

Strategies Used To Defend A Juvenile Waiver Case

If your client is charged in juvenile court, your case can morph from a straightforward juvenile defense case into a nightmare with this motion: “The State respectfully requests that the Court waive its original jurisdiction so the Respondent may be tried in adult court.” Below are some defense strategy tips useful in a waiver hearing.

Juvenile vs. Adult Court:

Maryland’s juvenile court is based upon the rehabilitation model: Children can change, and mistakes are a basis for learning pro-social behaviors and gaining the maturity to contemplate consequences. The rehabilitation model permits the juvenile’s offense to remain in a confidential juvenile record not available to the public.

In contrast, Maryland’s criminal court is based upon the punishment model: Adults should know better, and adults have limited capacity to change ingrained criminal behaviors. Punishment focuses on protecting the public by creating a deterrent to adults who are able to contemplate consequences for their actions. Additionally, the punishment model requires that adult criminal records are available to the public.

Waiver Hearing Criteria

At waiver hearings, the judge is permitted much discretion in making the decision to waive your client to adult court. The judge uses all the available evidence addressing these five statutory factors to determine venue:

- Age of the child;
- Physical and mental condition of the child;
- Amenability to treatment at the juvenile court level;
- Nature of the offense and degree of the child’s participation in the offense; and
- The public safety.

Rehabilitation Trumps

Under well-established Maryland case law and legislative intent, the most important factor is whether the juvenile can be rehabilitated. The prosecution must prove by a preponderance of the evidence that the child is unfit for rehabilitation. The defense case must focus on presenting strong evidence that your client is more likely than not to be helped with a rehabilitative program implemented by the juvenile justice system. You will also need evidence demonstrating that your client is mentally more immature than children his or her age, and that your client is able to make amends, and is able and willing to learn from her or his mistake.

Expert testimony from a psychologist or psychiatrist who specializes in juvenile offender treatment and rehabilitation is necessary for a successful defense. This expert will need to conduct a thorough evaluation of your client to uncover undiagnosed

learning disabilities, identify any mental illness or personality disorder issues, and create a psychological profile of your client. Your expert must also be able to contradict any Waiver Investigation Report conducted by the Department of Juvenile Services (DJS) that recommends your client be tried in adult court. It is essential that your expert's credentials exceed the DJS specialist who compiled the report. If your client has a mental health treatment provider, that provider's testimony demonstrating past and current change is also excellent evidence showing your client can be rehabilitated.

Even if your client is charged with a heinous crime, under Maryland case law the judge cannot dismiss the child's amenability to rehabilitation because the nature of the offense is extremely grievous or, as in one case, the child had no prior offenses (e.g. child is already good enough and does not need rehabilitation). If the juvenile can be rehabilitated in a program through the juvenile justice system, you must inform the judge that the weight of rehabilitation must be given greater deference than the nature of the offense.

Reverse Waiver – Same Difference

A reverse waiver is when your client is charged initially as an adult and you request a reverse waiver hearing to determine whether your client's case can be transferred to juvenile court. In this case, your burden is to prove by preponderance of the evidence that the juvenile is able to be rehabilitated in the juvenile system.

Nearly all case law continues to support the legislative intent that youth should remain in the juvenile system if they can be rehabilitated. However, in one recent Maryland case, a judge determined that the youth should remain in the adult court system because there were no treatment programs in Maryland through DJS that could rehabilitate the defendant.

To help change that outcome, in addition to the recommendations above, your defense should include providing the judge a comprehensive list of in- and out-of-state programs that have programs designed to help clients like yours. Your defense should also demonstrate that DJS has used or currently uses those provider's program to treat juveniles similar to your client.

Drastic Consequences For Your Client

Make certain the judge is fully informed about the grave consequences caused by a child's transfer to adult court. According to the latest Office of Juvenile Justice and Delinquency Program (OJJDP) study (through the Department of Justice) published August 2008, children who are adjudicated and treated through the juvenile court have the highest probability of rehabilitation and the lowest probability of reoffending.

In contrast, children who are convicted in adult courts and imprisoned in adult jails have the lowest probability of rehabilitation and the highest probability of reoffending. Furthermore, those children in adult prisons have the highest rate of suicide

and are highly likely to be sexually and physically victimized or murdered while in prison. Even judges who believe the juvenile justice system is a “soft” option give pause when faced with those well-documented consequences caused by waiving children to adult courts.

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