



POSITION ON PROPOSED LEGISLATION

BILL: HB 552 - Courts - Juvenile Court - Waiver of Jurisdiction - Victim Impact Statement

POSITION: OPPOSED

DATE: February 13, 2020

The purpose of a waiver hearing is for the juvenile court to determine whether a child under its jurisdiction remains best adjudicated and treated in the juvenile system or instead tried and punished in the adult criminal system. In reaching that determination, the court considers five factors including: the nature of the offense and the youth's alleged involvement in the offense, public safety, the age of the child, the mental and physical condition of the child, and the child's amenability to treatment in the juvenile system. By statute, the court must consider the facts alleged regarding the delinquent act to be true for purposes of the waiver hearing. A waiver hearing is pre-adjudication, so there has not been a finding of guilt or innocence regarding the alleged offense.

In *Lopez v. State*, 458 Md. 164, 178 (2018), the Court of Appeals explained that "the legislature and this Court have...made clear that the victims' rights are not without limitation." A victim impact statement at this pre-adjudicatory stage, while relevant to the assessment of public safety, is in our view unduly prejudicial and runs exactly counter to the presumption of innocence afforded an accused person at this early point in the process.

Especially within this context, the proposed change from a "may" to a "shall" appears to suggest that when such a statement is made in a case, courts are ignoring it. While reasonable persons may differ as to the weight such statements are accorded in the judge's final decision, we are not aware of any case in which victims have been roundly ignored or denied the opportunity to have their say.