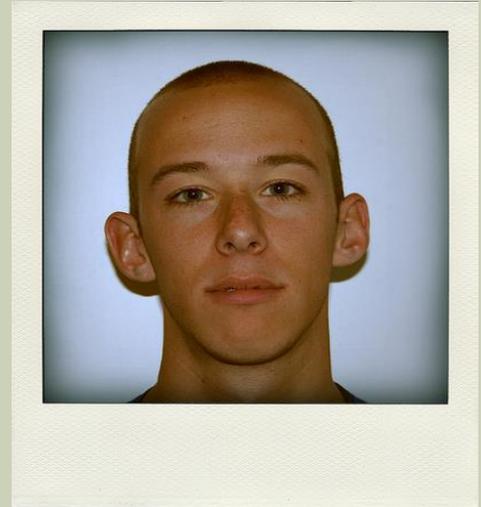


# JUVENILES IN CIRCUIT COURT

## HOW DID THEY GET HERE AND DO THEY HAVE TO STAY?

OSPD & MPDA  
SPRING PUBLIC DEFENDERS SEMINAR  
GOLDEN NUGGET BILOXI HOTEL & CASINO  
April 25-28, 2017

# MEET YOUR CIRCUIT COURT CLIENT



**HOW??**

**WHY??**



- **Why Isn't This Child In Youth Court?**
- **How Can Circuit Court Have Jurisdiction Of A Child?**

# **ORIGINAL JURISDICTION**

# YOUTH COURT JURISDICTION

## SECTION 43-21-151(1)

“The youth court shall have exclusive original jurisdiction in all proceedings concerning a delinquent child, a child in need of supervision, a neglected child, an abused child or a dependent child...”

- 43-21-105(d): “‘Child’ ... means a person who **has not reached his eighteenth birthday.**”
- 43-21-151(2): Jurisdiction attaches “**at the time of the offense**” and continues “**until the child’s twentieth birthday.**”

# EXCEPTIONS

## SECTION 43-21-151(1)(a)

“(a) Any act attempted or committed by a child, which if committed by an adult would be **punishable** under state or federal law **by life imprisonment or death**, will be in the **original jurisdiction of the circuit court.**”

# EXCEPTIONS cont'd

## SECTION 43-21-151 (1)(b)

“(b) Any act attempted or committed by a child with **the use** of a deadly weapon, the carrying of which concealed is prohibited by Section 97-37-1, or a shotgun or a rifle, which would be a felony if committed by an adult, will be in the **original jurisdiction of the circuit court.**”

# CHILD UNDER AGE OF THIRTEEN (13) SECTION 43-21-151(3)

- No child **who has not reached his thirteenth birthday** shall be held criminally responsible or criminally prosecuted for a misdemeanor or felony; however, the parent, guardian or custodian of such child may be civilly liable for any criminal acts of such child.

# EXAMPLES

- 15 yr old charged with First Degree Murder
  - Circuit Court (possible life sentence).
- 17 yr old charged with Sexual Battery
  - Circuit Court if charged under 97-3-95(1)(d) (possible life sentence).
  - Youth Court if charged under other sections.
- 12 yr old charged with Capital Murder
  - Youth Court (under the age of 13).
- 16 yr old charged with Manslaughter
  - Circuit Court only if a prohibited weapon was used (maximum sentence is 20 years).
- 15 yr old charged with carjacking
  - Youth court if unarmed carjacking (maximum sentence is 15 years)
  - Circuit Court if armed carjacking, ***unless the weapon is not listed in 97-37-1*** (maximum sentence is 30 years)

# **ARMED CARJACKING EXAMPLE CONT. COMPARE SECTION 97-37-1**

**Prohibiting concealed carry of “any bowie knife, dirk knife, butcher knife, switchblade knife, metallic knuckles, blackjack, slingshot, pistol, revolver, or any rifle with a barrel of less than sixteen (16) inches in length, or any shotgun with a barrel of less than eighteen (18) inches in length, machine gun or any fully automatic firearm or deadly weapon, or any muffler or silencer for any firearm, whether or not it is accompanied by a firearm.”**

## **WITH SECTION 97-3-117(2)**

**“Whoever commits the offense of car-jacking while armed with or having readily available any pistol or other firearm **or imitation thereof** or other dangerous or deadly weapon, including a sawed-off shotgun, shotgun, machine gun, rifle, dirk, bowie knife, butcher knife, switchblade, **razor**, blackjack, **billy, or metallic or other false knuckles, or any object capable of inflicting death or serious bodily harm**, shall be guilty of armed carjacking.”**

# **Transfer & Prior Convictions**

# TRANSFER TO CIRCUIT COURT SECTION 43-21-157(1)

- “If a child who has reached his thirteenth birthday is charged by petition to be a delinquent child, **the youth court ... may, in its discretion, transfer jurisdiction ... to the criminal court which would have trial jurisdiction of such offense if committed by an adult.**”

[MORE ON TRANSFER HEARINGS TOMORROW]

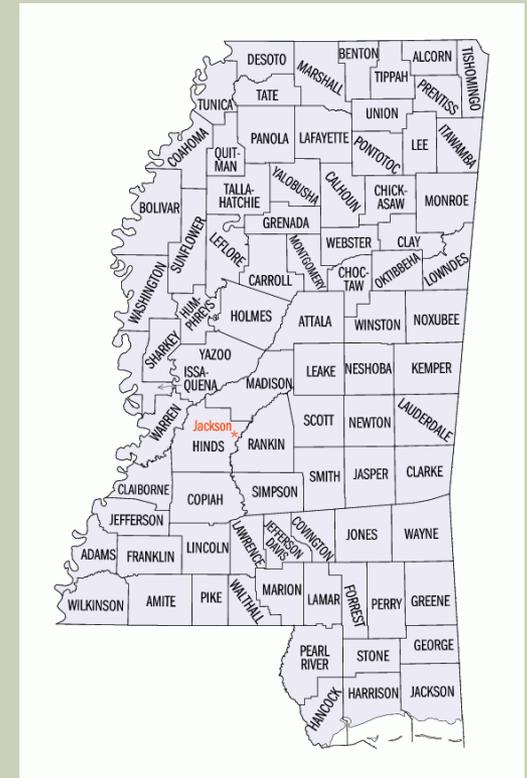
# PRIOR TRANSFER **AND** CONVICTION

## SECTION 43-21-157(8)

- “When jurisdiction of an offense is transferred to the circuit court, or when a youth has committed an act which is in original circuit court jurisdiction pursuant to Section 43-21-151, **the jurisdiction of the youth court over the youth for any future offenses is terminated...**”
- “**...except that** jurisdiction over future offenses is not terminated **if the circuit court transfers or remands the transferred case to the youth court...**”
- “...or if a child who has been transferred to the circuit court or is in the original jurisdiction of the circuit court **is not convicted.**”

# TRANSFERS OF OTHER COUNTIES OR STATES 43-21-157(9)

- “When any youth has been the subject of a transfer to circuit court for an offense committed in any county of the state or has committed any act which is in the original jurisdiction of the circuit court pursuant to [Section 43-21-151](#), that transfer or original jurisdiction shall be recognized by all other courts of the state and no subsequent offense committed by such youth in any county of the state shall be in the jurisdiction of the youth court unless transferred to the youth court pursuant to [Section 43-21-159\(3\)](#).”



# TRANSFERS OF OTHER COUNTIES OR STATES 43-21-157(9) cont'd



- “Transfers from youth courts of other states shall be recognized by the courts of this state and no youth who has a pending charge or a conviction in the adult court system of any other state shall be in the jurisdiction of the youth courts of this state, but such youths shall be in the jurisdiction of the circuit court for any felony committed in this state or in the jurisdiction of the court of competent jurisdiction for any misdemeanor committed in this state.”

# QUESTION

**Which Court has jurisdiction over a person who is alleged to have committed a crime at the age of 17, but is not arrested or charged until he or she is 20?**

**Assume the crime does not carry a possible life sentence and did not involve the use of a deadly weapon.**

## QUESTION CONT.

Apparently not the Youth Court:

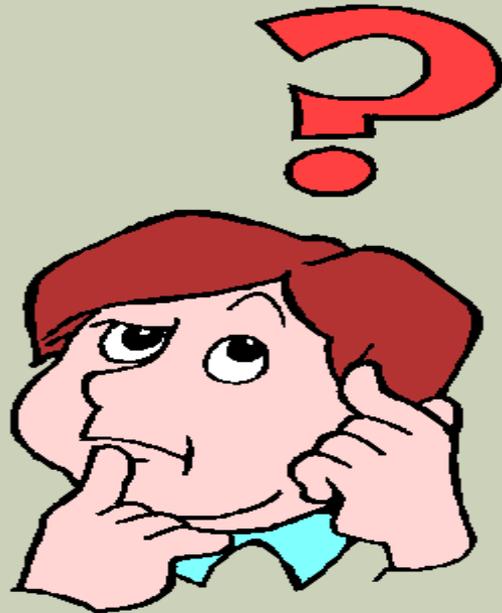
“Jurisdiction of the child in the cause shall attach at the time of the offense and shall continue thereafter for that offense **until the child's twentieth birthday**, unless sooner terminated by order of the youth court.”

## QUESTION CONT.

And apparently not the Circuit Court:

“The youth court shall have **exclusive** original jurisdiction in all proceedings concerning a delinquent child...” Section 43-21-151(1).

“Jurisdiction of the child in the cause **shall attach at the time of the offense...**” Section 43-21-151(2).



**SO WE'RE IN CIRCUIT COURT,  
DO WE HAVE TO STAY?**

# CIRCUIT COURT LACKS JURISDICTION

## SECTION 43-21-159(1)

“When a person appears before a court other than the youth court, and it is determined that the person is a child under jurisdiction of the youth court, such court **shall ... immediately dismiss the proceeding without prejudice and forward all documents pertaining to the cause to the youth court;** and all entries in **permanent records shall be expunged.**”

# CIRCUIT COURT LACKS JURISDICTION CONT.

- “After our review of the record and relevant caselaw, we find that the **youth court possesses exclusive original jurisdiction over this proceeding.**” *Meadows v. State*, 2017 WL 590506, \*6 (Miss. Ct. App. Feb. 14, 2017).
- “As a result, the circuit court lacked trial jurisdiction over this case since **there was not a transfer of jurisdiction to the circuit court from the youth court...**” *Id.*

# CIRCUIT COURT LACKS JURISDICTION CONT.

- “We therefore **reverse on the issue of jurisdiction**, and we remand to the circuit court with instructions to **vacate the convictions and sentences** ... and immediately dismiss the proceeding without prejudice....” *Id.*

# TRANSFER TO YOUTH COURT

## SECTION 43-21-159(4)

- “In any case wherein the defendant is a child as defined in this chapter and of which the circuit court has original jurisdiction, the circuit judge, upon a finding that **it would be in the best interest of such child and in the interest of justice**, may at any stage of the proceedings prior to the attachment of jeopardy **transfer such proceedings to the youth court for further proceedings...**”
- “...unless the child has previously been the subject of a transfer from the youth court to the circuit court for trial as an adult and **was convicted or has previously been convicted of a crime which was in original circuit court jurisdiction.**”

# MOTION TO TRANSFER TO YOUTH COURT FACTORS

- “There are **two factors** which the judge must consider when considering a motion to transfer from circuit court to youth court: (1) the **interest of the child**, and (2) **the interest of justice**.” *State v. U.G.*, 726 So.2d 151, 155 (Miss. 1998).
- “Neither the best interest of the child nor the ‘interest of justice’ overrides the other, but they can be separate interests and must be given full review by the circuit court. ... Often, but not always, the two separate interests will merge and be concurrent or commensurate.” *Id.*

# MOTION TO TRANSFER TO YOUTH COURT FACTORS CONT.

- “[T]his Court finds that consideration of the[] twelve factors [enumerated in Section 43-21-157(5)] ... provide a guideline or starting point for circuit court judges when entertaining a motion to transfer a case to youth court.” *State v. U.G.*, 726 So.2d 151, 155 (Miss. 1998).
- However, “[i]t is by no means an all inclusive list, nor a mandatory one; it is a roadmap of sorts.” *Id.*

# MOTION TO TRANSFER TO YOUTH COURT FACTORS

**Section 43-21-157(5):** The factors which shall be considered ... in determining the reasonable prospects of rehabilitation within the juvenile justice system are:

- (a) Whether or not the alleged offense constituted a substantial danger to the public;
- (b) The seriousness of the alleged offense;
- (c) Whether or not the transfer is required to protect the community;
- (d) Whether or not the alleged offense was committed in an aggressive, violent, premeditated or willful manner;

# MOTION TO TRANSFER TO YOUTH COURT FACTORS (CONT.)

- (e) Whether the alleged offense was against persons or against property, greater weight being given to the offense against persons, especially if personal injury resulted;
- (f) The sophistication, maturity and educational background of the child;
- (g) The child's home situation, emotional condition and lifestyle;
- (h) The history of the child, including experience with the juvenile justice system, other courts, probation, commitments to juvenile institutions or other placements;

# **MOTION TO TRANSFER TO YOUTH COURT FACTORS (CONT.)**

- **(i) Whether or not the child can be retained in the juvenile justice system long enough for effective treatment or rehabilitation;**
- **(j) The dispositional resources available to the juvenile justice system;**
- **(k) Dispositional resources available to the adult correctional system for the child if treated as an adult;**

# MOTION TO TRANSFER TO YOUTH COURT FACTORS (CONT.)

- (l) Whether the alleged offense was committed on school property, public or private, or at any school-sponsored event, and constituted a substantial danger to other students;
- (m) Any other factors deemed relevant by the ... court.

# MOTION TO TRANSFER TO YOUTH COURT FACTORS CONT.

*See also Foster v. State*, 639 So.2d 1263, 1297 (Miss. 1994)

The circuit court should “consider[] the person’s **age, lack of prior offenses, likelihood of successful rehabilitation** and other factors which favor sending the case to the youth court rather than continuing in circuit court.”

# MOTION TO TRANSFER TO YOUTH COURT HEARING

“Mississippi law clearly allows a person under the age of eighteen years, charged with [an offense in the original jurisdiction of the circuit court], to request by proper motion that the circuit court **conduct a special hearing** ... [at which the person receives] the same individualized consideration in the circuit court that would have been available to him in a certification hearing in the youth court.” *Foster v. State*, 639 So.2d 1263, 1297 (Miss. 1994).

# MOTION TO TRANSFER TO YOUTH COURT EVIDENCE

- “[Y]outh court records and school records.” *State v. U.G.*, 726 So.2d 151, 156 (1998).
- Testimony from the child’s parents. *Id.*
- Expert testimony regarding “the treatment of juveniles in the Department of Corrections.” *Id.*
- Expert testimony regarding juvenile development (generally) and the particular child’s development.

# MOTION TO TRANSFER TO YOUTH COURT EVIDENCE

**Your ideas?**

# MOTION TO TRANSFER TO YOUTH COURT

## *MILLER, GRAHAM & ROPER*

- The United States Supreme Court repeatedly has held that, *as a class*, “juveniles have **diminished culpability** [for their misconduct] and **greater prospects for reform.**” *Miller v. Alabama*, 132 S.Ct. 2455, 2464 (2012) (quoting *Graham v. Florida*, 560 U.S. 48 (2010)). See also *Roper v. Simmons*, 543 U.S. 551 (2005).

# MOTION TO TRANSFER TO YOUTH COURT

## *MILLER, GRAHAM & ROPER* CONT.

- “[C]hildren have a “lack of maturity and an underdeveloped sense of responsibility,” leading to recklessness, impulsivity, and heedless risk-taking.” *Miller*, 132 S.Ct. at 2464 (citing *Roper*, 543 U.S. at 569).
- “[C]hildren ‘are more vulnerable ... to negative influences and outside pressures,’ including from their family and peers; they have limited ‘contro[l] over their own environment’ and lack the ability to extricate themselves from horrific, crime-producing settings.” *Id.* (citing *Roper*, 543 U.S. at 569).

# MOTION TO TRANSFER TO YOUTH COURT *MILLER, GRAHAM & ROOPER* CONT.

- “[A] child's character is not as ‘well formed’ as an adult's; his traits are ‘less fixed’ and his actions less likely to be ‘evidence of irretrievabl[e] deprav[ity].’” *Miller*, 132 S.Ct. at 2464 (citing *Roper*, 543 U.S. at 570).

# MOTION TO TRANSFER TO YOUTH COURT

## *MILLER, GRAHAM & ROPER* CONT.

- The Court’s “decisions rested not only on common sense—on what ‘any parent knows’ —but on science and social science as well.” *Miller*, 132 S.Ct. at 2464 (citation omitted).
- “In *Roper*, [the Court] cited studies showing that “[o]nly a relatively small proportion of adolescents” who engage in illegal activity “develop entrenched patterns of problem behavior.” *Id.* at 2464 (citations omitted).

# MOTION TO TRANSFER TO YOUTH COURT

## *MILLER, GRAHAM & ROPER* CONT.

- “And in *Graham*, [the Court] noted that ‘developments in psychology and brain science continue to show **fundamental differences between juvenile and adult minds**’—for example, in ‘parts of the brain involved in behavior control.’” *Miller*, 132 S.Ct. at 2464 (citation omitted).

# LIMITATION ON TRANSFER MOTIONS



**43-21-159(7)**

- No offense involving the use or possession of a firearm by a child who has reached his fifteenth birthday and which, if committed by an adult would be a felony, shall be transferred to the youth court.

# CASES TRANSFERRED FROM YOUTH COURT TO CIRCUIT COURT

**43-21-157(8) The circuit court may review the transfer proceedings on motion of the transferred child. Such review shall be on the record of the hearing in the youth court. The circuit court shall remand the offense to the youth court if there is no substantial evidence to support the order of the youth court. The circuit court may also review the conditions of custody or release pending criminal court proceedings.**

# SHOULD I FILE TO REVIEW TRANSFER?

- **Things to Look for:**
  - **Did they do the transfer hearing correctly?**
  - **Were all of the factors required by statute addressed?**
  - **Is there sufficient evidence that there are no reasonable prospects of rehabilitation?**
  - **Is the Transfer Order sufficient?**

# WHAT TO FILE AND WHEN

- **What to File - Motion to Review Transfer Proceedings**
- **When to File - No statutory guidance**
  - **Think strategy**

# NOTE

- **43-21-157(7)** The testimony of the child respondent at a transfer hearing conducted pursuant to this chapter shall not be admissible against the child in any proceeding other than the transfer hearing.

# QUESTIONS



***THE END***