

IN THE
COURT OF APPEALS OF MARYLAND

September Term, 2020

No. 51

HOWARD JIMMY DAVIS,
Petitioner,

v.

STATE OF MARYLAND,
Respondent.

**BRIEF OF *AMICI CURIAE* MARYLAND CRIMINAL DEFENSE
ATTORNEYS' ASSOCIATION**

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**Motion for Special Admission Pending*

Filed: April 13, 2021

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STATEMENT OF INTEREST

The Maryland Criminal Defense Attorneys' Association ("MCDAA") was formed to promote study and research in the field of criminal defense law, to advance knowledge of the law as it relates to criminal defense practice, and to advocate for the proper administration of justice and the protection of individual rights. MCDAA is committed to representing juveniles to the fullest capacity and to ensuring that juveniles have access to all protections afforded to them under law. Its membership includes both attorneys and associated professionals throughout Maryland.

MCDAA respectfully submits this *amicus curiae* brief to address how Maryland courts consider the rehabilitative capacity of juveniles in deciding whether to transfer jurisdiction of a case from circuit court to juvenile court—an issue of enormous significance for young people charged as adults in Maryland.

Pursuant to Md. Rule 8-511(a)(1), MCDAA has received the written consent of the parties to file this *amicus* brief.

ARGUMENT

I. INTRODUCTION

A mere eighteen days after his sixteenth birthday, Petitioner Howard Jimmy Davis was involved in a home break-in for which he was charged as an adult in the Circuit Court for Baltimore County. Davis moved to transfer his case to juvenile court pursuant to Maryland Code, Criminal Procedure Article (“CP”), § 4-202.¹ Davis spent the nine months prior to his transfer hearing at the Charles H. Hickey, Jr. School (“Hickey”), a detention facility for male youth operated by the Maryland Department of Juvenile Services (“DJS”) that provides educational programs and counseling services.

Davis embraced the programs and services offered at Hickey. DJS reports from May and December 2017 noted that he was “always willing to participate in individual and group therapy sessions” and that he “regularly attends group and individual sessions, community meetings, [and] Boys-to-Men (a male mentoring group) where he actively and thoughtfully contributes.” E. 47. A Hickey correctional officer described Davis as their “best youth.” E. 82. Based on Davis’s record at Hickey, Judge Kathleen Gallogly Cox, the sentencing judge, wrote a letter recommending his admission to Patuxent Institution, a treatment-oriented correctional facility. E. 225–227. Judge Cox said, “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.” E. 225.

¹ For purposes of this brief, “transfer” and “reverse waiver” are used interchangeably.

CP § 4-202(b)(3) permits a court exercising criminal jurisdiction in a case involving a child to transfer the case to juvenile court if it finds, by a preponderance of the evidence, that “a transfer of its jurisdiction is in the interest of the child or society.” In deciding whether to transfer jurisdiction, 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.” *Id.* § 4-202(d).

The circuit court denied Davis’s transfer motion in a bench ruling, addressing each of the statutory factors. Despite overwhelming evidence in the record of Davis’s amenability to treatment, the court said only the following about the amenability factor:

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. The circuit court erroneously focused exclusively on potential treatment options available in the juvenile system, not Davis’s individualized amenability to them.

From there, the circuit court transitioned to the fourth factor—the nature of the alleged crime—which was seemingly dispositive in the transfer analysis: “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.*” E. 145 (emphasis added). The court then examined the underlying offense alongside the fifth factor of public

safety: “[H]e has committed an offense, a very grave, violent offense. And in my view, he’s a considerable threat to public safety.” E. 146.

The transfer statute asks the circuit court to consider whether to transfer a case involving a child to juvenile court, where rehabilitation is the paramount purpose. Construing the statute consistent with its function and the purpose of the juvenile justice system, a court is obliged to analyze the child’s individualized amenability to treatment. A finding of amenability to treatment should ordinarily result in a transfer to juvenile court, absent overwhelming countervailing evidence on the other factors, which as a matter of law cannot simply be the nature of the alleged crime.

The circuit court abused its discretion by (1) failing to assess Davis’s individualized amenability to treatment and (2) placing undue emphasis on the nature of the offense at the expense of other statutory factors, most of which lacked sufficiently specific examination. The Court of Special Appeals erred in affirming the lower court’s decision. Based on the undisputed record developed in the circuit court on this transfer ruling, this Court should reverse, or at the least, remand the judgment below for application of the proper standards on transfer.

II. SUMMARY OF THE ARGUMENT

Among the five transfer factors under CP § 4-202(d), amenability to treatment enjoys special significance: it prompts the circuit court to consider a child’s individualized capacity for rehabilitation in evaluating whether the case should proceed in juvenile court, where rehabilitation is the primary objective. Specifically, the function and purpose of the

statute compel the court to consider not only the availability of treatment programs in the juvenile system, but also the juvenile's amenability to them.

In addition, the circuit court must not unduly elevate the nature of the alleged crime over amenability to treatment. A circuit court has several opportunities to analyze the nature of the alleged crime indirectly: through the threshold jurisdictional inquiry under the CP § 4-202(b) framework; through the analysis of the public safety factor in CP § 4-202(d)(5); and through the evaluation of available treatment facilities with the requisite level of security—all in addition to direct analysis of the nature of the alleged crime factor itself.

Lastly, a circuit court must furnish its reasoning on each of the transfer factors with sufficient specificity. A lack of detailed engagement on the record of the reverse waiver analysis impedes appellate review. Here, an inadequately explained decision, where the analysis fails to consider the child's individualized amenability to treatment, and the nature of the alleged crime carries undue influence in the analysis, amounts to an abuse of discretion.

III. THE AMENABILITY TO TREATMENT FACTOR PROMPTS THE COURT TO EVALUATE A TRANSFER MOTION IN THE CONTEXT OF THE JUVENILE JUSTICE SYSTEM'S OVERRIDING PURPOSE OF REHABILITATION.

Under CP § 4-202(b), a circuit court considers whether to transfer a case involving a child charged as an adult to juvenile court. Given the well-accepted differences between children and adults, the juvenile justice system's principal aim is rehabilitation. The amenability to treatment factor in CP § 4-202(d)(3) directs the court to evaluate a child's

amenability to the distinct rehabilitation programs and services in the juvenile system. In other words, it prompts the court to determine whether a transfer would be consistent with the objectives of the juvenile justice system. Finding a child amenable to treatment under CP § 4-202(d)(3) should therefore ordinarily result in transfer to the juvenile court absent overwhelming countervailing evidence on the other factors.

A. The rehabilitative purpose of the juvenile justice system reflects constitutional differences between children and adults.

Consistent with established findings in adolescent cognitive development, courts recognize that “children are constitutionally different from adults.” *Montgomery v. Louisiana*, 577 U.S. 190, 213 (2016). The Supreme Court attributes these constitutional differences to children’s “diminished culpability and greater prospects for reform.” *Id.* at 207 (citations omitted). These differences manifest in three primary ways: First, children have a “lack of maturity and an underdeveloped sense of responsibility.” *Roper v. Simmons*, 543 U.S. 551, 569 (2005) (citation omitted). Second, “juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure.” *Id.* Third, “the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed.” *Id.* at 570. As a result, “it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed.” *Id.* This Court has likewise recognized the “well accepted differences between juveniles and adults.” *Carter v. State*, 461 Md. 295, 309 (2018).

The juvenile justice system’s unique features are specifically designed to meet the peculiar needs of children. The juvenile system exists to rehabilitate youthful offenders who otherwise would be prosecuted criminally as adults for their conduct. *See In re Victor B.*, 336 Md. 85, 91–94 (1994). It then follows that the aim of the juvenile justice system is to reform, not punish, juveniles. *See In re Anthony R.*, 362 Md. 51, 68–69 (2000). In particular, the stated purposes of the Juvenile Causes subtitle of the Maryland Code, Courts and Judicial Proceedings Article (“CJ”), § 3-8A-02(a)(4) encompass “provid[ing] for a program of treatment, training, and rehabilitation consistent with the child’s best interests and the protection of the public interest.” Proceedings in the juvenile system aspire to “the idealistic prospect of an intimate, informal protective proceeding,” *McKeiver v. Pennsylvania*, 403 U.S. 528, 545 (1971), and are intended “to provide for the care, protection, and wholesome mental and physical development of children,” CJ § 3-8A-02(a)(4).

B. The amenability factor is an individualized inquiry that directs the circuit court to assess whether the child would be receptive to the treatment programs available in the juvenile system.

In considering a transfer motion, the circuit court assesses whether a case is properly adjudicated within the 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). The amenability factor under CP § 4-202(d)(3) prompts the circuit court to consider a child’s individualized capacity for rehabilitation and thus his potential to benefit from the unique features of the juvenile system. The circuit court’s assessment of a child’s amenability to treatment is an

individualized inquiry that considers not only the treatment opportunities available in the juvenile system but also, and most importantly, the child’s particularized amenability to them. The individualized amenability inquiry is both compelled by the statutory text of CP § 4-202 and consistent with the underlying goal of the juvenile justice system.

The statute provides that 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). Implicit in the amenability statutory factor is a two-fold inquiry: (1) the availability of institutions, facilities, or programs for delinquent children; and (2) the child’s individualized amenability to treatment in such institutions, facilities, or programs. The statutory text makes plain that the amenability assessment pertains to “the” child. The assessment calls for an evaluation of a characteristic of the child—his rehabilitative potential—not simply characteristics of the juvenile system available to the child. It is therefore not adequate for a court to limit the amenability assessment to a child’s potential *eligibility* for certain treatment opportunities without also considering his individualized *amenability* to them.

Neither “amenability” nor “treatment in an institution, facility, or program available to delinquent children” is defined by CP § 4-202. Absent a statutory definition, “it is proper to consult a dictionary or dictionaries for a term’s ordinary and popular meaning.” *Chow v. State*, 393 Md. 431, 445 (2006). “Amenability,” often used to describe a child, refers to a willingness to submit to and a suitability for an intervention. *See Amenable, Black’s Law Dictionary* (11th ed. 2019). “Treatment in an institution, facility, or program,” when employed in the context of transfer, refers both to the availability of treatment furnished

by juvenile services and the child’s willingness and suitability to receive such treatment, which is specifically designed to rehabilitate the child. *See* CJ § 3-8A-06(d)(1) (juvenile court may not waive jurisdiction unless “child is an unfit subject for juvenile rehabilitative measures”). In undertaking an individualized assessment, the circuit court considers a child’s unique circumstances and rehabilitative potential. For example, for one child, prior contacts with the juvenile system and attempts at treatment may favorably demonstrate amenability to rehabilitation, suitability for programming, and willingness to engage with treatment opportunities, while for another child they may suggest the opposite. In other circumstances, lack of prior contacts with the system may support a finding that the child should have the opportunity to embrace treatments available to juveniles. The individualized amenability assessment directs the circuit court to assess how certain circumstances may spur different conclusions for different children.

Accordingly, the amenability analysis asks the circuit court to evaluate a particular child’s amenability to treatment to determine whether he would benefit from the rehabilitative aims of the juvenile system. Where the circuit court finds a child amenable to treatment, the court should ordinarily transfer the case to juvenile court absent overwhelming countervailing evidence on the other factors, which as a matter of law cannot exclusively be the nature of the alleged crime.²

² The interpretation and practical application of the statute being advanced here by MCDAA mimics a presumption. *See State v. Smith*, 374 Md. 527, 538 (2003) (quoting *Rowe v. State*, 41 Md. App. 641, 643, *cert. denied*, 285 Md. 733 (1979)) (“A presumption is a legally required inference. An inference is a factually permissible presumption.”); *cf.*

C. Failure to undertake an individualized assessment of a child’s amenability to treatment constitutes an abuse of discretion.

Given that the transfer statute functions to direct a court to assess a child’s capacity to benefit from the rehabilitative purpose of the juvenile system, failure to consider a juvenile’s individualized amenability to treatment amounts to an abuse of discretion. In exercising its discretion, “the trial court must apply the correct legal standard in rendering its decision.” *Neustadter v. Holy Cross Hosp. of Silver Spring, Inc.*, 418 Md. 231, 241 (2011) (finding that trial court abused its discretion). Failure to do so “constitutes an abuse of discretion.” *Id.* at 242 (citation omitted). The record must support a “reasonable conclusion that [the] appropriate factors were taken into account in the exercise of discretion.” *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 426–27 (2007) (citation omitted) (articulating abuse of discretion standard).

In the instant case, the circuit court considered only potential treatment programs for which Davis might have been eligible, not his individualized amenability to treatment. Ruling from the bench, the court found the following with respect to its amenability analysis: “[T]he report from Juvenile Services indicates that they would . . . need to conduct another evaluation and that he . . . would be eligible for behavioral modification. They don’t mention that he could [be] held in a secure facility, though we know that and certainly that experts testified to that.” E. 145. The court’s assessment briefly addresses the first part of the amenability analysis by referencing the “institution[s], facilit[ies], or program[s]

Carrion v. Linzey, 342 Md. 266, 275–76 (1996) (the purpose of the statute imbues the operation of the express presumption).

available to delinquent children,” CP § 4-202(d)(3), such as the behavioral modification. However, the court’s reasoning does not address the second part of the analysis—“the amenability of the child to treatment”—because it omitted any mention of Davis’s potential for rehabilitation. By not assessing Davis’s individualized amenability in any way, the court did not simply fail to “state each and every consideration or factor in a particular applicable standard,” *Aventis Pasteur*, 396 Md. at 426; it entirely failed to follow the correct standard. This record does not support a “reasonable conclusion” that the court considered the “appropriate factors.” *Id.* Therefore, the circuit court misapplied the law in its exercise of discretion. Given the ample evidence of Davis’s amenability to treatment, the court abused its discretion when it failed to grant a transfer.

IV. ASCRIBING UNDUE WEIGHT TO THE NATURE OF THE ALLEGED CRIME CONSTITUTES AN ABUSE OF DISCRETION.

The “nature of the alleged crime” factor should not be afforded undue weight in the five-factor analysis because it repeatedly appears—both directly and indirectly—in other aspects of the reverse waiver analysis. It receives direct consideration as an independent factor delineated by the statute. *See* CP § 4-202(d)(4). The nature of the offense likewise informs which court has original jurisdiction in the case under CP § 4-202(b) (and consequently the burden of persuasion), in addition to the available treatment options for the child. It is also often considered alongside the public safety factor delineated in CP § 4-202(d)(5). Accordingly, ascribing any additional weight to the nature of the alleged crime at the expense of other factors, notably a child’s amenability to treatment, amounts to an abuse of discretion.

A. The nature of the alleged crime is directly and indirectly considered at multiple points in the transfer analysis.

As a threshold matter, CP § 4-202(b) and (d) offer an analytical framework for transfer that is operable only when a juvenile, at a specific age, has allegedly committed one of the offenses circumscribed in CJ § 3-8A-03(d). The list contains offenses that are considered sufficiently serious to warrant placing an accused child outside the original jurisdiction of the juvenile court and instead placing the child in circuit court for a criminal proceeding. While presumed innocent, the juvenile then has the burden “to demonstrate that under [a preponderance of] these five factors, transfer to the juvenile system is in the best interest of the juvenile or society.” *Whaley v. State*, 186 Md. App. 429, 444, 447 (2009) (referring to the factorial analysis in CP § 4-202(d)).³

The nature of the alleged crime consideration often gets interpolated with the public safety inquiry. In a reverse waiver hearing, a court considers public safety through details that harken back to the nature of the offense or its alleged severity. Having the nature of the alleged crime factor inform the public safety factor does not necessarily reflect a defect in the circuit court’s reasoning. Rather, it demonstrates how interrelated the two factors are in practice. The nature of the offense “may encompass not only the type of crime but the circumstances surrounding its commission,” *In re Waters*, 13 Md. App. 95, 104 (1971), and by extension, its threat to public safety. To illustrate, in *Hazell v. State*, 12 Md. App.

³ Moreover, the juvenile cannot confront witnesses nor would he testify or otherwise preview his defense at a transfer hearing, meaning that criminal allegations against the juvenile would remain untested. *See generally Whaley*, 186 Md. App. at 446–48 (describing consequences of not presuming innocence in reverse waiver proceedings).

144, 150 (1971), the circuit judge noted for an armed robbery charge that “[t]he acts of which [the juvenile] is charged are acts in which grievous bodily harm was inflicted upon members of society without provocation” and manifest “this youngster’s apparent total disregard for the safety and well-being of others.” In discussing armed robbery and auto theft allegations, the circuit judge in *Gaines v. State*, 201 Md. App. 1, 16 (2011) said:

It is a very, very serious crime. Also, what weighs heavily on me is the threat to public safety. If someone was willing to do this at 8:30 in the morning in broad daylight and not only risk the lives of people in McDonald’s but then risk the lives of the police officers and citizens on the road when they are trying to get away, they are just simply a threat to the community.

And the circuit judge in *In re Waters* considered the nature of the offense alongside public safety: “This is an extremely serious offense, assault and robbery with a deadly weapon with a gun, and I feel that the respondent does constitute some element of risk to the safety of the public.” 13 Md. App. at 101. In brief, these decisions illustrate how circuit courts consider the nature of the alleged crime both directly as an independent factor in the analysis and indirectly, in its relationship to public safety.

Because juvenile services and courts give attention to the security of the prospective facility where the juvenile could receive treatment,⁴ the nature of the alleged crime, frequently joined by the risk to public safety, also pervades the amenability analysis. In

⁴ See generally Data Resource Guide Fiscal Year 2020, Maryland Department of Juvenile Services, https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2020.pdf (among other things, furnishing overview of all juvenile system facilities and their level of security).

analyzing an attempted armed robbery, the judge in *Whaley* quoted text from a juvenile services report, which indicated that:

Young people who become involved in these types of offenses can be held accountable Public safety can be ensured in juvenile jurisdiction via various levels of commitment, including placement in secure confinement facilities.

186 Md. App. at 438. In related contexts outside of reverse waiver, such as pre-hearing detention and commitment, circuit courts similarly consider the security of a juvenile treatment center. *See, e.g., In re Franklin P.*, 366 Md. 306, 315, 318 (2001); *In re Glenn H.*, 43 Md. App. 510, 513 (1979). Consideration of facility security, as a part of determining availability of rehabilitative treatment, indirectly imports the nature of the offense into the amenability analysis.

In sum, the circuit court takes into account the nature of the alleged crime at multiple points in the reverse waiver analysis: (1) as a threshold inquiry in the offenses that qualify for reverse waiver; (2) directly as an independent factor in the transfer analysis; (3) coupled with the public safety factor, which often necessarily addresses the severity of the alleged crime; and (4) in determining the availability of appropriately secure rehabilitative treatment facilities in the amenability analysis.

In light of the many opportunities to consider the nature of the alleged crime, giving any undue weight to that one factor is an abuse of discretion. The nature of the offense, namely its seriousness, has historically been—but should not continue to be—one of the most heavily weighed factors “in the decision to waive jurisdiction.” *In re Samuel M.*, 293 Md. 83, 88 (1982) (internal citation omitted). Though this observation of past practice

applies to waiver from juvenile court to the circuit court, the analytical similarities between waiver and reverse waiver, *see Smith v. State*, 399 Md. 565, 582 (2007), suggest that the nature of the alleged crime factor would also receive significant weight in the transfer analysis. The enduring significance of this factor only gets compounded and reinforced through all the other indirect ways in which a circuit court considers it, and it does so with deleterious effects on the amenability factor.

The nature of the offense analysis can not only unduly influence, but also diminish the impact of the amenability analysis in a reverse waiver decision. *See In re Johnson*, 17 Md. App. 705, 712 (1973) (“[T]he hearing 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.”); *see also In re Hamill*, 10 Md. App. 586, 593 (1970) (finding failure to weigh evidence of rehabilitation properly). Even though circuit judges do not have to adhere to a mathematical formula in weighing transfer factors, *see In re Waters*, 13 Md. App. at 97, the nature of the alleged crime cannot, as a matter of law, receive dispositive weight at the expense of all other factors, particularly amenability to treatment.

B. In assigning undue weight to the nature of the alleged crime at the expense of Davis’s amenability to treatment, the circuit court misapplied the law.

In Davis’s case, the circuit court treated the nature of the alleged crime as “the single most—concerning factor with regard to whether or not this young man should remain in the adult system.” E. 145. In doing so, the nature of the offense appeared to overwhelm the court’s analysis. The court subsequently considered the underlying offense again, in

conjunction with the public safety factor: “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 nature of the offense was seemingly dispositive, with the circuit court ascribing undue weight to the nature of the alleged crime with deleterious effects on the amenability factor. The circuit court thus misapplied the law and abused its discretion.

V. THE CIRCUIT COURT’S REASONING MUST BE SUFFICIENTLY SPECIFIC FOR AN APPELLATE COURT TO BE CONFIDENT THAT THE REVERSE WAIVER INQUIRY WAS PROPERLY CONDUCTED.

A circuit court must furnish its reasoning on each of the transfer factors with sufficient specificity on the record. An inadequate engagement with the specifics of the transfer factors during a reverse waiver analysis frustrates appellate review of the propriety of the lower court’s examination. Here, an insufficiently explained decision, with an analysis that fails to consider the child’s individualized amenability to treatment, amounts to an abuse of discretion.

A. The five transfer factors in CP § 4-202(d) should receive a detailed analysis on the record.

A circuit court must explain the reasoning of its decision with sufficient specificity. An appellate court is generally limited by what was raised or decided on the record in its review of a lower court’s decision. *See Robinson v. State*, 410 Md. 91, 103 (2009); *see also* Md. Rule 8-131(a). On an abuse of discretion standard, an appellate court determines whether the path that the lower court judge traveled logically follows from the findings upon which it supposedly rests or whether it has any reasonable relationship to its announced objective. *Nash v. State*, 439 Md. 53, 66–68 (2014). A circuit court can abuse

its discretion in a variety of ways, including with a ruling that “constitutes an untenable judicial act that defies reason and works an injustice.” *Id.* at 67 (citation omitted and internal quotation marks omitted). Although a circuit court is “not obliged to spell out in words every thought and step of logic,” *Beales v. State*, 329 Md. 263, 273 (1993), it should not render a decision “well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable,” *Gray v. State*, 388 Md. 366, 383 (2005) (citations omitted).

In the context of reverse waiver and related proceedings, some Maryland decisions have directly urged circuit courts to furnish sufficiently specific reasoning for their decisions. Though not obliged to follow a recommendation laid out in a waiver report, a circuit court rejecting the recommendation should nonetheless state that the report was considered and furnish the reasons for the rejection. *In re Appeal No. 646(76) from Cir. Ct. for Prince George’s Cty.*, 35 Md. App. 94, 97 (1977). A circuit court should also have a detailed engagement with the amenability factor. A circuit court should: (1) “consider whether the child is amenable to the rehabilitative processes available to the court;” and (2) “preferably should make the latter determination based on relevant criteria that have been prescribed by statute or judicial decision,” implying that it should specifically “state in the waiver order why jurisdiction is being waived.” *In re Samuel M.*, 293 Md. at 89 (citation omitted).

Where the possibility exists that juvenile services might have to treat a child beyond the age of majority and that fact becomes a determinative factor in a circuit court’s decision that the juvenile is unfit for rehabilitation, there must be substantial

evidence in the record that successful treatment might require extra time such that the circuit court can critically inspect. *In re Barker*, 17 Md. App. 714, 724 (1973). And *Brown v. State*, 169 Md. App. 442 (2006) generally suggests that when a child furnishes reports and supporting documentation from juvenile services, the trial court should analyze the findings in those materials when making its decision on waiver.

In addition, given the strong policy in favor of transfer upon a finding of amenability, a judge denying a transfer motion must provide specific reasons why the child was not deemed amenable to treatment. Where a court must articulate its finding as to whether a child is amenable to treatment in granting a transfer motion, it similarly must articulate specific reasons why a child is not amenable to treatment in denying such a motion.

Taken altogether, each of the five factors in CP § 4-202(d) should receive a detailed analysis on the record. Only when lower courts follow these prescriptions can appellate courts have confidence that the reverse waiver inquiry was properly conducted.

B. The circuit court did not sufficiently specify whether or not it deemed Davis amenable to treatment.

The record established that during the nine months that he spent in pre-trial custody in 2017, Davis was “always willing to participate in individual and group therapy sessions” in addition to “regularly attend[ing] group and individual sessions, community meetings, [and] Boys-to-Men (a male mentoring group) where he actively and thoughtfully contribute[d].” E. 47. Davis was also described by a Hickey correctional officer as their “best youth.” E. 82.

Despite all this, the circuit court merely commented that “the report from Juvenile Services indicates that . . . 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. In denying the transfer motion, the circuit court did not clearly articulate whether or not it deemed Davis amenable to treatment. It is not evident how, if at all, the court considered the overwhelming evidence of Davis’s amenability to treatment. Therefore, the circuit court failed to provide sufficiently specific reasons for the appellate court to be confident that Davis’s amenability to treatment was properly considered.

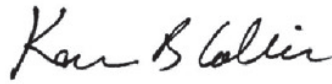
The paramount purpose of the juvenile justice system is rehabilitation. The amenability to treatment factor of CP § 4-202(d)(3) enjoys special significance under the CP § 4-202(b) framework: it directs the circuit court to consider the child’s individualized rehabilitative potential when exercising its discretion to determine whether a child charged as an adult should instead have his case proceed in juvenile court. In recognition of the constitutional differences between children and adults, a child deemed amenable to treatment is well-situated to benefit from the rehabilitative aims of the juvenile system. And given the function of the transfer statute and the overriding goal of the juvenile justice system, the nature of the alleged crime can neither receive undue nor dispositive weight at the expense of all other factors, most notably amenability to treatment. Thus, a finding of amenability to treatment should ordinarily result in a transfer

of the case to juvenile court absent overwhelming countervailing evidence on the other factors, which cannot, as a matter of law, be solely the nature of the crime.

CONCLUSION

For the reasons above, *Amicus* respectfully urges this Court to find that the circuit court abused its discretion in denying Davis's transfer motion and reverse, or at the least remand, the judgment of the lower court.

Respectfully submitted,



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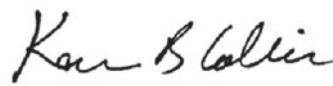
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**Motion for Special Admission Pending*

CERTIFICATE OF WORD COUNT
AND COMPLIANCE WITH RULE 8-112

1. This Brief contains 5,254 words, excluding the parts 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.



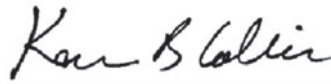
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CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2021, I caused two copies of the foregoing to be mailed via electronic mail to:

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PERTINENT AUTHORITY

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.

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

§ 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.