HOWARD JIMMY DAVIS,	IN THE
Petitioner	COURT OF APPEALS
v.	OF MARYLAND
STATE OF MARYLAND,	September Term, 2020
Respondent	No. 51

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17 day of March, 2021, a copy of the Petitioner's Brief and the Joint Record Extract were delivered via the MDEC system by arrangement with the Office of the Attorney General to:

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_____

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IN THE
COURT OF APPEALS OF MARYLAND

SEPTEMBER TERM, 2020

NO. 51

HOWARD JIMMY DAVIS,

Petitioner

v.

STATE OF MARYLAND,

Respondent

ON WRIT OF CERTIORARI TO THE
COURT OF SPECIAL APPEALS OF MARYLAND

PETITIONER'S BRIEF

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PETITIONER'S BRIEF

STATEMENT OF THE CASE

Petitioner, Howard Jimmy Davis, turned sixteen on March 4, 2017. (E.2). Eighteen days later, he participated in a home invasion in Woodlawn. He was charged by indictment in the Circuit Court for Baltimore County (Case 03-K-17-001763) with fourteen counts, including offenses that excluded him from the juvenile court's original

jurisdiction: attempted first degree murder, first degree assault, and use of a firearm in the commission of a crime of violence. (E.14–17).

On June 15, 2017, Mr. Davis moved under Maryland Rule 4-252(c) to transfer his case to juvenile court pursuant to Maryland Code (2001, 2008 Repl. Vol., 2017 Supp.), Criminal Procedure Article ("CP"), § 4-202. (E.18). He spent over nine months in the Charles H. Hickey, Jr. School ("Hickey") before his transfer hearing on January 23, 2018. (E.2). Following that hearing, Judge Nancy M. Purpura denied his transfer motion. (E.146).

On April 26, 2018, Mr. Davis entered a conditional guilty plea under Maryland Rule 4-242(d) to two counts of first degree assault and one count of use of a firearm in a crime of violence, "preserv[ing] for appeal all issues raised during the reverse waiver hearing." (E.153). Judge Kathleen G. Cox sentenced him on June 27, 2018 to concurrent terms of fifteen years, with all but ten years suspended, for each assault conviction, and a concurrent five years without parole for the firearm offense. (E.221).

Mr. Davis appealed the denial of his transfer motion. The Court of Special Appeals affirmed: *Davis v. State*, September Term, 2018, No. 2014, unreported, filed October 9, 2020. (E.229). On February 8, 2021, this Court granted a petition for writ of certiorari.

QUESTION PRESENTED

As a matter of first impression, does a trial court determining whether to transfer jurisdiction of a criminal case to the juvenile court discharge its responsibility under CP § 4-202(d)(3) to consider the "amenability of the child to treatment in an institution, facility, or program available to delinquent children" by considering the child's eligibility for services in the juvenile system, or does the court also need to consider the child's rehabilitative potential?

STATEMENT OF FACTS

A. Mr. Davis's childhood and pre-offense history.

Mr. Davis was born on March 4, 2001 in Baltimore. (E.20–21). Dr. Kristen Zygala, a clinical psychologist at Spring Grove Hospital Center who assessed Mr. Davis for the defense, testified that there was "no indication" that he had "significant behavioral problems" or "emotional problems" as a child. (E.81). He had, however, suffered some traumatic experiences: he observed a shooting and a stabbing when he was seven or eight years old, and his cousin and uncle were both shot dead when he was eleven years old.[1] (E.30, 44). He played football for a Pop Warner team from the third through eighth grades, and worked for the YouthWorks program in the summers of 2015 and 2016, cleaning a high school and mentoring younger children. (E.29–30).

[1] Dr. Zygala diagnosed Mr. Davis with an "unspecified trauma and stressor related disorder." (E.89).

Mr. Davis had three prior contacts with the Department of Juvenile Services ("DJS"), all for non-violent conduct. First, in May 2010 (when he was nine years old), he was accused of committing the delinquent act of fourth degree burglary. (E.22). The case was resolved at intake. *Id*. Second, in June 2014 (when he was thirteen years old), he was found to have been involved in "breaking and entering motor vehicles," placed on probation, and required to complete a victim awareness program. (E.22, 25). He completed probation in December 2015. (E.22). Finally, in November 2015 (when he was fourteen years old and still on probation), he was accused of committing the delinquent act of motor vehicle theft and placed on informal supervision, which he successfully completed in April 2016. *Id*.[2] Prior to this case, however, Mr. Davis did not receive any DJS services other than "victim awareness," which Dr. Zygala described as a non-intensive "hour or two a week [for] a couple of weeks." (E.98).

B. Events leading up to the offense.

The defense introduced evidence that there was a marked change in Mr. Davis in the months leading up to the offense. Jenna Conway, a forensic social worker for the Office of the Public Defender who testified as an expert, reported in her assessment that in late 2016, Mr. Davis's

[2] He was also suspended once in the ninth grade for "fighting." *Id*.

then-girlfriend, "S," told him that she was pregnant with his twins. (E.44). Mr. Davis was shocked but excited: he started picking out baby names, bought diapers and wipes with money saved from his summer job, and dreamed about what he would teach them when they were older. (E.44–45). In February 2017, S told him that she had been raped and beaten by a family friend, and lost one of the children. (E.44).

Mr. Davis's mother told Dr. Zygala that she saw a "decline" in her son's mood, "crying," and "increase[d] drug use." (E.82). He became "withdrawn and depressed," and started using Xanax to cope in February 2017. (E.21, 30). The next month, less than three weeks after his 16th birthday, he and two others invaded the home of the person they were told was responsible for the rape.

C. The offense.

The Court of Special Appeals summarized the relevant facts:

> Davis and two other persons participated in a home invasion in Baltimore County during the early morning hours of March 22, 2017. At approximately 1:40 a.m., the home invaders broke down a sliding glass door to enter the kitchen while the occupants were asleep.[3] Sleeping in the home were a man and woman (who were described as fiancé and fiancée), and their children (an 11-year-old boy and two teenage girls). When the adults were awakened by the sound of the break-in, the man went downstairs to investigate, and was confronted by masked men, who fled briefly, but then returned, armed with at least one assault rifle. By the

[3] One of the victims stated that the men were wearing "masks, gloves, and all dark clothing." (E.23).

> time police arrived in response to a 911 call, the invaders had fired shots in the house and had bludgeoned[4] the man who had confronted them. Police arrested suspects who led them to Davis. …
>
> Dr. Zygala testified that Davis "really hadn't exhibited any emotional and behavioral problems" until the months preceding the home invasion, when he believed—mistakenly, it turned out—that he had "potentially lost two children with [his girlfriend] due to a rape." … *Dr. Zygala explained that Davis's girlfriend had "fabricated an elaborate lie that she was pregnant with [Davis's] twins (even sending fake ultrasound pictures). She then told [Davis] that she was raped by a family friend and lost one of the babies*."

(E.229–230, 238) (emphasis added); *see also* E.231–233 (setting out the full police report summary in the Reverse Waiver Report).

At the plea hearing, the prosecutor proffered as support for the conditional guilty plea that:

> [Mr. Davis] *did write an apology letter*, wherein he … indicated that he was essentially operating under the belief that his girlfriend, at the time, had been sexually assaulted. … He thought … the person responsible for the sexual assault lived at this address … Ultimately, it was determined that [the man] and his wife had absolutely nothing to do with … an alleged … sexual assault. The Defendant … simply got the wrong address. And it turned out that the story about the sexual assault had been made up by someone and forwarded to Mr. Davis.

(E.175) (emphasis added).

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[4] The DJS Report notes the man's statement that he was "struck in the face with the butt of the [rifle]" and "suffered injuries." (E.23). Dr. Zygala acknowledged at the transfer hearing that there was evidence that the man had "teeth knocked out" and "suffered a graze wound from a bullet when he grabbed … the carbine of [the] gun." (E.102).

D. Mr. Davis's exemplary adjustment to DJS custody.

Mr. Davis spent over nine months at Hickey before his transfer hearing: his first time in DJS custody. As the Court of Special Appeals acknowledged, his record at Hickey was "exemplary." (E.246). In May 2017 (the month after Mr. Davis entered Hickey), DJS reported in its Reverse Waiver Report that Mr. Davis and his mother were "willing to participate" in DJS services. (E.22). In a Detention Court Report prepared around October 2017, his DJS case manager noted that he had "maintained a respectful attitude towards staff," "consistently follow[ed] directions," asked "often to assist staff with unit duties," behaved positively towards his peers, and enjoyed participating in peer-based programs. (E.57). The Hickey mental health examiner reported that Mr. Davis was "*very amenable*; … cooperative, … [had] an easy-going disposition, and [was] very tolerant of others," and spoke glowingly of his behavior and character in a December 2017 report:

> *Youth Davis' behavior at Hickey has been consistently positive.* Davis was *always willing to participate in individual and group therapy sessions* to discuss his moods and behaviors. Davis regularly attends group and individual sessions, community meetings, Boys-to-Men (a male mentoring group) where he actively and thoughtfully contributes, to the group discussions. Davis has successfully … earned [various] certificates of completion. Davis *consistently earns 100% of his daily points* for his compliance with the Challenge program.

(E.32, 47, 54) (emphases added).

Dr. Zygala reported that a Hickey correctional officer had told her that Mr. Davis was their "*best youth*," "does not engage in any altercations," "stays to himself," and is "respectful to everyone." (E.82) (emphasis added). She testified that Mr. Davis had "cut off" ties with S, and was "back to his level of optimal functioning" now that that "stimulus … [had] been removed." (E.83, 88). She said that his apology letter was evidence of his "empathy and remorse … traits necessary for … improved behavior." (E.104). She observed that he was "opening up" in therapy, "trying to improve himself," and had "a positive attitude towards intervention and authority." (E.83, 86, 90).

Ms. Conway testified that she had done almost 70 transfer cases, and did not think that she had ever "had a youth that … had 100% of their [daily behavioral] points," other than Mr. Davis. (E.122–123). She noted that he had no Behavioral Reports for misconduct, and was selected to be the "Student Advisory" for his unit, tasked with meeting the superintendent biweekly to discuss his cohort's needs. (E.47, 128).

Kim Turner, the program director for Uncuffed Ministries, a "faith-based group offering life skills training, mentoring, and spiritual encouragement to detained youth," testified that Mr. Davis actively participated in voluntary weekly bible studies classes throughout his stay at Hickey. (E.26, 66–67). She said that he was "extremely

personable," "un-defensive in his posturing and really willing to look at his life," helpful in recruiting others to the program, and "growing throughout." (E.67–68). She concluded that his "commitment to receiving help is testimony to how amenable he is to treatment." (E.26).

Judge Cox, the sentencing judge, was so impressed with Mr. Davis's record at Hickey that she wrote a letter after sentencing "strenuously" recommending his admission to the Patuxent Institution:

> Mr. Davis was barely sixteen when this incident occurred. *He has no prior offense history, or significant juvenile justice involvement.* Mr. Davis spent over nine months at [Hickey] pending hearing on his motion to transfer … *I can't recall a time in the past twenty years when I received a more glowing report on the adjustment of a youth in a detention setting.* He completed a number of programs, did well in school, had no behavioral incidents, and was described as a leader … Ms. Walley, who currently heads the educational department at Hickey, appeared at sentencing. She indicated this was the first time she appeared in court to testify for a youth. She noted Mr. Davis' positive attitude, his hard work, the depth of his devotion to his family and their support of him, and described Mr. Davis as one of her favorite kids who has ever come through her program. …
>
> *Mr. Davis has responded well to programming in a structured setting. He appears sincerely to regret his involvement and to understand the significance of the trauma and the harm he caused.*

(E.225–227, 243) (emphases added).

E. Mr. Davis's amenability to treatment in the juvenile system.

The defense introduced extensive evidence about the "treatment" available to Mr. Davis in the juvenile system, and his amenability to that treatment. Dr. Zygala concluded, based on two separate risk assessments, that he had a "low risk" of future violence. (E.36–38). Noting that it would be "extremely damaging" to his "personal development if he remain[ed] in the adult judiciary system," she concluded that he was "amenable to treatment" in the juvenile system, and would "greatly benefit from rehabilitative services through DJS" including "individual therapy with a trauma-focused cognitive behavioral approach," substance abuse treatment, mentoring, family therapy, "extra-curricular or prosocial activities with peers," and tutoring to improve his below-average reading skills. (E.40–42).

Ms. Conway testified that Mr. Davis was not excluded from in-state or out-of-state placements based on his charges. (E.129–131). She noted his "willing[ness] to be committed to DJS" and interest in the programs offered in detention, and recommended that he be placed in a hardware-secure facility where he could receive behavioral modification interventions, therapy to develop positive coping skills, grief and bereavement counseling, and vocational training. (E.47, 126, 130). She

acknowledged that the number of available hardware-secure facilities decreases after a child turns eighteen. (E.131). She noted two secure facilities in Maryland that Mr. Davis could be eligible for—the Rite of Passage Silver Oak Academy, and the Victor Cullen Center—and several suitable out-of-state facilities. (E.50–52).

The Reverse Waiver Report stated that if Mr. Davis "was transferred to juvenile jurisdiction, evaluations would be requested to help determine appropriate services … he will be eligible for behavior modification program[s] in state and out of state." (E.22). The report noted that Mr. Davis and his mother were "willing to participate" in DJS services. *Id*. The Hickey Mental Health Examiner reported that Mr. Davis was "very amenable" and "receptive to individual therapy," and would benefit from "individual counseling," "family therapy," and "group counseling … with his peers in a structured setting." (E.47, 55).

F. Transfer ruling.

Judge Purpura denied the transfer motion in a bench ruling. Addressing each of the statutory transfer factors separately, she stated regarding amenability to treatment:

> With regard to amenability, amenability to treatment in the juvenile system-- but the report from Juvenile Services indicates that they would, *they would need to conduct another evaluation and that he, he would be eligible for behavioral modification*. They don't mention that *he could [be] held in a secure facility,*

although we know that and certainly that the experts testified to that.

(E.145) (emphases added).

The court's ruling is addressed in Argument F.2, *infra*.

G. Court of Special Appeals.

Mr. Davis argued in the Court of Special Appeals that the trial court abused its discretion in considering his "eligibility" for treatment in the juvenile system, but not his "amenability" to that treatment. A panel of the Court (Meredith, J.) found that there was "no reason to conclude that the motion court failed to give consideration to Davis's amenability to treatment in the juvenile system." (E.246). The Court's reasons are addressed in Argument F.3, *infra*.

ARGUMENT

TRIAL COURTS REQUIRED TO CONSIDER THE "AMENABILITY OF THE CHILD TO TREATMENT IN AN INSTITUTION, FACILITY, OR PROGRAM AVAILABLE TO DELINQUENT CHILDREN" MUST NOT ONLY CONSIDER THE CHILD'S ELIGIBILITY FOR SERVICES IN THE JUVENILE SYSTEM, BUT MUST ALSO CONSIDER THE CHILD'S REHABILITATIVE POTENTIAL IN THE JUVENILE SYSTEM.

A. Summary of argument.

Under CP § 4-202(b)(3), a court exercising criminal jurisdiction in a case involving a child (a "criminal court") may transfer the case to the juvenile court if it determines, by a preponderance of the evidence,

"that a transfer of its jurisdiction is in the interest of the child or society." In determining whether to transfer jurisdiction, the court "shall consider" "the amenability of the child to treatment in an institution, facility, or program available to delinquent children." CP § 4-202(d)(3). Neither the Legislature nor this Court has defined the terms "amenability" or "treatment," or articulated the legal standard trial courts must consider.

This case thus presents an important question: What does "amenability" to "treatment in an institution, facility, or program available to delinquent children" mean? The plain meaning of the statutory language, its context, and its history make two things clear. *First*, the child's "amenability … to treatment" refers to the child's willingness to submit to, and suitability for, interventions in the juvenile system directed at rehabilitating the child. In other words, the trial court must consider the child's rehabilitative potential in the juvenile system. *See* Argument D, *infra*. *Second*, amenability to treatment is the most important consideration in transfer and waiver cases, and the record must reflect the court's careful consideration of this factor. *See* Argument E and F.4, *infra*.

Here, the trial court acknowledged Mr. Davis's *eligibility* for treatment in the juvenile system. The record does not reflect, however,

that the court considered his *amenability* to that treatment, despite the importance of this factor to the transfer determination, and despite the overwhelming evidence that he was a model candidate for juvenile rehabilitative measures. *See* Argument F, *infra*. By failing to "apply the correct legal standard"—rehabilitative potential—to its statutorily mandated consideration of amenability, the trial court abused its discretion. *Levitas v. Christian*, 454 Md. 233, 244 (2017) (quoting *Neustadter v. Holy Cross Hosp. of Silver Spring, Inc.*, 418 Md. 231, 241 (2011)). This Court should vacate the judgment of the trial court, and remand the case to that court for proper consideration of Mr. Davis's amenability to treatment.

B. Standard of review.

Transfer determinations are discretionary, and the circuit court's final decision is reviewed for abuse of discretion. *King v. State*, 36 Md. App. 124, 128, *cert. denied*, 281 Md. 740 (1977). *See also In re Franklin P.*, 366 Md. 306, 330 (2001) (juvenile court waiver decisions are reviewed for abuse of discretion). "In exercising discretion, the trial court must apply the correct legal standard in rendering its decision." *Neustadter*, 418 Md. at 241. "A failure to consider the proper legal standard in reaching a decision constitutes an abuse of discretion." *Levitas*, 454 Md. at 244 (quoting *Neustadter*, 418 Md. at 242).

Trial judges are "not obliged to spell out in words every thought and step of logic," *Beales v. State*, 329 Md. 263, 273 (1993), and need not "state each and every consideration or factor in a particular applicable standard." *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 426 (2007) (quoting *Cobrand v. Adventist Healthcare, Inc.*, 149 Md. App. 431, 445 (2003)). However, "the record [must] support[] a reasonable conclusion that *appropriate factors* were taken into account in the exercise of discretion." *Id*. at 426–427 (emphasis added). "The abuse of discretion standard requires a trial judge to use his or her discretion soundly and the *record must reflect* the exercise of that discretion." *Spaw, LLC v. City of Annapolis*, 452 Md. 314, 363 (2017) (quoting *Jenkins v. State*, 375 Md. 284, 295–296 (2003)) (emphasis added).

C. Legal background.

1. The juvenile court's jurisdiction.

Under Maryland Code (1974, 2013 Repl. Vol., 2017 Supp.), Courts & Judicial Proceedings Article ("CJP"), § 3-8A-03(a)(1), the circuit court for a county sitting as the juvenile court ("the juvenile court") has exclusive original jurisdiction over a "child who is alleged to be delinquent." *See also* CJP § 3-8A-01(j) (defining court). A child "means an individual under the age of 18 years." CJP § 3-8A-01(d). A

"delinquent child" is a child who has committed a "delinquent act"—"an act which would be a crime if committed by an adult"—and "requires guidance, treatment, or rehabilitation." CJP § 3-8A-01(l), (m). If the juvenile court obtains jurisdiction over a delinquent child, "that jurisdiction continues until that person reaches 21 years of age unless terminated sooner." CJP § 3-8A-07(a). A person subject to juvenile court jurisdiction "may not be prosecuted for a criminal offense committed before he reached 18 years of age unless jurisdiction has been waived." CJP § 3-8A-07(d).

2. Waiver to criminal court.

The juvenile court has the power to waive its jurisdiction with respect to an allegedly delinquent child who is "15 years old or older," or under the age of 15 and "charged with committing an act which if committed by an adult, would be punishable by life imprisonment." CJP § 3-8A-06(a). The waiver may be initiated by the court on its own motion, or through a petition by the State's Attorney. Maryland Rule 11-113(a). Upon the filing of a waiver petition, the "court shall order that a waiver investigation be made." Rule 11-113(b). The court may not grant a waiver until after it has conducted a hearing to determine whether it should waive its jurisdiction. CJP § 3-8A-06(b).

The juvenile court may not waive its jurisdiction "unless it determines, from a preponderance of the evidence presented at the hearing, that the child is an unfit subject for juvenile rehabilitative measures." CJP § 3-8A-06(d)(1). The State has the burden of persuading the court that a waiver should be granted. *Gaines v. State*, 201 Md. App. 1, 9–10, *cert. denied*, 424 Md. 55 (2011). The court "shall assume" for these purposes that the child "committed the delinquent act alleged." CJP § 3-8A-06(d)(2).

The waiver statute requires the court to consider "the following criteria individually and in relation to each other on the record:

> (1) Age of the child;
> (2) Mental and physical condition of the child;
> (3) The child's amenability to treatment in any institution, facility, or program available to delinquents;
> (4) The nature of the offense and the child's alleged participation in it; and
> (5) The public safety."

CJP § 3-8A-06(e).

If the court concludes that its jurisdiction should be waived, it must state the grounds for its decision on the record or in a written memorandum filed with the clerk. Rule 11-113(g)(1)(a). If a waiver is granted, the child is held for trial under the regular procedures of the court which would have jurisdiction over the offense if committed by an adult. CJP § 3-8A-06(f).

3. Transfer to juvenile court.

The juvenile court's jurisdiction is limited by statute. CJP § 3-8A-03(d). The court does not have jurisdiction over, *inter alia*, a child at least 14 years old alleged to have done an act that, if committed by an adult, would be a crime punishable by life imprisonment, and a child at least 16 years old alleged to have committed one of the excluded offenses in CJP § 3-8A-03(d)(4), as well as all other charges against the child arising out the same incident, "unless an order removing the proceeding to the court has been filed under § 4-202 of the Criminal Procedure Article." CJP § 3-8A-03(d)(1), (4).

The juvenile court did not have jurisdiction over Mr. Davis's case for two reasons. First, he was a "child at least 14 years old" charged with a crime "punishable by life imprisonment" (CJP § 3-8A-03(d)(1))—attempted first degree murder. Maryland Code (2002, 2012 Repl. Vol., 2017 Supp.), Criminal Law Article, § 2-205. Second, he was a child "at least 16 years old" charged with first degree assault and use of a firearm in a crime of violence—excluded offenses under CJP § 3-8A-03(d)(4)(xiii), (xvii). Accordingly, the juvenile court had no jurisdiction over his case unless "an order removing the proceeding to the court"—a transfer order—was filed under CP § 4-202.

Under CP § 4-202(b), a criminal court may "transfer the case to the juvenile court before trial or before a plea is entered" if: (1) the "accused child was at least 14 but not 18 years of age when the alleged crime was committed"; (2) the alleged crime is "excluded from the jurisdiction of the juvenile court" under CJP § 3-8A-03(d)(1), (4), or (5); and (3) the "court determines by a preponderance of the evidence that a transfer of its jurisdiction is in the interest of the child or society." Transfer is prohibited if the child was previously convicted in an unrelated case excluded from the jurisdiction of the juvenile court under CJP § 3-8A-03(d)(1) or (4), or if the alleged crime is murder in the first degree and the accused was 16 or 17 years of age when the alleged crime was committed. CP § 4-202(c). Mr. Davis was eligible for transfer: he was 16 years old when the alleged crime was committed; he was accused of committing offenses excluded from juvenile court jurisdiction under CJP § 3-8A-03(d)(1) and (4); and he was not precluded from transfer eligibility under CP § 4-202(c).

The child has the burden of persuading the criminal court that the case should be transferred to juvenile court. *Gaines*, 201 Md. App. at 10. The court cannot assume the child's guilt in a transfer hearing. *Whaley v. State*, 186 Md. App. 429, 447–448 (2009).

The criminal court "shall consider" five factors in the transfer determination, which are essentially identical to the five waiver factors:

> In determining whether to transfer jurisdiction under subsection (b) of this section, the court shall consider:
>
> (1) the age of the child;
> (2) the mental and physical condition of the child;
> (3) the amenability of the child to treatment in an institution, facility, or program available to delinquent children;
> (4) the nature of the alleged crime; and
> (5) the public safety.

CP § 4-202(d).[5]

In making its determination, "the court may order that a study be made concerning the child, the family of the child, the environment of the child, and other matters concerning the disposition of the case." CP § 4-202(e). The Regulations provide that "waiver and reverse waiver investigation hearings and reports" should be "factual in nature," and address the five waiver criteria. COMAR 16.16.01.03(D)(2)-(3). If jurisdiction is transferred, the child is held for an adjudicatory hearing

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[5] There are two differences between the transfer and waiver factors, neither of which are material. *First*, the transfer statute refers to the amenability of the child in "*an* institution, facility, or program" (CP § 4-202(d)(3)) (emphasis added); the waiver statute refers to the amenability of the child in "*any* institution, facility, or program." (CJP § 3-8A-06(e)(3)) (emphasis added). The transfer statute substituted the word "any" for "an" when the statute was recodified, "without substantive change," as CP § 4-202. *See* Revisor's Note to CP § 4-202. *Second*, the waiver statute expressly requires the court to consider "the child's alleged participation" in the offense (CJP § 3-8A-06(e)(4)); the transfer statute omits this language but implicitly permits the same consideration. *Gaines*, 201 Md. App. at 14.

under the regular procedures of the juvenile court. CP § 4-202(g); Maryland Rule 11-102A. "If a youth has been adjudicated delinquent, [DJS] utilizes the MCASP Needs Assessment to identify the youth's treatment and security needs, which serve as the basis for the Treatment Service Plan (TSP) development." 2020 Data Resource Guide, Maryland Department of Juvenile Services at 3, https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2020.pdf. DJS's "continuum of care spans in-home probation supervision with services, community-based out-of-home treatment, and state and privately operated secure programs, all designed to address youth needs and the factors that led the youth to delinquent behavior." *Id*.

D. The amenability to treatment factor requires trial courts to consider the child's rehabilitative potential in the juvenile system.

1. *The plain language of the transfer statute makes clear that the child's "amenability" to "treatment" refers to the child's rehabilitative potential in the juvenile system.*

"We start by looking at the statute's plain language, 'reading the statute as a whole to ensure that no word ... is rendered [meaningless].' " *Baltimore City Detention Center v. Foy*, 461 Md. 627, 637 (2018) (quoting *Lowery v. State*, 430 Md. 477, 490 (2013)). Under CP § 4-202(d)(3), the court shall consider "the amenability of the child

to treatment in an institution, facility, or program available to delinquent children." The question is what "amenability" means.

"Amenability" is not defined in the statute. When a term is not defined, "it is proper to consult a dictionary or dictionaries for a term's ordinary and popular meaning." *Montgomery County v. Deibler*, 423 Md. 54, 67 (2011) (quoting *Chow v. State*, 393 Md. 431, 445 (2006)). The ordinary and popular meaning of the term "amenable" is "willing" to submit to a particular intervention, and "suitable" for that intervention. *See Amenable*, Black's Law Dictionary (11th ed. 2019) ("Amenable" means "[a]cknowledging authority; ready and willing to submit <an amenable child>" and "[s]uitable for a particular type of treatment <a condition amenable to surgical intervention>."); *Amenable*, Merriam Webster (2021), https://www.merriamwebster.com/dictionary/amenable ("Amenable" means "capable of submission … suited," "readily brought to yield, submit, or cooperate," and "willing [inclined or favorably disposed in mind]."). *See also* Christopher Slobogin, *Treating Kids Right: Deconstructing and Reconstructing the Amenability to Treatment Concept*, 10 J. Contemp. Legal Issues 299, 330 (1999) ("The dictionary definition of amenability alludes both to "capability" and to "willingness;" accordingly, amenability to treatment might mean either an ability to be treated or

a readiness to undergo treatment, or both."). If trial courts only needed to consider the "availability" of juvenile services—and not the child's willingness or suitability for those services—the term "amenability" would be rendered meaningless. CP § 4-202(d)(3) plainly requires the trial court to consider whether the child is "willing" to submit to, and "suitable" for, "treatment in an institution, facility, or program available to delinquent children."

The term "treatment in an institution, facility, or program available to delinquent children" is also not defined in the statute.[6] "Treatment" is a broad term, and in ordinary parlance denotes "the action or way of treating a patient or a condition medically or surgically." *Treatment*, Merriam-Webster (2020), https://www.merriam-webster.com/dictionary/treatment. In context, however, "treatment" has a narrower meaning. *First*, CP § 4-202(d)(3) limits treatment to what is "available" in institutions, facilities, or programs for delinquent children. The trial court cannot presume that specific programs will or will not be available: DJS does not assess the youth's "treatment and

[6] The Regulations provide that "institution" "means those [DJS] facilities where children are held for the purposes of secure detention or commitment," and "program" "means any facility or program operated by, under contract with, licensed or certified by, or otherwise under the jurisdiction or supervision of the Department for the care or treatment of youth." COMAR 16.01.01.01B(19), 16.16.01.02B(14).

security needs," and does not develop a "Treatment Service Plan," until *after* the youth is transferred to juvenile jurisdiction and adjudicated delinquent. 2020 Data Resource Guide, *supra*, at 4, 149; *see also* CJP § 3-8A-20.1(a)(1) ("treatment service plan" means a plan recommended by DJS to the court "proposing specific assistance, guidance, treatment, or rehabilitation of a child.").[7] The trial court must, therefore, consider the child's amenability to the *types* of treatment available to delinquent children in Maryland, which include "cognitive behavioral interventions," "substance abuse services," "crisis intervention and stabilization," "individual and group therapy," "trauma informed care," "problem-solving and leadership skills" training, and "educational programs." 2020 Data Resource Guide, *supra*, at 150–152. The treatment may be administered in-state or out-of-state, Maryland Code (1984, 2012 Repl. Vol., 2019 Supp.), Family Law Article, § 5-607, and in-home or out-of-home, CJP § 3-8A-19(d)(1), until the "person reaches 21 years of age." CJP § 3-8A-07(a). *But see In re Barker*, 17 Md. App. 714, 723 (1973) (holding that a "bare showing of the possibility that effective treatment of the appellant might require his detention beyond his majority" was not enough to justify waiver).

[7] Furthermore, the juvenile court does not have the authority to order placement of a committed child at a specific facility, though it can designate the type of facility. *In re Demetrius J.*, 321 Md. 468, 475–476 (1991).

Second, "treatment" is qualified by the purposes of transferring a child to, or keeping a child in, juvenile jurisdiction. As Professor Slobogin explains, juvenile treatment might have very different objectives: "[a]t one end of the spectrum, [treatment] might focus on medical or psychiatric modalities designed to reduce recidivism. At the other, it might consist of any intervention by a specialist designed to better a person's quality of life." Slobogin, 10 J. Contemp. Legal Issues at 331. In Maryland, the juvenile justice system prioritizes both treatment objectives. *See* CJP § 3-8A-02(a)(4) (the purposes of the Juvenile Causes subtitle include "provid[ing] for the care, protection, and wholesome mental and physical development of children" and "provid[ing] for a program of treatment, training, and rehabilitation consistent with the child's best interests and the protection of the public interest"); CJP § 3-8A-19(c) ("[t]he priorities in making a disposition are consistent with the purposes specified in § 3-8A-02"). In the waiver and transfer contexts, however, the "treatment" question is whether the child is amenable to those juvenile services designed to *rehabilitate* the child, and thereby reduce recidivism. *See* CJP § 3-8A-06(d)(1) (juvenile court may not waive jurisdiction unless child is an "unfit subject for *juvenile rehabilitative measures*") (emphasis added); *Crosby v. State*, 71 Md. App. 56, 62–63 (1987) ("The

circuit court must engage in the *same inquiry* as the juvenile court … [the child must] demonstrate he or she is *suitable for rehabilitation in the juvenile system*.") (emphases added); Slobogin, 10 J. Contemp. Legal Issues at 303 ("The law's foremost concern in determining amenability is whether intervention will reduce or eliminate recidivism of the offender."). Accordingly, the court must consider the child's amenability to "treatment" in the juvenile system that is: (1) available; and (2) designed to rehabilitate the child and reduce recidivism.

Putting the statutory terms together, the trial court must consider the child's "amenability"—their willingness to submit to and suitability for—"treatment in an institution, facility, or program available to delinquent children"—available interventions designed to rehabilitate the child and reduce recidivism. *See* Institute of Judicial Administration and American Bar Association Joint Commission, *Juvenile Justice Standards Project: Standards Relating to Transfers Between Courts* § 2.2 C (1980) (the concept "amenable to treatment" is "premised on a rehabilitative juvenile court rationale"); Laurence Steinberg & Elizabeth Cauffman, *The Elephant in the Courtroom: A Developmental Perspective on the Adjudication of Youthful Offenders*, 6 Va. J. Soc. Pol'y & L. 389, 410 (1999) ("In legal practice, amenability to treatment refers to the *likelihood of an*

individual being rehabilitated when treated with some sort of intervention that is actually available within the community at the time of adjudication.") (emphasis added); *Kent v. United States*, 383 U.S. 541, 546 n.4, 567 (1966) (including, as a highly influential appendix to its decision, a list of eight waiver factors used by the Juvenile Court of the District of Columbia, including "the *likelihood of reasonable rehabilitation of the juvenile … by the use of procedures, services and facilities currently available* to the Juvenile Court") (emphasis added); Vanessa L. Kolbe, *A Cloudy Crystal Ball: Concerns Regarding the Use of Juvenile Psychopathy Scores in Judicial Waiver Hearings*, 26 Dev. Mental Health L. 1, 10 (2007) ("The question of a juvenile's amenability to treatment *requires an inquiry into the prospects for rehabilitation of the youth,* focusing on the youth's treatability and the juvenile justice system's resources.") (emphasis added). Put simply, CP § 4-202(d)(3) requires the trial court to consider the child's rehabilitative potential: Is the child likely to be rehabilitated by the available juvenile services?

2. The statutory context confirms that "amenability" refers to the child's rehabilitative potential.

The statutory language " 'must be viewed within the context of the statutory scheme to which it belongs, considering the purpose, aim, or policy of the Legislature in enacting the statute.' " *Johnson v.*

Maryland Department of Health, 470 Md. 648, 674 (2020) (quoting *Matter of Collins*, 468 Md. 672, 689–690 (2020)). The transfer and waiver statutes are interrelated parts of the statutory scheme for determining whether a youth is to be tried as an adult, *see* CJP § 3-8A-03(d) (excluding certain offenses from juvenile jurisdiction) and CP § 4-202(b)(2) (authorizing transfer to juvenile court if offense is excluded under CJP § 3-8A-03(d)), and should be interpreted consistently with the purpose of adjudicating a child in the juvenile system.

When a criminal court grants a transfer motion, it transfers jurisdiction to a juvenile system whose "overriding goal … is to rehabilitate and treat delinquent juveniles so that they become useful and productive members of society." *In re Keith W.*, 310 Md. 99, 106 (1987); *see also* CJP § 3-8A-02(a)(4) (purposes of Juvenile Causes subtitle include "provid[ing] for a program of treatment, training, and rehabilitation consistent with the child's best interests and the protection of the public interest"). Transfer would be pointless if the child was not suitable for juvenile rehabilitative measures, or in other words, amenable to treatment. *See* Steinberg & Cauffman, 6 Va. J. Soc. Pol'y & L. at 399 ("Amenability to treatment is a factor in most waiver or transfer determinations … because *if an individual is deemed not to be amenable to treatment, a rehabilitative disposition will serve no*

useful purpose.") (emphasis added). The amenability to treatment factor furthers the purpose of the statutory scheme by expressly directing courts to consider the child's suitability for rehabilitative treatment in the juvenile system.[8]

3. The statutory history reinforces that "amenability" concerns the child's suitability for juvenile rehabilitative measures.

Under the "prior-construction canon," "when 'judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute' is presumed to incorporate that interpretation." *Armstrong v. Exceptional Child Center, Inc.*, 575 U.S. 320, 330 (2015) (quoting *Bragdon v. Abbott*, 524 U.S. 624, 645 (1998)). Between the enactment of the amenability factor in 1969 in the waiver statute, and the enactment of an identical factor in the transfer statute in 1975, the Court of Special Appeals interpreted "amenability" to refer to the child's suitability for juvenile rehabilitative measures. This Court should presume that the transfer statute incorporated the same interpretation of "amenability."

Maryland's first waiver statutes were enacted by the General Assembly in 1943 (Acts of 1943, ch. 818, § 1) and 1945 (Acts of

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[8] None of the other factors in CP § 4-202(d)—"the age of the child," "the mental and physical condition of the child," "the nature of the alleged crime," and "the public safety"—specifically address the child's rehabilitative potential, though they may inform the available and appropriate treatment.

1945, ch. 797, § 1), as part of an overhaul of the juvenile justice system that gave judges jurisdiction in juvenile matters. *See Wiggins v. State*, 275 Md. 689, 692–695 (1975) (discussing the historical evolution of Maryland's juvenile courts). Judges were given the "discretion," after "full investigation," to "waive jurisdiction" over children "charged with the commission of an act or acts which would amount to a misdemeanor or felony if committed by an adult." *See* Code of Public Local Laws of Baltimore City (1949 ed.), Article 4, § 242; Maryland Code (1939, 1947 Cum. Supp.), Article 26, § 48D. "Neither of these acts set[] forth any definite criteria to be taken into consideration by such a judge in waiving jurisdiction." *Wiggins*, 275 Md. at 697. The juvenile court had no jurisdiction over crimes "punishable by death or life imprisonment," *Bean v. State*, 234 Md. 432, 443 (1964), and there was no provision for transfer to juvenile court.

Following another overhaul of the juvenile justice system in 1969 (Acts of 1969, ch. 432), the General Assembly specified five factors that a juvenile court "shall consider" in "making a determination as to waiver of jurisdiction": (1) "age of child"; (2) "mental and physical condition of child"; (3) "the child's amenability to treatment in any

institution, facility, or program available to delinquents";[9] (4) "the nature of the offense"; and (5) "the safety of the public." *See* Maryland Code (1957, 1966 Repl. Vol., 1970 Cum. Supp.), Article 26, § 70-16(b). The juvenile court still did not have jurisdiction over children (at least 14 years old) accused of committing crimes "punishable by death or life imprisonment," Article 26, § 70-2(d)(1), but children excluded from juvenile jurisdiction were finally given a vehicle to seek transfer to the juvenile court:

> In any case involving a child who has reached his fourteenth (14th) birthday but has not reached his eighteenth (18th) birthday at the time of any alleged offense excluded under the provisions of Section 70-2(d)(1) of Article 26, the court exercising jurisdiction may transfer the case to the juvenile court if a waiver is believed to be in the *interests of the child and/or society*.

Maryland Code (1957, 1966 Repl. Vol., 1970 Cum. Supp.), Article 27, § 594A (emphasis added).

As originally enacted, the transfer statute did not specify any factors for trial courts to consider in determining whether to transfer jurisdiction. By Acts of 1975, ch. 830, however, the General Assembly added to the transfer statute the same five factors from the waiver

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[9] In 1966, the Legislative Council Special Committee on Juvenile Courts recommended that the juvenile court should only have authority to waive jurisdiction when it "specifically finds, after study, that the particular delinquent *cannot benefit from the care and treatment facilities available through the Juvenile Court*." Report of the Legislative Council Special Committee on Juvenile Courts, at 31 (1966) (emphasis added). The amenability to treatment factor addresses that consideration.

statute, including "the child's amenability to treatment in any institution, facility, or program available to delinquents." Maryland Code (1957, 1976 Repl. Vol.), Article 27, § 594A.[10]

Between the enactment of the transfer statute in 1969 and its inclusion of the amenability factor in 1975, the Court of Special Appeals consistently interpreted "amenability" to refer to the child's rehabilitative potential. In *In re Johnson*, 17 Md. App. 705 (1973), the Court reversed a waiver decision where the "*amenability of the appellant to rehabilitation* was cast aside and not considered, or, if considered, was not afforded its proper weight." *Id.* at 712 (emphasis added). And in *Wiggins v. State*, 22 Md. App. 291 (1974), *aff'd*, 275 Md. 689 (1975), the Court stated that the "express purpose of the waiver hearing, … was to determine whether juveniles … *would have been receptive to a rehabilitation program*, *i.e.*, *the juvenile defendant's … amenability to treatment*"). *Id.* at 298 n.5 (emphasis added). This Court should apply the prior-construction canon and presume that the amenability factor in the transfer statute incorporated the Court of Special Appeals' interpretation of amenability in the waiver statute.

[10] By the same enactment, the General Assembly changed the transfer standard to the "interests of the child or society." *Id.*

E. Amenability to treatment is the most important consideration in transfer cases.

Amenability to treatment is the most important consideration in transfer cases for three reasons. *First*, the criminal court is authorized to transfer a child to juvenile court if it is in the "interest of the child *or* society." CP § 4-202(b)(3) (emphasis added). The statute's use of the disjunctive "or" suggests that the court may grant transfer if it is in the "interest of the child" *or* the "interest of society." *See Plank v. Cherneski*, 469 Md. 548, 620 (2020) ("Maryland courts generally interpret 'or' in the disjunctive sense when they construe statutes … 'Or' is a conjunction … [u]sed to indicate an alternative.") (internal citations omitted). When a child is *amenable* (willing and suitable for juvenile rehabilitative measures), it logically follows that it is in the "interest of the child" to be transferred to a system whose "overriding goal" is rehabilitation. *In re Keith W.*, 310 Md. at 106. And if it is necessary to prove that it is *also* in the interest of society to transfer an amenable child to the juvenile system, a child that is *suitable* for juvenile rehabilitative services is unlikely to reoffend when given those services. *See* Anthony Bottoms & Andrew von Hirsch, *The Crime-Preventive Impact of Penal Sanctions*, in The Oxford Handbook of Empirical Legal Research 96, 108 (Peter Cane & Herbert M. Kritzer

eds., 2010) ("Often, rehabilitation is said to involve 'helping' the offender, but a benefit to him is not necessarily presupposed; *those who benefit may chiefly be members of the public, whose risk of victimization is reduced*.") (emphasis added). By the same token, a child that is not amenable to treatment is unlikely to be transferred, because it is not in the interest of the child *or* society for an unwilling or unsuitable subject to be transferred to the juvenile system. *See* Argument D.2, *supra*. The statutory text and context thus establish that amenability to treatment is the central consideration in transfer cases.

Second, transfer cases are known as "reverse waivers" for a reason: They "reverse" the burden of persuasion, without altering the inquiry. *See King*, 36 Md. App. at 127 ("[t]he legal principles which govern the decision … in a 'reverse waiver' case are the same as those … on a request for waiver from the juvenile court"). Amenability to treatment is patently the most important consideration in waiver cases: The court may *only* grant a waiver if the child is an "unfit subject for juvenile rehabilitative measures" (CJP § 3-8A-06(d)(1))[11], and may not

[11] This language was added to the waiver statute by Acts of 1975, ch. 554, taking from language in *Kemplen v. Maryland*, 428 F.2d 169, 175 (4th Cir. 1970), one of the first cases to analyze the revised waiver statute. Before this amendment, the waiver statute had no express standard for waiver determinations. The transfer statute's "interest of the child or society" standard has been essentially unchanged since its enactment in 1969.

give undue weight to the nature of the alleged offense. *See In re Samuel M.*, 293 Md. 83, 96 (1982) ("Our [waiver] statute *focuses on the actor, the juvenile, and not on the purported delinquent act*.") (emphasis added); *In re Johnson*, 17 Md. App. at 712 (finding abuse of discretion where judge was "unduly influenced by the 'nature of the offense' to the extent that the amenability of the appellant to rehabilitation was cast aside and not considered, or, if considered, was not afforded its proper weight."). The juvenile court's decision to waive jurisdiction is not punitive, but rather reflects the court's determination that the child is unamenable to juvenile rehabilitative measures. *See In re Ann M.*, 309 Md. 564, 571 (1987) ("juvenile law has as its underlying concept the protection and rehabilitation of juveniles, *rather than the imposition of punitive sanctions*.") (emphasis added).

In transfer cases, amenability to treatment is also the most significant factor: The only difference is that the child, accused of an excluded (and usually more serious) offense, has the burden of proving their fitness for juvenile rehabilitative measures. *See Crosby*, 71 Md. App. at 63 ("At the circuit court level the burden is on the juvenile to demonstrate he or she is *suitable for rehabilitation in the juvenile system*.") (emphasis added); *In re Ricky B.*, 43 Md. App. 645, 648–649 (1979) (there is "no real difference" between the statutes "insofar as the

legislative direction as to how the factors are to be weighed is concerned," but there is a difference in the allocation of the burden).

Now the State might respond that the transfer provision—contained in the Criminal Procedure Article—permits the court to take into account punitive considerations that are not permitted in the waiver provision—contained in the Juvenile Causes Subtitle. *See Gaines*, 201 Md. App. at 8–9 (noting that the "purposes of *sentencing* in the criminal justice system" include "punishment and deterrence, neither of which is a stated purpose of the juvenile act.") (emphasis added). But as *Gaines* itself recognized, transfer hearings are not sentencing proceedings: They are preliminary hearings which do not "render an adjudication but merely determine[] the forum where that is to be done." *Id.* at 716; *see also Whaley*, 186 Md. App. at 448 (court is not permitted to assume the child's guilt in transfer hearings). In determining which forum is appropriate, the critical question, in transfer *and* waiver cases, is whether the child should be adjudicated in a juvenile system focused on rehabilitation, which turns on the child's amenability to juvenile treatment.[12]

[12] Amenability to treatment is also the most important factor because it is broad enough to encompass protective considerations. When a child is unamenable to treatment (unlikely to be rehabilitated by juvenile services), it is contrary to public safety to transfer that child to juvenile jurisdiction.

Third, the transfer statute is remedial, and "must be liberally construed, in order to effectuate its broad remedial purpose." *Lockett v. Blue Ocean Bristol*, LLC, 446 Md. 397, 424 (2016). Prior to the transfer statute's enactment in 1969, amenable children excluded from juvenile jurisdiction because they were charged with crimes "punishable by death or life imprisonment" had no recourse: they were categorically denied the rehabilitative services afforded to delinquent children, and set to be tried, and sentenced, in criminal court. After the transfer statute was enacted, these children had a remedy "not available at common law," *id.*, a procedure for transferring their case to juvenile court. *See In re Johnson*, 254 Md. 517, 521–522 (1969) (at common law, children above the age of seven were treated as adults, and "given the same legal protections and the same punishments as adults.") (quoting Abe Fortas, *Equal Rights For Whom?*, 42 N.Y.U. L. Rev. 401, 405–406 (1967)); *In re Nancy H.*, 197 Md. App. 419, 427 (2011) (CP § 4-202.2, which authorizes the transfer of a child's case from the criminal court to juvenile court for disposition, is "remedial, designed to protect the juvenile and to afford the juvenile the rehabilitative services of the juvenile system."). Accordingly, to the extent that the transfer statute is ambiguous or unclear about the importance of the child's amenability to the ultimate determination, it should be construed liberally to

promote its evident purpose: returning those children that are amenable to juvenile rehabilitation to a system focused on juvenile rehabilitation. *See* Marisa Slaten, *Juvenile Transfers to Criminal Court: Whose Right Is It Anyway?*, 55 Rutgers L. Rev. 821, 838 (2003) ("Reverse waiver … is a statutory construction created to offset possible abuse of discretion, over-inclusiveness, and other defects involved in the waiver process."); David S. Tanenhaus & Steven A. Drizin, *"Owing to the Extreme Youth of the Accused": The Changing Legal Response to Juvenile Homicide*, 92 J. Crim. L. & Criminology 641, 693 (2002) ("Reverse transfer statutes … mitigate the consequences of overly broad transfer statutes that sweep into criminal court accomplices, non-violent, and first-time offenders."); Lynda E. Frost Clausel & Richard J. Bonnie, *Juvenile Justice on Appeal*, in The Changing Borders of Juvenile Justice: Transfer of Adolescents to the Criminal Court, 181, 191 (Jeffrey Fagan and Franklin E. Zimring eds., 2000) (reverse waiver statutes ameliorate the "unfairness" of "overinclusive" statutory exclusions by "reintroducing an avenue of individualization into the statutory scheme").

F. The record does not reflect that the trial court considered Mr. Davis's amenability to treatment.

1. The trial court's reasons for denying transfer.

The trial court denied the transfer motion in a bench ruling:

I've had the opportunity to review the number of reports that have been admitted into evidence, um, hear the testimony of the experts and consider argument of counsel.

Going through the five factors, it is true, that with regard to the age of the child, he'll be turning 17 in March.

The mental and physical condition of the child is good -- I mean, in spite of emotional problems that have resulted from some of the experiences that he's had. His intelligence is, is good. In fact, it's at least average. While his reading level is, is below what it should be, that's something that he could work on. But his math, you know, as, as a lawyer, like both of you, I'm pretty impressed with the fact that his math ability is as good as it is. So, he-- this child is not someone who's mentally impaired in terms of his cognitive ability.

With regard to amenability, amenability to treatment in the juvenile system-- but the report from Juvenile Services indicates that they would, they would need to conduct another evaluation and that he, he would be eligible for behavioral modification. They don't mention that he could [be] held in a secure facility, although we know that and certainly that the experts testified to that.

The nature of this offense is horrific. It is probably the single most -- concerning factor with regard to whether or not this young man should remain in the adult system. Everybody's very fortunate here today, that this did not result in a murder, because it very easily could have. But in any event, that it is a very serious, violent offense. And I'm not persuaded, frankly, that the girlfriend is, is to blame here. But I have to say that, the presence of the girlfriend and her influence on this Defendant, that has been explained by the experts and, and counsel, frankly,

> in my view, does not favor transfer to the juvenile system, because, you know, there will be other girlfriends in the future and there will be other individuals in his life who will have an influence on him. And if those influences, influences can lead to behavior of this nature, that, frankly, does not weigh in favor of transfer to the juvenile system. In addition, while the expert that testified, that kids are more impulsive is certainly true, and, and certainly, most of that has to do with brain development, but it's important to note that, the vast majority of teenagers don't commit home invasion and attempted murder in spite of their impulsivity. It's clear, that when this young man is in custody, he does well, that he doesn't commit any offenses, that he's engaged in, in treatment, but when he's not in custody he has committed an offense, a very grave, violent offense. And in my view, he's a considerable threat to public safety. Therefore, the Request to Transfer Jurisdiction to the Juvenile Court is denied. He'll remain in the adult system.

(E.144–146) (emphasis added).

2. The record does not reflect that the trial court considered Mr. Davis's amenability to treatment.

The trial court was required to consider Mr. Davis's "amenability" to "treatment in an institution, facility, or program available to delinquent children"—his willingness to participate in, and suitability for, juvenile rehabilitative measures. The record does not permit this Court to have any confidence that the trial court applied this standard. *See Levitas*, 454 Md. at 244 (failure to consider "proper legal standard" in reaching decision constitutes an abuse of discretion).

The trial court's reasoning regarding the amenability factor was woefully deficient. *First*, the court noted the statement in the DJS

Reverse Waiver Report that it would need to conduct another evaluation if the case was transferred to juvenile jurisdiction. (E.22). The Reverse Waiver Report was issued in May 2017, a month into Mr. Davis's time at Hickey, and it unsurprisingly lacked specificity. The court did not address the DJS reports about Mr. Davis that were much more specific about his amenability to treatment: (1) his mental health clinician's observation in May 2017 that he was "very amenable" and "cooperative," and would benefit from "individual counseling," "family therapy," and "group counseling" with his peers (E.54–55); (2) his case manager's statement in October 2017 that he "maintained a respectful attitude towards staff," "consistently followed directives," and behaved positively towards his peers (E.57); (3) his mental health clinician's assessment in December 2017 that he had been "open and receptive to individual therapy" and behaved in a "consistently positive" way (E.47); and (4) his case manager's statement in January 2018 that he "maintained a respectful attitude towards staff and peers" and "enjoy[ed] participating in therapeutic groups." (E.58). Nor did the judge, if she thought that "another evaluation" was necessary, order a further study into Mr. Davis's amenability to treatment. *See* CP § 4-202(e).

Second, the trial court appeared to misunderstand the amenability to treatment factor, by addressing Mr. Davis's *eligibility* for juvenile services but not his *rehabilitative potential* if given those services. The court correctly noted that Mr. Davis was "eligible for behavioral modification" and "could [be] held in a secure facility." (E.145). In other words, there were services "available" to him. But availability is just the starting point: The real question under CP § 4-202(d)(3) is whether the child is willing to submit to, and suitable for, the available treatments in the juvenile system designed to rehabilitate the child. The record does not reflect that the trial court considered the "amenability" part of the amenability factor: whether Mr. Davis was likely to be rehabilitated if treated in the juvenile system.[13]

3. The Court of Special Appeals' reasons for affirmance do not withstand scrutiny.

The Court of Special Appeals held that the trial court did not err in considering Mr. Davis's amenability to treatment for four reasons, two of which misconstrue the record, and two of which misapprehend what constitutes sufficient consideration of amenability. *First*, the

[13] Accordingly, this is not a case where the trial court has simply failed to "spell out in words every thought and step of logic," *Beales*, 329 Md. at 273, or "state each and every consideration or factor in a particular applicable standard." *Aventis Pasteur, Inc.*, 396 Md. at 426. The court did not address the "applicable standard" altogether.

Court stated that the trial court "demonstrated its consideration of Davis's amenability by expressly crediting his exemplary track record in the various programs he participated in while awaiting trial at both Hickey and the Baltimore County Detention Center." (E.246). But the record does not support this assertion: Judge Cox, the *sentencing* judge, expressly credited Mr. Davis's exemplary record at those facilities (E.225–226); Judge Purpura, the *transfer* judge, did not. And even if Judge Purpura had expressly credited Mr. Davis's exemplary track record, the essential question remained unanswered: Was he likely to be rehabilitated by the available juvenile services?

Second, the Court stated that the trial court "pointed out … that, after having three previous contacts with the juvenile system, this fourth contact represented a significant '*escalation of violence*[,]' which the court viewed as an indication *he had not been* '*amenable to treatment in the juvenile system during his prior contacts*.' " (E.246) (emphases added). The first emphasized statement—"escalation of violence"—was made by the *prosecutor*, not the trial judge (E.142), and is the kind of boilerplate argument that is meritless when a child is accused of his *first*, *and only*, violent offense. The second emphasized statement—"he had not been 'amenable to treatment in the juvenile system during his prior contacts' "—misquoted *another* statement made

by the prosecutor. *See id.* ("I would submit that he is not amenable to treatment in the juvenile system."). Even if the trial judge had adopted this argument, it had no factual basis: Mr. Davis received no meaningful DJS treatment "during his prior contacts," and was only able to demonstrate his amenability to treatment during *this* case.

Third, the Court noted that the trial court "recognize[d] that Davis could participate in DJS behavior modification programs (although further evaluation was necessary to determine which specific programs would be available and appropriate for Davis in a secure DJS facility)." (E.246). Once again, recognizing that a child could participate in DJS programs is very different from considering the child's prospects for success in those programs—their rehabilitative potential. In reality, *all* delinquent children in Maryland "could participate" in DJS programs, regardless of their adjudicated offense. *See* 2020 Data Resource Guide, *supra* at 155 (noting committed placements for children found involved in murder). Accordingly, a court's finding that there are "available" services for a child if transferred to the juvenile system is correct but banal: the child's *amenability* to those services is the nub of the inquiry.

Finally, the Court relied on the trial court's observation, in its discussion of the "nature of the offense" and "public safety" factors, that

"when this young man is in custody, he does well, . . . he doesn't commit any offenses, . . . he's engaged . . . in treatment, but when he's not in custody he has committed an offense, a very grave, violent offense. And in my view, he's a considerable threat to public safety." (E.146). The record makes plain, however, that the trial court was not considering Mr. Davis's amenability to treatment. Amenability to treatment is a *prospective* inquiry: The question is whether, with the benefit of the juvenile services available until the child turns 21, the child will be rehabilitated or will continue offending. The court did not address that question, instead concluding that the "violent offense" committed *before* Mr. Davis received DJS treatment made him a "considerable threat to public safety."[14] The record does not support the Court of Special Appeals' conclusion that the trial court considered Mr. Davis's amenability to treatment.

4. *This Court should hold that the trial court abused its discretion in failing to consider Mr. Davis's amenability to treatment in the juvenile system, and remand for proper consideration.*

This Court should hold that the trial court abused its discretion for three reasons. *First*, the record does not reflect that the trial court

[14] The court did not acknowledge the two separate risk assessments that found that Mr. Davis was a "low risk" for future violence. (E.36–38). *See also* Slobogin, 10 J. Contemp. Legal Issues at 317 ("Intuitively and empirically, the nature of the offense in the abstract bears no relationship to treatability.").

considered the correct legal standard under CP § 4-202(d)(3): Mr. Davis's rehabilitative potential. A transfer proceeding, like a waiver proceeding, is a "critically important action determining vitally important statutory rights of the juvenile." *Kent*, 383 U.S. at 556; *see also id.* at 557 (observing that a waiver decision might be the "difference between five years' confinement and a death sentence").[15] To permit meaningful appellate review of this highly consequential decision, the trial court must state "in specific terms *why* the child is not amenable to rehabilitation or treatment and *why* the needs of the child and the safety of the community require that the child be tried as an adult." Samuel M. Davis, *Rights of Juveniles* § 4:4 (2020 Ed.); *see also Summers v. State*, 230 N.E.2d 320, 325 (Ind. 1967) ("the reasons for the order of waiver should be stated with sufficient specificity to permit a meaningful review."). Here the trial court did not state, let alone with any specificity, that it had considered whether Mr. Davis was a suitable candidate for juvenile rehabilitative measures. And the court's statement that it "consider[ed] argument of counsel" (E.144), and recitation of the five factors, does not foreclose appellate review of

[15] *Kent* was a waiver case, but its reasoning is equally persuasive in reverse waiver cases. In the present case, the transfer denial was the difference between Mr. Davis facing no more than four years' treatment in a juvenile facility, and potential life imprisonment for attempted murder.

whether the court *actually considered* the correct legal standard for amenability. *See In re Johnson*, 17 Md. App. at 712 ("The mere statement that the five legislative factors were considered by the hearing judge does not divest this Court of its right to determine whether vel non those factors were *actually considered and properly weighed in relation to each other* and relative to the legislative purpose.") (emphasis added).

Second, the case for finding an abuse of discretion is especially strong because the trial court did not consider the most important factor in the transfer determination: amenability to treatment. *See* Argument E, *supra*. The trial court's cursory discussion of amenability does not give rise to any confidence that the court actually considered this factor, or recognized its significance in transfer cases. *See United States v. Pugh*, 945 F.3d 9, 26 (2d Cir. 2019) (appellate court could not have "confidence" that district court exercised its broad sentencing discretion reasonably "without a sufficient explanation of how the court … reached the result it did.").

Finally, the trial court's decision is not saved by the presumption that "trial judges know the law and correctly apply it." *Plank*, 469 Md. at 607 (quoting *Attorney Grievance Comm'n v. Jeter*, 365 Md. 279, 288 (2001)). This Court has never clarified what "amenability … to

treatment" means, or specified how important amenability is to the ultimate transfer determination. Accordingly, the trial court cannot be presumed to have properly exercised its discretion: The question is whether the record reflects the court's application of the proper legal standard. And if the meaning of amenability is settled, there is "reason to think" that the trial court did not know the law and apply it properly, *Harris v. State*, 458 Md. 370, 412 (2018), given that its entire amenability discussion addressed Mr. Davis's eligibility for juvenile services, rather than his suitability for those services. This Court should hold that the trial court abused its discretion.

This Court should vacate the transfer ruling, and remand for the trial court to consider, based on a proper evaluation of the amenability factor, whether it was in the "interest of the child or society" for Mr. Davis's motion to be granted. *See* Maryland Rule 8-604(d)(1). If the court determines that the transfer should not be granted, his convictions should stand. If, however, the court orders a transfer, "the proceedings below shall have been *ab initio* a nullity and the trial court shall order the case to be transferred to the juvenile court." *Kennedy v. State*, 21 Md. App. 234, 241 (1974).

CONCLUSION

Petitioner respectfully requests that this Court vacate the trial court's ruling, and remand for further consideration.

Respectfully submitted,

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CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 10987 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

/s/

_____

Kiran Iyer

PERTINENT AUTHORITY

MARYLAND CODE (1957, 1966 REPL. VOL., 1970 CUM. SUPP.), ARTICLE 27

§ 594A. Transfer of certain juvenile causes.

In any case involving a child who has reached his fourteenth (14th) birthday but has not reached his eighteenth (18th) birthday at the time of any alleged offense excluded under the provisions of § 70-2(d)(1) of Article 26, the court exercising jurisdiction may transfer the case to the juvenile court if a waiver is believed to be in the interests of the child and/or society.

MARYLAND CODE (1957, 1976 REPL. VOL.), ARTICLE 27

§ 594A. Transfer of certain juvenile causes.

(a) *Transfer to juvenile court.* — In any case involving a child who has reached 14 years of age but has not reached 18 years of age at the time of any alleged offense excluded under the provisions of § 3-808 of the Courts Article of the Code, the court exercising jurisdiction may transfer the case to the juvenile court if a waiver is believed to be in the interests of the child or society.

(b) *Determination as to waiver of jurisdiction.* — In making a determination as to waiver of jurisdiction the court shall consider the following:
(1) Age of child;
(2) Mental and physical condition of child;
(3) The child's amenability to treatment in any institution, facility, or program available to delinquents;
(4) The nature of the alleged offense; and
(5) The public safety.

(c) *Study concerning child.* — For the purpose of making its determination, the court may request that a study concerning the child, his family, his environment, and other matters relevant to the disposition of the case be made.

(d) *Procedures of juvenile court.* — If the jurisdiction is waived, the court may order the person held for trial under the regular procedures of the juvenile court.

MARYLAND CODE (2001, 2008 REPL. VOL., 2017 SUPP.), CRIMINAL PROCEDURE ARTICLE

§ 4-202. Transfer of criminal cases to juvenile court.

Definitions

(a)(1) In this section the following words have the meanings indicated.
(2) "Victim" has the meaning stated in § 11-104 of this article.
(3) "Victim's representative" has the meaning stated in § 11-104 of this article.

Cases eligible for transfer to juvenile court

(b) Except as provided in subsection (c) of this section, a court exercising criminal jurisdiction in a case involving a child may transfer the case to the juvenile court before trial or before a plea is entered under Maryland Rule 4-242 if:
(1) the accused child was at least 14 but not 18 years of age when the alleged crime was committed;
(2) the alleged crime is excluded from the jurisdiction of the juvenile court under § 3-8A-03(d)(1), (4), or (5) of the Courts Article; and
(3) the court determines by a preponderance of the evidence that a transfer of its jurisdiction is in the interest of the child or society.

Transfer to juvenile court prohibited

(c) The court may not transfer a case to the juvenile court under subsection (b) of this section if:
(1) the child was convicted in an unrelated case excluded from the jurisdiction of the juvenile court under § 3-8A-03(d)(1) or (4) of the Courts Article; or
(2) the alleged crime is murder in the first degree and the accused child was 16 or 17 years of age when the alleged crime was committed.

Factors in transfer determination

(d) In determining whether to transfer jurisdiction under subsection (b) of this section, the court shall consider:
(1) the age of the child;
(2) the mental and physical condition of the child;
(3) the amenability of the child to treatment in an institution, facility, or program available to delinquent children;
(4) the nature of the alleged crime; and
(5) the public safety.

Studies concerning child, family, and environment of child

(e) In making a determination under this section, the court may order that a study be made concerning the child, the family of the child, the environment of the child, and other matters concerning the disposition of the case.

Time for transfer determination

(f) The court shall make a transfer determination within 10 days after the date of a transfer hearing.

Child held for adjudicatory hearing

(g) If the court transfers its jurisdiction under this section, the court may order the child held for an adjudicatory hearing under the regular procedure of the juvenile court.

Child held in secure juvenile facility pending determination

(h)(1) Pending a determination under this section to transfer its jurisdiction, the court shall order the child to be held in a secure juvenile facility unless:
(i) the child is released on bail, recognizance, or other conditions of pretrial release;
(ii) there is not available capacity in a secure juvenile facility, as determined by the Department of Juvenile Services; or
(iii) the court finds that detention in a secure juvenile facility would pose a risk of harm to the child or others.

(2) If the court makes a finding under paragraph (1)(iii) of this subsection that detention in a secure juvenile facility would pose a risk of harm to the child or others, the court shall state the reasons for the finding on the record.

Notice to victim or victim's representative

(i)(1) A victim or victim's representative shall be given notice of the transfer hearing as provided under § 11-104 of this article.
(2)(i) A victim or a victim's representative may submit a victim impact statement to the court as provided in § 11-402 of this article.
(ii) This paragraph does not preclude a victim or victim's representative who has not filed a notification request form under § 11-104 of this article from submitting a victim impact statement to the court.
(iii) The court shall consider a victim impact statement in determining whether to transfer jurisdiction under this section.

Bail review or preliminary hearing involving child

(j)(1) Regardless of whether the District Court has jurisdiction over the case, at a bail review or preliminary hearing before the District Court involving a child whose case is eligible for transfer under subsection (b) of this section, the District Court:
(i) may order that a study be made under the provisions of subsection (e) of this section; and
(ii) shall order that the child be held in a secure juvenile facility pending a transfer determination under this section unless:
1. the child is released on bail, recognizance, or other conditions of pretrial release;
2. there is not available capacity at a secure juvenile facility as determined by the Department of Juvenile Services; or
3. the District Court finds that detention in a secure juvenile facility would pose a risk of harm to the child or others.
(2) If the District Court makes a finding under paragraph (1)(ii)3 of this subsection that detention in a secure juvenile facility would pose a risk of harm to the child or others, the District Court shall state the reasons for the finding on the record.

§ 4-202.2. Transfer of jurisdiction to juvenile court.

Cases eligible for transfer to juvenile court

(a) At sentencing, a court exercising criminal jurisdiction in a case involving a child shall determine whether to transfer jurisdiction to the juvenile court if:
(1) as a result of trial or a plea entered under Maryland Rule 4-242, all charges that excluded jurisdiction from the juvenile court under § 3-8A-03(d)(1) or (4) of the Courts Article do not result in a finding of guilty; and
(2)(i) pretrial transfer was prohibited under § 4-202(c)(2) of this subtitle; or
(ii) the court did not transfer jurisdiction after a hearing under § 4-202(b) of this subtitle.

Factors in transfer determination

(b) In determining whether to transfer jurisdiction under subsection (a) of this section, the court shall consider:
(1) the age of the child;
(2) the mental and physical condition of the child;
(3) the amenability of the child to treatment in an institution, facility, or program available to delinquent children;
(4) the nature of the child's acts as proven in the trial or admitted to in a plea entered under Maryland Rule 4-242; and
(5) public safety.

Transfer of jurisdiction prohibited

(c) The court may not consider transferring jurisdiction to the juvenile court under this section if:
(1) under the terms of a plea agreement entered under Maryland Rule 4-243, the child agrees that jurisdiction is not to be transferred; or
(2) pretrial transfer was prohibited under § 4-202(c)(1) of this subtitle.

Notice of transfer to victim or victim's representative

(d)(1) A victim or victim's representative shall be given notice of the transfer hearing as provided under § 11-104 of this article.

(2)(i) A victim or victim's representative may submit a victim impact statement to the court as provided in § 11-402 of this article.
(ii) This paragraph does not preclude a victim or victim's representative who has not filed a notification request form under § 11-104 of this article from submitting a victim impact statement to the court.
(iii) The court shall consider a victim impact statement in determining whether to transfer jurisdiction under this section.

Disposition conducted by juvenile court

(e)(1) If the court transfers its jurisdiction to the juvenile court, the court shall conduct a disposition under the regular procedures of the juvenile court.
(2) The record of the hearing and of the disposition shall be transferred to the juvenile court, subject to § 3-8A-27 of the Courts Article.

CODE OF PUBLIC LOCAL LAWS OF BALTIMORE CITY (1949 ED.), ARTICLE 4

§ 242. Any child brought before the Judge in the exercise of the aforesaid jurisdiction shall be charged only as a dependent child, a delinquent child, a neglected child, a feebleminded child, or as a child coming within two or more of these terms, and shall not be charged with the commission of any crime. The Judge shall then determine whether or not such child comes within any of the aforesaid terms and is, by reason thereof, in need of care or treatment within the provisions and intent of this sub-title. If any such child is charged with the commission of an act or acts which would amount to a misdemeanor or felony if committed by an adult, the Judge, after full investigation, may in his discretion waive jurisdiction and order such child held for action under the regular procedure that would follow if such act or acts had been committed by an adult. …

MARYLAND CODE (1939, 1947 CUM. SUPP.), ARTICLE 26

§ 48D. Any child brought before the Judge in the exercise of the aforesaid jurisdiction shall be charged only as a dependent child, a delinquent child, a neglected child, a feeble-minded child, or as a child coming within two or more of these terms, and shall not be charged with the commission of any crimes. The Judge shall then determine whether or not such child comes within any of the aforesaid terms and

is, by reason thereof, in need of care or treatment within the provisions and intent of this sub-title. If any such child is charged with the commission of acts or acts which would amount to a misdemeanor or felony if committed by an adult, the Judge, after full investigation, may in his discretion waive jurisdiction and order such child held for action under the regular procedure that would follow if such act or acts had been committed by an adult. …

MARYLAND CODE (1957, 1966 REPL. VOL., 1970 CUM. SUPP.), ARTICLE 26

§ 70-2. (a) The court has exclusive original jurisdiction:

(1) over persons alleged to be delinquent children;
(2) over persons alleged to be dependent children;
(3) over children alleged to be neglected children;
(4) over children alleged to be in need of supervision;
(5) over children alleged to be mentally handicapped; …

(d) The court does not have jurisdiction over:

(1) a proceeding involving a child who has reached his 14th birthday, alleged to have done an act which, if committed by an adult, would be a crime punishable by death or life imprisonment (including a lesser offense or an offense arising out of the act alleged to have been committed), unless an order removing the proceeding to the Juvenile Court has been filed pursuant to Section 594A of Article 27;

(2) a proceeding involving a child who has reached his 16th birthday, alleged to have done an act in violation of any provision of Article 66½ or any other traffic law or ordinance (other than manslaughter by automobile, unauthorized use or occupancy of a motor vehicle, tampering with a motor vehicle, or operating a vehicle under the influence of intoxicating liquor or drugs). …

§ 70-16. (a) After a petition has been filed alleging delinquency and before the adjudicatory hearing the court, after the notice prescribed by the Maryland Rules, may hold a waiver hearing and waive the exclusive jurisdiction conferred by § 70-2, and may order the child or minor held for trial under the regular procedures of the court which would have jurisdiction over the offense if committed by an adult.

Notwithstanding anything to the contrary, jurisdiction may only be waived on (1) a child who has reached his fourteenth birthday, or (2) a child who has not reached his fourteenth birthday who is charged with committing an act which, if committed by an adult, would be punishable by death or life imprisonment.

(b) In making a determination as to waiver of jurisdiction the court shall consider:
(1) Age of child.
(2) Mental and physical condition of child.
(3) The child's amenability to treatment in any institution, facility, or program available to delinquents.
(4) The nature of the offense.
(5) The safety of the public.

MARYLAND CODE (1974, 2013 REPL. VOL., 2017 SUPP.), COURTS & JUDICIAL PROCEEDINGS ARTICLE

§ 3-8A-01. Definitions.

In general

(a) In this subtitle the following words have the meanings indicated, unless the context of their use indicates otherwise.

Adjudicatory hearing

(b) "Adjudicatory hearing" means a hearing under this subtitle to determine whether the allegations in the petition, other than allegations that the child requires treatment, guidance, or rehabilitation, are true.

…

Child

(d) "Child" means an individual under the age of 18 years.

Commit

(g) "Commit" means to transfer legal custody.

Court

(j) "Court" means the circuit court for a county sitting as the juvenile court.

…

Delinquent act

(l) "Delinquent act" means an act which would be a crime if committed by an adult.

Delinquent child

(m) "Delinquent child" is a child who has committed a delinquent act and requires guidance, treatment, or rehabilitation.

…

Disposition hearing

(p) "Disposition hearing" means a hearing under this subtitle to determine:
(1) Whether a child needs or requires guidance, treatment, or rehabilitation; and, if so
(2) The nature of the guidance, treatment, or rehabilitation.

§ 3-8A-02. Purposes and construction of subtitle.

Purposes of subtitle

(a) The purposes of this subtitle are:
(1) To ensure that the Juvenile Justice System balances the following objectives for children who have committed delinquent acts:
(i) Public safety and the protection of the community;
(ii) Accountability of the child to the victim and the community for offenses committed; and
(iii) Competency and character development to assist children in becoming responsible and productive members of society;
(2) To hold parents of children found to be delinquent responsible for the child's behavior and accountable to the victim and the community;

(3) To hold parents of children found to be delinquent or in need of supervision responsible, where possible, for remedying the circumstances that required the court's intervention;
(4) To provide for the care, protection, and wholesome mental and physical development of children coming within the provisions of this subtitle; and to provide for a program of treatment, training, and rehabilitation consistent with the child's best interests and the protection of the public interest;
(5) To conserve and strengthen the child's family ties and to separate a child from his parents only when necessary for his welfare or in the interest of public safety;
(6) If necessary to remove a child from his home, to secure for him custody, care, and discipline as nearly as possible equivalent to that which should have been given by his parents;
(7) To provide to children in State care and custody:
(i) A safe, humane, and caring environment; and
(ii) Access to required services; and
(8) To provide judicial procedures for carrying out the provisions of this subtitle.

Construction of subtitle

(b) This subtitle shall be liberally construed to effectuate these purposes.

§ 3-8A-03. Jurisdiction of court.

Exclusive original jurisdiction over delinquent children or children in need of supervision

(a) In addition to the jurisdiction specified in Subtitle 8 of this title, the court has exclusive original jurisdiction over:
(1) A child who is alleged to be delinquent or in need of supervision or who has received a citation for a violation;
(2) Except as provided in subsection (d)(6) of this section, a peace order proceeding in which the respondent is a child; and
(3) Proceedings arising under the Interstate Compact on Juveniles.

Concurrent jurisdiction over proceedings against an adult

(b) The court has concurrent jurisdiction over proceedings against an adult for the violation of § 3-8A-30 of this subtitle. However, the court may waive its jurisdiction under this subsection upon its own motion or upon the motion of any party to the proceeding, if charges against the adult arising from the same incident are pending in the criminal court. Upon motion by either the State's Attorney or the adult charged under § 3-8A-30 of this subtitle, the court shall waive its jurisdiction, and the adult shall be tried in the criminal court according to the usual criminal procedure.

Concurrent jurisdiction relating to compulsory public school attendance laws

(c) The jurisdiction of the court is concurrent with that of the District Court in any criminal case arising under the compulsory public school attendance laws of this State.

Jurisdiction relating to acts punishable by life imprisonment

(d) The court does not have jurisdiction over:
(1) A child at least 14 years old alleged to have done an act which, if committed by an adult, would be a crime punishable by life imprisonment, as well as all other charges against the child arising out of the same incident, unless an order removing the proceeding to the court has been filed under § 4-202 of the Criminal Procedure Article;
(2) A child at least 16 years old alleged to have done an act in violation of any provision of the Transportation Article or other traffic law or ordinance, except an act that prescribes a penalty of incarceration;
(3) A child at least 16 years old alleged to have done an act in violation of any provision of law, rule, or regulation governing the use or operation of a boat, except an act that prescribes a penalty of incarceration;
(4) A child at least 16 years old alleged to have committed any of the following crimes, as well as all other charges against the child arising out of the same incident, unless an order removing the proceeding to the court has been filed under § 4-202 of the Criminal Procedure Article:
(i) Abduction;
(ii) Kidnapping;

(iii) Second degree murder;
(iv) Manslaughter, except involuntary manslaughter;
(v) Second degree rape;
(vi) Robbery under § 3-403 of the Criminal Law Article;
(vii) Second degree sexual offense under § 3-306(a)(1) of the Criminal Law Article;
(viii) Third degree sexual offense under § 3-307(a)(1) of the Criminal Law Article;
(ix) A crime in violation of § 5-133, § 5-134, § 5-138, or § 5-203 of the Public Safety Article;
(x) Using, wearing, carrying, or transporting a firearm during and in relation to a drug trafficking crime under § 5-621 of the Criminal Law Article;
(xi) Use of a firearm under § 5-622 of the Criminal Law Article;
(xii) Carjacking or armed carjacking under § 3-405 of the Criminal Law Article;
(xiii) Assault in the first degree under § 3-202 of the Criminal Law Article;
(xiv) Attempted murder in the second degree under § 2-206 of the Criminal Law Article;
(xv) Attempted rape in the second degree under § 3-310 of the Criminal Law Article;
(xvi) Attempted robbery under § 3-403 of the Criminal Law Article; or
(xvii) A violation of § 4-203, § 4-204, § 4-404, or § 4-405 of the Criminal Law Article;
(5) A child who previously has been convicted as an adult of a felony and is subsequently alleged to have committed an act that would be a felony if committed by an adult, unless an order removing the proceeding to the court has been filed under § 4-202 of the Criminal Procedure Article; or
(6) A peace order proceeding in which the victim, as defined in § 3-8A-01(cc)(1)(ii) of this subtitle, is a person eligible for relief, as defined in § 4-501 of the Family Law Article.

Exclusive jurisdiction relating to violations of Maryland Vehicle Law by children

(e) If the child is charged with two or more violations of the Maryland Vehicle Law,1 another traffic law or ordinance, or the State Boat Act, allegedly arising out of the same incident and which would result in the child being brought before both the court and a court exercising

criminal jurisdiction, the court has exclusive jurisdiction over all of the charges.

§ 3-8A-06. Waiver of exclusive jurisdiction by the court.

Children subject to waiver

(a) The court may waive the exclusive jurisdiction conferred by § 3-8A-03 of this subtitle with respect to a petition alleging delinquency by:
(1) A child who is 15 years old or older; or
(2) A child who has not reached his 15th birthday, but who is charged with committing an act which if committed by an adult, would be punishable by life imprisonment.

Hearing required to waive jurisdiction

(b) The court may not waive its jurisdiction under this section until after it has conducted a waiver hearing, held prior to an adjudicatory hearing and after notice has been given to all parties as prescribed by the Maryland Rules. The waiver hearing is solely to determine whether the court should waive its jurisdiction.

Notice of waiver hearing

(c)(1) Notice of the waiver hearing shall be given to a victim as provided under § 11-104 of the Criminal Procedure Article.
(2)(i) A victim may submit a victim impact statement to the court as provided in § 11-402 of the Criminal Procedure Article.
(ii) This paragraph does not preclude a victim who has not filed a notification request form under § 11-104 of the Criminal Procedure Article from submitting a victim impact statement to the court.
(iii) The court may consider a victim impact statement in determining whether to waive jurisdiction under this section.

Determination that child unfit for juvenile rehabilitative measures

(d)(1) The court may not waive its jurisdiction under this section unless it determines, from a preponderance of the evidence presented at the hearing, that the child is an unfit subject for juvenile rehabilitative measures.

(2) For purposes of determining whether to waive its jurisdiction under this section, the court shall assume that the child committed the delinquent act alleged.

Criteria for making determination

(e) In making its determination, the court shall consider the following criteria individually and in relation to each other on the record:
(1) Age of the child;
(2) Mental and physical condition of the child;
(3) The child's amenability to treatment in any institution, facility, or program available to delinquents;
(4) The nature of the offense and the child's alleged participation in it; and
(5) The public safety.

Order that child be held for trial

(f) If jurisdiction is waived under this section, the court shall order the child held for trial under the regular procedures of the court which would have jurisdiction over the offense if committed by an adult. The petition alleging delinquency shall be considered a charging document for purposes of detaining the child pending a bail hearing.

Order interlocutory

(g) An order waiving jurisdiction is interlocutory.

Waiver of jurisdiction in subsequent proceedings involving child

(h) If the court has once waived its jurisdiction with respect to a child in accordance with this section, and that child is subsequently brought before the court on another charge of delinquency, the court may waive its jurisdiction in the subsequent proceeding after summary review.

§ 3-8A-07. Continuation or cessation of jurisdiction.

Continuation of jurisdiction until child reaches age 21

(a) If the court obtains jurisdiction over a child under this subtitle, that jurisdiction continues until that person reaches 21 years of age unless terminated sooner.

…

Persons who have committed a criminal offense before reaching age 18

(d) A person subject to the jurisdiction of the court may not be prosecuted for a criminal offense committed before he reached 18 years of age unless jurisdiction has been waived.

§ 3-8A-19. Disposition of child.

…

Priorities in making a disposition

(c) The priorities in making a disposition are consistent with the purposes specified in § 3-8A-02 of this subtitle.

Disposition by court

(d)(1) In making a disposition on a petition under this subtitle, the court may:
(i) Place the child on probation or under supervision in his own home or in the custody or under the guardianship of a relative or other fit person, upon terms the court deems appropriate, including community detention;
(ii) Subject to the provisions of paragraphs (2) and (3) of this subsection, commit the child to the custody or under the guardianship of the Department of Juvenile Services, the Maryland Department of Health, or a public or licensed private agency on terms that the court considers appropriate to meet the priorities set forth in § 3-8A-02 of this subtitle, including designation of the type of facility where the child is to be accommodated, until custody or guardianship is

terminated with approval of the court or as required under § 3-8A-24 of this subtitle; or
(iii) Order the child, parents, guardian, or custodian of the child to participate in rehabilitative services that are in the best interest of the child and the family.
(2) In addition to the provisions of paragraph (1) of this subsection, in making a disposition on a petition, the court may adopt a treatment service plan, as defined in § 3-8A-20.1 of this subtitle.
(3)(i) Except as provided in subparagraph (ii) or (iii) of this paragraph, a child may not be committed to the Department of Juvenile Services for out-of-home placement if the most serious offense is:
1. Possession of marijuana under § 5-601(c)(2)(ii) of the Criminal Law Article;
2. Possession or purchase of a noncontrolled substance under § 5-618 of the Criminal Law Article;
3. Disturbing the peace or disorderly conduct under § 10-201 of the Criminal Law Article;
4. Malicious destruction of property under § 6-301 of the Criminal Law Article;
5. An offense involving inhalants under § 5-708 of the Criminal Law Article;
6. An offense involving prostitution under § 11-306 of the Criminal Law Article;
7. Theft under § 7-104(g)(2) or (3) of the Criminal Law Article; or
8. Trespass under § 6-402(b)(1) or § 6-403(c)(1) of the Criminal Law Article.
(ii) A child whose most serious offense is an offense listed in subparagraph (i) of this paragraph may be committed to the Department of Juvenile Services for out-of-home placement if:
1. The child previously has been adjudicated delinquent for three or more offenses arising from separate and independent circumstances;
2. The child waives the prohibition described in subparagraph (i) of this paragraph and the court accepts the waiver as knowing, intelligent, and voluntary; or
3. The court makes a written finding in accordance with subparagraph (iii) of this paragraph.
(iii) A child whose most serious offense is an offense listed in subparagraph (i) of this paragraph may be committed to the Department of Juvenile Services for out-of-home placement if the court makes a written finding, including the specific facts supporting the

finding, that an out-of-home placement is necessary for the welfare of the child or in the interest of public safety.
(iv) This paragraph may not be construed to prohibit the court from committing the child to another appropriate agency.
(4) A child committed under paragraph (1)(ii) of this subsection may not be accommodated in a facility that has reached budgeted capacity if a bed is available in another comparable facility in the State, unless the placement to the facility that has reached budgeted capacity has been recommended by the Department of Juvenile Services.
(5) The court shall consider any oral address made in accordance with § 11-403 of the Criminal Procedure Article or any victim impact statement, as described in § 11-402 of the Criminal Procedure Article, in determining an appropriate disposition on a petition.
(6)(i) If the court finds that a child enrolled in a public elementary or secondary school is delinquent or in need of supervision and commits the child to the custody or under the guardianship of the Department of Juvenile Services, the court may notify the county superintendent, the supervisor of pupil personnel, or any other official designated by the county superintendent of the fact that the child has been found to be delinquent or in need of supervision and has been committed to the custody or under the guardianship of the Department of Juvenile Services.
(ii) If the court rescinds the commitment order for a child enrolled in a public elementary or secondary school, the court may notify the county superintendent, the supervisor of pupil personnel, or any other official designated by the county superintendent of the fact that the child is no longer committed to the custody of the Department of Juvenile Services.
(iii) The notice authorized under subparagraphs (i) and (ii) of this paragraph may not include any order or pleading related to the delinquency or child in need of supervision case.

§ 3-8A-20.1. Treatment service plans.

Treatment service plan defined

(a)(1) In this section, "treatment service plan" means a plan recommended at a disposition hearing under § 3-8A-19 of this subtitle or at a disposition review hearing under this section by the Department of Juvenile Services to the court proposing specific assistance, guidance, treatment, or rehabilitation of a child.

(2) In making a treatment service plan, a juvenile counselor shall meet with the child who is the subject of the treatment service plan and the child's parent, guardian, or legal custodian to discuss the treatment service plan.
(3) If a child's parent, guardian, or legal custodian is unable or refuses to meet with the juvenile counselor, the treatment service plan shall indicate that the parent, guardian, or legal custodian is unable or refuses to meet, and the reason for the inability or refusal to meet, if known.
(4) At a minimum, the treatment service plan shall include:
(i) The recommended level of supervision for the child;
(ii) Specific goals for the child and family to meet, along with timelines for meeting those goals;
(iii) A statement of any condition that the child's parent, guardian, or legal custodian must change in order to alleviate any risks to the child;
(iv) A statement of the services to be provided to the child and child's family; and
(v) Any other information that may be necessary to make a disposition consistent with the child's best interests and the protection of the public interest.

Implementation of treatment service plan

(b)(1) In making a disposition on a petition under § 3-8A-19 of this subtitle, if the court adopts a treatment service plan, the Department of Juvenile Services shall ensure that implementation of the treatment service plan occurs within 25 days after the date of disposition.
(2) If a treatment service plan requires specified supervision, mentoring, mediation, monitoring, or placement, implementation of the treatment service plan is considered to have occurred when the supervision, mentoring, mediation, monitoring, or placement occurs.
(3) The Department of Juvenile Services shall certify in writing to the court within 25 days after the date of disposition whether implementation of the treatment service plan has occurred.

Failure to implement treatment service plan

(c)(1) If a treatment service plan is not implemented by the Department of Juvenile Services within 25 days under subsection (b)(3) of this section, the court shall schedule, within 7 days after receipt of the

certification, a disposition review hearing to be held within 30 days after receipt of the certification.
(2) The court shall give at least 7 days' notice of the date and time of the disposition review hearing to each party and to the Department of Juvenile Services.

Disposition review hearing

(d)(1) The court shall hold a disposition review hearing unless the Department of Juvenile Services certifies in writing to the court prior to the hearing that implementation of the treatment service plan has occurred.
(2) At a disposition review hearing, the court may:
(i) Revise, in accordance with the provisions of § 3-8A-19 of this subtitle, the disposition previously made; and
(ii) Revise the treatment service plan previously adopted.

Construction of section

(e) This section may not be construed to provide entitlement to services not otherwise provided by law.

Rules for implementation

(f) The Court of Appeals may adopt rules to implement the provisions of this section.

MARYLAND CODE (2002, 2012 REPL. VOL., 2017 SUPP.), CRIMINAL LAW ARTICLE

§ 2-205. Attempt to commit murder in the first degree.

A person who attempts to commit murder in the first degree is guilty of a felony and on conviction is subject to imprisonment not exceeding life.

MARYLAND CODE (1984, 2012 REPL VOL., 2019 SUPP.), FAMILY LAW ARTICLE

§ 5-607. Placement of delinquent children.

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to the child being sent to such other party jurisdiction for institutional care and the court finds that:
(1) equivalent facilities for the child are not available in the sending agency's jurisdiction; and
(2) institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

MARYLAND RULES

Rule 4-242. Pleas.

…

(d) *Conditional Plea of Guilty*.

(1) Scope of Section. This section applies only to an offense charged by indictment or criminal information and set for trial in a circuit court or that is scheduled for trial in a circuit court pursuant to a prayer for jury trial entered in the District Court.

(2) Entry of Plea; Requirements. With the consent of the court and the State, a defendant may enter a conditional plea of guilty. The plea shall be in writing and, as part of it, the defendant may reserve the right to appeal one or more issues specified in the plea that (A) were raised by and determined adversely to the defendant, and, (B) if determined in the defendant's favor would have been dispositive of the case. The right to appeal under this subsection is limited to those pretrial issues litigated in the circuit court and set forth in writing in the plea.

(3) Withdrawal of Plea. A defendant who prevails on appeal with respect to an issue reserved in the plea may withdraw the plea.

Rule 4-252. Motions in circuit court.

…

(c) *Motion to Transfer to Juvenile Court*. A request to transfer an action to juvenile court pursuant to Code, Criminal Procedure Article, § 4-202 shall be made by separate motion entitled "Motion to Transfer to Juvenile Court." The motion shall be filed within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court pursuant to Rule 4-213(c) and, if not so made, is waived unless the court, for good cause shown, orders otherwise.

Rule 8-604. Disposition.

…

(d) *Remand*.

(1) Generally. If the Court concludes that the substantial merits of a case will not be determined by affirming, reversing or modifying the judgment, or that justice will be served by permitting further proceedings, the Court may remand the case to a lower court. In the order remanding a case, the appellate court shall state the purpose for the remand. The order of remand and the opinion upon which the order is based are conclusive as to the points decided. Upon remand, the lower court shall conduct any further proceedings necessary to determine the action in accordance with the opinion and order of the appellate court.

Rule 11-102A. Transfer of jurisdiction from court exercising criminal jurisdiction.

a. *Applicability*. This Rule applies to actions for which a court exercising criminal jurisdiction has entered an order transferring jurisdiction pursuant to Rule 4-251 (c)(2) or 4-252 (h)(3).

b. *Juvenile Petition*. Within 10 days after a court exercising criminal jurisdiction enters an order transferring jurisdiction over a defendant to the juvenile court, the State's Attorney shall file a juvenile petition pursuant to Rule 11-103 and shall attach to the petition a copy of (1)

the charging document that was filed in the court exercising criminal jurisdiction and (2) the order of the court transferring jurisdiction. If the petition is not so filed, the respondent shall be released from detention, shelter care, or all conditions of pretrial release, without prejudice to the right of the State's Attorney to file a petition thereafter.

c. *Effect of Provisions in Order Transferring Jurisdiction*. Except as provided in section b of this Rule and subject to Rules 11-112 and 11-114, any conditions of release of the respondent or any placement of the respondent in detention or shelter care set forth in the order transferring jurisdiction shall remain in effect and be enforceable by the juvenile court pending the adjudicatory hearing unless modified or abrogated by the juvenile court.

Rule 11-113. Waiver of jurisdiction.

a. *Initiating Waiver*.
1. On the Court's Own Motion. Upon the filing of a juvenile petition alleging delinquency the court may on its own motion waive its exclusive original jurisdiction so that the respondent may be tried in the criminal court.
2. Petition by State's Attorney--Requirements. The State's Attorney may file a petition requesting the court to waive its exclusive jurisdiction over a juvenile respondent alleged to be delinquent. The petition shall:
(i) be filed with or after the filing of a juvenile petition, but before the commencement of an adjudicatory hearing;
(ii) comply with the provisions of Section 3-817(a) of the Courts Article; and
(iii) state in clear, concise and specific language the reasons why the State's Attorney requests the waiver, taking into account the factors required to be considered by the court under Section 3-817(c) and (d) of the Courts Article.

b. *Investigation*. Upon the filing of a waiver petition, the court shall order that a waiver investigation be made. The report of the waiver investigation shall include all social records that are to be made available to the court at the waiver hearing, and a copy of the report shall be served upon counsel for the parties at least two days before the hearing.

c. *Hearing*.
1. Hearing Required--Exceptions. Except as provided by sections e. and f. of this Rule, the court may not waive its jurisdiction without first conducting a waiver hearing.
2. Time of Hearing. The hearing shall take place
(i) after notice has been given pursuant to Rule 11-110 (Hearings--Generally).
(ii) prior to the commencement of an adjudicatory hearing.
3. Purpose of Hearing. A waiver hearing is for the sole purpose of determining whether the court should waive its jurisdiction. The court shall assume, for purposes of that determination, that the respondent committed the delinquent act or crime alleged in the juvenile petition.

d. *Consideration in Determining Waiver*. In determining whether to waive its jurisdiction, the court shall comply with the provisions of Section 3-817 (c) , (d), and (e) of the Courts Article. In the interest of justice, the court may decline to require strict application of the rules in Title 5, except those relating to the competency of witnesses.

e. *Summary Review*. If the court has once waived its jurisdiction with respect to a respondent who again comes before the court on a juvenile petition alleging delinquency, the court, on its motion or on a waiver petition filed by the State's Attorney, may waive its jurisdiction in the subsequent proceeding after summary review and without a hearing.

f. *Adult Respondent*. Jurisdiction over an adult respondent charged under Section 3-831 of the Courts Article shall be waived by the court upon the motion of the State's Attorney or the adult respondent. Jurisdiction may be waived by the court upon its own initiative or after a hearing upon the motion of any party, if charges against the adult respondent arising out of the same incident are pending in the criminal court.

g. *Order*.
1. Jurisdiction Waived. If the court concludes that its jurisdiction should be waived, it shall:
(a) state the grounds for its decision on the record or in a written memorandum filed with the clerk.
(b) enter an order:
(i) waiving its jurisdiction and ordering the respondent held for trial under the appropriate criminal procedure;

(ii) placing the respondent in the custody of the sheriff or other appropriate officer in an adult detention facility pending a bail hearing pursuant to Rule 4-222.
2. Juvenile Petition a Charging Document Pending Bail Hearing. The juvenile petition shall be considered a charging document for the purpose of detaining the respondent pending a bail hearing.
3. True Copies to Be Furnished Appropriate Officer. A true copy of the juvenile petition and of the court's signed order shall be furnished forthwith by the clerk to the appropriate officer pending a bail hearing.

MARYLAND REGULATIONS

COMAR 16.01.01.01. Definitions.

A. In this title, the following terms have the meanings indicated.

B. Terms Defined.

…

(19) "Program" means any facility or program operated by, under contract with, licensed or certified by, or otherwise under the jurisdiction or supervision of the Department for the care or treatment of youth.

COMAR 16.16.01.02. Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

…

(14) "Institution" means those Department of Juvenile Services facilities where children are held for the purposes of secure detention or commitment.

COMAR 16.16.01.03. Court services provided by the Department of Juvenile Services.

…

D. Waiver and Reverse Waiver Investigation Hearings and Reports.

(1) The purpose of waiver and reverse waiver hearings is to determine whether the juvenile or criminal court will have jurisdiction in a given case, and for the purpose of these hearings it is assumed that the child committed the alleged offense.

(2) The reports are factual in nature and do not call for conclusions from the juvenile counselor.

(3) The juvenile counselor shall:

(a) Gather information, including a check of the child's juvenile record on ASSIST, to address the five waiver criteria as provided for in Courts and Judicial Proceedings Article, §3-8A-06, Annotated Code of Maryland, which are the:

(i) Age of the child;
(ii) Physical and mental condition of the child;
(iii) Child's amenability to treatment in any institution, facility, or program available to delinquents;
(iv) Nature of the offense and the child's alleged participation in it; and
(v) Public safety;

(b) Conclude the report with a recommendation unless otherwise directed by the court;

(c) Proceed as specified in §A(2)(d)—(f) of this regulation;

(d) If the case is sent to the criminal system, terminate the case, or continue supervision in accordance with court requirements;

(e) If the case remains in the juvenile system, deliver the case for assignment.