

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 severe 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.