

# Investigation & Mitigation for Youth Subject to Transfer

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# Goals of our session

- Preparing for a discretionary transfer amenability hearing
  - Relevant statutes, factors & cases
  - Case study & brainstorming
  - Conducting investigation for the hearing
  - Working with the client's family
- Mitigation in sentencing
  - Relevant U.S. & Ohio case law
  - New standards
  - Mitigation expert

Preparing for a  
discretionary  
transfer amenability  
hearing

# Discretionary Transfer

- R.C. 2152.12(B)(3):
  - (1) Child was 14+
  - (2) Probable cause
  - (3) Child isn't amenable to rehabilitation in juvenile system & safety of community may require adult sanctions
- “court shall consider whether the applicable factors \* \* \* indicating that the case should be transferred **outweigh** the applicable factors \* \* \* indicating that the case should not be transferred.”
  - Presumption?

# Discretionary Transfer

- R.C. 2152.12(D) & (E) factors

In favor of transfer	Against transfer
Victim suffered harm	Victim induced act
Harm exacerbated by age, etc.	Acted under provocation
Relationship facilitated act	Not principal actor OR under negative influence of another
Gang/criminal activity	Didn't cause harm OR didn't believe harm would occur
Gun was used	No previous adjudications
On probation/parole	Not mature enough for transfer
Results of previous sanctions	Mental illness/intellectual disability
Mature enough for transfer	Sufficient time to rehabilitate
Not enough time for rehabilitation	

# Discretionary Transfer

- *State v. D.H.* (2d District) 2015-Ohio-3259
  - Questions about adequacy of record & which reports were considered
  - Abuse of discretion in transfer

“The record reveals that D.H.'s age at the time of the amenability hearing would have given him more than 3 years for rehabilitation in the juvenile system, and yet the juvenile court's findings contain no discussion of what rehabilitation goals can, or cannot, be accomplished in the juvenile system in a 3-year period, or what programs are, or are not, available in the juvenile system to accomplish these goals.

We note that if the juvenile court had denied the motion to transfer D. H., upon a finding of delinquency, the court could have imposed a number of different juvenile dispositions \* \* \* ranging from intensive probation to secure confinement for serious youthful offenders. The juvenile court's entry relinquishing jurisdiction did not discuss why none of these options would suffice to rehabilitate D. H. in the juvenile system \* \* \* .”

# Case Study Example

- Ronnie Miller
  - Age: 16
  - Offenses: 3 x aggravated robbery, felonious assaults, firearm specifications
    - Participated with other boys in offenses where two people were shot during weekend crime spree (relatively minor injuries)
    - Ronnie didn't possess the gun
  - Never been in trouble before (jaywalking violation)
  - Dad died of cancer 3 weeks before offenses
  - Did OK in school & was excellent athlete
  - History of AND services, lead poisoning
  - Stipulated to probable cause
  - Mother died of renal failure just a couple weeks after PC hearing
  - He has a supportive aunt
  - Evaluation:
    - Recommends grief counseling, strong male role model, probation, services, etc.

# Where do we start?

- What else do you want to know?
- Ideas?
- Records?
- Interviews?
- Family involvement?

# Collecting Records

- Importance of record collection
- Basics of record collection
  - (Sample standard and HIPAA release forms in provided materials)
- Types of records to collect
  - (Detailed list of records in provided materials)

# What to do with Records Collected

- Careful review
- Source for additional records and witnesses
- Incorporate into presentation

# Interviewing Witnesses

## Who to Interview

- Client
- Family (parents, siblings, aunts/uncles/grandparents, cousins, social family)
- Significant others (spouses, partners, girlfriend, boyfriend (past and present))
- Friends/neighbors
- Employers/co-Workers/supervisors
- School personnel (teachers, school counselors, principals, school nurse, coach)
- Probation/parole officers
- Social service workers/mental health personnel
- Institutional personnel
- Anyone else who had extended contact with client/family

# Interviewing Witnesses

## Interview Topics

- Pre-natal history/development history
- Childhood
- Adolescence
- Family and social relationships
- Medical/mental health/substance abuse
- Education/DD/ID/LD/ADD
- Legal involvement
- Family background (generational patterns)
- Offense/stressors preceding offense
- Positive/productive aspects of client
- Opportunities for rehabilitation

# OPD Resources

- Record collection information: Details on types of records to collect and sample request letters
  - <http://opd.ohio.gov/Trial-Services/Mitigation-Investigation/Records>
- Mitigation and investigation links and resources
  - <http://opd.ohio.gov/Trial-Services/Mitigation-Investigation/Resources>
- Mitigation and Investigation Consultation
  - Dorian Hall, Chief
  - Mitigation and Investigation Department
  - [Dorian.hall@opd.ohio.gov](mailto:Dorian.hall@opd.ohio.gov)
  - 614.466.9524 (direct)
- Juvenile Department Consultation
  - Charlyn Bohland
  - [charlyn.bohland@opd.ohio.gov](mailto:charlyn.bohland@opd.ohio.gov)
  - 614.644.1561 (direct)

# Working with your client's family

# How can the family help?

# Mitigation in Sentencing

# Relevant Case Law

- *Miller v. Alabama (2012)*
  - No mandatory JLWOP
  - Individualized determination at sentencing about youth & characteristics of youth
  - JWLOP is akin to death penalty
  - *State v. Long (2014)*
    - Ohio's application of Miller's individualized sentencing
- *Montgomery v. Louisiana (2016)*
  - Retroactive extension of *Miller*
  - Transient immaturity v. irreparable corruption

**In light of what this Court has said in *Roper*, *Graham*, and *Miller* about how children are constitutionally different from adults in their level of culpability, however, prisoners like *Montgomery* must be given the opportunity to show their crime did not reflect irreparable corruption; and, if it did not, their hope for some years of life outside prison walls must be restored.”**

# Standards for Representation

- Campaign for the Fair Sentencing of Youth
- <http://fairsentencingofyouth.org/wp-content/uploads/2015/03/Trial-Defense-Guidelines-Representing-a-Child-Client-Facing-a-Possible-Life-Sentence.pdf>
- Guidelines emphasize the importance of a full investigation; preparing for mitigation; and, consulting with psychologists, adolescent development experts, and lay witnesses to explain the circumstances of the child's life

# Mitigation Specialist

**“As the guidelines make clear, to be constitutionally adequate, the defense team’s investigation must include an exhaustive examination of the defendant, his life, medical and mental health, social connections, and environment.**

**Members of the defense team must conduct a mitigation investigation that allows the team members to know their clients’ life histories better than the team members know their own histories.”**

# Resources

- <http://fairsentencingofyouth.org/wp-content/uploads/2015/03/Trial-Defense-Guidelines-Representing-a-Child-Client-Facing-a-Possible-Life-Sentence.pdf>
- [http://sagemitigation.com/uploads/3/4/0/2/34028966/final\\_wilson\\_myers\\_accepting\\_millers\\_invitation\\_april\\_2015\\_04012015\\_730\\_art\\_copy.pdf](http://sagemitigation.com/uploads/3/4/0/2/34028966/final_wilson_myers_accepting_millers_invitation_april_2015_04012015_730_art_copy.pdf)
- <http://ssa.uchicago.edu/symbolic-struggles-advocating-juveniles-sentenced-life-without-parole>
- ABA Guidelines for DP/Juvenile LWOP Guidelines
  - <http://opd.ohio.gov/Trial-Services/Mitigation-Investigation>

# Questions?

- Thank you!