

Cases on Due Process and Experts in Transfer Proceedings

1. *Washington v. Texas*, 388 U.S. 14, 19 (1967): The right to present a defense is “a fundamental element of due process of law.” “The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's....” *Id.*
2. *Kent v. United States*, 383 U.S. 541 (1966): A juvenile is entitled to due process and fairness in a transfer proceeding. In discussing a juvenile court’s decision to waive jurisdiction and transfer a case to adult criminal court, the *Kent* Court stated, “It is clear beyond dispute that the waiver of jurisdiction is a ‘critically important’ action determining vitally important statutory rights of the juvenile.” The *Kent* Court held that a transfer hearing therefore required “procedural regularity sufficient in the particular circumstances to satisfy the basic requirements of due process and fairness,” including the right to counsel, the right to a hearing, and the right to “access by his counsel to the social records and probation or similar reports which presumably are considered by the court....” *Kent v. United States*, 383 U.S. 541, 553, 557 (1966). The Court found that such protections were “required by the statute read in the context of constitutional principles relating to due process and the assistance of counsel.” *Id.* at 557.
3. *Kempen v. Maryland*, 428 F.2d 169, 173-174 (4th Cir. 1970) (citations omitted):

The waiver hearing is much more than a mere ‘preliminary hearing establishing probable cause for the initiation of further action.’... By deciding the waiver issue, the juvenile court determines whether the accused, if found guilty, will receive nonpunitive rehabilitation as juvenile from the state's social service agencies or will be sentenced as an adult....it seems to us nothing can be more critical to the accused than determining whether there will be a guilt determining process in an adult-type criminal trial. The waiver proceeding can result in dire consequences indeed for the guilty accused. If the juvenile court decides to keep jurisdiction, he can be detained only until he reaches majority....But, if jurisdiction is waived to the adult court, the accused may be incarcerated for much longer, depending upon the gravity of the offense, and, if the offense be a felony, lose certain of his rights of citizenship.

4. *L.L.J. v. State*, 746 So. 2d 1052, 1062-63 (Ala. Crim. App. 1999): The Alabama Court of Appeals held that although transfer hearings are not adjudications of guilt, they must still measure up to the essentials of due process and fair treatment, noting “to transfer a juvenile and subject him to adult treatment without protecting his constitutional rights is impermissible.”
5. *Matter of Stephfon W.*, 191 W. Va. 20, 23 (W. Va. 1994): The West Virginia Supreme Court of Appeals found that “the transfer of a juvenile to adult criminal jurisdiction...is a matter of substantially more gravity” than a preliminary hearing because “If the transfer is made, the juvenile loses the beneficial protection of our juvenile laws and is treated the same as an adult criminal.” The West Virginia Court held that certain “substantial due process rights” must be afforded to a juvenile at a transfer hearing, including, inter alia, advance written notice, a right to be heard in person and present witnesses and evidence, a right to confront and cross-examine adverse witnesses, and a right to court appointed counsel. *Id.* at 23-24.
6. *L.L.J. v. State*, 746 So. 2d 1052 (Ala. Crim. App. 1999): The juvenile court below abused its discretion in precluding the defendant from offering expert testimony by a child psychologist, stating, “We conclude that Dr. Lyman's testimony would have been relevant to at least one of the six factors that a juvenile court must consider when determining whether to transfer a juvenile for prosecution as an adult...[this] testimony would have been directly relevant to the issue whether the best interests of the

appellant would be served by keeping her in the juvenile system,...[and] would have been relevant for purposes of rebutting the state's expert testimony that the appellant's conduct disorder was most likely not treatable....Such evidence was highly relevant to the transfer hearing, and thus should have been admitted.” *Id.* at 1063. In holding that the defense should have been permitted to call an expert witness, the *L.L.J.* Court relied on the right to present witnesses, the right to cross-examine witnesses, and Due Process: “Few rights are more fundamental than that of an accused to present witnesses in his own defense.’ The rights to confront and cross-examine witnesses and to call witnesses in one's own behalf have long been recognized as essential to due process.’ Furthermore, ‘[i]t is the manifest duty of the courts to vindicate the Fifth Amendment guarantee that no person shall be deprived of liberty without due process of law, and to accomplish that it is essential that all relevant and admissible evidence be produced.’” *Id.* (citations omitted).

7. *In Interest of M.D.N.*, 493 N.W.2d 680, 687 (N.D. 1992): “Determining whether a juvenile is amenable to treatment, especially in light of a limited time period within the juvenile system, requires the juvenile court judge to predict the future. It is essential, therefore, that the court hear expert testimony—not as a sole basis for the court's decision, but to assist in its determination.”
8. *Matter of J.E.H.*, 972 S.W.2d 928, 929 (Tex. App. 1998): “Because of the hearing's impact upon a juvenile with respect to his or her punishment and the overall unfairness of the State's presentation of expert testimony when an indigent juvenile would not have the means to counter such evidence in the absence of the appointment of his or her own expert, we hold that the appointment of such an expert in connection with a release-transfer hearing is required by the Due Process Clause when an indigent juvenile makes the required showing to justify such an appointment.”
9. *Howell v. State*, 185 S.W.3d 319, 328 (Tenn. 2006): the Court held that defense counsel's failure to secure and present an expert's evaluation of the juvenile during a transfer hearing constituted deficient performance. Although the Court determined that in the particular circumstances the deficiencies did not result in unfair prejudice to the juvenile defendant, the Court’s holding nevertheless highlights the notion that the juvenile defendant’s mental history and mental state are key factors to be considered at a transfer hearing, and that defense counsel has a duty to consult an expert regarding these factors. *Id.* at 329-330. Importantly, *Howell* holds that a defense attorney’s failure to obtain an expert medical opinion for the purposes of a transfer hearing constitutes ineffective assistance of counsel. *Id.* at 328.
10. The American Bar Association states that in a transfer proceeding, “Expert opinion should be considered in discussing the likely efficacy of the dispositions available to the juvenile court.” American Bar Association, *Juvenile Justice Standards- Standards Relating to Transfer Between Courts*, Standard 2.2 (1980). Available at <https://www.ncjrs.gov/pdffiles1/ojjdp/82487.pdf>.