



JUVENILE CASELAW UPDATE

33rd Annual Juvenile Law Conference

Galveston, Texas

February 15-19, 2020

Pat Garza
Associate Judge
386TH District Court
Bexar County, Texas
patgarza386@sbcglobal.net

Pat Garza, 386th District Court Associate Judge

**In the Matter of M.S.
Tex.App.—Dallas, 8/20/2019**

APPEALS

ERROR WAS NOT PRESERVED WHERE NO COMPLAINT WAS MADE ABOUT JUVENILE'S FATHER NOT BEING PRESENT OR ABOUT THE SUFFICIENCY OF THE STATUTORY ADMONISHMENTS PRIOR TO THE TAKING OF TESTIMONY.

In re Commitment of Hull

Tex.App.—Corpus Christi-Edinburg, 7/18/2019

APPEALS

APPELLATE COURT CONCLUDED THAT THE ERRONEOUS ADMISSION OF PRISONER “TRAVEL CARD,” AS EVIDENCE OF PRIOR JUVENILE RECORD, PROBABLY LED TO THE RENDITION OF AN IMPROPER JUDGMENT.

Hestand v. State

Tex.App.—Fort Worth, 4/25/2019

APPEALS

IN ADULT TRIAL, FAILURE TO OBJECT AT PUNISHMENT HEARING TO IMPROPER JUVENILE ENHANCEMENT PARAGRAPH DOES NOT PRESERVE ERROR FOR APPEAL.

Bell v. State

Tex.App.—Houston (1st Dist.), 11/27/18

APPEALS

**APPEAL OF JUVENILE TRANSFER TO
ADULT COURT CAN BE RAISED AFTER
DEFERRED ADJUDICATION OR
CONVICTION.**

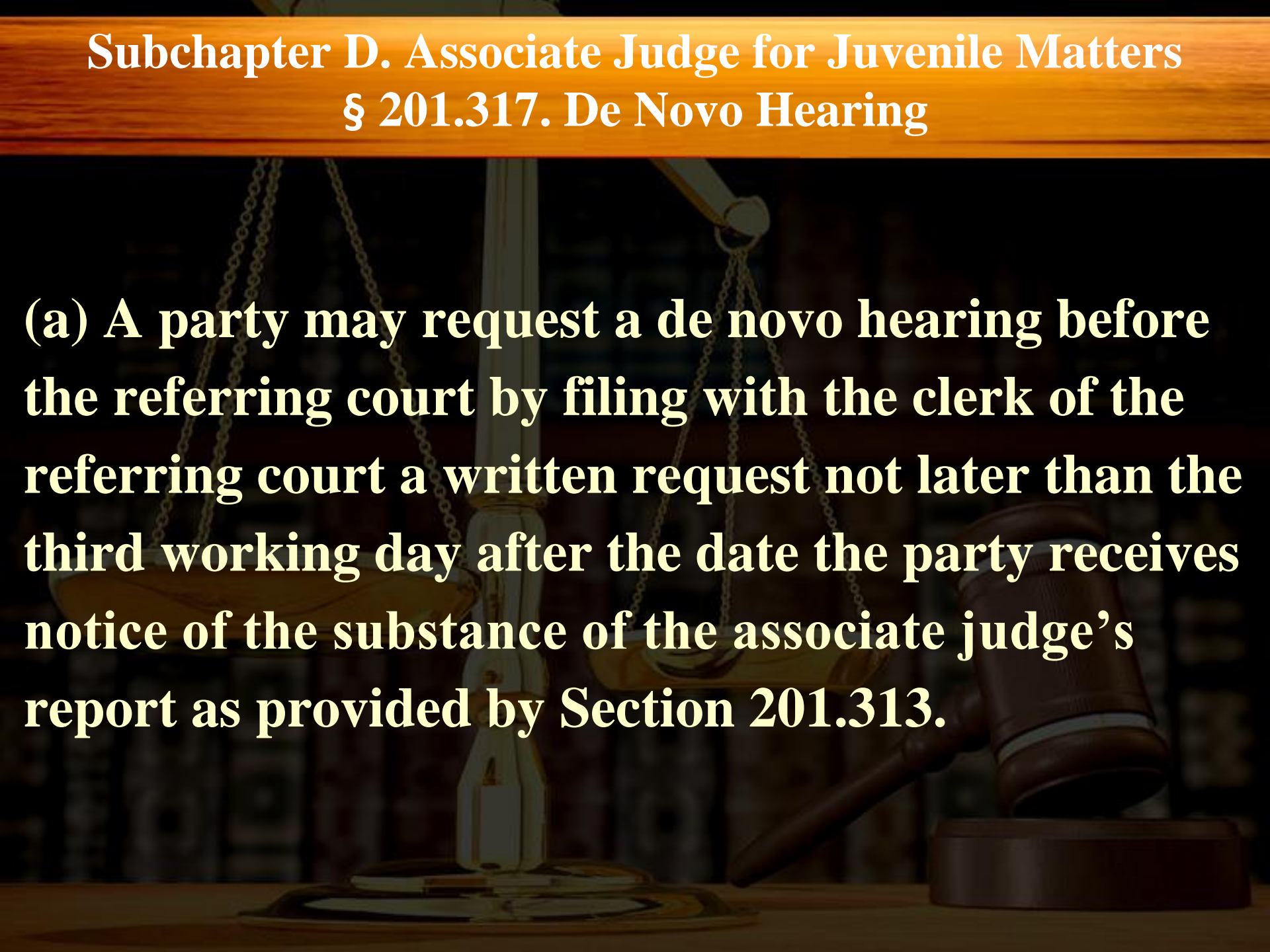
In the Interest of A.L.M.-F.
Tex.Sup.Ct., 5/3/2019

ASSOCIATE JUDGE

A “DE NOVO HEARING” FROM THE ASSOCIATE JUDGE TO THE REFERRING COURT IS NOT AN ENTIRELY NEW OR INDEPENDENT ACTION BUT IS AN EXTENSION OF THE ORIGINAL TRIAL ON THE MERITS.

Subchapter D. Associate Judge for Juvenile Matters § 201.317. De Novo Hearing

(a) A party may request a de novo hearing before the referring court by filing with the clerk of the referring court a written request not later than the third working day after the date the party receives notice of the substance of the associate judge's report as provided by Section 201.313.



Subchapter D. Associate Judge for Juvenile Matters

§ 201.317. De Novo Hearing

(Cont'd)

(b) A request for a de novo hearing under this section must specify the issues that will be presented to the referring court. The de novo hearing is limited to the specified issues.

(f) In the de novo hearing before the referring court, the parties may present witnesses on the issues specified in the request for hearing. The referring court may also consider the record from the hearing before the associate judge...

In the Matter of J.K.

Tex.App.—Houston (14th Dist.), 6/11/2019

CONFESSIONS

NO REVERSABLE ERROR WHERE THE RECORD ESTABLISHED BEYOND A REASONABLE DOUBT THAT THE IMPROPERLY OBTAINED CONFESSION DID NOT CONTRIBUTE TO APPELLANT'S CONVICTION.

Rios-Barahona v. State

Tex.App.—Corpus Christi-Edinburg, 8/22/2019

CRIMINAL TRIAL

IN ADULT TRIAL, COURT NEED NOT INSTRUCT JURY THAT OFFENSE OCCURRED AFTER 17th BIRTHDAY WHERE THERE WAS NO TESTIMONY DISCUSSING ANY OFFENSES THAT APPELLANT MIGHT HAVE COMMITTED PRIOR TO TURNING SEVENTEEN.

**In the Matter of the Expunction of V.H.B.
Tex.App.—El Paso, 9/28/2018**

CRIMINAL TRIAL

**JUVENILE MISTAKENLY INDICTED BY
GRAND JURY WAS NOT ENTITLED TO HAVE
HIS RECORD EXPUNGED BECAUSE MISTAKE
OF AGE DOES NOT CALL INTO QUESTION
THE EXISTENCE OF PROBABLE CAUSE. AGE
IS SIMPLY AN ELEMENT OF THE OFFENSE.**

Ex Parte McIntyre
Tex.App.—Fort Worth, 8/16/2018

CRIMINAL TRIAL/ADULT BOND

**NO DISTINCTION EXISTS BETWEEN
JUVENILE PREDELINQUENCY RELEASE
AND ADULT PRETRIAL BOND RELEASE
FOR PURPOSES OF ARTICLE I, SECTION
11b OF THE TEXAS CONSTITUTION.**

Ex Parte McIntyre

Tex.App.—Fort Worth, 8/16/2018

***July 2016. Tarrant County, Texas. Juvenile (16) charged and arrested for one count of capital murder and three counts of aggravated robbery.**

***Released on ankle monitor by juvenile court.**

***March 2017. Juvenile removed his ankle monitor and was involved in a capital murder in Bexar County and an aggravated robbery and aggravated assault in Arlington, Texas.**

***Appellant, now an adult, was arrested in New Jersey, returned to Tarrant County, and certified to adult criminal court.**

Trial court sets bond on capital murder at \$500,000; and on the aggravated robbery at \$0.

***Later, Trial Court sua sponte ordered appellant held without bail.**

***Appellant files Pretrial Writ of Habeas Corpus. ***

Ex Parte McIntyre

The Rest of the Story

When appellant cut off his ankle monitor and fled, he wrote a song detailing his escapades. Appellant ultimately signed a three-year recording contract with 88 Classic for \$600,000 or \$700,000. Appellant also made a music video in which the trial court described Appellant as “pretty much bragging about the fact that he not only cut off his monitor ... but he’s standing around holding a .9 mm pistol ... standing next to a poster of himself,” which the trial court believed “came from the directive to apprehend.”*

TEXAS CONSTITUTION

ARTICLE I, SECTION 11b

A trial court may deny bail if a person:

- (1) who is accused in Texas of a felony,**
- (2) is released on bail pending trial,**
- (3) has his bail subsequently revoked for a violation of a condition of release, and**
- (4) is found to have violated conditions that relate to the safety of a victim or the safety of the community.***

FORT WORTH COURT OF APPEALS HOLDING

Appellant is a person

- (1) who was accused in Tarrant County, Texas, of the felonies of capital murder and aggravated robbery;**
- (2) was “released on bail pending trial” via his juvenile predelinquency adjudication hearing release;**
- (3) had his “bail”/juvenile predelinquency adjudication hearing release subsequently revoked for violating a condition of his release—including cutting off his ankle monitor and fleeing;**
and
- (4) was specifically found by the trial court in finding of fact to have violated a condition that relates to the safety of the victims and of the community.**

**In the Matter of D.L.
Tex.App.—Austin, 8/23/2018**

DETERMINATE SENTENCE

**A PETITION THAT INCLUDES BOTH
ELIGIBLE AND INELIGIBLE OFFENSES
MAY BE REFERRED TO THE GRAND JURY,
BUT A DETERMINATE SENTENCE MAY BE
IMPOSED AS TO THE ELIGIBLE OFFENSE
ONLY.**

In Re X.A.

Tex.App.—Houston (1st Dist.), 1/16/2020

DETERMINATE SENTENCE TRANSFER

IN GRANTING WRIT OF MANDAMUS, HOUSTON COURT OF APPEALS (1ST DIST.), VOIDED TRIAL COURT'S NUNC PRO TUNC ORDER CHANGING THE DURATION OF JUVENILE'S PROBATION FROM ENDING ON HIS 18TH BIRTHDAY TO ENDING ON HIS 19TH BIRTHDAY*

In Re X.A.

Cont'd

DETERMINATE SENTENCE TRANSFER

THE COURT HELD THAT ANY ORDERS ISSUED BY THE TRIAL COURT AFTER JUVENILE'S 18TH BIRTHDAY WERE BEYOND THE TRIAL COURT'S JURISDICTION, ARE VOID, AND MUST BE VACATED, INCLUDING THE ORDER TRANSFERRING JUVENILE'S DETERMINATE PROBATION TO ADULT COMMUNITY SUPERVISION.

The background of the slide features a pair of golden scales of justice and a wooden gavel resting on a surface. The scales are positioned on the left side, and the gavel is on the right. The entire scene is set against a dark, blurred background of bookshelves filled with books. The text is overlaid on this background in a bright, yellowish-gold color.

U.S. v. Sparks
U.S. 5th Cir., 10-24-2019

DISPOSITIONS

***MILLER V. ALABAMA* DOES NOT PROHIBIT LWOP, RATHER IT “REQUIRES A SENTENCER TO CONSIDER A JUVENILE OFFENDER’S YOUTH AND ATTENDANT CHARACTERISTICS BEFORE DETERMINING THAT LIFE WITHOUT PAROLE IS A PROPORTIONATE SENTENCE.”**

Grogan v. TDCJ-CID

U.S.D.C., E.D.—Beau. Div., 1/21/2020

DISPOSITION

IN DENYING PETITION FOR WRIT OF HABEAS CORPUS, U.S. MAGISTRATE RULED THAT *MILLER* DID NOT CLEARLY ESTABLISH THAT A DISCRETIONARY LENGTHY TERM-OF-YEAR SENTENCE, EVEN WHEN IT AMOUNTS TO THE PRACTICAL EQUIVALENT OF LIFE WITHOUT PAROLE (130 YEARS), WAS UNCONSTITUTIONAL.

Brooks v. State

Tex.App.—Houston (1st Dist.), 9/24/2019

DISPOSITIONS

CASE AFFIRMED UNDER DICTATES OF VERTICAL STARE DECISIS [*Lewis v. State*, 428 S.W.3d 860 (Tex. Crim. App. 2014)], WHERE THE SENTENCE OF LIFE WITH THE POSSIBILITY OF PAROLE AFTER 40 YEARS PRECLUDED THE SENTENCER FROM CONSIDERING THE OFFENDER'S YOUTH.

U.S. v. Melton

U.S. Ct.App. (5th Cir.), 10/19/2018

(5th Cir. Interpreting Packingham)

PACKINGHAM HOLDING

STATUTE MAKING IT A FELONY FOR A REGISTERED SEX OFFENDER TO ACCESS SOCIAL NETWORKING WEBSITES WAS CONSIDERED UNCONSTITUTIONAL, BECAUSE THE STATUTE FORECLOSED ACCESS TO SOCIAL MEDIA ALTOGETHER.

U.S. v. Melton

U.S. Ct.App. (5th Cir.), 10/19/2018 (Per Curiam)

DISPOSITIONS

A CONDITION OF PROBATION REQUIRING PRIOR APPROVAL FOR INTERNET USE BY THE PROBATION DEPARTMENT, SUBJECT TO THE INTERPRETATION THAT “PRIOR APPROVAL” DOES NOT REQUIRE INDIVIDUAL APPROVAL FOR EACH SPECIFIC INSTANCE OF INTERNET USE.

**In the Matter of A.T.D.
Tex.App.—Texarkana, 8/30/2018**

DISPOSITIONS

Probation condition restricting use of:

“any type of electronic [device] at any time unless it is for school purposes ... mean[ing] no cell phone, computer, or iPod, ect. [sic],”

**Condition was unchallenged in Motion to Modify
Disposition.**

(probation conditions must be challenged at trial level)

In the Matter of B.M.

Tex.App.—Houston (1st Dist.), 4/30/2019

ETHICS

WHILE AFFIRMING THE DISCRETIONARY TRANSFER, APPELATE COURT SLAMMED JUVENILE COUNSEL'S APPROACH OF AGREEING WITH THE STATE'S CASE, SITTING ALMOST COMPLETELY SILENT WHILE WITNESSES, OVER TWO DAYS, TESTIFIED AGAINST HIS CLIENT, AND MAKING INSENSITIVE, IRRELEVANT, AND INAPPROPRIATE "JOKES" AND COMMENTS. *

In the Matter of B.M.

Tex.App.—Houston (1st Dist.), 4/30/2019

(Cont'd)

THE APPELATE COURT STATED THAT “THIS WAS NOT INDICATIVE OF A ‘COMMITMENT AND DEDICATION TO THE INTEREST OF [HIS] CLIENT’ AND ZEALOUS ‘ADVOCACY UPON [HIS] CLIENT’S BEHALF’ THAT IS EXPECTED BY THE LAWYERS IN THIS STATE.”

**In the Matter of M.S.
Tex.App.—Fort Worth, 8/8/2019**

**TRIAL PROCEDURE
JURY INSTRUCTIONS**

**CASE REVERSED WHERE JURY WAS
INCORRECTLY INSTRUCTED ON TWO
DISJUNCTIVE THEORIES OF THE LAW OF
PARTIES AND ONE THEORY IMPLIED THAT
APPELLANT HAD A LEGAL DUTY TO
PREVENT THE COMMISSION OF THE CRIME,
WHICH SHE DID NOT.**

Davis v. State
Tex.App.—Dallas, 5/31/2019

WAIVER AND DISCRETIONARY TRANSFER

**NO ABUSE OF DISCRETION IN A
DISCRETIONARY TRANSFER TO CRIMINAL
COURT WERE APPELLANT AGREED TO THE
TRANSFER.**

In the Matter of A.B.
Tex.App.—Ft. Worth, 2/28/2019

WAIVER AND DISCRETIONARY TRANSFER

WHILE THE JUVENILE'S AGE AT THE TIME OF THE ALLEGED INCIDENT WAS FUZZY AT BEST, UTILIZING THE LESS STRINGENT PREPONDERANCE-OF-THE-EVIDENCE STANDARD; THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN TRANSFERRING JUVENILE TO ADULT COURT.

**In the Matter of D.J.M.
Tex.App.—Austin, 1/14/19**

WAIVER AND DISCRETIONARY TRANSFER

**PREEMPTIVE MOTION TO SET ASIDE
DISCRETIONARY TRANSFER ORDER BASED
ON NONCOMPLIANCE WITH MOON,
CONSIDERED SUFFICIENT PART OF DUE
DILIGENCE BY THE STATE.***

In the Matter of D.J.M. Tex.App.—Austin, 1/14/19

July 17, 2014: Petition for waiver of jurisdiction and discretionary transfer to criminal court is filed.

August 22, 2014: Juvenile Court transfers jurisdiction.

August 29, 2014, D.J.M. turned eighteen.

December 10, 2014: Moon v. State released.*

In the Matter of D.J.M. Tex.App.—Austin, 1/14/19

May 8, 2018: State files Motion to Set Aside the Order

May 21, 2018: Motion Granted

May 21, 2018: State files an Amended Petition for Waiver of Jurisdiction and Transfer to Criminal Court under TFC 54.02(j).

June 21, 2018: Juvenile Court transfers jurisdiction

**Does preemptive action by State
satisfy due diligence requirement?**

54.02(j)(4) {If} the juvenile court finds from a preponderance of the evidence that:

(A) for a reason beyond the control of the state it was not practicable to proceed in juvenile court before the 18th birthday of the person; or

(B) after due diligence of the state it was not practicable to proceed in juvenile court before the 18th birthday of the person because:

- (i) the state did not have probable cause to proceed in juvenile court and new evidence has been found since the 18th birthday of the person;**
- (ii) the person could not be found; or**
- (iii) a previous transfer order was reversed by an appellate court or set aside by a district court; and**

In the Matter of A.J.F.
Tex. App.—Hou (14th Dist.), 2019

MANDATORY TRANSFER

THE LANGUAGE “PREVIOUSLY BEEN TRANSFERRED” AS CONTAINED IN SECTION 54.02(m) RELATES TO THE SECTION 54.02(m) TRANSFER ITSELF AND NOT THE CONDUCT AT ISSUE IN THE SECTION TRANSFER.*

MANDATORY TRANSFER

TFC 54.02(m)

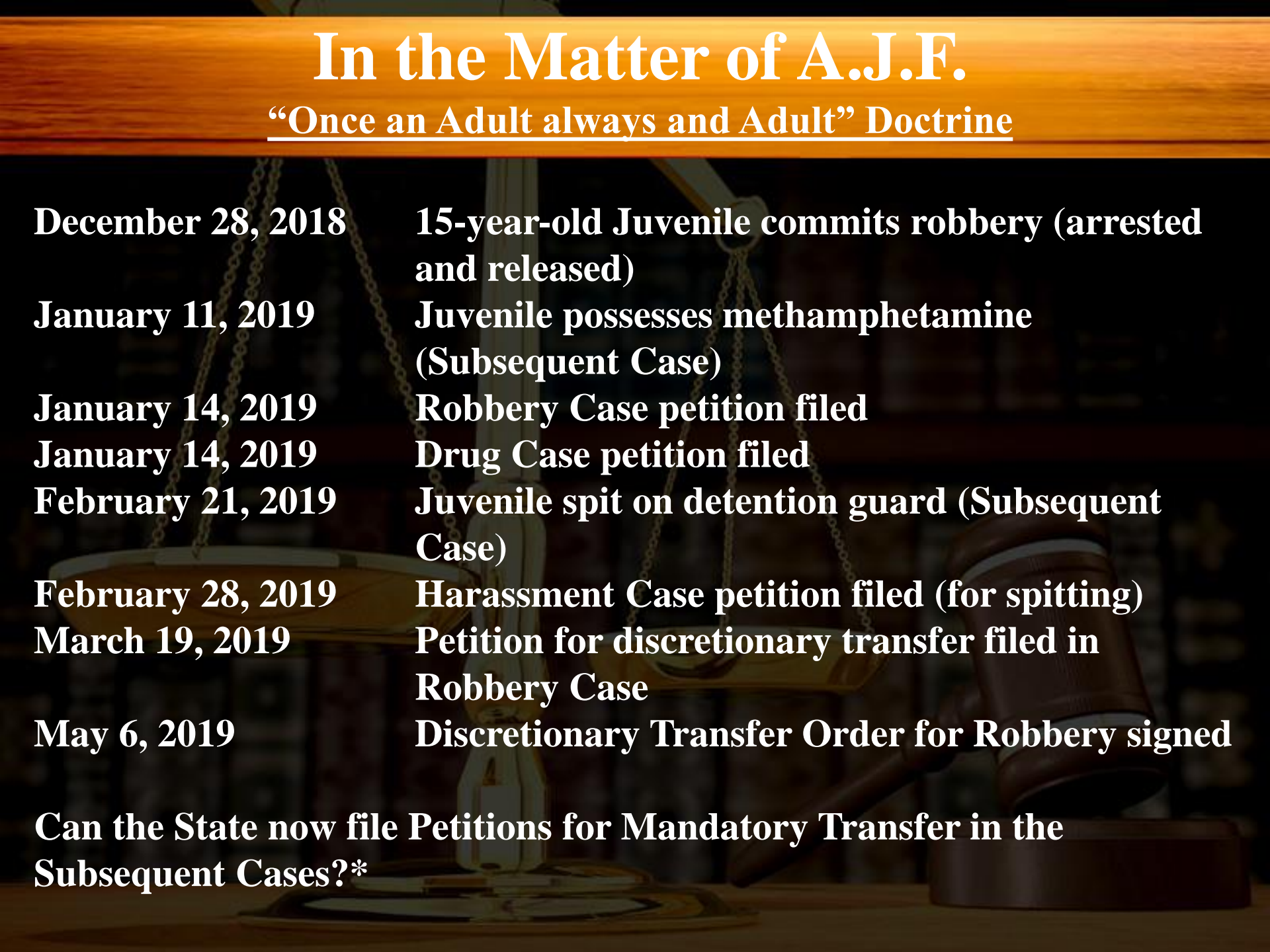
Child *has previously been transferred*, and has committed a new felony...

Unless, On the previous transfer

**the child was not indicted,
the child was found not guilty,
the matter transferred was dismissed with prejudice,
the child was convicted, the conviction was reversed, and the appeal is final;***

In the Matter of A.J.F.

“Once an Adult always and Adult” Doctrine

- 
- December 28, 2018** **15-year-old Juvenile commits robbery (arrested and released)**
- January 11, 2019** **Juvenile possesses methamphetamine (Subsequent Case)**
- January 14, 2019** **Robbery Case petition filed**
- January 14, 2019** **Drug Case petition filed**
- February 21, 2019** **Juvenile spit on detention guard (Subsequent Case)**
- February 28, 2019** **Harassment Case petition filed (for spitting)**
- March 19, 2019** **Petition for discretionary transfer filed in Robbery Case**
- May 6, 2019** **Discretionary Transfer Order for Robbery signed**

Can the State now file Petitions for Mandatory Transfer in the Subsequent Cases?*



**In the Matter of A.J.F.
Tex.App—Houston (14th Dist.), 2019**

Yes!

The Houston Court of Appeals stated that section 54.02(m)(1) does not mention the child's conduct. The only requirement is that child has previously been transferred for criminal proceedings.*

**In the Matter of A.J.F.
Tex.App—Houston (14th Dist.), 2019
(Cont'd)**

Many mandatory transfer statutes across the country explicitly apply only to “subsequent delinquent acts”—acts committed after the first transfer. Our section 54.02(m)(1) does not.

“The wisdom or expediency of the law is the Legislature’s prerogative, not ours.” “We are not empowered to substitute what we believe is right or fair for what the Legislature has written, even if the statute seems unwise or unfair.”

The Voting Thing

A golden scale of justice and a wooden gavel are positioned on a desk in front of a bookshelf. The scale is on the left, and the gavel is on the right. The background is a dark, blurred bookshelf. The text "WWW.JUVENILELAW.ORG" is overlaid in the center in a bold, white, serif font.

WWW.JUVENILELAW.ORG

Pat Garza, 386th District Court Associate Judge