claims by criminal defendants the same under both the [F]ederal and [S]tate Constitutions.'" In a footnote in his *Motion to Dismiss*, Defendant contended "North Carolina's 'cruel or unusual' clause is broader than the federal 'cruel and unusual' one[,]" but then stated "[Defendant] is entitled to relief under the narrower 'cruel and unusual' punishment formulation and will focus his arguments there."

¶ 17 We have held:

> Article I, Section 27 of the North Carolina Constitution prohibits the infliction of "cruel *or* unusual punishments." N.C. Const. art. I, § 27. The wording of this provision differs from the language of the Eighth Amendment, which prohibits the infliction of "cruel *and* unusual punishments." U.S. Const. amend. VIII.
>
> Despite this difference in the wording of the two provisions, however, our Supreme Court historically has analyzed

> cruel and/or unusual punishment claims by criminal defendants the same under both the [F]ederal and [S]tate Constitutions. Thus, because we have determined that [the] [d]efendant's sentence does not violate the Eighth Amendment, we likewise conclude it passes muster under Article I, Section 27 of the North Carolina Constitution.

State v. Seam, 263 N.C. App. 355, 365, 823 S.E.2d 605, 612 (2018) (marks and citations omitted), *aff'd per curiam*, 373 N.C. 529, 837 S.E.2d 870 (2020). Accordingly, we only analyze this issue under the United States Constitution as it applies with equal force to the North Carolina Constitution.

¶ 18 As an initial matter, the State argues the trial court should not have applied the Eighth Amendment to the present case because Defendant had not been punished at the time of the motion.

> Eighth Amendment scrutiny is appropriate only after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions. Thus, in *Trop v. Dulles*, [356 U.S. 86, 2 L. Ed. 2d 630] (1958), the plurality appropriately took the view that denationalization was an impermissible punishment for wartime desertion under the Eighth Amendment, because desertion already had been established at a criminal trial. But in *Kennedy v. Mendoza-Martinez*, [372 U.S. 144, 9 L. Ed. 2d 44] (1963), where the Court considered denationalization as a punishment for evading the draft, the Court refused to reach the Eighth Amendment issue, holding instead that the punishment could be imposed only through the criminal process. As these cases demonstrate, *the State does not acquire the power to punish with which the Eighth Amendment is concerned until after it has secured a formal adjudication of guilt in accordance with due process of law*. Where the State seeks to impose

> punishment without such an adjudication, the pertinent constitutional guarantee is the Due Process Clause of the Fourteenth Amendment.

Ingraham v. Wright, 430 U.S. 651, 671 n.40, 51 L. Ed. 2d 711, 730 n.40 (1977) (emphasis added) (citations omitted); *see also Moore v. Evans*, 124 N.C. App. 35, 51, 476 S.E.2d 415, 426-27 (1996) (citation omitted) ("In a related argument, [the plaintiff] further contends that [the] defendants violated his Eighth Amendment right to be free from cruel and unusual punishment. The United States Supreme Court stated in *Ingraham v. Wright*, 'An examination of the history of the [Eighth] Amendment and the decisions of this Court construing the proscription against cruel and unusual punishment confirms that it was designed to protect those convicted of crimes.' Therefore, we find that the Eighth Amendment is inapplicable to the present case, as [the plaintiff] was never formally adjudicated guilty of any crime.").

¶ 19 Defendant contends, however, that being automatically tried as an adult is covered by the Eighth Amendment, which in part "imposes substantive limits on what can be made criminal and punished as such[.]" *See Ingraham,* 430 U.S. at 667, 51 L. Ed. 2d at 728. *Ingraham* stated:

> [T]he Cruel and Unusual Punishments Clause circumscribes the criminal process in three ways: First, it limits the kinds of punishment that can be imposed on those convicted of crimes; second, it proscribes punishment grossly disproportionate to the severity of the crime; and *third, it imposes substantive limits on what can be made criminal and punished as such*. We have recognized the

> last limitation as one to be applied sparingly. The primary purpose of the Cruel and Unusual Punishments Clause has always been considered, and properly so, to be directed at the method or kind of punishment imposed for the violation of criminal statutes.

Id. at 667, 51 L. Ed. 2d at 727-28 (citations and marks omitted) (emphasis added). The United States Supreme Court then referred to *Robinson v. California* as an example of the third category. *Id.* at 667, 51 L. Ed. 2d at 728 (citing *Robinson v. California*, 370 U.S. 660, 8 L. Ed. 2d 758 (1962)).

¶ 20 In *Robinson,* the United State Supreme Court held that a statute, making the illness of being addicted to narcotics a criminal offense, violated the Eighth Amendment, reasoning:

> This statute, therefore, is not one which punishes a person for the use of narcotics, for their purchase, sale or possession, or for antisocial or disorderly behavior resulting from their administration. It is not a law which even purports to provide or require medical treatment. Rather, we deal with a statute which makes the "status" of narcotic addiction a criminal offense, for which the offender may be prosecuted "at any time before he reforms." California has said that a person can be continuously guilty of this offense, whether or not he has ever used or possessed any narcotics within the State, and whether or not he has been guilty of any antisocial behavior there.
>
> It is unlikely that any State at this moment in history would attempt to make it a criminal offense for a person to be mentally ill, or a leper, or to be afflicted with a venereal disease. A State might determine that the general health and welfare require that the victims of these and other human afflictions be dealt with by compulsory treatment,

> involving quarantine, confinement, or sequestration. But, in the light of contemporary human knowledge, a law which made a criminal offense of such a disease would doubtless be universally thought to be an infliction of cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments.
>
> We cannot but consider the statute before us as of the same category. In this Court counsel for the State recognized that narcotic addiction is an illness. Indeed, it is apparently an illness which may be contracted innocently or involuntarily. We hold that a state law which imprisons a person thus afflicted as a criminal, even though he has never touched any narcotic drug within the State or been guilty of any irregular behavior there, inflicts a cruel and unusual punishment in violation of the Fourteenth Amendment. To be sure, imprisonment for ninety days is not, in the abstract, a punishment which is either cruel or unusual. But the question cannot be considered in the abstract. Even one day in prison would be a cruel and unusual punishment for the "crime" of having a common cold.

Robinson, 370 U.S. at 666-67, 8 L. Ed. 2d at 762-63 (citation and footnotes omitted).

¶ 21 We do not identify Defendant being tried as an adult, pursuant to N.C.G.S. § 7B-1604(a) (2015), to be of the same character as a person's illness being criminalized, and it does not trigger the Eighth Amendment's "[imposition of] substantive limits on what can be made criminal and punished as such[.]" *Ingraham,* 430 U.S. at 667, 51 L. Ed. 2d at 728. As an initial matter, our research has not revealed any North Carolina or United State Supreme Court decision applying the above principle from *Robinson* outside of the status of addiction to drugs or alcohol. *See, e.g., Powell v.*

Texas, 392 U.S. 514, 532, 20 L. Ed. 2d 1254, 1267 (holding a conviction for being drunk in public was not in the same category discussed in *Robinson*, as "[t]he State of Texas [] [did] not [seek] to punish a mere status, as California did in *Robinson*; nor [did] it attempt[] to regulate [the] appellant's behavior in the privacy of his own home. Rather, it has imposed upon [the] appellant a criminal sanction for public behavior which may create substantial health and safety hazards, both for [the] appellant and for members of the general public, and which offends the moral and esthetic sensibilities of a large segment of the community"), *reh'g denied*, 393 U.S. 898, 21 L. Ed. 2d 185 (1968). Further, the prosecution of juveniles as adults does not involve the substance of what is made criminal, and instead involves the procedure taken regarding a criminal offense alleged against juveniles. Here, the substance is properly criminally punished as Defendant was charged with felonious breaking and entering and larceny after breaking or entering, offenses that are undoubtedly within the police powers of North Carolina. The situation Defendant faces here cannot be said to be analogous to *Robinson* because his prosecution as an adult does not criminalize a status, but instead punishes criminal behavior by juveniles according to the procedures in place at the time of the offense.

¶ 22 Defendant has no claim under the Eighth Amendment. Instead, to the extent Defendant claims the State punished him prior to a conviction, this claim properly

falls under due process.[4] On this basis, we reverse the Order as to the cruel and unusual punishment violation.

C. Due Process

¶ 23 Relying on *Kent v. United States*, 383 U.S. 541, 16 L. Ed. 2d 84 (1966), the trial court concluded Defendant's due process rights were violated because he was automatically prosecuted as an adult in this case "without a hearing and findings in support of transfer." As it was unclear whether the trial court's conclusion included both procedural and substantive due process, we analyze both.

> Our courts have long held that the law of the land clause has the same meaning as due process of law under the Federal Constitution. Due process provides two types of protection for individuals against improper governmental action. Substantive due process protection prevents the government from engaging in conduct that shocks the conscience, or interferes with rights implicit in the concept of ordered liberty. Procedural due process protection ensures that when government action depriving a person of life, liberty, or property survives substantive due process review, that action is implemented in a fair manner.
>
> Substantive due process is a guaranty against arbitrary legislation, demanding that the law shall not be unreasonable, arbitrary or capricious, and that the law be substantially related to the valid object sought to be obtained. Thus, substantive due process may be characterized as a standard of reasonableness, and as such it is a limitation upon the exercise of the police power.
>
> The fundamental premise of procedural due process

[4] We note Defendant did not make an argument recognizing this distinction at the trial court or on appeal.

> protection is notice and the opportunity to be heard. Moreover, the opportunity to be heard must be at a meaningful time and in a meaningful manner.
>
> In order to determine whether a law violates substantive due process, we must first determine whether the right infringed upon is a fundamental right. If the right is constitutionally fundamental, then the court must apply a strict scrutiny analysis wherein the party seeking to apply the law must demonstrate that it serves a compelling state interest. If the right infringed upon is not fundamental in the constitutional sense, the party seeking to apply it need only meet the traditional test of establishing that the law is rationally related to a legitimate state interest.

State v. Fowler, 197 N.C. App. 1, 20-21, 676 S.E.2d 523, 540-41 (2009) (marks and citations omitted), *disc. rev. denied*, *appeal dismissed*, 364 N.C. 129, 696 S.E.2d 695 (2010). "The requirements of procedural due process apply only to the *deprivation* of interests encompassed by the Fourteenth Amendment's protection of liberty and property." *Johnston v. State*, 224 N.C. App. 282, 305, 735 S.E.2d 859, 875 (2012), *aff'd per curiam*, 367 N.C. 164, 749 S.E.2d 278 (2013). "Once a protected life, liberty, or property interest has been demonstrated, the Court must inquire further and determine exactly what procedure or 'process' is due." *State v. Stines*, 200 N.C. App. 193, 196, 683 S.E.2d 411, 413 (2009) (marks omitted).

¶ 24 Here, the trial court did not clearly find the existence of a fundamental right or a protected interest; however, it did cite *Kent v. United States* in its discussion of due process. *See Kent,* 383 U.S. at 544, 16 L. Ed. 2d at 88. To the extent that the

trial court concluded a fundamental right to or a protected interest in being prosecuted as a juvenile existed, it erred. Defendant does not present, and our research does not reveal, any case that holds there is a protected interest in, or fundamental right related to, being tried as a juvenile in criminal cases, as opposed to being tried as an adult. We decline to create such a right under the veil of the penumbra of due process.

¶ 25 Further, *Kent*, which the trial court and Defendant cite, is not controlling or instructive on the issues raised by Defendant. In *Kent,* a sixteen-year-old boy was charged with housebreaking, robbery, and rape. *Id.* at 543-44, 16 L. Ed. 2d at 87-88. At that time, according to the applicable statutes in Washington, D.C., the juvenile court had exclusive jurisdiction over the petitioner due to his age; however, the juvenile court could elect to waive jurisdiction and transfer jurisdiction to the district court after a full investigation. *Id*. at 547-48, 16 L. Ed. 2d at 90. After the petitioner's attorney filed a motion in opposition to the juvenile court's waiver of jurisdiction, the juvenile court, without ruling on the motion, holding a hearing, or conferring with the petitioner, entered an order transferring jurisdiction to the district court that contained no findings or reasoning. *Id*. at 545-46, 16 L. Ed. 2d at 88-89. The United States Supreme Court held:

> [The] petitioner–then a boy of 16–was *by statute* entitled to certain procedures and benefits as a consequence of his *statutory right* to the "exclusive" jurisdiction of the

> [j]uvenile [c]ourt. In these circumstances, considering particularly that decision as to waiver of jurisdiction and transfer of the matter to the [d]istrict [c]ourt was potentially as important to [the] petitioner as the difference between five years' confinement and a death sentence, we conclude that, as a condition to a valid waiver order, [the] petitioner [was] entitled to a hearing, including access by his counsel to the social records and probation or similar reports which presumably are considered by the court, and to a statement of reasons for the [j]uvenile [c]ourt's decision. *We believe that this result is required by the statute read in the context of constitutional principles relating to due process* and the assistance of counsel.

Id. at 557, 16 L. Ed. 2d at 95 (emphases added).

¶ 26 Based on this language, in the context of the facts of *Kent*, we conclude *Kent* involved a completely distinct factual situation at the outset—there, the petitioner was statutorily entitled to begin his proceedings within the exclusive jurisdiction of the juvenile court; whereas, here, under N.C.G.S. § 7B-1604(a) (2015), Defendant's proceedings began in Superior Court. This statutory distinction is critical because the United States Supreme Court in *Kent* explicitly based its holding on due process's interaction with the requirements of the applicable statute. *Id.* Furthermore, it is clear *Kent* does not require a hearing and findings to support trying *any* juvenile as an adult; instead, *Kent* requires hearings and findings to support the *transfer* of a juvenile from juvenile court to adult court when that is the existing statutory scheme. *Id.* *Kent* did not create a fundamental constitutional right or constitutionally protected interest to a juvenile hearing or being tried as a juvenile. Furthermore, our

Supreme Court, in interpreting *Kent*, has stated:

> In *Kent*, the Supreme Court enunciated a list of factors for the Juvenile Court of the District of Columbia to consider in making transfer decisions. . . . [I]t is important to note that the Supreme Court *nowhere stated in Kent that the above factors were constitutionally required*. In appending this list of factors [to consider in making transfer determinations] to its opinion, *the Kent Court was merely exercising its supervisory role over the inferior court created by Congress for the District of Columbia*. Thus, the factors in the Appendix to *Kent* have no binding effect on this Court.

State v. Green, 348 N.C. 588, 600-01, 502 S.E.2d 819, 826-27 (1998) (emphases added), *cert. denied*, 525 U.S. 1111, 142 L. Ed. 2d 783 (1999), *superseded by statute on other ground as stated in In re J.L.W.*, 136 N.C. App. 596, 525 S.E.2d 500 (2000). Our Supreme Court's interpretation of *Kent* in *Green*, as not concerning constitutionally required factors for the transfer of juveniles from juvenile court to adult court, further supports our conclusion that *Kent* was not concerned with constitutional requirements. *Id.*

¶ 27 The trial court clearly considered *Kent* in concluding that Defendant's due process rights were violated. The only other finding of fact that the trial court used to support the conclusion of law related to due process stated "[a]s of [1 December 2019], North Carolina will no longer permit a sixteen-year-old charged with class H Felonies to be automatically prosecuted, tried and sentenced as an adult." This finding alone does not support concluding that Defendant's due process rights were

violated. Further, the Order does not otherwise conduct the required steps of a due process analysis, as there was no finding or conclusion that the statute impacted a fundamental right, implicating enhanced scrutiny under substantive due process, or deprived Defendant of "a protected life, liberty, or property interest[,]" implicating procedural due process protections. *Stines*, 200 N.C. App. at 196, 683 S.E.2d at 413.

¶ 28 There was not a protected interest at issue before the trial court and Defendant's procedural due process protections were not implicated. *See Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 569, 33 L. Ed. 2d 548, 556 (1972) ("The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property."). Additionally, turning to substantive due process, as there is not a fundamental right at issue here, we apply the rational basis test. *See Fowler*, 197 N.C. App. at 21, 676 S.E.2d at 540-41. "The 'rational basis' standard merely requires that the governmental classification bear some rational relationship to a conceivable legitimate interest of government." *White v. Pate*, 308 N.C. 759, 766-67, 304 S.E.2d 199, 204 (1983).

> [U]nless legislation involves a suspect classification or impinges upon fundamental personal rights, the mere rationality standard applies and the law in question will be upheld if it has any conceivable rational basis. Moreover, the deference afforded to the government under the rational basis test is so deferential that a court can uphold the regulation if the court can *envision* some rational basis

for the classification.

Clayton v. Branson, 170 N.C. App. 438, 455, 613 S.E.2d 259, 271 (marks omitted), *disc. rev. denied*, 360 N.C. 174, 625 S.E.2d 785 (2005).

¶ 29 Here, there is a rational basis for the statute, despite the trial court's finding otherwise in Finding of Fact 31.[5] North Carolina has a legitimate interest in promoting the permanency of a sentence, and also has a legitimate interest in updating statutes to reflect changing ideals of fairness. *See Engle v. Isaac*, 456 U.S. 107, 127, 71 L. Ed. 2d 783, 800, *reh'g denied*, 456 U.S. 1001, 73 L. Ed. 2d 1296 (1982). The change the General Assembly made to increase the age at which a person is treated as a juvenile is rationally related to the State's legitimate interests in having statutes that reflect current ideals of fairness, as the statute directly effectuates the legitimate interest in having fair sentencing statutes. The decision to prosecute and sentence juveniles under the statutory scheme in place at the time they commit their offense is rationally related to the State's legitimate interest in having clear criminal statutes that are enforced consistently with their contemporaneous statutory

[5] The State challenges Finding of Fact 31 in its brief. Additionally, Finding of Fact 31 is more properly classified as a conclusion of law because it requires the application of legal principles. *See In re Helms*, 127 N.C. App. at 510, 491 S.E.2d at 675 (citations omitted) (holding "any determination requiring the exercise of judgment or the application of legal principles is more properly classified a conclusion of law"). As a conclusion of law, we review whether there was a rational basis for this statute de novo. *See Williams*, 362 N.C. at 632, 669 S.E.2d at 294 ("Conclusions of law drawn by the trial court from its findings of fact are reviewable *de novo* on appeal.").

scheme.[6] Prosecuting Defendant as an adult within the jurisdiction of the Superior Court was not a violation of substantive or procedural due process based simply upon the findings of fact regarding an impending change in how juveniles are prosecuted under the law and *Kent*, which held that a violation of due process occurred when a juvenile's statutory right to the juvenile court having exclusive jurisdiction was violated without any hearing, findings, or reasoning. To the extent the trial court relied on *Kent* and due process generally to support its conclusion that Defendant's due process rights were violated, the trial court erred and we reverse the Order to the extent that it is based on this perceived constitutional violation.

¶ 30 Defendant's constitutional rights were not violated, much less flagrantly so, as required for the grant of his *Motion to Dismiss* pursuant to N.C.G.S. § 15A-954(a)(4). As there were no flagrant violations of Defendant's constitutional rights, we need not address whether Defendant was irreparably prejudiced. We reverse the Order granting Defendant's *Motion to Dismiss* pursuant to N.C.G.S. § 15A-954(a)(4).

CONCLUSION

¶ 31 The challenged and unchallenged findings of fact do not support concluding there was any violation of Defendant's constitutional rights to equal protection, to be

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[6] Our appellate courts have consistently required this approach in the context of sentencing. *See, e.g., State v. Whitehead*, 365 N.C. 444, 447, 722 S.E.2d 492, 495 (2012) ("Trial courts are required to enter criminal judgments in compliance with the sentencing provisions in effect at the time of the offense.").

protected from cruel and unusual punishment, or to substantive or procedural due process. The trial court erred in granting Defendant's *Motion to Dismiss* under N.C.G.S. § 15A-954(a)(4).

REVERSED AND REMANDED.

Chief Judge STROUD and Judge COLLINS concur.

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Transfer of Juvenile Delinquency Cases to Superior Court

Jacquelyn Greene

CONTENTS

Jacquelyn Greene is an assistant professor at the School of Government specializing in the area of juvenile justice law.

North Carolina law allows, and sometimes requires, certain juvenile delinquency cases to be transferred to superior court for trial in the criminal system. Whether a juvenile case is subject to transfer and how a case subject to transfer is transferred depends on the age of the juvenile at the time of the offense and the offense that is charged. This bulletin describes the transfer process, from case origination through appeal of a transfer order.

The Legal Effect of Transfer

Article 22 of Chapter 7B of the North Carolina General Statutes (hereinafter G.S.) establishes a procedure to move certain matters that begin under the original jurisdiction of the district court as juvenile delinquency cases to the jurisdiction of the superior court "for trial as in the case of adults."[1] These cases begin under juvenile jurisdiction and, following the procedure provided in the Juvenile Code, shift to become criminal matters under the jurisdiction of superior court. The young people who are subject to these proceedings begin as juveniles who are alleged to be delinquent and then become defendants in criminal proceedings. Once these matters are under the jurisdiction of the superior court, they are indistinguishable from other criminal proceedings.[2]

In 1965, the United States Court of Appeals held that the determination of transfer is "critically important."[3] That importance was reinforced by the U.S. Supreme Court the very next year when, referring to the transfer of a case to criminal court, the Supreme Court stated, "[T]here is no place in our system of law for reaching a result of such tremendous consequences without ceremony—without hearing, without effective assistance of counsel, without a statement of reasons."[4]

The Juvenile Code provides for varying procedures to transfer a case to superior court. However, no matter how the transfer occurs, the legal effect is the same. The juvenile becomes subject to prosecution under the criminal law and faces the possibility of a criminal conviction, a criminal record, and incarceration in the state prison system.

Cases Subject to Transfer

The Juvenile Code allows transfer of cases in which a felony is alleged to have occurred when the juvenile was 13 or older.[5] A subset of those cases *must* be transferred to superior court. That subset includes cases in which

- a Class A felony is alleged to have been committed at age 13 or older[6] and
- a Class B1–C felony is alleged to have been committed at age 16 or 17.[7]

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1. G.S. 7B-2200, -2200.5.

2. There is a right to an interlocutory appeal of any order transferring jurisdiction to superior court under G.S. 7B-2603. This is the one legal component of a case that is transferred that differs from the criminal law once the superior court obtains jurisdiction. There is nothing that distinguishes a transferred case from any other criminal case after the transfer order is upheld following such an appeal.

3. Black v. United States, 355 F.2d 104 (D.C. Cir. 1965).

4. Kent v. United States, 383 U.S. 541, 554 (1966).

5. G.S. 7B-2200, -2200.5.

6. G.S. 7B-2200, -2200.5(a).

7. G.S. 7B-2200.5(a), (a1).

In addition, a case in which any Class D–G felony is alleged to have been committed at age 16 or 17 must be transferred unless the prosecutor chooses to retain the case as a juvenile matter.[8]

Case Initiation

District court has exclusive, original subject matter jurisdiction of juvenile matters, including most felonies alleged to have been committed by juveniles.[9] These cases must be initiated the way all juvenile cases are initiated: via the filing of a petition.[10] The superior court may obtain subject matter jurisdiction over a matter that is originally subject to juvenile jurisdiction only after it is transferred from the district court according to the procedure prescribed by statute.[11]

Sufficiency of Petitions

A juvenile petition "serves essentially the same function as an indictment in a felony prosecution and is subject to the same requirement that it aver every element of a criminal offense, with sufficient specificity that the accused is clearly apprised of the conduct for which he is being charged."[12] Fatal defects in a juvenile petition are jurisdictional.[13] Therefore, the juvenile petition must include facts that support every element of all charged offenses with sufficient precision to clearly apprise the juvenile of the conduct that is the subject of the accusation.[14]

At the same time, it is not necessary for the petition to include every offense that may be pursued after the case is transferred. Under G.S. 7B-2203(c),

> [w]hen the case is transferred to superior court, the superior court has jurisdiction over that felony, any offense based on the same act or transaction or on a series of acts or transactions connected together or constituting parts of a single scheme or plan of that felony, and any greater or lesser included offense of that felony.

The North Carolina Court of Appeals relied on this statute to hold that a conviction of conspiracy to commit armed robbery following transfer of a case was proper, despite the fact that the case included two juvenile petitions that alleged only murder and attempted armed robbery.[15] The court held that because the conspiracy charge was transactionally related to the

8. G.S. 7B-2200.5(a1).

9. G.S. 7B-1601. *But see* G.S. 7B-1501(7)b (no juvenile jurisdiction for violations of Chapter 20 of the General Statutes when they are alleged to have been committed at ages 16 or 17); G.S. 7B-1604(b) (no juvenile jurisdiction over any offense committed by a juvenile when that juvenile has been convicted previously in criminal court for any offense other than a misdemeanor or infraction motor-vehicle-law violation, other than an offense that involved impaired driving); G.S. 7B-1501(17) (youth under the age of 18 who are married, emancipated, or members of the armed forces are excluded from the statutory definition of *juvenile* and are therefore excluded from juvenile jurisdiction). Cases that fall under any of these exceptions correctly begin as criminal matters.

10. G.S. 7B-1804.

11. State v. Dellinger, 343 N.C. 93, 95 (1996).

12. *In re* Griffin, 162 N.C. App. 487, 493 (2004).

13. *In re* S.R.S., 180 N.C. App. 151, 153 (2006).

14. State v. Jordan, 75 N.C. App. 637, 639 (1985).

15. State v. Jackson, 165 N.C. App. 763 (2004).

transferred armed robbery charge, the superior court also had jurisdiction over the conspiracy offense. It was proper to obtain an indictment of and conviction on the related charge after transfer, despite its never being alleged in a juvenile petition.

Putting these pieces of law together, it is clear that a juvenile petition must be filed to initiate a case subject to transfer. That petition must allege at least one felony that is subject to transfer with sufficient specificity to provide notice to the juvenile of the behavior that is the basis for the charge. At the same time, the petition does not have to include every related offense that may be pursued following transfer. Related offenses can be added after transfer, as long as they are based on the same act or transaction, or on a series of acts or transactions connected together or constituting parts of a single scheme or plan of the felony alleged in the petition and subsequently transferred. Related offenses also include any greater or lesser included offenses of the felony that is alleged in the petition and subsequently transferred.

First Appearance

A first appearance must be held in accordance with the Juvenile Code in all cases that are subject to transfer. The Juvenile Code mandates a first appearance *within ten days* of the filing of a delinquency petition for all felony allegations.[16] The first appearance is required to be held sooner, at the initial secure or nonsecure custody hearing, if the youth is being held in secure or nonsecure custody.[17]

The court must accomplish four things at the first appearance:

1. It must inform the juvenile of the allegations in the petition.
2. It must determine whether the juvenile has retained counsel or been assigned counsel, appointing counsel if the juvenile is not yet represented.
3. It must inform the juvenile of the date of the probable cause hearing, if such a hearing is required.
4. It must inform the juvenile's parent, guardian, or custodian that the parent, guardian, or custodian must attend all hearings in the proceeding and can be held in contempt of court for failure to attend.[18]

Transfer Pathways: An Overview

The Juvenile Code provides three different procedures that can, and sometimes must, be used to transfer a case. The two critical factors that determine which procedure or procedures to use are (1) age at time of the offense and (2) offense classification.

Age at the Time of Offense

Both G.S. 7B-2200 and G.S. 7B-2200.5, the statutes that provide transfer procedures, are grounded in the age that the juvenile was "at the time the juvenile allegedly committed an offense." Age at the time of the offense is foundational to establishing

16. G.S. 7B-1808(a).

17. *Id*; s*ee also* G.S. 7B-1906 (requiring an initial secure custody hearing within five calendar days of an initial remand to secure custody and within seven calendar days of an initial remand to nonsecure custody).

18. G.S. 7B-1808(b).

Table 1. Transfer Mechanisms by Age at Offense and Felony Classification

Age at Offense	Felony Classification	Transfer Mechanism	Mandatory?
13–15	A	Finding of probable cause[a]	Yes[b]
	B1–I	Finding of probable cause, motion for transfer, and judicial determination at transfer hearing[c]	No[d]
16, 17	A–C	Finding of probable cause or return of an indictment[e]	Yes[f]
	D–G	Finding of probable cause or return of an indictment[g]	Only if prosecutor chooses to transfer[h]
	H–I	Finding of probable cause, motion for transfer, and judicial determination at transfer hearing.[i]	No[j]

a. G.S. 7B-2200.
b. *Id*.
c. G.S. 7B-2200, -2203.
d. *Id*.
e. G.S. 7B-2200.5(a).
f. *Id*.
g. *Id*.
h. G.S. 7B-2200.5(a1).
i. G.S. 7B-2200.5(b), -2203.
j. *Id*.

subject matter jurisdiction.[19] In addition, the court only has jurisdiction to transfer cases to superior court if they meet the various age requirements laid out in the Juvenile Code. It is therefore critical that age at offense is precisely known.

A juvenile's age is based on the "birthday rule."[20] Youth become the next chronological age on the first second of their date of birth, regardless of the time of day that the actual birth occurred. Age must be measured chronologically, and not developmentally, for determining a juvenile's age at offense.[21]

Offense Classification

Determining the correct procedure to follow for transfer depends on both the age at the time of offense and on the offense classification. For example, every case with a Class A felony alleged to have been committed at age 13 or older is subject to mandatory transfer.[22] However, as described below, the mechanism that triggers transfer varies, depending on the age at the time of the offense. There is significant variation in how cases that include Class B1–I felonies can and sometimes must be transferred, depending on age at the time of the offense. Table 1 provides an overview of this variation, as well as which combinations of age at offense and offense classification are subject to mandatory transfer.

There is no need to use multiple transfer mechanisms if a case includes felonies that have varying transfer procedures. This is because G.S. 7B-2203(c) provides that the superior court obtains jurisdiction over all related offenses when one felony in the case is transferred. Therefore, only one transfer mechanism per case should be used.[23]

19. State v. Collins, 245 N.C. App. 478 (2016).
20. *In re* Robinson, 120 N.C. App. 874, 877 (1995).
21. *In re* Wright, 137 N.C. App. 104, 111 (2000).
22. G.S. 7B-2200, -2200.5(a).
23. *See In re* Ford, 49 N.C. App. 680 (1980) (affirming transfer of breaking and entering charges on transfer of murder charge). For a fuller discussion of this topic, see Jacquelyn Greene,

Transfer Pathways in Detail

Class A Felony Alleged at Age 13, 14, or 15: Mandatory Transfer

Transfer of a case that includes a Class A felony alleged to have been committed at ages 13, 14, or 15 is required, following notice and a finding of probable cause for the Class A felony.[24] Under G.S. 7B-2202(a), the probable cause hearing must be held within *fifteen days* of the first appearance unless the hearing is continued for good cause. The hearing must be conducted in accordance with the requirements of G.S. 7B-2202, unless the juvenile waives in writing the right to the hearing and stipulates to a finding of probable cause.[25] Once probable cause is found, the court must transfer the case. The court does not have discretion, and there is no transfer hearing. Form AOC-J-343, Juvenile Order—Probable Cause Hearing, should be used to order the transfer in this circumstance.[26]

Mandatory transfer of Class A felonies became law in 1979 when a new Juvenile Code was enacted in North Carolina.[27] That law required that all capital offenses committed at age 14 or older be transferred to superior court, following a finding of probable cause.[28] The statute was amended to replace "capital offense" with "Class A felony" in 1991.[29] The legislature lowered the age at offense to 13 in 1994.[30] While North Carolina's appellate courts have never explicitly ruled on the constitutionality of a mandatory transfer statute, several cases that were transferred to superior court pursuant to the mandatory transfer statute have been upheld by the North Carolina Court of Appeals.[31]

Class A–C Felony Alleged at Age 16 or 17: Mandatory Transfer

Transfer of a case in which a Class A–C felony is alleged to have been committed at age 16 or 17 is also always required.[32] Transfer must be ordered by the court after either

1. a finding of probable cause on the Class A–C felony[33] or
2. the return of an indictment on the Class A–C felony.[34]

All Related Charges Are Transferred When One Felony in a Delinquency Case Is Transferred, On the Civil Side, UNC Sch. of Gov't Blog (Feb. 25, 2020), https://civil.sog.unc.edu/all-related-charges-are-transferred-when-one-felony-in-a-delinquency-case-is-transferred/.

24. G.S. 7B-2200.

25. G.S. 7B-2202(d).

26. Form AOC-J-343 is available at https://www.nccourts.gov/assets/documents/forms/j343_0.pdf?0PL0PsHoeMTTfWoqkqsluNf3MqOiQduw (last visited September 30, 2021).

27. G.S. 7A-557 (1980) (recodified as G.S. 7A-608 (1992)(replacing capital offense with Class A felony) and G.S. 7B-2200).

28. G.S. 7A-557 (1980).

29. S.L. 1991-842 (recodifying the statute at G.S. 7A-608).

30. S.L. 1994-22es, § 25.

31. *See, e.g., In re* Ford, 49 N.C. App. 680 (1980) (affirming transfer of murder and breaking and entering charges pursuant to mandatory transfer statute); *In re* K.R.B., 134 N.C. App. 328 (1999) (affirming transfer of first-degree murder charge pursuant to mandatory transfer statute); State v. Brooks, 148 N.C. App. 191 (2001) (affirming transfer of first-degree murder charge pursuant to mandatory transfer statute).

32. G.S. 7B-2200.5(a).

33. G.S. 7B-2200.5(a)(2).

34. G.S. 7B-2200.5(a)(1).

Probable Cause

The prosecutor may choose to pursue a finding of probable cause to trigger transfer of a case in which a Class A–C felony is alleged to have been committed by a juvenile at age 16 or 17. The juvenile must be provided notice,[35] and a probable cause hearing must be conducted within *ninety days* of the juvenile's first appearance.[36] The hearing may be continued for good cause.[37] The hearing must be conducted in accordance with the requirements of G.S. 7B-2202, unless the juvenile waives in writing the right to the hearing and stipulates to a finding of probable cause.[38] The form AOC-J-343, Juvenile Order—Probable Cause Hearing, should be used to order transfer in these cases, following a finding of probable cause. There is no transfer hearing.

Indictment

Alternatively, the prosecutor may choose to trigger mandatory transfer of cases in which Class A–C felonies are alleged to have occurred at age 16 or 17 through the return of a true bill of indictment. G.S. 7B-2200.5(a)(1) requires that notice be given to the juvenile and that the district court make a finding that a bill of indictment has been returned charging a felony subject to mandatory transfer. The form AOC-J-444, Juvenile Order—Transfer After Bill of Indictment, should be used to order transfer under these circumstances.[39]

There are no statutes directing when charges may be submitted to the grand jury in a case subject to transfer, how the returned indictment should be provided to the district court, or whether the returned indictment is confidential prior to the transfer. The absence of such provisions raises significant questions about how to implement this process. Thus, localities have been left to develop their own implementation processes.[40] There is no transfer hearing.

No Order for Arrest on Return of True Bill of Indictment

An order for arrest *should not be issued* when a true bill of indictment is returned related to a matter that is under juvenile jurisdiction. This will be true for every case that is being transferred as a result of the indictment. Because the district court must make a finding and order the transfer, the case remains under juvenile jurisdiction at the same time that there is an indictment. While juveniles may be taken into temporary custody and ordered into secure custody, they may not be arrested.[41] Therefore, an order of arrest should not be generated when an indictment is returned in a case that has not yet been transferred by the district court.[42]

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35. G.S. 7B-2200.5(a)(2).
36. G.S. 7B-2200.5(c).
37. *Id*.
38. G.S. 7B-2202(d).
39. Form AOC-J-444 is available at https://www.nccourts.gov/assets/documents/forms/j444.pdf?3yV2sh27hpytmQwmPfeL_hBhba2tXHOP (last visited September 30, 2021).
40. For more detail on the procedural gaps, see Jacquelyn Greene, *The Indictment Process and Juvenile Transfer*, On the Civil Side, UNC Sch. of Gov't Blog (Jan. 28, 2020), https://civil.sog.unc.edu/the-indictment-process-and-juvenile-transfer/.
41. *See* G.S. 7B art. 19.
42. This is reflected in the note to the court on the first page of the form AOC-CR-215, Notice of Return of Bill of Indictment, https://www.nccourts.gov/assets/documents/forms/cr215.pdf?NnLfOq7Ov9dC7jFkwsEK1vgUoP8tANgZ ("An Order for Arrest shall *not* be issued for an indicted juvenile whose case began in juvenile court and for which the district court has not yet entered an order for transfer to superior court pursuant to G.S. 7B-2200 or G.S. 7B-2200.5(a)(1).").

Class D–G Felony Alleged at Age 16 or 17: Mandatory Transfer at Prosecutor Discretion

The Juvenile Justice Reinvestment Act, which brought most offenses committed at ages 16 and 17 under juvenile jurisdiction, included Class D–G felonies in the mandatory transfer structure described above for Class A–C felonies committed at ages 16 and 17.[43] However, Session Law 2021-123 enacted prosecutorial discretion to use that mandatory transfer structure for Class D–G felonies.[44] Beginning with offenses committed on or after December 1, 2021, the prosecutor may decline to transfer a case in which the most serious offense is a Class D–G felony committed at age 16 or 17.[45] If the prosecutor exercises this discretion, the matter remains in juvenile court following a finding of probable cause.[46] The prosecutor may reconsider and choose to transfer the matter at any time before adjudication.[47]

If the prosecutor chooses to pursue transfer, transfer is mandatory under the same pathways described above for Class A–C felonies alleged to have been committed at age 16 or 17 (either following a finding of probable cause or the return of an indictment).

All Other Felonies: Discretionary Transfer

Cases are subject to discretionary transfer when they include felonies committed at age 13 or older and do not include any of the above-described felonies subject to mandatory transfer. This includes

- Class B1–I felonies committed at ages 13–15 and
- Class H and I felonies committed at ages 16 and 17.

Discretionary transfer follows a three-step process:

1. a finding of probable cause;
2. a motion by the prosecutor, juvenile's attorney, or court to transfer; and
3. a transfer hearing at which the court determines whether to transfer the case.

The probable cause hearing in these matters must be conducted within *fifteen days* of the juvenile's first appearance.[48] The hearing may be continued for good cause.[49] Probable cause can be found as a result of evidence presented at the hearing or as a result of the juvenile's written waiver of the hearing and stipulation to the finding.[50]

If probable cause is found, the prosecutor, the juvenile's attorney, or the court may move to transfer the case. Once the motion is made, the court may proceed to a transfer hearing or set a date for a transfer hearing.[51] If the juvenile does not receive notice of intent to seek transfer at least five days before the probable cause hearing, the court must continue the transfer hearing at the request of the juvenile.[52]

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43. S.L. 2017-57, § 16D.4.(e).
44. S.L. 2021-123, § 4.
45. G.S. 7B-2200.5(a1).
46. *Id*.
47. *Id*.
48. G.S. 7B-2202(a).
49. *Id*.
50. G.S. 7B-2202(c), (d).
51. G.S. 7B-2202(e).
52. *Id*.

Transfer Hearings

Both the prosecutor and the juvenile have the right to present evidence at the transfer hearing. The juvenile's attorney is expressly permitted to examine any records that the court may consider in making the transfer determination, including court and probation records.[53] The district court is statutorily required to (1) determine whether the protection of the public and the needs of the juvenile will be served by transfer of the case and (2) consider eight specified factors.[54]

The eight factors that must be considered are

1. the juvenile's age;
2. the juvenile's maturity;
3. the juvenile's intellectual functioning;
4. the juvenile's prior record;
5. prior attempts to rehabilitate the juvenile;
6. facilities or programs available to the court while it will retain juvenile jurisdiction over the matter and the likelihood that the juvenile would benefit from treatment or rehabilitative efforts;
7. whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner; and
8. the seriousness of the offense and whether the protection of the public requires that the juvenile be prosecuted as an adult.[55]

While the court must consider all eight of these factors, the transfer order does not have to include findings of fact to support the court's conclusion that the needs of the juvenile or the protection of the public would be served by transfer.[56] At the same time, the transfer order must specify the reasons for transfer[57] and reflect that the court considered all eight factors. The North Carolina Court of Appeals found a transfer order that stated the following reasons for transfer to be insufficient.

1. The juvenile was 15 years old.
2. A codefendant in the matter was 17 years old.
3. It was desirable to handle both cases in one court.
4. The juvenile admitted guilt to an officer.
5. The damage done to public property was extensive ($23,564.97 to school buses and $785.30 to a school fence).[58]

The court held that the transfer order was deficient, failing to adequately state the reasons for transfer, because it did not reflect "that consideration was given to the needs of the juvenile, to his rehabilitative potential, and to the family support he receives."[59] The transfer hearing order

53. G.S. 7B-2203(a).
54. G.S. 7B-2203.
55. G.S. 7B-2203(b).
56. State v. Green, 124 N.C. App. 269, 276 (1996).
57. *In re* E.S., 191 N.C. App. 568, 572–73 (2008).
58. *In re* J.L.W., 136 N.C. App. 596, 600–01 (2000).
59. *Id.* at 601.

form provided by the North Carolina Administrative Office of the Courts, AOC-J-442, includes a blank box in which the reasons for transfer should be included.[60]

If the court decides not to transfer the case to superior court, a separate adjudicatory hearing on the petition must occur in juvenile court.[61] The adjudicatory hearing may occur immediately following the transfer hearing, or it may be scheduled by the court at the conclusion of the transfer hearing.[62] The adjudicatory hearing may also be continued for good cause.[63]

Procedure when Transfer Is Ordered

Conditions of Pretrial Release

Once an order of transfer is entered, the juvenile has a right to pretrial release under Article 26 of the North Carolina Criminal Procedure Act.[64] Therefore, the district court must determine the conditions of pretrial release. The court must impose at least one of the following conditions:

1. release on written promise to appear,
2. release on unsecured appearance bond,
3. placement in the custody of a designated person or organization agreeing to supervise the youth,
4. release on a secured appearance bond, or
5. house arrest with electronic monitoring.[65]

The court must impose one of the first three conditions unless it finds that such release (1) will not ensure the appearance of the youth (now the defendant) as required, (2) will pose a danger of injury to any person, or (3) is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses.[66] If the court makes any of these findings, then either release on a secured appearance bond or house arrest with electronic monitoring must be ordered.[67] Courts are required to take several factors into consideration when determining conditions for pretrial release, on the basis of available information, including

- the nature and circumstances of the offense charged;
- the weight of the evidence against the youth;
- the youth's family ties, employment, financial resources, character, and mental condition;
- whether the youth is intoxicated to such a degree that the youth would be endangered by being released without supervision;
- the length of the youth's residence in the community;
- the youth's record of convictions;

60. Form AOC-J-442 is available at https://www.nccourts.gov/assets/documents/forms/j442-en.pdf?jVUJC6XXFuDhOEO18IBR13CaKc3yYdV0 (last visited September 30, 2021).

61. G.S. 7B-2203(d).

62. *Id.*

63. *Id.*

64. G.S. 7B-2204 (providing that upon entry of an order of transfer, the juvenile has a right to pretrial release as provided in G.S. 15A-533 and G.S. 15A-534); G.S. 7B-2603(b) (same).

65. G.S. 15A-534(a). If house arrest with electronic monitoring is ordered, a secured bond must also be imposed.

66. G.S. 15A-534(b).

67. *Id.*

- the youth's history of flight to avoid prosecution or failure to appear at court proceedings; and
- any other evidence relevant to the issue of pretrial release.[68]

The Criminal Procedure Act contains several additional provisions regarding determining conditions of pretrial release that apply to specific charges, such as capital offenses[69] and domestic violence offenses,[70] and specific situations, such as previous failures to appear.[71] For more detailed information on the additional restrictions and requirements related to determining conditions of pretrial release, see *Criminal Proceedings Before North Carolina Magistrates*[72] and the *North Carolina Superior Court Judges' Benchbook*.[73]

The court is required to issue an order that details the conditions for pretrial release. Form AOC-CR-922 should be used for this purpose after the court orders the case transferred.[74] The order must also inform the defendant of the penalties associated with violation of the conditions in the order and that arrest will be ordered immediately upon any violation.[75]

Fingerprinting and DNA Sample

The Juvenile Code requires fingerprinting of the youth and submission of those fingerprints to the State Bureau of Investigation when jurisdiction is transferred to superior court.[76] The Juvenile Code also requires the taking of a DNA sample from the youth once the case is transferred if the charged offense is one that falls within the mandate for DNA sample collection in the Criminal Procedure Act.[77]

Addressing Counsel for the Juvenile

Transfer of a case has implications for appointment of counsel to represent the juvenile. The case begins as a juvenile matter and, therefore, counsel must be appointed under G.S. 7B-2000 unless counsel is retained for the juvenile. Under the Juvenile Code, juveniles are "conclusively presumed to be indigent," and there is therefore no need for an affidavit of indigency.[78]

When a delinquency case is transferred to superior court, it is no longer governed by provisions of the Juvenile Code. Therefore, the original counsel appointment that was made under G.S. 7B-2000 no longer applies. The case becomes a criminal matter once transfer is ordered, and the law governing the appointment of counsel in criminal cases now applies to the case.

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68. G.S. 15A-534(c).
69. G.S. 15A-533(c).
70. G.S. 15A-534.1.
71. G.S. 15A-534(d1).
72. Jessica Smith, Criminal Proceedings Before North Carolina Magistrates 27–37 (UNC School of Government, 2014)
73. Jessica Smith, *Pretrial Release*, *in* North Carolina Superior Court Judges' Benchbook (UNC School of Government, Apr. 2015), https://benchbook.sog.unc.edu/criminal/pretrial-release.
74. Form AOC-CR-922 is available at https://www.nccourts.gov/assets/documents/forms/cr922_0.pdf?7kndZsMih2oH5hlctS4bekuCxVl6TxLv (last visited December 20, 2021).
75. G.S. 15A-534(d).
76. G.S. 7B-2201(a).
77. G.S. 7B-2201(b); *see also* G.S. 15A-266.3A (DNA sample requirements under the state Criminal Procedure Act).
78. G.S. 7B-2000(b).

Indigent criminal defendants accused of felony offenses are guaranteed the right to counsel.[79] Because a juvenile matter can only be transferred to superior court if it includes a felony offense, every transferred case will fall under this guarantee.

Unlike delinquency proceedings, indigency must be shown in order to qualify for appointed counsel in criminal matters. Under G.S. 7A-450(a), a person is indigent when that person "is financially unable to secure legal representation and to provide all other necessary expenses of representation in an action or proceeding enumerated in this Subchapter." While it is difficult to imagine a circumstance in which a juvenile would not meet the requirements of this definition, and it can be reasonably argued that the presumption of juvenile indigence may also apply in a criminal matter, indigency should be determined in order to appoint counsel once the case becomes a criminal matter. This is a determination that is specific to the juvenile and does not include consideration of the resources of the parent, guardian, or custodian.

The Juvenile Code does not expressly mandate that appointment of counsel be addressed immediately following transfer. However, the time immediately following transfer is critical because there is a time-limited window for appeal of the transfer order (discussed below), and the juvenile is newly eligible for conditions of pretrial release. Given the critical nature of this time period, the changing legal foundation for the appointment of counsel, and the varying ways that indigent defense is structured across North Carolina, it is sound practice for the court to address appointment of counsel immediately after ordering the transfer of the case.[80]

Remand to District Court and Expungement

The Juvenile Code allows a transferred case to be remanded to district court to be handled as a juvenile matter if the alleged offense occurred when the juvenile was 16 or older.[81] The superior court must remand the case when the prosecutor and the juvenile's attorney file a joint motion for remand.[82] There is no requirement beyond the filing of the joint motion. The superior court does not have discretion regarding the remand; once the joint motion is filed, the case must be remanded to district court. Form AOC-CR-291 should be used to order the remand.[83]

The Juvenile Code also requires the expungement of the superior court record when the case is remanded.[84] This includes expunction of any DNA record or profile included in the state DNA

79. G.S. 7A-451; *see also* Gideon v. Wainwright, 372 U.S. 335 (1963); State v. Mays, 14 N.C. App. 90 (1972).

80. Rule 1.7 of the IDS Rules for the Continued Delivery of Services in Non-capital Criminal and Non-criminal Cases at the Trial Level obligates appointed counsel to represent the client through judgment at the trial level, to discuss the right to appeal with the client, and to either file notice of an appeal or represent the client until the time for providing notice of appeal expires. While this rule is not directly applicable to delinquency proceedings, the attorney appointed in the delinquency proceeding may have an obligation to ensure that the juvenile is able to exercise the right to appeal the transfer order. Attorneys may want to consider providing verbal notice of appeal in court following transfer in order to meet any such obligation.

81. G.S. 7B-2200.5(d).

82. *Id*.

83. Form AOC-CR-291 is available at https://www.nccourts.gov/assets/documents/forms/cr291_0.pdf?wzR5xGJj4SpBiIm0JKU9kdQYBkUk.S9 (last visited September 30, 2021).

84. G.S. 7B-2200.5(d), 15A-145.8.

database and any DNA sample stored in the state DNA databank as a result of the remanded charges.[85] The clerk must send a certified copy of the expungement order to

1. the juvenile;
2. the juvenile's attorney;
3. the Administrative Office of the Courts;
4. the sheriff, chief of police, or other arresting agency;
5. the Division of Motor Vehicles, when applicable;
6. any state or local agency identified by the petition as bearing record of the expunged offense;
7. the Department of Public Safety, Combined Records Section; and
8. the State Bureau of Investigation.[86]

Each agency that receives a certified copy must delete any public records made as a result of the remanded charges.[87] AOC-CR-291 includes an order for expungement to be used when ordering remand.[88]

Confinement Orders and the Remand Process

When a case is transferred, it shifts from being under juvenile jurisdiction, subject to the Juvenile Code, to being under superior court jurisdiction, subject to the criminal law. Before transfer, if the juvenile is confined, it is pursuant to a secure custody order issued under the Juvenile Code.[89] As discussed previously, when transfer is ordered, the case becomes subject to the laws governing criminal actions, so the juvenile has the same right to conditions of pretrial release as any other defendant in a criminal proceeding.[90] Therefore, the secure custody order issued under the Juvenile Code is no longer valid and any confinement must be ordered in accordance with G.S. 15A-533 and G.S. 15A-534.[91]

When a case is remanded, jurisdiction (and therefore the applicable law) shifts again. The case leaves the jurisdiction of superior court, the criminal law no longer applies, and the case is again subject to the Juvenile Code. As a result, the juvenile can no longer be confined pursuant to conditions of pretrial release set under the criminal law. Instead, any confinement can once again be ordered only via a secure custody order issued in accordance with the Juvenile Code.

On December 1, 2019, when the remand provision took effect, the jurisdictional shift that occurs at remand made the issuance of a secure custody order necessary for continued confinement following remand.[92] However, there was no statutory provision that authorized the superior court to issue a secure custody order. Session Law 2021-123 provided express authority to allow the superior court to issue a secure custody order under the Juvenile Code when remanding a case.[93] A hearing in district court to determine the need for continued secure custody must be held no more than ten calendar days after the superior court issues a secure

85. G.S. 15A-145.8(b).
86. G.S. 15A-145.8(d), -150(b).
87. G.S. 15A-145.8(d).
88. See note 83, above.
89. G.S. 7B-1904.
90. G.S. 7B-2204.
91. *Id*.
92. S.L. 2019-186, § 8.(a).
93. S.L. 2021-123, § 3.(a)–(d).

custody order on remand.[94] That hearing cannot be continued or waived.[95] If the juvenile remains in secure custody after this initial hearing, ongoing secure custody hearings must be held every thirty days (unless the juvenile requests to hold the hearings every ten days, and the court finds good cause).[96] These ongoing hearings may be waived with the consent of the juvenile.[97]

Place of Confinement in Transfer Cases

Secure custody for any youth under juvenile jurisdiction must be in a juvenile detention facility.[98] Therefore, juveniles who are subject to transfer must be held in juvenile detention, and not jail, while their case is under juvenile jurisdiction. This is generally true even if the juvenile is 18 or older.[99]

Once a case is transferred to superior court, the place of confinement depends on the age of the youth who is now a defendant in a criminal proceeding. As previously described, youth can be confined following transfer until they satisfy conditions of pretrial release set by the court in the criminal case. If a youth under the age of 18 is confined, the youth must remain in a juvenile detention facility.[100] Once the juvenile reaches the age of 18, the juvenile must be transported by Juvenile Justice to the custody of the sheriff for the county where the charges arose for confinement in the county jail.[101]

Posting Bond While in a Juvenile Detention Facility

Youth who have cases under superior court jurisdiction following transfer must be afforded the opportunity to post bond if they are confined pursuant to a secured bond. This can become very complicated when the place of confinement is a juvenile detention facility. Juvenile detention facilities lack the personnel and systems necessary to process bonds, which are not part of the juvenile justice system.

Geography may also present a challenge. Not every county has a juvenile detention facility. A youth may therefore have a criminal case pending in one county and be confined in a juvenile detention facility in another county. This creates practical barriers related to the actual processing of the bond as well as the physical release of the youth. The bond must be posted in the county where the criminal matter is pending, rather than the county where the juvenile is

94. G.S. 7B-1906(b2).
95. *Id*.
96. G.S. 7B-1906(b1)–(b2).
97. G.S. 7B-1906(b1).
98. G.S. 7B-1905(b).
99. *But see* G.S. 7B-1905(d) (providing that if secure custody is ordered for any person age 18 or older over whom the court did not obtain juvenile jurisdiction before that person aged out of juvenile jurisdiction, the person may be temporarily detained in the county jail); G.S. 7B-1901(d) (providing that if secure custody is ordered for a person 21 or older over whom the court did not obtain juvenile jurisdiction before that person aged out of juvenile jurisdiction, the person must be temporarily detained in the county jail).
100. G.S. 7B-2204(a).
101. G.S. 7B-2204(c).

confined. The posting of the bond must be communicated to the juvenile detention facility. Once released, the youth must be transported back to the youth's home, which may be far from the facility.

Release of these youth following posting of a bond is also complicated because they are minors and therefore must be released to an adult. This is reflected in the Juvenile Code provisions that address pretrial release following transfer. G.S. 7B-2204(a) requires both that the court follow the provisions of G.S. 15A-533 and G.S. 15A-534 in determining conditions of pretrial release and that "[t]he release order shall specify the person or persons to whom the juvenile may be released." Release to a specified person may become challenging if the youth is being held in a facility that is far from home.

Finally, the process for these youth to post bond is complicated by federal law that requires sight and sound separation between minors and adult inmates. Many local procedures for satisfying conditions of pretrial release involve processing inside the jail where the youth is likely to come into contact with adult inmates. However, the Juvenile Justice and Delinquency Prevention Act requires sight and sound separation from adult inmates for any youth under 18 who is housed in a secure facility, regardless of whether the youth is being processed as a juvenile or as a defendant in the criminal system.[102] The Act allows for a minor to be held in an adult jail for up to six hours for processing of the minor's release. If the jail is used to process release, the youth still must have no sight or sound contact with any adult inmate.[103] Therefore, any process used to post bond for youth housed in juvenile detention must comply with this requirement.

Localities need to develop procedures that allow youth to post bond while they are housed in a juvenile detention facility. This may include use of magistrates or very short-term use of jails where sight and sound separation are maintained.[104]

Appeal of Transfer Orders

Under G.S. 7B-2603(a), juveniles have a right to appeal any orders transferring jurisdiction of their juvenile matters to the superior court. A juvenile has ten days from entry of the order of transfer in district court to give notice of appeal.[105] If notice is not given within ten days, the case proceeds as a superior court matter. If notice is given, the clerk must place the matter on the superior court docket, and the superior court must review the record of the transfer hearing within a reasonable time.[106]

Preserving Confidentiality Pending Resolution of the Appeal

Because it is possible that the superior court will remand the case to juvenile court for adjudication on a finding of an abuse of discretion, Rules of Recordkeeping 12.8.1 and 12.8.2 instruct clerks to include any appeal of a transferred case on the superior court calendar as an

102. 34 U.S.C. § 11133(a)(11)(B)(i)(I) (effective Dec. 21, 2021).

103. 34 U.S.C. § 11133(a)(13)(A).

104. For more information on posting bond while in juvenile detention, see Jacquelyn Greene, *Satisfying Conditions of Pretrial Release when in Juvenile Detention*, On the Civil Side, UNC Sch. of Gov't Blog (Sept. 22, 2020), https://civil.sog.unc.edu/satisfying-conditions-of-pretrial-release-when-in-juvenile-detention/.

105. G.S. 7B-2603(a).

106. *Id*.

add-on hearing/case using "In the Matter of" and the JB file number (the file number assigned in the juvenile matter).[107] The title of the case is to be listed only as "Appeal of Transfer." The rules prohibit the clerk from entering the juvenile's name or charges on the calendar. This process protects the juvenile's confidentiality if the case returns to district court as a juvenile matter.

Rules of Recordkeeping 12.8.1 and 12.8.2 also instruct clerks not to enter the case into the Automated Criminal Information System before the appeal is resolved. This is another safeguard built in to maintain the matter's confidentiality should the case be remanded to district court as a juvenile matter.

While the clerk must be careful to protect juvenile confidentiality during this period, the case is a criminal matter under the jurisdiction of the superior court as soon as the district court enters the order of transfer to superior court.[108] There is no statutorily provided lag time in superior court jurisdiction. This means that any forms used in the case after the transfer order is entered must be criminal forms. Those forms use a CRS number. For example, the form that is to be used to set conditions of pretrial release after transfer is ordered, form AOC-CR-922, Release Order for Juvenile Transferred to Superior Court for Trial, is a criminal form. As the matter is now a criminal matter under superior court jurisdiction, that form should use a CRS number and not the JB number assigned to the juvenile matter. The CRS number should be manually generated for use in the case once transfer is ordered. If an indictment is used to trigger transfer of the case, the CRS number may also be needed for the indictment process.

It is important to note that any criminal paperwork generated following transfer to superior court should be held in a secure location, such as a locked cabinet, during the ten-day period to give notice of appeal and during the pendency of any appeal. Keeping the paper file that is created during this time out of public view is another protection of confidentiality, should the case be remanded to district court as a juvenile matter.

There are several practical implications that stem from criminal, superior court jurisdiction over cases during the appeal period. For example, if conditions of pretrial release need to be revisited during this time, that issue should be heard by the superior court. If the youth violates a condition of pretrial release and needs to be apprehended by law enforcement during this time, criminal procedure provides the appropriate process (although the place of confinement for any youth under age 18 remains juvenile detention, as discussed previously). If there is a change of attorney during this timeframe, the rules related to appointment of counsel in criminal matters apply. The superior court may want to consider closing the courtroom if there is a need to hear motions in a case during the ten-day appeal period or when an appeal of a transfer order is pending in order to preserve confidentiality until the appeal is resolved.

Standard of Review on Appeal

G.S. 7B-2603(a) provides that when an appeal of the transfer order is entered, the superior court must "review the record of the transfer hearing for abuse of discretion by the juvenile court in the issue of transfer." The North Carolina Court of Appeals explained how the abuse of discretion standard is to be applied, stating that

> [a] superior court reviewing an appeal of a transfer order may not . . . re-weigh the evidence, decide which factors are more important, and reverse the district court on that basis, as the superior court did here. Put simply, a superior court

107. N.C. Admin. Off. of the Cts., Rules of Recordkeeping, r. 12.8.1, 12.8.2.
108. G.S. 7B-2203(c).

> may not substitute its judgment for that of the district court. In this case, the superior court did not explain in what way the district court's decision was manifestly unreasonable. The superior court simply concluded, based on its de novo view of the evidence, that transfer was inappropriate. That approach does not properly apply an abuse of discretion standard of review.[109]

In addition, the superior court may not review a finding of probable cause made by the district court before transfer.[110] The court of appeals has repeatedly held that a finding of probable cause in a juvenile proceeding is not immediately appealable.[111]

Preserving the Right to Appeal to the Court of Appeals

It is possible to preserve the right to appeal the transfer decision beyond the initial review by the superior court, but only under certain circumstances: the appeal must first be filed in the superior court, and conviction in superior court cannot be the result of a plea.

Initial Appeal to Superior Court Required

G.S. 7B-2603(d) states that "[t]he superior court order shall be an interlocutory order, and the issue of transfer may be appealed to the Court of Appeals only after the juvenile has been convicted in superior court." In 2002 the court of appeals held that this means that issues arising from a transfer order must first be appealed to the superior court.[112] The court noted that in 1999, the General Assembly removed statutory language stating that failure to appeal to the superior court constituted waiver of the right to raise the issue of transfer to the court of appeals before the matter's final disposition in superior court. According to the court, this deletion indicates legislative intent to remove any potential statutory authority for skipping an appeal to the superior court and appealing directly to the court of appeals. In addition, the court noted that the general principle of appellate review in criminal matters flows from district court to the superior court and not directly from district court to the court of appeals. The court held that the defendant must first appeal the transfer order and issues arising from it to the superior court in order to preserve any appeal to the court of appeals.

No Appeal After a Guilty Plea

The North Carolina Court of Appeals addressed whether a transfer decision may be appealed following a guilty plea in superior court in *State v. Evans*.[113] The court noted that other criminal statutes expressly provide for an appeal from a judgment of conviction based on a plea of guilty. The court held that there is no right to appeal a transfer decision after pleading guilty in superior court because there is no such express language in G.S. 7B-2603(d).[114]

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109. *In re* E.S., 191 N.C. App. 568, 574 (2008).
110. G.S. 7B-2603(a).
111. *In re* Ford, 49 N.C. App. 680, 683 (1980); *In re* K.R.B., 134 N.C. App. 328, 331 (1999); *In re* J.L.W., 136 N.C. App. 596, 598 (2000).
112. State v. Wilson, 151 N.C. App. 219, 226 (2002).
113. State v. Evans, 184 N.C. App. 736 (2007).
114. *Id.* at 740.