

anteeing a formal, adversarial probable cause hearing within that period, was found to satisfy these requirements.

Each state has a procedure by which juveniles may be tried as adults.¹²⁵⁶ With the Court having clarified the constitutional requirements for imposition of capital punishment, it was only a matter of time before the Court would have to determine whether states may subject juveniles to capital punishment. In *Stanford v. Kentucky*,¹²⁵⁷ the Court held that the Eighth Amendment does not categorically prohibit imposition of the death penalty for individuals who commit crimes at age 16 or 17; earlier the Court had invalidated a statutory scheme permitting capital punishment for crimes committed before age 16.¹²⁵⁸ In weighing validity under the Eighth Amendment, the Court has looked to state practice to determine whether a consensus against execution exists.¹²⁵⁹ Still to be considered by the Court are such questions as the substantive and procedural guarantees to be applied in proceedings when the matter at issue is non-criminal delinquent behavior.

The Problem of Civil Commitment.—As with juvenile offenders, several other classes of persons are subject to confinement by court processes deemed civil rather than criminal. Within this category of “protective commitment” are involuntary commitments for treatment of insanity and other degrees of mental disability, alcoholism, narcotics addiction, sexual psychopathy, and the like. In *O'Connor v. Donaldson*,¹²⁶⁰ the Court held that “a State cannot constitutionally confine without more a nondangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends.”¹²⁶¹ The jury had found that Donaldson was not dangerous to himself or to others, and the Court ruled that he had been unconstitutionally con-

¹²⁵⁶ See SAMUEL M. DAVIS, *RIGHTS OF JUVENILES: THE JUVENILE JUSTICE SYSTEM*, ch. 4, *Waiver of Jurisdiction* (2d ed. 1989).

¹²⁵⁷ 492 U.S. 361 (1989).

¹²⁵⁸ *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

¹²⁵⁹ See analysis of Eighth Amendment principles, under “Capital Punishment,” *supra*.

¹²⁶⁰ 422 U.S. 563 (1975). The Court bypassed “the difficult issues of constitutional law” raised by the lower courts’ resolution of the case, that is, the right to treatment of the involuntarily committed, discussed under “Liberty Interests of People with Mental Disabilities: Commitment and Treatment,” *supra*.

¹²⁶¹ 422 U.S. at 576. Prior to *O'Connor v. Donaldson*, only in *Minnesota ex rel. Pearson v. Probate Court*, 309 U.S. 270 (1940), had the Court considered the issue. Other cases reflected the Court’s concern with the rights of convicted criminal defendants and generally required due process procedures or that the commitment of convicted criminal defendants follow the procedures required for civil commitments. *Specht v. Patterson*, 386 U.S. 605 (1967); *Baxstrom v. Herold*, 383 U.S. 107 (1966); *Lynch v. Overholser*, 369 U.S. 705 (1962); *Humphrey v. Cady*, 405 U.S. 504 (1972); *Jackson v. Indiana*, 406 U.S. 715 (1972); *McNeil v. Director*, 407 U.S. 245 (1972). Cf. *Murel v. Baltimore City Criminal Court*, 407 U.S. 355 (1972).