

Case Law & Legislative  
Updates

# Hot Topics in Juvenile Justice

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# U.S. Supreme Court

## *Montgomery v. Louisiana*

- Retroactive extension of *Miller v. Alabama* to children sentenced to die in prison
  - Transient immaturity v. irreparable corruption
  - Decided: January 25, 2016

*“Henry Montgomery has spent each day of the past 46 years knowing he was condemned to die in prison.*

*Perhaps it can be established that, due to exceptional circumstances, this fate was a just and proportionate punishment for the crime he committed as a 17-year-old boy.*

*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.”*

# U.S. Supreme Court

## *Montgomery v. Louisiana*

### (continued)

- o Ohio SB 272 /HB 521
  - o Opportunity for parole for children in adult prisons
    - o 15+ prison term – Eligible for parole after serving 15 years
    - o JLWOP prison term – Eligible for parole at age 40

This language in Senator Thomas's bill was approved by the Ohio Criminal Sentencing Commission after being thoroughly vetted by the participating prosecutors, defense attorneys, judges, and personnel from the Department of Rehabilitation and Correction and the Department of Youth Services. Senate Bill 272 enjoys the joint sponsorship of State Senator John Eklund, chair of the Criminal Justice Committee, and co-sponsorship from State Senators Bill Seitz (R-Green Township), Peggy Lehner (R-Kettering), and Cliff Hite (R-Findlay).

Press release from Senator Cecil Thomas (D-Cincinnati)

# Supreme Court of Ohio Decisions

- SO classification
  - *In re D.S.*, 2016-Ohio-1027
    - Decided: March 16, 2016
- Confessions & *Miranda*
  - *State v. Barker*, 2016-Ohio-2708
    - Decided: April 28, 2016
- Double jeopardy (merger/allied offenses)
  - *In re A.G.*, 2016-Ohio-3306
    - Decided: June 9, 2016
- Juvenile adjudications used as enhancements
  - *State v. Hand*, 2016-Ohio-5504
    - Decided: August 25, 2016
    - SB 97

# Supreme Court of Ohio

## Pending Cases

- Several pending juvenile cases with BIG implications:
  - Transfer
  - Juvenile SO registration
    - *In re M.R.*, Case No. 2014-1315
  - Confinement credit
    - *In re D.S.*, Case No. 2015-0505
      - Argued: April 4, 2016
  - Guardians ad litem in delinquency cases
    - *State v. Morgan*, Case No. 2015-0924
  - Mandatory sentencing for juveniles in adult court
    - *State v. Anderson*, Case No. 2016-1317
  - Apprehension after age 21

**On appeal, in the absence of an objection,  
argue plain error & cite pending cases in SCO**

# Transfer to Adult Court

- Mandatory transfer

- Issue: Mandatory transfer statutes violate child's rights to due process & equal protection

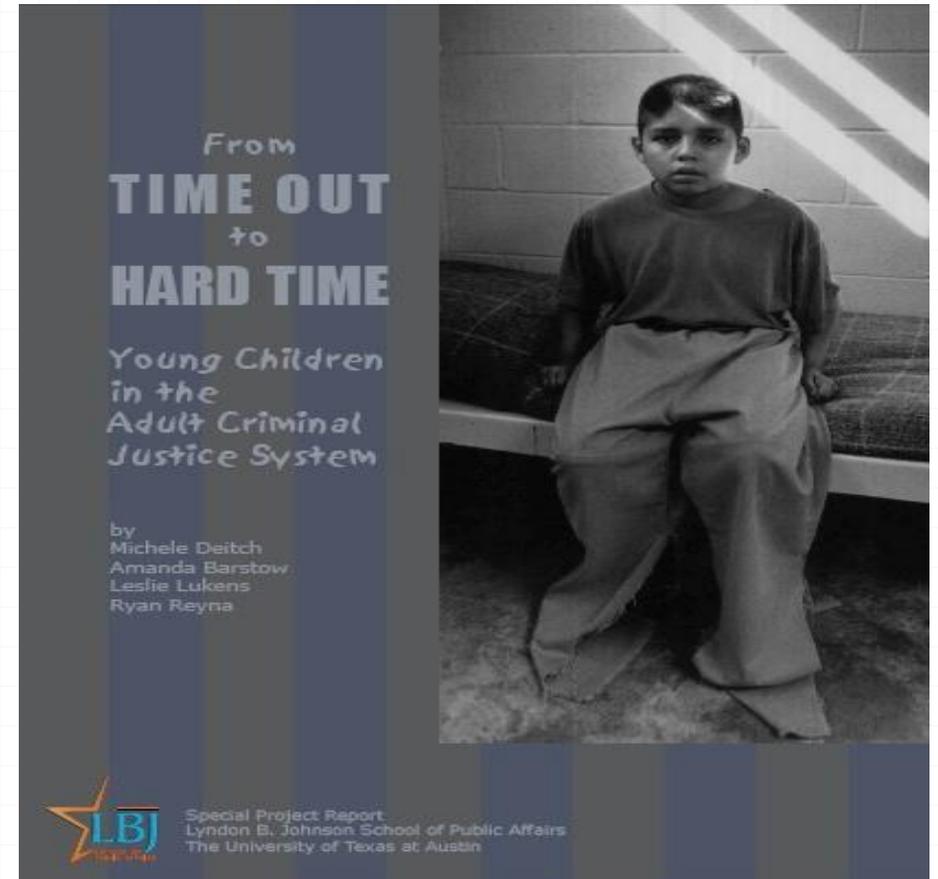
- *State v. Aalim*, Case No. 2015-0677

- Argued: April 20, 2016

- Sentencing Commission Committee

# Transfer to Adult Court (continued)

- o Mixed (yikes!)
  - o Issue #1: Juvenile court must conduct amenability determination prior to transfer for discretionary offenses
  - o Issue #2: Criminal court must follow R.C. 2152.121 (reverse waiver) & send case to juvenile court for amenability hearing
  - o *State v. Brookshire*, Case No. 2015-0677
    - o Argued: December 16, 2015



# Apprehension after age 21

- Something to watch out for

- *State v. Orr*, Case No. 2015-1847

- Proposition:

- R.C. 2152.02(C)(3), R.C. 2151.23(I) and R.C. 2152.12(J) considers a person who committed a crime as a juvenile but apprehended after their 21<sup>st</sup> birthday an adult subject to prosecution in the general division. These provisions do not violate the ex post facto clause of the US constitution or the retroactivity clause of the Ohio Constitution when applied to a person who committed the crime of rape prior to attaining the age of 15

# District Courts of Appeals

## o Adjudication issues

o *In re K.L.R.*, 2015-Ohio-4453 (12<sup>th</sup>)

o Juvenile court erred in granting state's motion to amend complaint where the identity of the offense was changed by removing the force language of R.C. 2907.05(A)(1) & replacing it with the substantial impairment language of R.C. 2907.05(A)(5)

o *In re J.H.*, 2015-Ohio-4471 (9<sup>th</sup>)

o Delinquency adjudication for SI was against the weight of evidence where juvenile & victim were teenagers who had known each other for years, victim did not show any indication of being uncomfortable with juvenile's conduct up to a point when she did protest, & juvenile then stopped his conduct

o *In re C.A.*, 2015-Ohio-4768 (8<sup>th</sup>)

o Juvenile court erred when it denied child access to records relating to offense without reviewing them in camera

o *In re J.S.*, 2015-Ohio-4990 (8<sup>th</sup>)

o Insufficient evidence where testimony failed to establish any type or degree of penetration

o *In re R.H.*, 2016-Ohio-746 (3<sup>rd</sup>)

o Juvenile court erred in failing to substantially comply with Juv.R. 29(D) because court did not discuss the consequences of an admission or the rights that juvenile waived by entering an admission

o *In re C.H.*, 2016-Ohio-4965 (8<sup>th</sup>)

o Juvenile court erred in imposing DYS commitment for juvenile's violation of community control where juvenile was not notified that he violated community control, and the record does not reflect that the court complied with Juv.R. 35

# District Courts of Appeals (continued)

## o Disposition issues

o *In re T.B.*, 2015-Ohio-2117 (5<sup>th</sup>)

o Juvenile court erred when it ordered restitution for victim's economic loss without considering property that was returned to the victim

o *In re T.C.*, 2015-Ohio-4348 (8<sup>th</sup>)

o Juvenile court erred when it ordered restitution without sufficient evidence to resolve discrepancies in the requested restitution amounts

o *In re M.A.*, 2016-Ohio-1161 (11<sup>th</sup>)

o Juvenile court erred in ordering restitution to the police and fire departments since the threat was not made against the departments & they performed service in investigating the offense which is within their regular duties

o *In re E.B.*, 2016-Ohio-1507 (1<sup>st</sup>)

o Juvenile court erred in imposing three-year commitment for gun specification since the confinement was limited to one year where juvenile did not furnish, use or dispose of the gun used in the offense

o *In re T.W.*, 2016-Ohio-3131 (1<sup>st</sup>)

o Juvenile court did not err in crediting juvenile with confinement in children's residential center where nature of restrictions on the juveniles' personal freedom while living at center

# District Courts of Appeals (continued)

## o GALs

- o *In re D.R.B.*, 2015-Ohio-3346 (8<sup>th</sup>)
  - o GAL required when parents are not at the hearing & alleged delinquent child has turned 18
- o *In re D.B.*, 2015-Ohio-4488 (8<sup>th</sup>)
  - o GAL required when parent did not attend second day of trial
- o *In re J.C.*, 2015-Ohio-4664 (5<sup>th</sup>)
  - o GAL required when parent is the parent of the both the alleged delinquent child & victim

## o SO Issues

- o *In re J.B.*, 2016-Ohio-98 (5<sup>th</sup>)
  - o Juvenile court lacked jurisdiction under R.C. 2152.83(A)(1) because juvenile was 21 years-old at the time the court issued the classification

## o Jurisdiction issues

- o *State ex rel. TLM v. Judges of the First District* (SCO)
  - o Writ of prohibition is granted to prevent court of appeals from proceeding with state's appeals since the state failed to file motions for leave to appeal before the 30-day deadline in App.R. 5(C)
- o *In re C.W.*, 2016-Ohio-4834 (5<sup>th</sup>)
  - o State's appeal of juvenile decision declining imposition of serious youthful offender specifications is dismissed for state's failure to comply with App.R. 5(C)

# District Courts of Appeals (continued)

## o Transfer

### o Abuse of discretion?!?

#### o *State v. D.H.*, 2015-Ohio-3259 (2<sup>nd</sup>)

- o “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.
- o 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 \* \* \* .”

### o Reverse waiver

#### o *State v. Mack*, 2015-Ohio-4148 (7<sup>th</sup>)

# What else?

- Indiscriminate shackling of juveniles in juvenile court proceedings
  - Sup.R. 5.01 Local Juvenile Restraint Rule
    - Requires juvenile courts to adopt local rule creating presumption against physical restraints unless necessary (safety risk or flight risk) & no less restrictive alternatives available



Photo from: <http://tinyurl.com/z3ujzj2>

# Policy Forums

- Ohio General Assembly
  - Proposed legislation
  - House Judiciary Committee
  - Senate Criminal Justice Committee
- Sentencing Commission
  - Pretrial Services Committee
  - Juvenile Committee
  - Sentencing/Criminal Justice Committee
- Recodification Committee
  - Rewriting Criminal Code
  - Not changing juvenile code
  - Sex Offender Registration Changes



Photo from: <https://www.google.com/url?sa=i&rct=j&q=&esrc=s&source=images>

# Legislative Update

## o New and Update Laws as of 9/12/16:

- o SB 321: Public Records Modification (K. Faber)
- o SB 204: Drug Violation Driving Suspension Discretion (B. Seitz)
- o SB 97: Firearm Prison Terms (J. Hughes, F. Larose)
- o HB523: Medical Marijuana (S. Huffman)
- o HB 171: Heroin Felony Level (L. Blessing, J. Dever)
- o HB 164: Sealed Offenses (D. Pelanda)
- o HB 15: Stalking Telecommunications Harassment (M. Anielski)
- o HB 123: Alibi Defense Notification/PSI Waiver (G. Johnson)
- o HB 110: Failure to Stop Penalty/Good Samaritan Immunity (B. Hill)
- o HB 50: Foster Care Adoption Assistance Age (D. Pelanda)
- o HB 6: Rape DNA Analysis Limitations (S. Latourette)

## o Potential 2016:

- o SB 272/HB 521: Parole Eligibility-Minor
- o SB 237: Fentanyl Restrictions (F. Larose)
- o SB184: Sex Offender Registration (T. Balderson)
- o SB 146: Distracted Driving Enhanced Penalty (J. Hughes, B. Seitz)
- o SB 13: Rape Statute of Limitations
- o HB405: Importuning Penalties (T. Schaffer)
- o HB 270: Drug Liability Offense (D. Pelanda)
- o HB 185: Arson Property Ownership (K. Koehler)
- o HB 172: Criminal Records Law (J. Barnes, Jr.)
- o HB 57: Aggravated Murder Sentence Change (R. Maag)
- o HB 14: Powdered Crystalline Alcohol (R. Gerberry)

## o On the horizon:

- o SB 350: Advocate-Victim Communication (J. Eklund)
- o SB 286: Police Dog-Horse Assault (J. Hughes)
- o SB 290: Injunction Repeat Offender (S. Williams)
- o SB 143: Trial Felony Time Frame (J. Eklund)

Search legislation and find your representatives at:  
<https://www.legislature.ohio.gov>

# Questions?

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