

Chicago Daily Law Bulletin®

Volume 160, No. 237

Time to realize juveniles shouldn't automatically be treated as adults

Some social movements are unstoppable. It's clear that gay marriage will soon be firmly established in our culture. And despite the travails of Obamacare, I am betting that government-provided health care will continue to expand in America.

I am also banking on another development — the realization in criminal law that “children are constitutionally different from adults for purposes of sentencing.” I am especially confident because that quotation comes directly from a decision by the U.S. Supreme Court: *Miller v. Alabama*, 132 S.Ct. 2455, 2464 (2012).

So I am convinced that, in the long run, the world will little note nor long remember the Illinois Supreme Court's unfortunate decision in *People v. Patterson*, 2014 IL 115102 (Oct. 17). *Patterson* held that it was constitutional to mandate the automatic transfer of a minor from juvenile court to adult criminal court based solely on the nature of the crime charged.

For the reasons stated in Justice Mary Jane Theis' perceptive dissent, the decision will likely be a mere speed bump on the road to justice for juveniles.

Patterson concerns the mandatory transfer provision of the Juvenile Court Act of 1987 (705 ILCS 405/5-130). This statute requires juveniles who are at least 15 years old and charged with one of the enumerated crimes to be automatically transferred from juvenile court for prosecution in adult criminal court.

It consequently requires the juvenile to be sentenced as an adult. Because Ronald Patterson was 15 years old when he was charged with aggravated criminal sexual assault, he was automatically tried in adult criminal court. He was convicted of three charges and sentenced to consecutive terms of 12 years, for a total of 36 years in prison.

In his cross-appeal in the Illinois Supreme Court, Patterson argued that the mandatory transfer

provision that directly resulted in his being tried and sentenced as an adult violated the Eighth Amendment's cruel and unusual punishment clause, as well as the Illinois Constitution's proportionate penalties clause (Article I, Section 11).

The court rejected this argument by holding that mandatory transfer had nothing whatsoever to do with punishment. The court insisted that the transfer statute is “purely procedural” — it is concerned only with the forum in which the defendant is tried.

It found the connection between a minor being forced to trial in adult criminal court and being consequently sentenced to the adult criminal term of 36 years as “simply too attenuated to be persuasive.”

Got that?

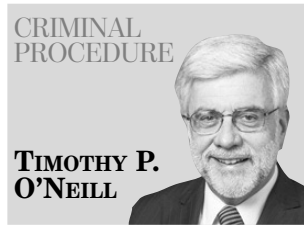
It was Thomas Reed Powell who observed that “If you can think about a thing that is hitched to other things without thinking about the things that it is hitched to, then you have a legal mind.” If true, the *Patterson* opinion is undoubtedly the product of a legal mind.

In dissent, Theis found this approach “overly simplistic” and accused the majority of elevating form over substance. She contended that the real motivation behind mandatory transfer of juveniles was obviously the harsher sentencing only available in the adult criminal system.

Juveniles such as Patterson should not have to depend on the largesse of the legislature. Mandatory transfers are simply unconstitutional.

She quotes legislator after legislator who during floor debates on the statute expressed support because it would result in longer incarceration.

But the fact that the statute involves punishment only begins the inquiry. Theis goes on to argue that the mandatory transfer provision violates the Eighth



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Amendment because it flouts “the evolving standards of decency that mark the progress of a maturing society.” See *Trop v. Dulles*, 356 U.S. 86, 100-01 (1958) (plurality op.).

That is because “statutes with mandatory sentencing consequences for juveniles that fail to account for their diminished culpability and individual characteristics are constitutionally infirm.”

In support of this proposition, she cites a trilogy of recent U.S. Supreme Court decisions dealing with juvenile sentencing: *Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010); *Miller v. Alabama*, supra. These cases illustrate the court's recognition that, for both sociological and neurological reasons, youth indeed does matter.

For example, in the course of holding that the Eighth Amendment prohibited capital sentences for juveniles who commit murder, *Roper* cited both scientific and sociological studies showing that juveniles exhibit both a lack of maturity and an underdeveloped sense of responsibility. In addition, juveniles are more susceptible to negative influence and peer pressure. Finally, the juvenile's character is still unformed and malleable.

For all these reasons, the “diminished culpability” of juveniles “means the penological justifications for the death penalty re-

tribution and deterrence apply to them with less force.”

Graham held that the Eighth Amendment prohibited life-without-parole sentences for juveniles who commit non-homicide offenses. In doing so, it cited evidence from both psychology and brain science stressing the fundamental differences between the still-developing juvenile brain and the fully formed adult brain. Thus, the court held that “incorrigibility is inconsistent with youth,” thus negating one of the major purposes behind a life-without-parole sentence.

Finally, *Miller* held that the Eighth Amendment prohibited mandatory life-without-parole sentences for juveniles who commit murder. Note that *Miller* did not categorically bar life-without-parole for juvenile murderers; it merely forbade “treating every juvenile as an adult.” By doing so, the sentence “misses too much,” including the particular details of the juvenile's life.

In reviewing these decisions on juvenile culpability, Theis noted that “Every statement [these cases] made about juveniles, their psychological traits, and their developmental paths applies with as much force in this case as those. ... The constitutional infirmity with the [transfer] statute is not that it exposes juveniles to adult sentences, but that it operates automatically.”

She stresses that she was not arguing for a categorical ban on any transfer. Rather, a transfer decision must be made on a case-by-case basis.

To be fair, the *Patterson* majority recognized problems with the mandatory transfer statute. It “strongly” urged the legislature to review the current scientific evidence indicating the need for an individualized transfer decision. Indeed, Theis notes that a bill to repeal the mandatory transfer statute is pending in the Illinois legislature.

But juveniles such as Patterson should not have to depend on the largesse of the legislature. Mandatory transfers are simply unconstitutional.