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## In the Courts: Juvenile Automatic Transfer Rule Deemed Retroactive

Lianne Foley

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*In the Courts:*  
**Juvenile Automatic Transfer Rule Deemed Retroactive**  
*By: Lianne Foley*

On December 1<sup>st</sup> of 2016, the Supreme Court of Illinois held in *People ex rel. Alvarez v. Howard* that defendant Luis Montano would have the opportunity to re-open his criminal case in order to have his case tried in juvenile delinquency court, as opposed to adult criminal court. Luis Montano was charged by a grand jury for twenty-nine counts of first degree murder for shooting and killing Eugenio Solano. Luis Montano was also found guilty for four counts of attempted murder and one count of aggravated battery arising out of the shooting of Raul Maza. The crux of this case was centered on the issue of whether the newly amended statute, 705 ILCS §405/5-130, entitled “Excluded Jurisdiction,” was meant to apply retroactively or prospectively. When a statute applies retroactively, the new statute will have an effect on cases in the past. When a statute applies prospectively, it affects only cases moving forward from the date on which the statute was passed.

The “Excluded Jurisdiction” statute is part of the Juvenile Court Act of 1987. The Juvenile Court Act is based on the belief that children, youth, and families involved with the juvenile and criminal courts should be guarded by federal standards for care and custody, while also upholding the interest of community safety and the prevention of victimization. “Excluded Jurisdiction” in sum, lists exceptions as to when a juvenile or criminal court no longer have the power to hear a youth’s case. These exceptions include when a minor has engaged in any of the following offenses: first degree murder, aggravated criminal sexual assault, and aggravated battery with a firearm. Essentially, if a minor is at least sixteen years of age and committed any of the aforementioned offenses, the automatic transfer rule will apply. This rule requires a juvenile’s case to be automatically transferred from juvenile delinquency court to adult criminal court, causing the minor to be treated, prosecuted, and sentenced as an adult, in accordance with the criminal laws of the State. The automatic transfer age in Illinois under the “Excluded Jurisdiction” statute was previously fifteen. However, recent legislation has increased the automatic transfer age to sixteen.

When Luis Montano, the defendant in *Alvarez v. Howard*, was found guilty of murder, attempted murder, and aggravated battery, he was fifteen years old. At the time, the “Excluded Jurisdiction” of the Juvenile Court Act had the automatic transfer rule set at fifteen years of age and thus, Luis Montano was tried in front of a grand jury. Once indicted, Luis Montano was held in adult criminal court while waiting for his sentencing hearing, during which a Sentencing Judge, usually the same Judge who has been assigned to the case from its inception, makes an independent assessment of all of the evidence and determines a sentencing period. In Luis Montano’s case, due to the heinous and violent nature of his crimes, Montano would most likely be looking at twenty to thirty-five years of prison time.

While Luis Montano was waiting for his sentencing hearing in adult criminal court, amendments to the Juvenile Court Act changed the “Excluded Jurisdiction” age from fifteen to sixteen, limiting the automatic transfer rule’s application to those juveniles who had committed the aforementioned offenses at the age of sixteen. In light of this amendment, Luis Montano moved to send his pending criminal case to juvenile delinquency court for a discretionary transfer hearing because the newly amended legislation no longer allowed for his criminal case to be tried in an adult court, as he had committed the offenses at the age of fifteen. The Honorable Judge Carol M.

Howard granted Luis Montano's motion to transfer his case to juvenile delinquency court. The State then responded with a motion to Reconsider.

The Court's decision in *Alvarez v. Howard* concentrated on the issue of whether the new legislation allowed for retroactive application. The issue was brought before the Supreme Court of Illinois when the State of Illinois, represented by State's Attorney Anita Alvarez, sought a writ of *mandamus* or prohibition against, the Honorable Carol M. Howard. A writ of *mandamus* or prohibition is an order from a court to an inferior government official ordering the government official to properly fulfill their official duties or correct an abuse of discretion.

In its motion to reconsider, the State argued that, because the effective date of this statute was postponed until January 1, 2016, it had to be presumed to have a prospective effect. The State based its reasoning on the Supreme Court case *Landgraf v. Usi Film Production*, which concluded that retroactivity is not favored by the law. The Court in *Landgraf* reasoned that congressional enactments and administrative rules should not be construed to have retroactive effect unless their language specifically required this result. Additionally, the State relied on *Commonwealth Edison Co. v. Will County Collector* to show that the Illinois Supreme Court had already adopted the same reasoning in *Landgraf*. Relying on Illinois precedent, the State concluded that since the legislature did not indicate the temporal reach of the statute and delayed its implementation, it could not be applied retroactively. Following a hearing, Judge Howard denied the State's motion to reconsider, explaining that the amendment applied retroactively and Luis Montano's case belonged in juvenile delinquency court. Judge Howard transferred Luis Montano's case back to juvenile delinquency court specifically because the changes to the "Excluded Jurisdiction" statute did not include a savings clause, which would have preserved the provision that had been altered, effectively making it enforceable despite the new amendments.

Subsequently, the State then moved for leave to file an original action for a writ of *mandamus* or probation, arguing that Judge Howard was without a legal basis to transfer Luis Montano's case. The Supreme Court granted the State leave to file its writ of *mandamus*. The Supreme Court has discretionary original jurisdiction to hear *mandamus* or prohibition cases. A writ of *mandamus* may be used to prevent a judge from acting where he has no power to act or goes beyond the judge's scope of authority. The Supreme Court, in its ruling, began by recognizing Judge Howard's argument that the State illegitimately filed a writ of *mandamus* because the State had the power to appeal the order transferring Luis Montano's case back to juvenile court. Judge Howard argued that the writ of *mandamus* may not be used to circumvent the normal appellate process. The Supreme Court reasoned that there was no procedural hindrance to the State seeking a writ of *mandamus* because, when a court transfers a case between juvenile and criminal courts, the only question being decided is which forum will determine whether the defendant is guilty of the crimes charged. In Luis Montano's case, the writ of *mandamus* was not to dismiss the charges against him, but rather which court was going to adjudicate those charges.

Once it was determined that the State's petition for a writ of *mandamus* was proper, the Supreme Court was able to address whether or not the change to the automatic juvenile transfer age was intended to apply retroactively. Ultimately, the Supreme Court agreed with Judge Howard and recognized that the changes in the "Excluded Jurisdiction" were meant to apply to cases like Luis Montano's. The Supreme Court of Illinois reasoned that the State's argument was illegitimate

due to the existence of Section 4 of the Statute on Statutes, a savings clause of general applicability. The Supreme Court interpreted the Statute on Statutes to hold that procedural changes to statutes will be applied retroactively, while substantive changes are prospective only. The Supreme Court further clarified that, due to the Statute on Statutes, an Illinois Court should interpret statutes based on the plain text reading of the statute. If the statute is unclear, the Supreme will apply Section 4 of the Statute on Statutes as a default. In applying the holding to the case of Luis Montano, the Supreme Court found that the newly amended "Excluded Jurisdiction" did not indicate a temporal reach when changing the automatic transfer age from fifteen to sixteen. Further, as previously mentioned, the legislature did not include a savings clause with respect to the statutory change. Thus, based on Illinois case law and the interpretation of the Statute on Statutes, the Supreme Court concluded that the "Excluded Jurisdiction" did apply retroactively and the Circuit Court was correct in granting Luis Montano's motion for a transfer from adult to juvenile court. For Luis Montano, this holding will result in being released from juvenile court at age twenty-one, as juvenile court only has jurisdiction over youths up until they turn twenty-one years of age. Once released, Luis Montano will mostly likely be on probation, which is a slim punishment in comparison to the decades-long imprisonment he would have faced if the changes to the "Excluded Jurisdiction" statute did not apply retroactively.

*People ex rel. Alvarez v. Howard* determined that the newly changed "Excluded Jurisdiction" statute would be applied retroactively toward pending juvenile cases. This statutory application and interpretation has already been upheld in a similar subsequent case, *People v. Taylor*. In *People v. Taylor*, the defendant was found guilty of first degree murder and armed robbery. He was fifteen years old at the time of the commission of the crimes, and was sentenced to twenty-six years in prison after being tried in adult criminal court. However, pursuant to *Howard*, the defendant's sentence was vacated and remanded to juvenile court for resentencing.

The decision to allow the automatic juvenile transfer to apply retroactively in Illinois appears to be in concurrence not only with legal reasoning, but also with certain policy standpoints. The U.S. Supreme Court, lawmakers, and criminal justice experts are acknowledging the differences between adults and adolescents. Scientific research has made it clear that an adolescent's brain is capable of making significant changes that can enable them to make better choices in the future. A study conducted by researchers at both the Massachusetts Institute of Technology and Brown University has shown that "incarcerating minors in adult court significantly diminishes the likelihood they will complete high school, and makes them more likely to be incarcerated as adults." Furthermore, when transferred juveniles are incarcerated with adults, adverse consequences arise. Transferred juveniles become exposed to the antics of adult criminals and as a result are subject to forms of criminal training in adult prison. Thus, it appears that by keeping juveniles out of the adult system and in the juvenile system, a youth released from a juvenile detention center has the opportunity to be rehabilitated, as well as avoiding exposure to criminal behavior.

On the other hand, the implication of this new amendment to the automatic transfer age puts an additional hardship on the families who have fallen victim to a juvenile's violent actions. Victim's families are faced with the emotional hardship of having to deal with the judicial system again, by having to be privy to the resentencing process by reopening these old cases. Victim's families are no longer afforded the sense that the person who has committed these crimes against

their loved ones will be facing substantial years of punishment. Additionally, the State is faced with using resources to reassess cases that have already been decided.

The Juvenile Court Act is meant to ensure public safety as well as preventing victimization of youths. It will be fascinating to see if the intent of the Juvenile Court Act is being upheld by applying the automatic transfer age retroactively.

### Sources

Bryant Jackson-Green, *Changes to Transfer Policy Will Keep More Minors Under Juvenile Supervision, Where They Belong*, ILLINOIS POLICY, (Oct. 10, 2017) <https://www.illinoispolicy.org/illinois-poised-to-update-juvenile-transfer-policy/>.

*Cheney v. United States Dis. Court For D.C.*, 542 U.S. 367, 380 (2004).

COALITION FOR JUVENILE JUSTICE, *Juvenile Justice and Delinquency Prevention Act*, <http://www.juvjustice.org/federal-policy/juvenile-justice-and-delinquency-prevention-act> (last visited Oct. 20, 2017).

*Commonwealth Edison Co. v. Will County Collector*, 196, Ill. 2d 27, 38 (S. Ct. 2001).

Daniel E. Traver, *The Wrong Answer to a Serious Problem: A Story of School Shootings, Politics and Automatic Transfer*, 31 LOY. U. CHI. L.J. 281, 283 (2000).

Duaa Eldeib, *Young Killers Who Stay in Juvenile Court Take Vastly Different Paths*, CHI. TRIB. (Oct. 10, 2017), <http://www.chicagotribune.com/news/ct-illinois-juvenile-killers-met-20150611-story.html>.

Ill. Const. art. VI, § 9.

5 Ill. Comp. Stat. Ann. § 70/4 (2017).

705 Ill. Comp. Stat. Ann. § 405/5-130 (2016).

*Landgraf v. Usi Film Products*. 511 U.S. 244, 264 (1994).

Mary E. Spring, *Extended Jurisdiction Juvenile Prosecution: A New Approach to the Problem of Juvenile Delinquency in Illinois*, 31 J. MARSHALL L. REV. 1351, 1380 (1998).

*People ex rel. Alvarez v. Howard*, 72 N.E.3d 346, (Ill. S. Ct. 2016).

*People v. Taylor*, 2017 IL App (1st) 142540-U.

Rachel M. Fugett, *Comment: Stop Presumptive Transfers: How Forcing Juveniles to Prove They Should Remain in the Juvenile Justice System is Inconsistent with Roper v. Simmons & Graham v. Florida*, 48 J. MARSHALL L. REV. 365, 367-69 (2014).