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CHAPTER 39, THE FLORIDA JUVENILE JUSTICE ACT:
FROM JUVENILE TO ADULT WITH THE
STROKE OF A PEN

Sue Carter

I. INTRODUCTION

The Florida Juvenile Court has been in existence since 1911.1 Operating under the well-known doctrine of parens patriae,2 the juvenile division of the circuit court is currently vested by the legislature with exclusive original jurisdiction over all proceedings “in which a child is alleged to have committed a delinquent act or violation of law.”3 The court is empowered to retain jurisdiction, “unless relinquished by its order, until the child reaches nineteen years of age.”4 During this period, the court has the same power over the child as it had before the child became an adult.5

The Florida Juvenile Justice Act (the Act)6 is bottomed on the philosophy that both the best interests of the child and of the state must be considered when determining the fate of juvenile offend-


2. The concept of parens patriae originated in England where the law recognized a residual power in the crown to protect children. The earliest cases invoking the doctrine, however, protected children against wrongdoing adults and not against the child’s own misbehavior. M. PAULSEN & C. WHITEBREAD, JUVENILE LAW AND PROCEDURE 5 (1974).

3. FLA. STAT. § 39.02(1) (1981). A “child” is defined to be “any unmarried person under the age of 18 alleged to be dependent or any married or unmarried person who is charged with a violation of law occurring prior to the time that person reached the age of 18 years.” FLA. STAT. § 39.01(7) (1981). In addition, a “[c]hild who has committed a delinquent act” means a child who . . . is found by a court to have committed a felony, a misdemeanor, contempt of court, or a violation of a local penal ordinance and whose case has not been prosecuted as an adult case.” FLA. STAT. § 39.01(8) (1981).


5. Id. The legislature specifically provided, however, that this subsection “shall not be construed to prevent the exercise of jurisdiction by any other court having jurisdiction of the child if the child, after becoming an adult, commits a violation of law.” Id.

ers. The Act’s proclaimed purposes are “[t]o protect society more effectively by substituting for retributive punishment, whenever possible, methods of offender rehabilitation” and “[t]o assure to all children brought to the attention of the courts . . . as a result of their misconduct . . . the care, guidance, and control . . . which will best serve the moral, emotional, mental, and physical welfare of the child and the best interests of the state.”

A child who is suspected of committing a delinquent act or violation of Florida law is subject to one of three actions by the state. He may be formally charged in the juvenile court, he may be diverted from the system and his case submitted to mediation, or the state may decline to prosecute. In the event that the state attorney does decide to prosecute, judicial proceedings are initiated by filing a petition alleging the commission of a delinquent act. From this point forth, the juvenile court process in substantial part mirrors that of the adult criminal court. The juvenile defendant has the right to a judicial determination of the probable cause against him, the right to counsel at every critical stage of the proceedings, and the right to be informed of the charges against him. In addition, the juvenile offender has the right to present witnesses and evidence in his own behalf, and to confront and cross-examine witnesses against him. The juvenile need not be a witness against or otherwise incriminate himself, nor may the state use illegally seized evidence against him. Although a juvenile offender is not entitled to bail or to trial by jury, the state is still required to prove every element of each offense.

20. Fla. Stat. § 39.032(6)(a) (1981) (which states that the decision to release a child from detention care shall be made by the court).
charged beyond a reasonable doubt. 22

Although the juvenile court is vested with exclusive jurisdiction to determine whether a child should be adjudicated as a delinquent,23 the legislature realizes that some children are not amenable to juvenile court treatment. Thus four methods have been provided by which a child may be transferred to the adult criminal court. Under the "judicial waiver" provision,24 a child who is fourteen years of age or older and who is charged with a violation of Florida law is brought before a juvenile court judge for a due process waiver hearing. Based upon considerations such as the child's age, background, and the nature of the charges against him, the court must then decide whether to continue to treat the defendant as a juvenile or to certify and transfer him to the criminal justice system to be charged and tried as an adult. If the court determines that adult treatment is appropriate, the child is then bound over for prosecution, trial and sentencing as an adult criminal defendant.25

A second means of transferring a child to the adult criminal court is pursuant to an information filed directly by the state attorney.26 Unlike the judicial waiver provision, the direct file provision bypasses the juvenile court system altogether. Instead, the prosecutor is expressly authorized to charge a sixteen or seventeen-year-old child with a criminal offense "when in his judgment and discretion the public interest requires that adult sanctions be considered or imposed."27

Another method of transfer to adult court is pursuant to an indictment.28 The state attorney is specifically authorized to submit to the grand jury for consideration any case involving "[a] child of any age charged with a violation of Florida law punishable by death or by life imprisonment."29 As in the case of an information, no due process hearing is required. If, upon completion of its inquest, the grand jury determines that there is probable cause to believe that the accused juvenile committed the alleged offense, an indictment may be returned against him. The child shall then be

25. Id.
27. Id.
29. Id.
treated as an adult for all subsequent purposes.\textsuperscript{30}

Finally, a child may be transferred to the adult criminal court upon his own motion.\textsuperscript{31} Under the "demand-waiver" provision, a child and his parent or guardian may choose to opt out of the juvenile court into the adult court system. Although seldom used, this provision may be advantageous in those cases where the child seeks release prior to an adjudicatory hearing or where he wishes to exercise his right to a jury trial.\textsuperscript{32} Courts which have considered the demand-waiver statute have held that transfer pursuant to this provision is mandatory. However, a child who is transferred upon his own request may still be treated as a juvenile if subsequently charged with a new offense.

This comment sets forth the current law pertaining to the transfer of juvenile offenders from the juvenile to the adult court system. Its purpose is to examine those provisions of the Florida Juvenile Justice Act which provide for transfer by judicial waiver, information, indictment, and pursuant to the child's request. In so doing, a concise source of information for the practicing attorney and for concerned members of the legal community is provided. To achieve this goal, relevant statutory provisions will be examined and the latest available case law construing these provisions will be analyzed. Finally, assuming that the transferred offender is found guilty of the offense charged, the sentencing alternatives which are available to the adult court will be examined briefly, and the continuing interplay between the juvenile and adult court processes will be highlighted.

II. WAIVER OF JURISDICTION

One of the oldest procedures used to transfer a juvenile to the adult court system is judicial waiver. By this process, the juvenile court "relinquishes its original jurisdiction over a child and transfers the case to a court of criminal jurisdiction for prosecution" of the child as an adult.\textsuperscript{33} Not all states statutorily provide for waiver of jurisdiction or its functional equivalent.\textsuperscript{34}
In Florida, however, the legislature has specifically provided for waiver of jurisdiction by the juvenile court:

If the court finds, after a waiver hearing, that a child who was 14 years of age or older at the time the alleged violation was committed and who is alleged to have committed a violation of Florida law should be charged and tried as an adult, then the court may enter an order transferring the case and certifying the case for trial as if the child were an adult. The child shall thereafter be subject to prosecution, trial, and sentencing as if the child were an adult but subject to the provisions of [section] 39.111(6).35

A. Due Process Requirements

Decisions interpreting the Florida rule and similar waiver provisions have held that a child subject to waiver must be afforded a hearing prior to transfer by the juvenile court.36 In Kent v. United States,37 Morris Kent, a juvenile, was apprehended and interrogated concerning a housebreaking and rape. Without conducting the "full investigation" required by statute, the juvenile court judge transferred Kent to the criminal jurisdiction of the circuit court where he was found guilty of housebreaking and was sentenced to a term of thirty to ninety years in prison.38

On appeal, the United States Supreme Court held that although a minor has no constitutional right to treatment in a separate court system, once such a system is authorized by statute a juvenile may not be transferred from it until due process requirements are met.39 Characterizing the waiver process as a "critically important" process which determines important statutory rights for the juvenile, the Court held that due process requires that no transfer

the determination. Id. at 4-2. By comparison, Nebraska has no waiver provision because juvenile and criminal courts have concurrent jurisdiction over the more serious offenses. Id. New York, on the other hand, has a very young jurisdictional age. More significantly, however, it utilizes a "reverse waiver" process whereby older children charged with serious offenses may sometimes be transferred to the juvenile court. Id. at 4-1 to 4-2.

36. Because juvenile court proceedings are characterized as civil rather than criminal in nature, juveniles are often stripped of due process rights which would have been afforded adults charged with similar offenses. See, e.g., Kent v. United States, 383 U.S. 541, 545 n.3 (1966); see also McKeiver v. Pennsylvania, 403 U.S. 528 (1971); In re Gault, 387 U.S. 1 (1967); Cox v. United States, 473 F.2d 334 (4th Cir. 1973); Note, Delinquency and Denied Rights in Florida's Juvenile Court System, 20 U. FLA. L. REV. 369 (1968).
38. Id. at 546-48.
39. Id. at 557.
to a criminal court shall occur without a hearing and a statement of reasons.\(^4\) Citing *Pee v. United States*,\(^4\) the Court explained that it did not mean that the waiver hearing "must conform with all of the requirements of a criminal trial or even of the usual administrative hearing; but, [such a] hearing must measure up to the essentials of due process and fair treatment."\(^4\)

In an appendix to the opinion, the Court announced eight criteria and principles concerning waiver of jurisdiction. The Court noted that these criteria were consistent with the basic aims and purposes of the Juvenile Court Act of the District of Columbia.\(^4\) The *Kent* standards have been adopted by a majority of states both judicially\(^4\) and statutorily.\(^4\) In 1975, they were incorporated almost verbatim into the Florida Juvenile Justice Act.\(^4\) Under cur-

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40. Id. at 556-57.
41. 274 F.2d 556, 559 (D.C. Cir. 1959).
42. *Kent*, 383 U.S. at 562.
43. Id. at 565-67.

The court shall conduct a hearing . . . for the purpose of determining whether a child should be transferred. In making its determination, the court shall consider:

1. The seriousness of the alleged offense to the community and whether the protection of the community is best served by transferring the child for adult sanctions.

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.

5. The desirability of trial and disposition of the entire offense in one court when the child’s associates in the alleged crime are adults or children who are to be tried as adults who will be or have been charged with a crime.

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

7. The record and previous history of the child, including:
   a. Previous contacts with the department, other law enforcement agencies, and courts;
   b. Prior periods of probation or community control;
   c. Prior adjudications that the child committed a delinquent act or violation of law, greater weight being given if the child had previously been found by a court to have committed a delinquent act involving an offense classified as a felony or had twice previously been found to have committed a delinquent act involving an offense classified as a misdemeanor; and
   d. Prior commitments to institutions.
rent Florida law, before a child may be transferred to the adult court the juvenile court must comply with the guidelines enumerated in Kent. 47

B. State Attorney May Request Waiver

In addition to setting forth the guidelines for judicial waiver, the Act empowers the Office of the State Attorney to seek transfer of any child for adult criminal prosecution if the child was fourteen years of age or older at the time of the alleged commission of the offense for which he is charged. 48 Under this provision, the prosecutor's decision to request a transfer is discretionary. However, if a child is currently charged with a violent crime against a person, and has been previously adjudicated delinquent for a similar offense, the statute allows no such discretion. The state attorney is mandated to either file a motion requesting the transfer or an information pursuant to section 39.04(2)(e)(4). 49

If the state files a motion for waiver, the Department of Health and Rehabilitative Services is required, prior to the hearing on the motion, to make and submit a written study of the child's background utilizing the Kent standards. 50 The child, his parents, guardians, or counsel, and the state attorney, are then authorized to examine these reports and to question those responsible for their preparation. 51 Upon completion of the waiver hearing, if the decision to transfer is made by the court, the judge is required by law to submit written findings of fact with respect to each of the Kent criteria. 52 Moreover, the judge must also enter a court order

47. Id.
49. Fla. Stat. § 39.09(2)(a) (1981) mandates that if the child has been "previously adjudicated delinquent for a violent crime against a person, to wit: Murder, sexual battery, armed or strong-armed robbery, aggravated battery or aggravated assault," the state attorney must act pursuant to its provisions.
51. Id.
52. Fla. Stat. § 39.09(2)(e) (1981). A state is free to select its own statutory scheme to govern the transfer of juvenile offenders to adult court. Therefore, the procedural protections which the child must be afforded before he may be treated as an adult will depend upon the statute which originally entitled him to juvenile treatment. Stokes v. Fair, 581 F.2d 287, 289 (1st Cir. 1978). See also Breed v. Jones, 421 U.S. 519, 537-38 (1974).
specifying the reasons for imposing adult sanctions. If the child is opposed to waiver, he is free to seek review on appeal pursuant to section 39.14.

III. TRANSFER BY INFORMATION

Perhaps the procedure which is used most often to transfer a juvenile to the adult court is that pursuant to an information filed by the state attorney. Since early common law, it has been well-settled that prosecution for a crime must be preceded by a formal accusation. Under both the Juvenile Justice Act and the Florida Rules of Juvenile Procedure, all proceedings against a child alleged to be delinquent shall be initiated by the filing of a petition by a person authorized by law to do so. Pursuant to a recent legislative amendment, however, an information may be filed against any child sixteen or seventeen years old who is alleged to have committed an offense if, in the state attorney’s judgment and discretion, the public interest requires that adult sanctions be considered. The effect of this provision, like that of judicial waiver, is to force the child into the adult criminal system. Unlike judicial waiver, however, no due process hearing is required. The filing of an information is considered a prerogative of the prosecutor. Therefore, absent the presence of certain factors, the decision to charge is not subject to judicial review.

A child who has been charged with a misdemeanor may never-

54. Id.
57. Fla. R. Juv. P. 8.100. A uniform traffic citation may be considered a petition, but is not subject to the requirements of this rule. Id. See also I.H. v. State, 405 So. 2d 450 (Fla. 1st DCA 1981) (an information initially filed in adult court may substitute for the petition when the case is transferred to juvenile court).
58. Fla. Stat. § 39.04(2)(e)(4) (1981). Although the statute provides that the intake officer may “recommend that the state attorney file a petition of delinquency or an information or seek an indictment by the grand jury,” this is not “a prerequisite for any action taken by the state attorney.” Fla. Stat. § 39.04(2)(a) (1981).
59. See, e.g., Russell v. Parratt, 543 F.2d 1214, 1215-16 (8th Cir. 1976) (the court agreed that Congress could legitimately vest in the Attorney General discretion to proceed against a minor as a juvenile or an adult and that the exercise of such discretion does not require a hearing); Register v. Safer, 368 So. 2d 620 (Fla. 1st DCA 1979) (a state attorney has discretion to prosecute juveniles under certain conditions by filing an information and is not bound by the certification provisions which place discretion in the judge and require a determination by the court of the Kent factors).
60. See infra text accompanying notes 94 & 95 for the circumstances under which a court may review the state attorney’s charging decision.
theless be treated as a juvenile. However, this is so only if he can show that he has not been previously found to have committed two delinquent acts, one of which was a felony.\textsuperscript{61} Upon consideration of this requirement, the Florida Supreme Court in \textit{Lott v. State}\textsuperscript{62} has determined that it does not work a hardship on the juvenile. The court noted that “under the statute, the juvenile is only required to submit some form of legally sufficient evidence that he has not committed the subject acts.”\textsuperscript{63} Accordingly, the court stated that “[a]n affidavit or testimony . . . would be satisfactory.”\textsuperscript{64}

A minor may exercise his right to be tried as a juvenile at any time prior to the commencement of his criminal trial.\textsuperscript{65} In \textit{State ex rel. Ortez v. Brousseau},\textsuperscript{66} the defendant was charged by direct information with attempted sexual battery and burglary. Before the trial, the juvenile filed a motion to transfer the charges for adjudication against him as a child.\textsuperscript{67} The state stipulated that the defendant had not previously been adjudicated guilty of two delinquent acts, one of which would constitute a felony if committed by an adult.\textsuperscript{68} Nevertheless, the trial court ruled that the defendant, by waiting, had waived his right to be tried as a juvenile.\textsuperscript{69} On appeal, the Second District Court of Appeal held that since the child had not committed the requisite prior offenses, he had a mandatory right to be tried as a juvenile.\textsuperscript{70} Acknowledging that while “[t]here is much to be said for placing a time limit upon the right to make a motion to transfer,” the court pointed out that both the statute and the court rules are silent in this respect.\textsuperscript{71} Accordingly, once the defendant moved to transfer his case to the juvenile division for adjudication, the circuit court was divested of jurisdiction over his prosecution.

\begin{itemize}
\item \textsuperscript{61} \textsc{Fla. Stat.} § 39.04(2)(e)(4) (1981).
\item \textsuperscript{62} 400 So. 2d 10, 12 (Fla. 1981).
\item \textsuperscript{63} \textit{Id}.
\item \textsuperscript{64} \textit{Id}.
\item \textsuperscript{65} \textit{State ex rel. Ortez v. Brousseau}, 403 So. 2d 549 (Fla. 2d DCA 1981). \textit{Cf.} \textit{Carter v. State}, 382 So. 2d 871, 873 (Fla. 5th DCA 1980) (which held that once a 16-year-old had been convicted in a criminal trial, it was too late to request a transfer to juvenile court).
\item \textsuperscript{66} 403 So. 2d 549, 550 (Fla. 2d DCA 1981).
\item \textsuperscript{67} \textit{Id}.
\item \textsuperscript{68} \textit{Id}.
\item \textsuperscript{69} \textit{Id}.
\item \textsuperscript{70} \textit{Id}.
\item \textsuperscript{71} \textit{Id}.
\end{itemize}
A. Is Section 39.04(2)(e)(4) Constitutional?

In State v. Cain,22 the Florida Supreme Court faced a direct challenge to the constitutionality of section 39.04(2)(e)(4). Mark Cain, a minor, was charged by an amended information with two counts of armed burglary and two counts of grand theft. Contending that “the statute unconstitutionally delegates to the state attorney unbridled discretion to prosecute a juvenile as an adult,” Cain moved to dismiss the charges.23 The circuit court granted the defendant’s motion and the State of Florida appealed.24

On review, the constitutionality of the direct filing provision was upheld.25 Relying on Johnson v. State26 and Woodard v. Wainwright,27 which upheld the constitutionality of the juvenile indictment provision, the court stated that it saw no distinction between the state attorney’s decision to seek an indictment against a juvenile28 and the decision to file an information.29 “In either case,” said the court, “the legislature has, by these statutory exceptions to the juvenile division's general jurisdiction over children, returned to the state attorney his traditional prerogative of deciding who to criminally charge with what offense.”30

There have been several criticisms of the holding in Cain.31 First, in order to uphold the present waiver statute, the court relied upon prior case law which had sustained the constitutionality of waiver by grand jury indictment.32 Emphasizing the differences between the Office of the State Attorney and a grand jury, the court’s finding that the prosecutor’s power to file an information is the same as his ability to refer the case to a grand jury has been characterized as “dubious at best.”33 Arguably, this is so because while the state attorney operates practically restraint-free,34 a grand jury’s actions are limited in that they are subject to the in-

72. 381 So. 2d 1361 (Fla. 1980).
73. Id. at 1362.
74. Id.
75. Id. at 1368.
76. 314 So. 2d 573 (Fla. 1975).
77. 556 F.2d 781 (5th Cir. 1977).
78. Cain, 381 So. 2d at 1364. See infra notes 114-72 and accompanying text.
79. Id.
80. Id. Any difference between an indictment and an information is procedural, not substantive. Id. See also Hubbard v. State, 411 So. 2d 1312 (Fla. 1st DCA 1982).
82. Id. at 488.
83. Id. at 489.
84. Id. at 490.
ternal policing of the jury members. Therefore, to say that there is no difference between the prosecutor's power to file an information and his ability to refer the case to the grand jury "mistakes the fact that two separate institutions are formally accusing the juvenile, . . . [as] each arrives at its decision to charge in completely different ways." 86

Apparently having anticipated this argument, the Cain court countered that there is no absolute right to be treated as a juvenile delinquent rather than a criminal offender. 87 Such a right exists only to the extent provided by the legislature. 88 Rejecting the argument that the state attorney has "unbridled discretion," the court concluded that the prosecutor's discretion to charge does have limits. Accordingly, pursuant to section 39.04(2)(e)(4), the state attorney "may successfully charge only a sixteen or seventeen-year-old and then only if the child has also been previously found to have committed two delinquent acts, one of which would constitute a felony if committed by an adult." 89

Comparing the direct file provision to waiver by grand jury indictment, the Cain court noted that the grand jury indictment requirement does not determine the propriety of prosecuting a juvenile as an adult. It merely ensures that there is probable cause for the charge. 90 By enacting these exceptions to the court's otherwise exclusive jurisdiction, the legislature has simply returned to the prosecutor his traditional prerogative of deciding what criminal charges to bring and against whom to bring them. 91 The court also noted that the legislature could reasonably have concluded that, based on factors "such as age, seriousness of the offense and past record . . . certain juvenile offenders were not suitable candidates for the juvenile act's rehabilitative goals." 92 Consequently, the court acknowledged that the legislature could have had valid reasons to classify the juveniles as persons against whom adult sanctions would be a reasonable alternative. 93

Once the statutory requirements are met, the state attorney's charging discretion is almost absolute. Although "there may be cir-

85. Id.
86. Id. at 491.
87. Cain, 381 So. 2d at 1363.
88. Id.
89. Id. at 1364-65.
90. Id. at 1365.
91. Id. at 1364.
92. Id.
93. Id.
cumstances in which courts would be entitled to review the exercise of prosecutorial discretion, these circumstances would necessarily include the deliberate presence of such factors as 'race, religion, or other arbitrary classification.' Absent such factors, courts have held that "the exercise of prosecutorial discretion, even when it results in different treatment of codefendants originally charged in the same case with the same offense, does not violate due process or equal protection of the law." 

**B. Does the Florida Direct File Provision Circumvent Kent?**

A final argument against section 39.04(2)(e)(4) is that it is an attempt by the legislature to circumvent the Supreme Court's command in Kent v. United States. Opponents argue that although a neutral and detached magistrate is required to abide by the Kent standards prior to effectuating judicial waiver, the state attorney—a partisan advocate within the system—may effectively bypass these standards with the filing of an information.

In apparent agreement with this position, Judge Skelly Wright, dissenting in United States v. Bland, stated that the pertinent question is how the prosecutor should go about making waiver decisions. Judge Wright determined that "the shift in decision making responsibility from the court to the prosecutor did not eliminate the need for the procedural rights expounded in Kent." Characterizing the majority's holding as a "blatant attempt to evade the force of the Kent decision," the dissent concluded that "the rights expounded in Kent are fundamental and immutable." Admonishing that "[t]he transfer of the waiver decision from the neutral judge to the partisan prosecutor increases rather than diminishes the need for due process protection of the child," Judge Wright contended that since the effect of the divestiture is the same in both proceedings, the procedural rights ac-

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96. See Comment, supra note 81, at 494.
98. Id. at 1342.
99. Id. at 1342-43.
100. Id. at 1341.
101. Id. at 1341-42.
102. Id. at 1343.
companying it should also be the same. Thus, he asserted, "we need look no further than Kent to determine what those rights are." Responding to this contention, the Cain court adopted the rationale set forth in Russell v. Parratt. After reviewing the Kent decision, the court in Parratt stated that

[i]t is the holding of Kent that when the question is one of waiver of jurisdiction of the Juvenile Court, and it is to be decided by a judge of the Juvenile Court, the juvenile is entitled to a hearing on the question of waiver, and to the assistance of counsel in that hearing.

The court noted, however, that the decision to direct file does not involve judicial proceedings. Rather, it involves "a traditional exercise of discretion within the executive branch." Although recognizing that the prosecutor's charging decision has a substantial impact on the course of subsequent proceedings, the court refused to equate the prosecutorial decision with judicial proceedings absent a legislative directive. The net result is that without such factors as race, religion or arbitrary classification, due process in Florida does not require either a hearing or consideration of the Kent criteria prior to the direct filing of an information by the state attorney against a juvenile.

In support of Florida's position, federal courts have also held that Congress may legitimately vest in the Attorney General discretion to decide whether to proceed against a juvenile as an adult. Again, the exercise of such discretion does not require a due process hearing. In Bland, the court emphatically rejected "the hitherto unaccepted argument that due process requires an adversary hearing before the prosecutor can exercise his age-old discretion to decide whether to proceed against a juvenile as an adult."
function of deciding what charge to bring against whom."\textsuperscript{112} In light of these decisions, there can be no doubt as to the validity of Florida's direct file provision.

IV. TRANSFER BY INDICTMENT

Not only has the constitutional validity of the direct filing provision been upheld, but so too has the constitutionality of the juvenile indictment provision. Section 39.02(5)(c), Florida Statutes, provides that a child of any age charged with a violation of Florida law punishable by death or by life imprisonment may be transferred to an adult criminal court when charged by a grand jury indictment.\textsuperscript{118} One apparent rationale behind the indictment provision, like that underlying the direct file provision, is that a child charged with a serious offense may not be amenable to treatment as a juvenile and thus he should be treated as an adult.\textsuperscript{114}

The leading case pertaining to juvenile indictments is Johnson v. State.\textsuperscript{116} There, the Florida Supreme Court upheld the constitutionality of section 39.02(5)(c) against a direct attack based on due process and equal protection grounds.\textsuperscript{116} In Johnson, a juvenile defendant and an adult codefendant were jointly indicted for the crime of armed breaking and entering with intent to commit a felony. The first two counts of the indictment each carried a potential maximum sentence of life imprisonment.\textsuperscript{117} Contending that section 39.02(5)(c) was unconstitutional, Johnson moved to dismiss the indictment. The trial court rejected his assertions and upheld the constitutionality of the statute.\textsuperscript{118}

On appeal to the Florida Supreme Court, Johnson argued that the statute violated both the equal protection and due process clauses of the Florida and the United States Constitutions because

\begin{flushleft}
\textsuperscript{112} Bland, 472 F.2d at 1337.
\textsuperscript{113} Fla. Stat. § 39.02(5)(c) (1981) provides that:
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 forth in s.39.06(7) unless and until an indictment on such charge is returned by the grand jury. When an indictment is returned, the petition for delinquency, if any, shall be dismissed.
\textsuperscript{114} Woodard v. Wainwright, 556 F.2d 781, 785 (5th Cir.), cert. denied, 434 U.S. 1088 (1977).
\textsuperscript{115} 314 So. 2d 573 (Fla. 1975).
\textsuperscript{116} Id. at 577.
\textsuperscript{117} Id. at 574.
\textsuperscript{118} Id.
\end{flushleft}
[s]ome children charged with violations of Florida law punishable by death or by life imprisonment are indicted and may thereafter be handled in every respect as an adult, while others similarly charged are not indicted and are thereby retained within the jurisdiction of the Juvenile Division of the Circuit Court.\textsuperscript{119}

Rejecting Johnson’s assertions as having “no basis,”\textsuperscript{120} the court noted that the constitution permits,\textsuperscript{121} but does not require, that a child be charged with an act of delinquency instead of a crime.\textsuperscript{122} In addition, the court reasoned that although the juvenile court has exclusive original jurisdiction in matters involving children, a valid exception to that court’s jurisdiction has been created by the legislature under section 39.02(5)(c).\textsuperscript{123} Consequently, the court found the statute constitutionally valid.\textsuperscript{124} In so doing, the court emphasized that in both the adult and juvenile divisions of our judicial system, the state attorney, as the prosecuting attorney, may elect to prosecute or not in any particular case. However, this decision is discretionary and is inherent in our system of criminal justice.\textsuperscript{125}

A. An Indicted Child Shall Be Handled in Every Respect as if He Were an Adult

Once a grand jury indictment has been returned against the child, the juvenile court is divested of jurisdiction and “[t]he child shall be tried and handled in every respect as if he were an adult.”\textsuperscript{126} A waiver or certification hearing comporting with the Kent guidelines is not required.\textsuperscript{127} Furthermore, “[a] circuit court

\begin{itemize}
  \item [119.] Id. at 575.
  \item [120.] Id. at 577.
  \item [121.] FLA. CONST. art. I, § 15(b), provides that:
  
  When authorized by law, a child as therein defined may be charged with a violation of law as an act of delinquency instead of crime and tried without a jury or other requirements applicable to criminal cases. Any child so charged shall, upon demand made as provided by law before a trial in a juvenile proceeding, be tried in an appropriate court as an adult. A child found delinquent shall be disciplined as provided by law.
  
  \item [122.] Johnson, 314 So. 2d at 576.
  \item [123.] Id. at 576-77.
  \item [124.] Id. at 577.
  \item [125.] Id. See also McCloud v. State, 335 So. 2d 257, 258 (Fla. 1976) (where the court again rejected the argument that the juvenile indictment provision was unconstitutional because it allowed for the use of unbridled prosecutorial discretion).
  \item [126.] FLA. STAT. § 39.02(5)(c)(1) (1981). See also State v. N.B., 360 So. 2d 162, 164 (Fla. 1st DCA 1978); State v. Robinson, 336 So. 2d 437 (Fla. 2d DCA 1976).
  \item [127.] Woodard v. Wainwright, 556 F.2d 781, 785-86 (5th Cir. 1977) (in which the court
is without authority to treat an indicted juvenile under the protective provisions of Chapter 39 but must, during pretrial proceedings, treat him "as an adult in every respect including the setting of terms for bail or release or confinement."128

B. Related Offenses Not Punishable by Death or by Life Imprisonment May Also Be Charged by Indictment

Under prior Florida law, a child could not be charged by indictment for an offense not punishable by death or life imprisonment. However, this changed in 1980. In Robidoux v. Coker,129 Benjamin Robidoux, a juvenile, was indicted in three separate counts for armed robbery, attempted murder, and aggravated assault. Only the armed robbery was punishable by life imprisonment or by death.130 This being the case, Robidoux, by petition for writ of prohibition, sought to prevent the adult criminal court from exercising jurisdiction over the remaining two counts of the indictment. Reasoning that only the offense punishable by death or by life imprisonment was properly before the court, Robidoux argued that absent a valid waiver of jurisdiction by the juvenile court on the charges in question, the criminal court lacked jurisdiction to try him.131

In granting the defendant's petition, the Fourth District Court of Appeal stated that while it may have been more expedient to dispose of all charges in a single judicial proceeding, the fact that additional charges arose out of the same incident as the life felony was insufficient to allow adult jurisdiction.132 Thus, the court held that "[o]nly the offense punishable by death or life imprisonment is properly before the adult court."133 In explaining its holding, the court admonished that "what could not have been done by the filing of separate indictments for the three offenses, cannot be done by the simple expedient of a single indictment."134 However, Judge Anstead concluded that, assuming the filing of a delin-

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129. 383 So. 2d 719 (Fla. 4th DCA 1980).
130. Id. at 720.
131. Id.
132. Id. at 721.
133. Id.
134. Id.
quency petition, the state would not be precluded from seeking a waiver hearing on the related offenses.\textsuperscript{135}

In arriving at its decision, the court reviewed several related opinions. In \textit{E.H.N. v. Willis},\textsuperscript{136} a juvenile was charged by two separate informations, each alleging the commission of two felonies.\textsuperscript{137} At the time these offenses were committed, the juvenile defendant was serving a sentence based upon a prior felony conviction in the adult division. The new charges arose from, or were closely connected with, the incarceration arising out of the prior felony conviction.\textsuperscript{138} The issue in \textit{E.H.N.} was whether the adult division of the circuit court had jurisdiction to try the defendant on the four new felonies absent a waiver of jurisdiction and certification of the case by the juvenile court.

Ruling that the adult division was without jurisdiction, the First District Court of Appeal emphatically held that section 39.02(5)(a), the waiver hearing statute, permits the child to be treated as an adult only for the purpose of disposing of the alleged violation pending in the juvenile division.\textsuperscript{139} Where new criminal charges are involved, the child must again receive a waiver hearing and certification to adult court, notwithstanding the fact that the juvenile division has previously waived jurisdiction as to an earlier criminal charge.\textsuperscript{140}

A similar result was reached in \textit{A.D.T. v. State}.\textsuperscript{141} There, the juvenile defendant was charged by indictment with one count of disorderly intoxication and with three counts of resisting arrest with violence. On appeal, the First District Court of Appeal held that the state could not use an indictment as a substitute for a petition alleging delinquency.\textsuperscript{142} Noting that substitution is permitted only when the child is charged by grand jury indictment with a violation of Florida law punishable by death or life imprisonment, the court reasoned that “had the legislature intended for an indictment to be used in the place of a delinquency petition in any other situations, it would have so provided.”\textsuperscript{143}

After a review of the pertinent case law and the four exceptions

\textsuperscript{135} \textit{Id.} This was before the enactment of section 39.04(2)(e)(4), the direct file provision.
\textsuperscript{136} 350 So. 2d 829 (Fla. 1st DCA 1977). See Robidoux, 383 So. 2d at 719-20.
\textsuperscript{137} \textit{E.H.N.}, 350 So. 2d at 830.
\textsuperscript{138} \textit{Id.}
\textsuperscript{139} \textit{Id.}
\textsuperscript{140} \textit{Id.}
\textsuperscript{141} 318 So. 2d 478 (Fla. 1st DCA 1975). See Robidoux, 383 So. 2d at 721.
\textsuperscript{142} \textit{A.D.T.}, 318 So. 2d at 480.
\textsuperscript{143} \textit{Id.}
contained in chapter 39, the Robidoux court steadfastly refused to create a fifth exception.\textsuperscript{144} Although acknowledging that its action may in practice appear to be superfluous or inefficient, the court declined to engage in judicial legislation. The problem was left for the legislature to examine.\textsuperscript{145}

In a direct response to the Robidoux court’s dilemma, the Florida legislature amended the Juvenile Justice Act.\textsuperscript{146} Consequently, after October 1, 1981, when a grand jury returns an indictment against a juvenile on an offense punishable by death or by life imprisonment, the juvenile may be tried as an adult on the indictable offense and on any other connected or related offense charged in the indictment.\textsuperscript{147} Thus, the Robidoux problem has been eliminated.

\textbf{C. An Indictment May Not Substitute for an Information but the Right Not To Be Charged by Indictment May Be Waived}

Approximately one year after Robidoux, the Fourth District Court of Appeal was again confronted with the question of whether a juvenile charged with offenses not punishable by death or life imprisonment had been improperly indicted. In King v. State,\textsuperscript{148} Nathaniel King, a juvenile, was indicted for robbery and aggravated battery. Failing to attack the indictment in the trial court, King was tried as an adult and convicted.\textsuperscript{149} On appeal to the Fourth District, King asserted for the first time that because he was a juvenile he could not be charged by indictment and tried as an adult under the provisions of chapter 39.\textsuperscript{150}

Reversing the defendant’s conviction, the appellate court directed the court below to dismiss the indictment without prejudice in order to allow the state to proceed as required by chapter 39.\textsuperscript{151}

\begin{itemize}
  \item[144.] Robidoux, 383 So. 2d at 721.
  \item[145.] Id.
  \item[147.] Fla. Stat. § 39.02(5)(c)(1) (1981) provides in pertinent part:
  \begin{quote}
  The child shall be tried and handled in every respect as if he were an adult:
  \begin{itemize}
    \item[a.] On the offense punishable by death or by life imprisonment; and
    \item[b.] On all other felonies or misdemeanors charged in the indictment which are based on the same act or transaction as the offense punishable by death or by life imprisonment or on one or more acts or transactions connected with the offense punishable by death or by life imprisonment.
  \end{itemize}
  \end{quote}
  \item[148.] 425 So. 2d 1379 (Fla. 4th DCA 1981).
  \item[149.] Id.
  \item[150.] Id.
  \item[151.] Id.
\end{itemize}
Moreover, holding that the indictment was not proper because the crimes charged were not punishable by death or by life imprisonment, the court explained that to rule otherwise would allow the state attorney to circumvent the provisions of chapter 39 "by seeking an indictment for every alleged juvenile offender."\textsuperscript{153}

In concluding, however, the appellate court acknowledged what it perceived to be a "rather incongruous situation as a result of [its] decision."\textsuperscript{154} Recognizing that section 39.04(2)(e)(4) allows under certain circumstances the direct filing of an information against a juvenile sixteen years of age or older, the court stated that "it does not logically follow that the same juvenile should be denied the greater degree of protection an indictment provides by having probable cause established by a grand jury."\textsuperscript{155} Seeking a remedy to this problem, the court certified the following question to the Florida Supreme Court: "May a juvenile who is subject to the direct filing of an information against him for a crime not punishable by death or life imprisonment also be subjected to the presentation of an indictment against him for like crimes?"\textsuperscript{155}

In \textit{State v. King},\textsuperscript{156} the Florida Supreme Court answered this question in the negative, finding "no indication that the legislature intended to allow the indictment of sixteen- or seventeen-year-old juveniles as an alternative to the filing of a direct information." The court reasoned that section 39.04(2)(e)(5) "must be read together with section 39.02(5)(c), which limits the crimes for which a juvenile may be indicted."\textsuperscript{157} The court held that a juvenile has a right not to be charged by an indictment for an offense not punishable by life imprisonment or death. If it is not timely or properly asserted, however, this right will be waived.\textsuperscript{158} Since the trial court had jurisdiction over all felonies as well as the parties, the court held that any objections the defendant may have had as to the court's jurisdiction over his person were waived when he appeared in person and defended his case.\textsuperscript{159}

Justice McDonald, concurring on the issue of waiver, entertained a different point of view with regard to the indictment.\textsuperscript{160} In his

\textsuperscript{152} Id. at 1380.
\textsuperscript{153} Id.
\textsuperscript{154} Id.
\textsuperscript{155} Id.
\textsuperscript{156} 426 So. 2d 12, 14 (Fla. 1982).
\textsuperscript{157} Id.
\textsuperscript{158} Id.
\textsuperscript{159} Id.
\textsuperscript{160} Id. at 15 (McDonald, J., concurring). Justice McDonald concurred in the opinion to
opinion, an indictment in which the state attorney concurs is the functional equivalent of an information filed by the prosecutor to proceed in the adult division of the circuit court.\textsuperscript{161} The state attorney is charged with preparing both informations and indictments. Since a proper indictment and an information contain "the same essential allegations," Justice McDonald concluded that by enacting section 39.04(2)(e)(4) the legislature contemplated and authorized prosecution by indictment for offenses not punishable by death or life imprisonment.\textsuperscript{162}

Even so, although a child may be indicted for the requisite offense, the legislature has imposed restrictions on the time frame in which the juvenile court may accept a plea or otherwise dispose of the cause.

**D. Preventing the Race to the Courthouse**

As a final consideration, the legislature has provided that "[a]n adjudicatory hearing shall be held within 21 days from the date that the child is taken into custody and charged" with the requisite offense.\textsuperscript{163} During this period, the juvenile court may act on any matter pertaining to the child and his welfare except adjudication.\textsuperscript{164} This provision "prevents the so-called 'race to the courthouse,' where a child charged with a capital or life felony rushes to an adjudicatory hearing before the Juvenile Court in order to avoid prosecution as an adult."\textsuperscript{165} In the event that the court unwittingly accepts such a plea, its action is void\textsuperscript{ab initio}.\textsuperscript{166} To rule otherwise would frustrate the legislative intent\textsuperscript{167} by permitting "the juvenile court to exercise jurisdiction [which is] expressly forbidden without recourse by the state."\textsuperscript{168}

Conversely, the state attorney may advise the court in writing that he does not intend to present the case to the grand jury or, the extent that it addressed the issue of waiver and the propriety of King's conviction.

\textsuperscript{161} Id.
\textsuperscript{162} Id.
\textsuperscript{164} State v. Lisak, 409 So. 2d 1149, 1151 (Fla. 2d DCA 1982) (stating that State v. Cain, 581 So. 2d 1361 (Fla. 1980) clearly indicates that the juvenile court's jurisdiction is specifically limited during the 21-day period immediately following the defendant's arrest).
\textsuperscript{165} State v. Meagher, 323 So. 2d 26, 28 (Fla. 4th DCA 1975) (referring to the predecessor statute which provided for a 14-day period during which the juvenile court was prohibited from taking any action).
\textsuperscript{166} Lisak, 409 So. 2d at 1151.
\textsuperscript{167} Id. at 1151-52.
\textsuperscript{168} Id. at 1151.
having had the case presented to it, the grand jury may return a no true bill. In these circumstances, the court may then proceed as otherwise authorized by chapter 39. In addition, if the grand jury fails to act within the specified period, the court is again free to proceed under chapter 39. However, the grand jury is not prevented from thereafter indicting the child and divesting the court of its jurisdiction.

V. Transfer on Demand by the Child

Perhaps the least contested and the least used provision for transferring a juvenile to the adult criminal court is the demand-waiver provision. Section 39.02(5)(b), Florida Statutes, provides that upon written demand of the child and his parent or guardian the juvenile court shall transfer and certify the case for trial as if the child were an adult. Resort to this provision may be appropriate when the sanctions to be imposed by the juvenile court are more severe than those available to the adult court for a similar offense.

Holding that transfer under this section is mandatory, the court in State v. Williams granted the defendant's writ to prohibit the juvenile court from exercising jurisdiction. The defendant was a minor charged with careless driving. Pursuant to Rule 8.100(b), Florida Rules of Juvenile Procedure, Williams made a timely demand for waiver of jurisdiction and certification for trial as an adult. The juvenile court denied the motion and held that waiver is not mandatory, but is subject to the discretion of the juvenile court judge.

170. Id.
172. Fla. Stat. § 39.02(5)(b) (1981) provides that:
   The court shall transfer and certify the case for trial as if the child were an adult if the child is alleged to have committed a violation of law and, prior to the commencement of an adjudicatory hearing, the child, joined by a parent or, in the absence of a parent, by his guardian or guardian ad litem, demands in writing to be tried as an adult.
See also Fla. R. Juv. P. 8.150(a).
173. An example of this is a child who receives a traffic citation for a noncriminal offense. He may be subject to only a fine in the traffic court whereas the same offense may subject him to detention or community control in the juvenile system.
174. 304 So. 2d 472, 473 (Fla. 2d DCA 1974).
175. Id.
176. Id.
On review, the Second District Court of Appeal reversed. The court noted that section 22 of the Declaration of Rights provides that the right to trial by jury "shall be secure to all and remain inviolate," and that section 15(b) of the Declaration provides that "[a]ny child . . . charged with a violation of law as an act of delinquency instead of crime and tried without a jury . . . shall, upon demand as provided by law, . . . be tried in an appropriate court as an adult." The court concluded that these are two fundamentals which control the interpretation of Rule 8.100(b). Accordingly, the Second District Court of Appeal held that when a child demands waiver, the juvenile court must transfer the case.

Transfer under the demand-waiver provision does not mean, however, that a child relinquishes his right to juvenile treatment for all future violations of law. In fact, the statute specifically provides that only a child who has been transferred pursuant to a waiver hearing or information and subsequently found guilty of the offense charged shall be handled for any subsequent prosecution as if he were an adult.

In *F.S.N. v. Joyce*, a seventeen-year-old juvenile, initially charged by petition with petit theft, sought and was granted transfer to the adult division pursuant to section 39.02(5)(b). He was subsequently found guilty and placed on probation. A short time later, Joyce was again arrested on an unrelated charge. He then moved to transfer his case to the custody of juvenile authorities. Based on its interpretation of section 39.02(5)(d), Florida Statutes, and its finding that the defendant, "by voluntarily submitting himself to the adult division of the county court on the previous petit theft charge, had relinquished his right to be treated as a juvenile for further violations of Florida law," the trial court denied the motion.

On appeal, the Fourth District Court of Appeal reversed. Ordering that the child be discharged and transferred to the Department of Health and Rehabilitative Services, the court noted that the legislature has not provided that any transfer would allow for a juve-

179. *Id.*
180. *Id.*
182. *Id.* at 721 (quoting *Fla. Stat.* § 39.02(5)(d) (1979)).
183. 384 So. 2d 720 (Fla. 4th DCA 1980).
184. *Id.*
nile to be treated as an adult in subsequent prosecutions. Instead, the legislature has specifically enumerated the methods of transfer which would authorize a juvenile to be subsequently treated as an adult. Stating that the legislature intended to limit the treatment of children as adults for subsequent violations to those situations in which an independent determination that the child should be treated as an adult has been made by the prosecutor, the grand jury or the court, the Joyce court held that a transfer on demand does not involve such an independent determination. Rather, it is merely a transfer voluntarily obtained by the juvenile. As such, it does not prevent the child from receiving future treatment as a juvenile pursuant to chapter 39. However, in the event that the juvenile is transferred and subsequently adjudicated as guilty, the question arises as to what sentencing alternatives are available to the adult court.

VI. SENTENCING THE TRANSFERRED OFFENDER

A child who has been transferred to adult court and found guilty of the alleged offense may nonetheless be sentenced by the adult court as a juvenile pursuant to chapter 39. The Florida Legislature, by enactment of section 39.111(6), Florida Statutes, has mandated the procedure which the court must follow to dispose of the child’s case.

Prior to imposing judgment, the trial court must first conduct a disposition hearing to determine whether juvenile or adult sanctions are appropriate. In making this determination the court must weigh the enumerated criteria pertaining to the seriousness of the offense, the sophistication and maturity of the child, the child’s prior record, if any, and the prospects for adequate protection of the public and reasonable rehabilitation of the child. These criteria are almost identical to the Kent standards required for ju-

185. Id. at 721.
186. Id.
187. Id. In a special concurrence, Chief Judge Letts agreed that “the applicable statutes do not appear to cover voluntary transfers.” It was his opinion, however, that it is probably “a legislative oversight rather than anything else.” Moreover, he noted that since “section 39.02(5)(d) appears by its language to be contemplating only felonies,” there was no harm done to the result in Joyce since the initial crime in that case was only a misdemeanor. Id. at 722 (Letts, C.J., specially concurring).
dicial waiver. Failure to consider these standards may result in reversal of the court’s decision on appeal.

If it is determined that juvenile sanctions are appropriate, the court has at its disposal a variety of sentencing alternatives. The court may, in its discretion, commit the child to the Department of Health and Rehabilitative Services to receive treatment in a youthful offender program outside of the correctional system, place the child in a community control program, or classify the child as a youthful offender.

If the child is placed in a community control program, the court may also impose various community-based sanctions. Included among the court’s options are rehabilitative restitution, curfew, revocation or suspension of a driver’s license, community or public service, deprivation of nonessential activities or privileges, and any other restraints which the court may deem appropriate to place on the child’s liberty.

In the alternative, the court may choose to classify the juvenile as a youthful offender pursuant to chapter 958, Florida Statutes, § 39.111(6)(c) provides that:

Suitability or nonsuitability for adult sanctions shall be determined by the court before any other determination of disposition. The suitability determination shall be made by reference to the following criteria:

1. The seriousness of the offense to the community and whether the protection of the community requires adult disposition.
2. Whether the offense was committed in an aggressive, violent, premeditated, or willful manner.
3. Whether the offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury resulted.
4. The sophistication and maturity of the child, as determined by consideration of his home, environmental situation, emotional attitude, and pattern of living.
5. The record and previous history of the child, including:
   a. Previous contacts with the department, the Department of Corrections, other law enforcement agencies, and courts,
   b. Prior periods of probation or community control,
   c. Prior adjudications that the child committed a violation of law, and
   d. Prior commitments to institutions.
6. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child if he is assigned to juvenile services and facilities.

See, e.g., Jenkins v. State, 386 So. 2d 1302 (Fla. 4th DCA 1980); Stallins v. State, 385 So. 2d 1171, 1172 (Fla. 2d DCA 1980); Proctor v. State, 373 So. 2d 450 (Fla. 2d DCA 1979). But see Glenn v. State, 411 So. 2d 1367 (Fla. 5th DCA 1982) (failure to object at trial level to trial court’s failure to strictly comply with statutory procedures results in waiver on appeal).

Id.
the Florida Youthful Offender Act. Under this chapter, any person who is at least eighteen years old, or who has been transferred for prosecution to the criminal division pursuant to chapter 39, may be classified as a youthful offender. No person, however, who has been found guilty of a capital or life felony is eligible to receive this classification. Although an indicted juvenile is considered "transferred . . . pursuant to chapter 39" if he is convicted of the primary offense, section 958.04(1)(c) effectively denies him the more protective treatment afforded to less serious offenders. Moreover, this limitation also applies to those offenders who have been transferred pursuant to judicial waiver or information.

Finally, if the court determines that juvenile sanctions are inappropriate, the transferred juvenile may then be exposed to adult sanctions. Depending upon the nature and the seriousness of the offense, the statutory minimum sentencing provisions may also come into play. If the defendant used a firearm or weapon in the commission of a felony, the penalty for the offense is enhanced. Any decision to impose adult sanctions, however, must be in writing. The sentencing court must, in its record, render findings of fact and reasons for its decision which conform to the specified criteria. The court's order is then subject to review on appeal by the child, pursuant to section 39.14.

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196. Fla. Stat. § 958.04 (1981) provides in pertinent part:
   (1) The court may classify as a youthful offender any person:
       (a) Who is at least 18 years of age or who has been transferred for prosecution to the criminal division of the circuit court pursuant to chapter 39;
       . . . .
       (c) Who has not previously been classified as a youthful offender under the provisions of this act; however, no person who has been found guilty of a capital or life felony may be classified as a youthful offender under this act.
197. Goodson, 403 So. 2d at 1337; see also Judge v. State, 408 So. 2d 831, 832 (Fla. 4th DCA 1982); Williams v. State, 406 So. 2d 1195 (Fla. 4th DCA 1981).
200. Fla. Stat. § 775.087 (1981). However, this provision does not apply to an offense in which the use of a firearm is an essential element.
202. Id.
203. Id.
VII. Conclusion

There is a common thread running through the procedures by which a child may be transferred for adult treatment. In each case, the transfer is accomplished by the stroke of a pen. The significant difference, however, lies in the figure wielding the pen. Under the judicial waiver provision, the determination to transfer is made by the juvenile court judge. His hand signs the order certifying the child to the adult court’s jurisdiction.

In Florida, the judge’s discretion to certify is limited by mandatory consideration of the Kent factors. The United States Supreme Court has held that certain due process requirements must be met before a child can be transferred by waiver to adult court. The Florida Legislature has incorporated the Kent factors into the Juvenile Justice Act almost verbatim. It is only after considering these factors and determining that the public interest is best served by transferring the child that the juvenile judge is authorized to sign a waiver order.

Unlike the waiver provision, however, transfer by information requires no due process hearing. The key figure holding the pen in this instance is the state attorney. Pursuant to a recent legislative amendment, the prosecution has been given a tremendous amount of power. Under the Act, he is authorized to file an information against any child aged sixteen or seventeen years who has previously been found guilty of the requisite offenses. In this way, the juvenile court system is bypassed completely.

Courts which have considered the direct file provision have upheld it as a valid exercise of legislative authority. Moreover, the state attorney’s decision to charge or not to charge a juvenile by information—even when it results in disparate treatment of codefendants—is viewed as an act of prosecutorial discretion and, as such, is virtually absolute. Even if the state attorney is barred from filing an information against the child because the child fails to meet the age or prior adjudication of guilt requirements, he may nevertheless succeed in obtaining a transfer if the child is charged with an indictable offense.

Under the juvenile indictment provision the grand jury sits in the place of the juvenile court judge. The determination of probable cause to charge the child with a criminal offense is made by the grand jury. However, as in the case of an information, due process considerations are not required.

If the prosecutor succeeds in obtaining from the grand jury a true bill of indictment, he has again effected a transfer. For, al-
though the grand jury signs the indictment, it does so after hearing the case presented to it by the state prosecutor.

The final method by which a juvenile may be transferred to an adult court is pursuant to the child’s own motion. However, this involves different considerations. In these circumstances, the judge, grand jury and state prosecutor play no part. It is the child and his parents or guardian who are responsible for transferring the case. Even so, despite the child’s treatment as an adult under this provision, he may still receive juvenile treatment for a subsequent offense. According to case law, before a child can be treated as an adult for any subsequent offense, due process requires that the initial transfer to an adult court be made only after an independent determination by a judge, prosecutor, or grand jury that the transfer is in the best interests of the public. Where the child has been transferred to the adult court upon his own motion for his first offense, no independent determination has been made. Thus, for any subsequent offense, absent this independent determination, the child still has the right to be prosecuted in the juvenile court system.

At this stage, the question may arise as to whether Florida’s transfer provisions are in keeping with the rehabilitative purposes of the Juvenile Justice Act. By authorizing these transfer procedures, the legislature has significantly curtailed the juvenile court’s exclusive original jurisdiction. Except for the judicial waiver provision, the decision to transfer a child to the adult criminal court is not within the juvenile court’s power.

However, a safety feature has been provided. In the event that a transferred juvenile is subsequently found guilty, the adult court judge must look to the Act in determining whether juvenile or adult sanctions are appropriate. If the court determines that juvenile sanctions are required, then the protective functions of the juvenile court continue to be realized. Likewise, if the sentencing court determines that adult sanctions are appropriate, the defendant may still receive a degree of protection by being sentenced as a youthful offender under the Youthful Offender Act. It is only when the court deals with the more hardened juvenile offender who is charged with a violent or otherwise heinous crime that the judge is likely to impose adult sanctions.