

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, : No. 113404  
 :  
 v. :  
 :  
 T.S., :  
 :  
 Defendant-Appellant. :

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**JOURNAL ENTRY AND OPINION**

**JUDGMENT: REVERSED; VACATED; REMANDED  
RELEASED AND JOURNALIZED: October 10, 2024**

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Criminal Appeal from the Cuyahoga County Court of Common Pleas  
Case No. CR-23-681526-A

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***Appearances:***

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Patrick White, Assistant Prosecuting Attorney, *for appellee.*

Elizabeth Miller, Ohio Public Defender, and Lauren Hammersmith, Assistant State Public Defender, *for appellant.*

EILEEN A. GALLAGHER, P.J.:

{¶ 1} Defendant-appellant, T.S., appeals his convictions after he was bound over from the Juvenile Division of the Cuyahoga County Court of Common Pleas (the “juvenile court”) to the General Division of the Cuyahoga County Court of

Common Pleas (the “general division” or “adult court”) and pled guilty to attempted murder and tampering with evidence. T.S. contends that his convictions and bindover should be reversed and the case remanded to juvenile court because the juvenile court abused its discretion in transferring his case to the general division for criminal prosecution without sufficient credible evidence of nonamenability.

{¶ 2} Following a thorough review of the record, we find that the juvenile court failed to make certain findings required for a discretionary transfer under R.C. 2152.12(B)(3). Further, there is insufficient evidence in the record to support a finding, by a preponderance of the evidence, that T.S. is not amenable to care or rehabilitation within the juvenile system. Accordingly, we reverse the trial court’s judgment, vacate T.S.’s convictions, vacate the juvenile court’s transfer order and remand the case to the juvenile court for further proceedings.

## **I. Factual Background and Procedural History**

### **A. The Juvenile Court Proceedings**

{¶ 3} On August 16, 2022, the State filed a delinquency complaint against T.S. (d.o.b. May 10, 2007) in juvenile court, alleging that then-15-year-old T.S. had committed acts that would constitute the following crimes if he were an adult: attempted murder in violation of R.C. 2923.02/2903.02(A), felonious assault in violation of R.C. 2903.11(A)(1), felonious assault in violation of R.C. 2903.11(A)(2) and tampering with evidence in violation of R.C. 2921.12(A)(1). The attempted murder and felonious assault counts included one- and three-year firearm specifications and a forfeiture of weapon specification. The tampering with evidence

count included a one-year firearm specification and forfeiture of weapon specification. The charges related to an August 15, 2022 incident in which T.S. allegedly shot and very seriously injured then-13-year-old C.J. in a park in Cleveland.

{¶ 4} The State filed a motion for an order to relinquish jurisdiction for the purpose of criminal prosecution pursuant to R.C. 2152.10(B). T.S. denied the allegations of the complaint and objected to the motion to relinquish jurisdiction.

{¶ 5} On March 7, 2023, the juvenile court held a probable cause hearing. The juvenile court found that there was probable cause to believe that T.S. had committed all of the offenses with which he had been charged. The juvenile court ordered a full investigation into T.S.'s social history, education, family situation and any other factor relevant to whether T.S. was amenable to juvenile rehabilitation and referred T.S. to the juvenile court diagnostic clinic for a psychological evaluation.

{¶ 6} Dr. Lynn Williams, a forensic psychologist with the juvenile court diagnostic clinic, conducted a psychological evaluation of T.S. pursuant to the juvenile court's referral. Dr. Daniel Hrinko, an independent forensic psychologist, also conducted a psychological evaluation of T.S. Both prepared reports summarizing their evaluations and setting forth their opinions and conclusions.

### **1. Amenability Hearing**

{¶ 7} On May 15, 2023, the juvenile court conducted an amenability hearing to determine whether T.S.'s case should be transferred to the general division for

criminal prosecution as an adult. C.J.'s father was the sole witness to testify on behalf of the State; Hrinko was the sole witness to testify on behalf of T.S.

**a. Evidence Presented by the State**

**i. Testimony by Victim's Father**

{¶ 8} C.J.'s father testified that, in August 2022, C.J. was a "regular 13-year-old." He indicated that C.J. had graduated from Valley View Boys School as the valedictorian of his class and was scheduled to attend St. Edward High School and play football. He stated that his family knew T.S.'s family "through the neighborhood" and had not had any prior issues with them.

{¶ 9} When asked to describe C.J.'s injuries, C.J.'s father testified, "He got shot a lot in the stomach. I think that they said he severed one of the main arteries, a piece of his lung, three broken ribs, large intestine severed, a broken arm bone. He had a fracture of the spine, one of his vertebrae." He stated that C.J. also has a hernia and permanent scarring from bullet wounds. C.J.'s father indicated that C.J. underwent seven surgeries, was hospitalized for more than two months, had a breathing tube for two weeks and wore a colostomy bag for four months. He stated that C.J. continues to suffer from PTSD and paranoia, is now home schooled, does not like leaving his room and can never play football again.

{¶ 10} In addition to C.J.'s father's testimony, the State presented photographs of C.J.'s injuries and a copy of Williams' report. T.S. stipulated to the admissibility of Williams' report but stated that he disagreed with its conclusions. The other exhibits were admitted without objection.

## **ii. Williams' Report**

{¶ 11} In her psychological evaluation report, Williams set forth her opinions and findings regarding T.S.'s family history, developmental and social history, academic performance, medical history, mental health, mental status, substance use, psychological testing and "forensic considerations."

{¶ 12} The sources of information Williams used in formulating her opinions included (1) a clinical and forensic interview of T.S. on May 5, 2023; (2) an email consultation with Gianna Ligon, investigative officer, on May 5, 2023; (3) a telephone consultation with Jane Petty, a social worker at Applewood Centers, Inc. ("Applewood") who provided services to T.S. in the juvenile detention center, on May 5, 2023; (4) a risk-sophistication-treatment inventory assessment ("RSTI") and a structured assessment of violence risk in youth ("SAVRY") conducted on May 5, 2023; (5) a telephone conversation with T.S.'s mother on May 8, 2023 and (6) her review of various documents, including (a) journal entries and other court records relating to the case; (b) a juvenile evaluation referral from the probation department; (c) certain school records from 2022-2023, including an individualized education program ("IEP") from February 2023 and an evaluation team report ("ETR") from November 2022; (d) an Ohio youth assessment system report ("OYAS report") dated April 13, 2023; (e) medical records from Bellefaire JCB (2011 to 2014) and OhioGuidestone (2016 to 2021); (f) a juvenile justice mental health project preliminary assessment dated August 15, 2022; (g) a complaint filed by CCDCFS in July 2018 relating to T.S. and his siblings; (h) the police report in this case and (i) a

history of charges and continuum history reported in the juvenile court's iCase system. Williams indicated that additional records had been requested from the Cleveland Metropolitan School District and the Cleveland Clinic (Fairview Hospital) but had not been received prior to the completion of her evaluation.

{¶ 13} Williams stated that T.S. had been residing in the juvenile detention center since August 16, 2022 and was on Level 1 of the behavior management program. Referencing a March 2023 adjustment summary report, Williams reported that while in the detention center, T.S. had “refrained from fights but was the victim of an assault.” She indicated that staff members at the detention center were reportedly divided regarding their view of T.S. Some described T.S. as “cooperative and respectful”; others stated that he was “disrespectful,” that he needed constant redirection and that he struggled to comply with the rules of the facility.

{¶ 14} Before he was remanded to the juvenile detention center, T.S. lived with his mother. Williams reported that in 2018, the Cuyahoga County Division of Family Services (“CCDCFS”) filed a complaint against T.S.’s mother for physical abuse of two of T.S.’s siblings and that the children were placed under court-ordered protective supervision until January 2020. Williams indicated that there was also a substantiated case of physical abuse of T.S. by his father in 2022. T.S.’s mother and father reportedly had a significant history of domestic violence, which T.S. witnessed. He also witnessed domestic violence between his mother and stepfather.

**{¶ 15}** According to the medical records and mental health assessments Williams reviewed, T.S. had “an extensive history of fire-setting” beginning at age 3, which resulted in the family moving multiple times. Williams reported that hospital records also indicated that T.S. had historically “displayed significant behavioral issues with physical aggression towards others” and engaged in property destruction and animal cruelty. According to Williams, T.S.’s mother denied that T.S. was aggressive to anyone in her home and denied accounts of animal cruelty. T.S.’s mother “did not endorse any recent behavioral issues in the home other than self-harm” and denied any history of T.S. being absent without permission.

**{¶ 16}** Williams reported that T.S. told her that he “gets along” with both of his parents. With respect to his mother, T.S. said, “When I was growing up what she did to me was detrimental but for the most part it is alright now.”

**{¶ 17}** Williams indicated that T.S. had described his friends as “negative” because they “do drugs and drink” and indicated that one friend was “court-involved.” T.S. denied any gang involvement and stated that he smoked marijuana daily. Aside from a charge of criminal trespass that had not yet been adjudicated, this case was T.S.’s first involvement with the juvenile justice system.

**{¶ 18}** With respect to T.S.’s intellectual ability and academic performance, Williams reported that T.S. was in the 9th grade when he was remanded to the juvenile detention center and that he had qualified for special education services since 2014. Williams stated that T.S. initially qualified for special education services due to posttraumatic stress disorder (“PTSD”) and attention deficit hyperactivity

disorder (“ADHD”) but that his 2022 ETR indicated that he was eligible for special education services for emotional disturbance.

**{¶ 19}** Referring to the results of intellectual testing administered in connection with T.S.’s November 2022 ETR, Williams indicated that T.S. had an IQ of 89 in the 23th percentile, in the average range, and that he scored in the 12th percentile, in the low-average range, for reading.

**{¶ 20}** Williams stated that while T.S.’s “intellectual functioning was always in the average range when compared to typical peers, his behavior difficulties were significant.” She described “numerous disruptive behaviors” T.S. had reportedly exhibited when he was in the third grade and stated that in 2012, T.S. was allegedly involved in pulling the fire alarm at school; that he was, “at that time,” suspended multiple times for leaving class without permission, fighting and cussing at teachers and that he had been expelled from school in the first or second grade. Although Williams’ report provides little specific information regarding T.S.’s behavior in school during his later elementary school or middle school years, Williams indicated that in his 2022 ETR, his team noted that T.S. continued to express thoughts of hurting himself and to “demonstrate inappropriate types of behavior or feelings under normal circumstances that have a negative effect on his educational progress.” Williams reported that T.S.’s mother had also expressed concerns regarding T.S.’s comprehension during his 2023 OYAS evaluation.

**{¶ 21}** With respect to T.S.’s mental health, Williams reported that T.S. had been receiving mental health services through Applewood while at the juvenile



detention center; had current diagnoses of ADHD, PTSD and major depressive disorder and was taking three psychiatric medications for these conditions. Williams stated that while at the juvenile detention center, “the severity of [T.S.’s] self-injury escalated,” resulting in hospitalization and three blood transfusions. She noted, however, that Miss Petty, a licensed social worker in the detention center, expressed concerns that because the hospital allowed T.S. full visitation privileges while he was in the hospital, including allowing his mother to visit, it may have “inadvertently reinforced his behaviors to pursue hospitalization rather than staying in the [juvenile detention center].” According to Petty, the hospital determined that T.S.’s self-injury was “not mental health in nature but behavioral.”

**{¶ 22}** Williams reported that T.S.’s past “documented diagnoses” included disruptive behavior disorder, PTSD (since age 6), major depressive disorder and ADHD (since age 3) and that T.S. had had “an extensive history of behavioral health assessments in the community with limited interventions.” Williams noted that, over the years, T.S. had “some contact” with OhioGuidestone, Cleveland Christian Home, MetroHealth, Applewood, Signature Health, Bellefaire and the Tapestry program but that the medical records she obtained showed “mental health assessments without follow up ongoing services.” T.S.’s mother confirmed that T.S. “had contact” with all of these agencies but stated that the contact was “intermittent,” “all school-based services” and that she could not remember the “details” of any services provided. According to T.S.’s mother, “obstacles always interfered with T.S. receiving ongoing care,” e.g., providers stated that fire-setting

was not their “specialty area,” T.S. was put on waitlists or T.S. was prescribed trials of psychiatric medications that made him “zone out,” so they were discontinued. Williams reported that T.S. was referred for specialty assessments for fire-setting (in 2011) and neurology (in 2014) but that his mother did not follow up on the referrals. T.S.’s mother could not identify any providers with which T.S. had been involved over the last two years and Williams noted that there was “no documentation” of T.S. receiving “any mental health services” after 2016, prior to his remand to the juvenile detention center.

**{¶ 23}** Williams stated that during her evaluation of T.S., T.S. “endorsed some symptoms of depression or anxiety,” “endorse[d] experiencing nightmares every night” and “acknowledged chronic suicidal ideation” but did not identify “active suicidal or homicidal plans or intent.” Based on her evaluation and the historic information available to her, she suggested the following psychiatric diagnoses for T.S.: conduct disorder, childhood-onset; ADHD; PTSD; major depressive disorder; and cannabis use disorder, severe, in early remission, in a controlled environment. Williams further opined that T.S. “does not meet criteria for Intellectual Development Disorder” and that “while he has mental health diagnoses, he does not suffer severe psychiatric disturbance that would impair reality testing.”

**{¶ 24}** With respect to “forensic considerations,” Williams set forth her “findings” on “three key transfer factors” as follows:

- *Risk for Violence*: High. [T.S.] was in the high range when considering future antisocial or violent acts toward community members.
- *Sophistication Maturity*: High. [T.S.] demonstrated the development of personal autonomy and self-determination. He has the capacity to make decisions with reasonable, sound judgment. He is aware of his emotions. In consideration of the current offenses, [T.S.] is using his sophistication and maturity in primarily antisocial ways.
- *Treatment Amenability*: Low. [T.S.'s] score in this area produced a low estimate that he could obtain a positive treatment outcome.

(Emphasis in original.)

{¶ 25} Williams explained that T.S.'s results on the SAVRY indicated “a high estimate for future violence” based on (1) the nature of the pre-adjudicated charges at issue, i.e., the offenses are “F1 and F2 offenses and include multiple serious acts of violence with a firearm,” (2) historical risk factors, i.e., T.S.'s “history of physical aggression towards people and animals, property destruction, fire-setting, . . . school behavior infractions” and “history of inconsistent school achievement,” (3) social/contextual risk factors, i.e., associating with delinquent or antisocial peers and poor coping ability, and (4) individual/clinical risk factors, i.e., problems with anger management, attitudes that condone crime or violence, low empathy and substance abuse issues. Williams noted, however, that the fact that T.S.'s first court involvement occurred at age 15 was a positive factor.

{¶ 26} Williams testified that on the sophistication-maturity subscale of the RSTI, T.S. scored in the 88th percentile — the “high offender range” as compared with other juvenile offenders. Williams explained:

This construct can have two different meanings in the juvenile justice population. These skills can be used toward prosocial goals as a favorable and positive attribute; however, when these attributes are used for delinquent or criminogenic purposes, sophistication and maturity become a distinct liability. On a subscale capturing a youth's level of autonomy, [T.S.] was in the high range, reflecting that he has begun to develop a sense of himself as an independent person. This high score indicates that [T.S.] has some internal locus of control (the belief that outcome of his action is a result of his own ability) and ability to consider potential consequences in a larger framework. He has developed decision-making skills including cost-benefit analysis, or the ability to weigh the consequences of different outcomes ahead of the action. [T.S.] has a limited ability to manage and regulate emotions to attain goals. He is aware of the wrongfulness of crimes and understands behavioral norms. Taking into consideration probable cause was found for the instant offenses, [T.S.] is displaying a higher level of sophistication and maturity and using these emerging skills in a criminogenic manner.

{¶ 27} With respect to amenability to treatment, Williams stated that T.S. scored in the 57th percentile — the “low offender range” as compared with other juvenile offenders. Williams stated that T.S.’s classification in the “low offender range” was based on the fact that T.S. had “significant behavioral issues at a young age that essentially were untreated outside of sporadic school-based counseling” and had problems adhering consistently to rules and expectations in school with multiple suspensions. She noted, however, T.S. had shown “some limited advancement” in the juvenile detention center’s behavioral management program and that although “adherence to his special management plan ha[d] been inconsistent,” T.S. had shown “some ability to manage emotions appropriately to achieve goals.” Williams further observed that T.S.’s “motivations for additional

interventions cannot be determined, as he has shown variable consistency,” and his “behavioral issues may be impacted by a lack of consistent family involvement.”

**b. Evidence Presented by T.S.**

**i. Hrinko’s Testimony and Report**

{¶ 28} Hrinko was the sole witness to testify on behalf of T.S. He testified regarding the opinions set forth in his report, a copy of which was introduced into evidence along with a copy of his CV.<sup>1</sup> As stated in his report, Hrinko’s opinions were based on (1) an interview of T.S. conducted on November 23, 2002; (2) an interview of T.S.’s mother on November 23, 2022; (3) a juvenile adjudicative competence interview; (4) an interview with Keara Mullen, a social worker with the Alternative Disposition Division of the Cuyahoga County Public Defender’s Office; (5) results of a SAVRY assessment and Jesness Inventory-Revised testing and (6) his review of various documents, including (a) the prosecutor’s file for the case, (b) records obtained from Petty regarding T.S.’s treatment at the juvenile detention center, (c) an ETR for T.S. and (d) medical records from University Hospitals, the Cleveland Clinic and MetroHealth.

{¶ 29} Hrinko testified that he first reviewed the discovery in the case, then interviewed T.S. and his mother. He testified that, during his interview with T.S., T.S. “painted a picture of a youth in a situation that was unsettling without any real security, confidence or stability” and that T.S. “viewed his childhood as a generally

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<sup>1</sup> Hrinko’s CV and report were admitted into evidence, without objection.

unhappy and relatively traumatic point in his life.” Hrinko reported that T.S. described his father “in generally positive terms, but did acknowledge that his father was sometimes less than ideal,” and described his mother “as having her own problems and often making statements such as, you know, I wish you were dead or were never born and things like that.” He indicated that T.S. acknowledged that he had had difficulties in school, had struggled with math and English and had received special education services due to behavior issues, anger management issues and ADHD. T.S. indicated that he had been suspended twice the prior year for “horse playing around with friends” but had completed the 8th grade and had been scheduled to attend the Rhodes Career Center when he was remanded to the juvenile detention center.

**{¶ 30}** T.S. told Hrinko that in December 2021, after his family moved from Cleveland Heights to the west side of Cleveland, he began experiencing significant problems in the neighborhood. T.S. described incidents in which he was bullied, threatened, assaulted and “terrorized” by a “gang” in front of his younger siblings, including incidents in which guns were waved or pointed at him. T.S. told Hrinko that his friends smoke marijuana with him but do not “commit any criminal activities” and that none had a history of carrying guns, being in juvenile detention or being on probation. T.S. told Hrinko that after his mother’s most recent boyfriend died after being shot in March 2022, T.S. went through his belongings and found a gun. Hrinko reported that T.S. had been charged with criminal trespassing on

July 7, 2022, for “being in a house he wasn’t supported to be in,” but otherwise had no prior court involvement.

**{¶ 31}** Hrinko indicated that he used two assessments in evaluating T.S.: (1) the SAVRY — a structured interview that guides the interviewer, using his or her professional, clinical judgment, in reviewing various historical, social/contextual, individual/clinical and protective factors to assess the risk an individual may pose to others — and (2) the Jesness Inventory-Revised — a “scientifically supported” standardized test of 160 true/false statements designed to assess the responsiveness of juveniles of various personality styles to “factors that speak directly to whether or not treatment opportunities may be of benefit.”

**{¶ 32}** Based on the results of the SAVRY, Hrinko opined that, at that time, T.S.’s risk for ongoing violent behavior was moderate to high. He indicated that with respect to historical factors, he rated T.S. high in history of violence, history of self-harm, exposure to violence in the home and poor school achievement and rated him moderate in history of nonviolent offending, history of childhood maltreatment, exposure to parental caregivers with criminal behaviors and disruption in early childhood care. He stated that he rated T.S. low in past compliance and supervision, primarily because T.S. had never been placed on court supervision in the community or offered significant intervention services for possible remediation of his difficulties. With respect to social/contextual risk factors, Hrinko rated T.S. high in peer delinquency, stress and coping skills, poor parental management, lack of personal/social support and disorganization and criminality within his community.

He rated T.S. moderate in peer rejection. With respect to individual/clinical factors, Hrinko rated T.S. high in use of substances, difficulty with attention and hyperactivity and low interest or commitment to school and moderate as to negative attitudes on support of violence as an option, risk-taking due to impulsivity, pattern of reacting with anger, difficulty with empathy with others or remorse and poor compliance with the attempts of his mother to intervene in his behaviors. Hrinko indicated that no protective factors, i.e., factors that, if present, tend to reduce the risk of violence, were present.

**{¶ 33}** Hrinko stated that the ratings reflected that “basically” T.S. was “living in a situation where there are a lot of negative influences around him.” Hrinko noted, however, that social/contextual factors, individual/clinical factors and protective factors could change and that it was “possible that [T.S.’s] risk could be reduced significantly with significant changes.” He explained:

In this situation you’re looking at the quality of the family relationships. So if family relationships are significantly changed through a process such as intensive family therapy or substitute family environments, group homes, you know, foster families, these can quickly be changed.

The criminality of a neighborhood can be changed by the nature of the address where they live.

And then the nature of peer relationships can deal with the idea of peer rejection, so significant changes can occur within six months to a year in all of those factors should the proper resources be put into place. . . . So if things changed dramatically regarding address, family structure, peer relationships, then a review of these factors in a year could produce a significantly lower score.



**{¶ 34}** With respect to the results of the Jesness Inventory-Revised, Hrinko testified that T.S.'s responses indicated that "he has many commonalities with . . . known groups of individuals some of which were very criminal, many of which are not," that he was "likely to be dissatisfied with himself and when in uncomfortable situations he was likely to prefer a passive escape by isolating himself from those stressful situations," that he was "someone who is likely to be depressed, feels misunderstood and may blame himself for difficulties inappropriately," that "[h]e tends to have problems in relationships finding himself being lonesome and dislikes fighting, aggression or conflicts" and that "when offered . . . an opportunity to flee or fight, he would generally prefer to flee as much as possible." He further noted that there was no indication that T.S. had "a high commitment to values of criminal behavior," engaged in "immature decision-making or childish ways of thinking" or "chooses aggression as a primary coping skill" but stated that "[T.S.] is likely to choose what he believes is his best path even if it might mean involving breaking the rules of society." As Hrinko described T.S., "He's the one that if someone else says, let's go do this, he may go along as a passive way of least resistance" but "[t]hrough it all," is "likely to have high levels of anxiety and uncertainty."

**{¶ 35}** Hrinko observed that T.S. was "suspicious of others," had issues with trusting others — particularly persons of authority — and that he was "slow to engage in therapeutic relationship[s]," but stated that he believed that "over time" there was "a good probability that [T.S.] will make use of those opportunities as he learns the concept of a trusting relationship."

**{¶ 36}** Hrinko stated that he attempted to administer the Minnesota Multiphastic Personality Inventory, which he described as “the gold standard for personality and mental health problems,” to T.S., but that T.S.’s reading comprehension was “beneath the threshold” necessary for valid results.

**{¶ 37}** With respect to his interview with T.S.’s mother, Hrinko reported that T.S.’s mother indicated that T.S. was “having significant behavioral problems at a very early age including setting fires around the age[s] of 3 and 5” and that his “behaviors . . . continued episodically since then.” According to Hrinko, T.S.’s mother stated that she found T.S. “very frustrating, difficult to handle at times” and that because she was dealing with her own problems, including anxiety, depression and PTSD, it was difficult for her to handle “a difficult child.” T.S.’s mother also provided information regarding T.S.’s father that suggested that T.S. might have “an overly optimistic view of his father . . . overlooking many negative qualities and . . . focusing on some idealized positive experiences.” She confirmed that T.S. had witnessed domestic violence in the home.

**{¶ 38}** With respect to prior mental health diagnoses for T.S., Hrinko testified that the medical records reflected that T.S. had been previously diagnosed with PTSD, depression, anxiety and ADHD but that there were no indications of any diagnoses “involv[ing] things like psychotic episodes, hallucinations, [or] delusions.” He reported that although T.S. was prescribed medication for ADHD when he was very young, his mother discontinued use of the medication because she felt it had a negative effect on him. There was no indication that T.S. was prescribed

any other medication for his conditions prior to his remand to the juvenile detention center.

**{¶ 39}** Hrinko indicated that, based on his review of the medical records, T.S.'s mother "quite often took him to therapy, completed an assessment, [and] treatment recommendations were made," but that "there were no indications of ongoing follow-through of intensive therapy." He stated that T.S. denied any involvement with mental health counseling prior to being placed in juvenile detention and that, aside from some reported in-school counseling of which there appeared to be few in any records, "[T.S.] tended to be assessed, addressed, and then kind of dropped off the radar."

**{¶ 40}** Hrinko testified that, in addition to the significant behavior issues T.S.'s mother described, the records reflected that, beginning in kindergarten, T.S. was "very hyper," had difficulties in school and was eventually identified as a student with an emotional disturbance.

**{¶ 41}** Hrinko reported that T.S. had a history of self-harming, which included banging his head against the wall, cutting and a suicide attempt on his 14th birthday. This behavior continued at the juvenile detention center. In October 2022, T.S. ingested hand soap in an apparent suicide attempt and, in March 2023, T.S. had "a whole series of self-injurious behavior" that "seemed to be cluttered around" the date of the probable cause hearing. Hrinko indicated that such behaviors are "often associated with high levels of emotional stress with a lack of coping skills, a lack of supports, and someone who feels like they have no option but

to hurt themselves as a way of making sense out of his world.” He indicated that it is “a very distorted but a way of coping until he develops alternative coping skills.”

{¶ 42} Hrinko testified that in reviewing the available records, he found no evidence of treatment services ever having been provided to T.S. that would have had a reasonable likelihood of successfully addressing the problems he was experiencing. Hrinko explained:

When he was very young and attention deficit was a concern, rather than having family therapy, individual therapy and medications, there were very little services, possibly supportive counseling in school to deal with school behaviors.

As he got older when self-injurious behaviors became apparent and his mother spoke about knowing about them at the age of 14 . . . there was no real evidence of her or anyone else taking this youth who is smoking marijuana and cutting himself due to the emotional stress and getting help for that.

Q. So when he’s young there’s the lack of follow-through and then as he gets older there’s no evidence that supports that there was treatment?

A. Not of a nature of treatment that would be reasonably likely to have a significant impact and deal with these issues.

{¶ 43} Hrinko reported that although the records reflected that in 2016, T.S. was assessed in school “for educational purposes,” he “didn’t see any real mental health treatment records” after 2013.

{¶ 44} Hrinko testified that at the detention center, T.S. had been diagnosed with PTSD, major depressive disorder and ADHD for which he was prescribed medication. With respect to the treatment T.S. was receiving at the juvenile detention center, Hrinko reported that, based on his conversation with Mullen and

his review of records provided by Petty, treatment at the juvenile detention center was focused on coping with and adapting to detention and supporting T.S. following his incidents of self-harm — not intensive long-term therapy services designed to address his past traumas or “fundamental functioning problem.” Hrinko indicated that, early on in his detention, T.S. was reportedly “very anxious, very nervous and had difficulty focusing on providing basic historical information,” but that, as he spent time at the detention center, he began to adapt to his situation and “became more stable and workable” — as evidenced by his ability to have “a good long interview” with Hrinko and as confirmed by Petty’s observations that T.S. was “doing well” and making progress. Although T.S. reportedly had difficulties in conflicts with peers when he first entered the juvenile detention center, including both being bullied and being a bully, such conflicts had been “reduced.” Hrinko stated that this suggested a willingness and ability on the part of T.S. to move forward with therapeutic services should the next level of services become available.

**{¶ 45}** Based on his evaluation, Hrinko offered the following “forensic conclusions” relevant to the juvenile court’s decision whether to transfer T.S. to adult court. He opined that “[t]here are no barriers to transfer based solely on maturity,” i.e., that there were “no indications of impairment in his cognitive capabilities” and that, with respect to emotional maturity, “all indications suggested that he is in a similar level of maturity of others his age.”

**{¶ 46}** He indicated, however, that there was “clear evidence” that T.S. had “a serious mental illness” that has “a significant impact on his functioning.” Hrinko

noted that T.S. had been “identified as emotionally disturbed by the school,” had been diagnosed with ADHD and PTSD and that T.S.’s “problems” with mood, behavior and anger, “difficulty coping with emotions” and self-injurious behavior “all point to problems that would be considered a mental illness.” Hrinko stated that he did not “get into specific diagnoses” as a matter of practice because “there’s no real correlation between diagnosis and legal questions.”

{¶ 47} With respect to T.S.’s “dangerousness” and whether he could be rehabilitated, Hrinko opined that T.S.’s problems, albeit serious, were treatable and that there was a reasonable probability that, within the time period available to the juvenile court, “appropriate treatment modalities” would “likely . . . have a significant impact to improve his ability to fix many of those problems and become a much healthier and more functioning person.” He indicated that although T.S.’s SAVRY score was “very high,” “if you look at the dynamic factors . . . the same services that will help him with [the] clinical problems of his mental illness will also contribute to reducing his risk based upon those variable factors.” Hrinko further opined that “given . . . that the Department of Youth Services has an adequate level of security to protect the community from him, . . . the juvenile system does have the resources to adequately treat his mental illness and to provide for the safety of the community.”

{¶ 48} As to what an appropriate treatment plan for T.S. might look like, Hrinko stated that T.S. would need to be in a secure environment with 24-hour, 7-day-a-week controlled supervision. He would also need individual and group

therapy, opportunities to role model and develop healthy, trusting relationships and psychiatric medication to help him manage some of his symptoms. Hrinko opined that “[a] residential or similarly structured program lasting a minimum of 24 months” would have “a reasonable chance of . . . helping [T.S.] make the changes he needs to make to reduce his risk and improve his overall functioning.” He stated that, to his knowledge, such treatment programs were not available in the adult criminal system but that ODYS has “a broader range of options,” including facilities that are “focused on treatment of various kinds of specific difficulties” and the option to contract with outside agencies to provide necessary services. Hrinko indicated that although there were “no guarantees,” in his opinion, “if [T.S.] was given the opportunity to participate in [these] kinds of services, . . . there is a more likely than not probability that he will benefit, will improve and do well.”

## **ii. Mullen’s Report**

**{¶ 49}** In addition to Hrinko’s testimony, report and CV, T.S. introduced a copy of an undated report from Mullen, a social worker in the Alternative Disposition Division of the Cuyahoga County Public Defender’s Office. The State stipulated to the admissibility of Mullen’s report but stated that it “disagree[d] with the findings.”

**{¶ 50}** Mullen identified the purpose of her report as providing “supplementary information about [T.S.] to offer an inclusive understanding of his life up until this point in time.” Based on her review of relevant records, Mullen described T.S.’s “unstable” home life growing up (including intermittent contact

with his father, verbal abuse, aggression, physical violence and CCDCFS involvement), his history of behavioral concerns and educational difficulties and his mother's difficulties in parenting T.S. and lack of follow up on recommended interventions.

**{¶ 51}** Mullen stated that T.S. had experienced and “continues to struggle with the effects of long-term mental illness complicated by lifelong emotional neglect and abuse” that “have never been appropriately addressed” and sought to explain why T.S. should remain in the juvenile court system where he could receive restoration and rehabilitation services. Mullen opined that a “systemic failure” and “chronic . . . neglect” resulted in T.S. not receiving “crucial treatment” for ongoing, documented behavioral, mental health and educational concerns both due to CCDCFS's failure to “identify a child with chronically untreated mental illness who needed urgent intervention” when it was involved with the family from 2018-2020 and T.S.'s mother's failure to follow up with mental health and school interventions.

As Mullen described it:

Unable to get away from the ongoing domestic violence that plagued the household, between his mother and sisters but also between his mother and her partners, [T.S.] was raised in a chaotic environment without learning how to manage the emotions that arose from that constant state of overwhelm. . . . Without therapeutic support, he internalized [his mother's verbal abuse] and the other interpersonal violence he has witnessed his entire life and for which he has never learned healthy skills he can use to cope.

**{¶ 52}** Mullen claimed that in the juvenile detention center — the first time T.S. had ever been away from the “toxic environment” in which he grew up — T.S.



was beginning to learn coping and life skills. She stated that “[w]hile he has a long road ahead of him,” T.S. was “slowly building the foundations of a mental health recovery practice in the [juvenile detention center] with the help of his therapist and other trusted adults.” Mullen asserted that T.S. “needs the juvenile justice system to continue to intervene in his life” and provide “the age specific mental health services he desperately has needed and will continue to need.” Mullen requested, on behalf of T.S.’s defense team, that the case remain in juvenile court so that T.S.’s “ongoing critical needs” could “continue to receive the attention they require.”

### **c. The Juvenile Court’s Amenability Determination**

{¶ 53} At the conclusion of the amenability hearing, the juvenile court stated that it would take the matter under advisement and, after reviewing all of the reports submitted as evidence, rule by journal entry. On May 18, 2023, the juvenile court issued a journal entry in which it set forth its findings as follows:

The Court finds after a full investigation, including a mental examination of said child made by a duly qualified person, and after full consideration of the child’s prior juvenile record, school record, efforts previously made to treat and rehabilitate the child, the nature and severity of the offense, the age, physical, and mental condition of the victim as effected by the matter, and other matters of evidence, that there are reasonable grounds to believe that the child herein is not amenable to care or rehabilitation with[in] the juvenile system.

The Court considered the relevant factors in favor of transfer pursuant to R.C. 2152.12(D) and makes the following findings:

- (1) The victim of the act charged suffered physical or psychological harm, or serious economic harm, as a result of the alleged act.

(5) The child had a firearm on or about the child's person or under the child's control at the time of the act charged, the act charged is not a violation of section 2923.12 of the Revised Code, and the child, during the commission of the act charged, allegedly used or displayed the firearm, brandished the firearm, or indicated that the child possessed a firearm.

(7) The results of any previous juvenile sanctions and programs indicate that rehabilitation of the child will not occur in the juvenile system. The child has not had prior juvenile sanctions. But the child has had community or school based access to and contact with the following agencies throughout his life going back to age three: Ohio Guidestone, Cleveland Christian Home, MetroHealth, Applewood, Signature Health and Bellefaire. The child failed to benefit from any prior service referrals either through failure of family to follow up on assessments, failure to show for appointments, and/or child was non compliant with any school based counseling service.

(8) The child is emotionally, physically, or psychologically mature enough for the transfer.

(9) There is not sufficient time to rehabilitate the child within the juvenile system.

The Court considered the relevant factors against transfer pursuant to R.C. 2152.12(E), and makes the following findings:

(5) The child previously has not been adjudicated a delinquent child.

**{¶ 54}** The juvenile court then transferred the case to the general division for further proceedings.

### **B. Proceedings in the General Division**

**{¶ 55}** Once in the general division, a Cuyahoga County Grand Jury indicted T.S. on four counts related to the August 15, 2022 shooting: one count of attempted murder in violation of R.C. 2923.02/2903.02(A) (Count 1), one count of felonious

assault in violation of R.C. 2903.11(A)(1) (Count 2), one count of felonious assault in violation of R.C. 2903.11(A)(2) (Count 3) and one count of tampering with evidence in violation of R.C. 2921.12(A)(1) (Count 4). The attempted murder and felonious assault counts included one- and three-year firearm specifications and a forfeiture of weapon specification. The tampering with evidence count included a one-year firearm specification and forfeiture of weapon specification. T.S. initially pled not guilty to all charges.

**{¶ 56}** On October 20, 2023, the parties reached a plea agreement. In accordance with the plea agreement, T.S. pled guilty to an amended count of attempted murder with a one-year firearm specification and a forfeiture of weapon specification (amended Count 1) and Count 4 as charged, i.e., tampering with evidence with a one-year firearm specification and forfeiture of weapon specification.<sup>2</sup> In exchange for his guilty pleas, the remaining counts were nolle.

**{¶ 57}** On October 26, 2023, the trial court sentenced T.S. to an aggregate prison sentence of 14 years to 19 years and six months as follows: On amended Count 1, the trial court sentenced T.S. to one year on the firearm specification to be served prior to and consecutive to a sentence of 11 years to 16 years, six months on

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<sup>2</sup> The parties further agreed, as part of the plea agreement, that T.S. had a firearm on or about his person or under his control while committing the offense charged and displayed the firearm, brandished the firearm, indicated he possessed the firearm or used the firearm to facilitate the offense; T.S. would have no contact with the victim; T.S. would pay restitution in an amount to be determined; the sentence imposed would be a mandatory prison sentence; the case was not subject to reverse bindover and that it would be recommended that T.S. be sentenced to consecutive sentences on the two counts with a minimum aggregate sentence of five years and nine months.

the base offense. On Count 4, the trial court sentenced T.S. to one year on the firearm specification to be served prior to and consecutive to a sentence of 12 months on the base offense. The trial court ordered that the sentences on the two counts be served consecutively.<sup>3</sup> The trial court also imposed postrelease control.

{¶ 58} T.S. appealed, raising the following sole assignment of error for review:

The juvenile court abused its discretion when it transferred [T.S.’s] case for criminal prosecution, without sufficient credible evidence of non-amenability, in violation of R.C. 2152.12(B); the Fifth and Fourteenth Amendments to the United States Constitution; and Article I, Section 16 of the Ohio Constitution; *State v. Nicholas*, 171 Ohio St.3d 278, 2022-Ohio-4276, 217 N.E.3d 745, ¶ 3.

## II. Law and Analysis

{¶ 59} Few, if any, determinations are more significant in the life of an accused juvenile offender than whether he or she will be tried in an adult court. *See, e.g., State v. Smith*, 2022-Ohio-274, ¶ 21 (“The transfer hearing implicates far more significant issues than the venue or forum of trial; it serves as a vehicle by which a child offender is deprived of the rehabilitation and treatment potential of the juvenile-justice system.”), quoting *State v. Aalim*, 2017-Ohio-2956, ¶ 73 (O’Connor, C.J., dissenting). Because of the “tremendous consequences” following a decision that a child must lose the protections of the juvenile system and face trial as an adult,

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<sup>3</sup> Although neither party raised the issue, we note that there is an error in the trial court’s October 26, 2023 sentencing journal entry. The sentencing journal entry states: “Counts #1, #2 to run consecutive.” T.S., however, was sentenced on Counts 1 and 4; Count 2 was nolle. The trial court correctly imposed consecutive sentences on Counts 1 and 4 at the sentencing hearing. This error could, therefore, be remedied by a nunc pro tunc entry. However, given our resolution of T.S.’s assignment of error, it is moot.

a bindover proceeding — a “critically important” stage in juvenile proceedings — must “measure up to the essentials of due process and fair treatment.” *Kent v. United States*, 383 U.S. 541, 560-562 (1966); see also *In re D.M.*, 2014-Ohio-3628,

¶ 11.

**{¶ 60}** As the Ohio Supreme Court stated in *Smith*,

Ohio juvenile law is organized around the tenet that children who are charged with acts that would be felonies if committed by adults must be recognized by courts as children when adjudicating and determining the consequences to be imposed on them if they are found to have committed those acts. In the statutory scheme for juvenile justice, “[i]nstead of ‘defendants,’ children are ‘respondents’ or simply ‘juveniles’; instead of a trial, children receive ‘hearings’; children are not found guilty, they are ‘adjudicated delinquent’; and instead of sentencing, children’s cases are terminated through ‘disposition.’” *State v. Hanning*, 89 Ohio St.3d 86, 89, 728 N.E.2d 1059 (2000). Legislatures and courts, including this court, have recognized that the special interests involved in juvenile cases cannot be adequately addressed by the adult criminal-justice system, but they have also recognized that juveniles accused of crimes must be afforded the same procedural-due-process protections as adult criminal defendants . . . .

“Juvenile law and criminal law are not synonymous,” *State v. Hand*, 149 Ohio St.3d 94, 2016-Ohio-5504, 73 N.E.3d 448, ¶ 13[.] . . . “[T]he very purpose of the state juvenile code is ‘to avoid treatment of youngsters as criminals and insulate them from the reputation and answerability of criminals,’” *id.* at ¶ 19, quoting *In re Agler*, 19 Ohio St.2d 70, 80, 249 N.E.2d 808 (1969). Stated another way, the juvenile-justice system must provide for accountability; yet it must also meet society’s need to secure its future through its youth. Thus, the juvenile-justice system must hold juveniles accountable for their actions and, whenever possible, provide them with opportunities for learning and growth toward a better path.

*Smith* at ¶ 1-2.

**{¶ 61}** As set forth in R.C. 2152.01(A), the “overriding purposes” for juvenile dispositions are “to provide for the care, protection, and mental and physical

development of children . . . , protect the public interest and safety, hold the offender accountable for the offender’s actions, restore the victim, and rehabilitate the offender.” These purposes are to be achieved “by a system of graduated sanctions and services.” *Id.* “We should respect those stated statutory purposes when examining, applying, and, when necessary, interpreting the statutes for juvenile bindovers for prosecution in adult court.” *Smith* at ¶ 2.

{¶ 62} To that end, R.C. Ch. 2151 and 2152 are to be “liberally interpreted and construed” “[t]o provide judicial procedures” through which their provisions are “executed and enforced” and in which “the parties are assured of a fair hearing, and their constitutional and other legal rights are recognized and enforced.” R.C. 2151.01; 2152.01(C). “To ensure that orders are ‘reasonably calculated to achieve the overriding purposes’ of the statutes that govern the juvenile-justice system, R.C. 2152.01(B), juvenile courts must evaluate the particular facts and circumstances of each case and discern the particular problems and needs of the juvenile appearing before them.” *In re D.R.*, 2022-Ohio-4493, ¶ 15. “A juvenile court’s ability to individually assess and treat juvenile offenders is a key element to maintaining fairness in our juvenile-justice system. So, too, is shielding juveniles from carrying the consequences and stigma of their juvenile delinquency into adulthood.” *Id.* at ¶ 5.

{¶ 63} It is against this backdrop that we consider the issues raised in this appeal.

### **A. T.S.’s Guilty Pleas in Adult Court Did Not Waive His Right to Appeal the Juvenile Court’s Amenability Determination**

{¶ 64} Before we turn to the merits of T.S.’s assignment of error, we first address the State’s contention that T.S. waived his right to appeal the juvenile court’s amenability determination by entering guilty pleas to various offenses after he was bound over to adult court. The State asserts that when a defendant enters a guilty plea, he or she “waive[s] all appealable errors that may have occurred unless those errors are shown to have precluded [the defendant] from entering a knowing and voluntary plea,” quoting *State v. Slater*, 2023-Ohio-608, ¶ 12 (8th Dist.), and that a guilty plea also “waives [a] waivable hearing like probable cause or amenability,” citing *State v. Powell*, 2021-Ohio-200, ¶ 55 (4th Dist.).

{¶ 65} *Slater* did not involve a transfer from juvenile court to adult court. In that case, this court held that the defendant waived his statutory right to a speedy trial (but not his constitutional right to a speedy trial) and his claims of ineffective assistance of counsel by pleading guilty to various offenses. *Slater* at ¶ 12-14, 54-58. In *Powell*, the Fourth District held that a juvenile defendant waived a claim that the juvenile court’s probable cause finding was not supported by sufficient evidence, a claim of ineffective assistance of counsel (based on counsel’s alleged failure to adequately prepare for the probable cause hearing) and any errors in juvenile court’s failure to appoint a criminal investigator, denial of a motion to suppress and its colloquy regarding the juvenile’s waiver of amenability hearing when he entered guilty pleas in adult court after bindover. *Powell* at ¶ 37-56. This case is different.

{¶ 66} In *State v. D.T.*, 2024-Ohio-4482 (8th Dist.), this court rejected a similar argument and held that a defendant’s guilty pleas in adult court did not preclude the court from considering the defendant’s argument that the juvenile court had transferred his case to adult court without sufficient credible evidence of nonamenability. *Id.* at ¶ 70-80.

{¶ 67} As we explained in that case:

[E]rrors related to deficiencies in the juvenile court’s amenability determination are very different from a challenge to the factual or evidentiary basis for a juvenile court’s probable-cause determination. Such defects in the juvenile court’s bindover proceedings do not relate to an offender’s factual guilt. While a defendant, when entering a guilty plea in adult court, admits committing the acts that constituted the offenses to which he pleads guilty (and which were the subject of the juvenile court’s probable-cause determination), he does not make any admission as to his competency during prior juvenile proceedings or that he was not amenable to care or rehabilitation in the juvenile justice system.

*Id.* at ¶ 76.<sup>4</sup>

{¶ 68} In *In re D.T.*, this court distinguished another of our decisions, *State v. Pickens*, 2024-Ohio-951 (8th Dist.). *In re D.T.* at ¶ 77-78. In *Pickens*, the defendant appealed his convictions for involuntary manslaughter and improper discharge of a firearm at or into habitation or school after his case was transferred to adult court and he pled guilty to the offenses. *Pickens* at ¶ 1, 4-5. On appeal, the defendant challenged the sufficiency of the evidence that supported the juvenile court’s probable-cause determination. *Id.* at ¶ 14. This court held that there could

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<sup>4</sup> The court determined that it did not need to decide and, therefore, did not decide whether alleged deficiencies in the juvenile court’s amenability determination are the type of errors that would deprive the adult court of jurisdiction. *Id.* at ¶ 80.



be no reversible error in the juvenile court’s probable-cause determination because the defendant’s subsequent admissions through his guilty pleas “subsume[d] the quantum of evidence necessary to the probable-cause determination.” *Id.* at ¶ 15.

The court explained:

The probable-cause determination is a preliminary, sufficiency determination requiring the state to present evidence that raises more than mere suspicion of guilt — but that need not rise to the level of beyond a reasonable doubt. *In re E.S.*, Slip Opinion No. 2023-Ohio-4273, at ¶ 23.

The effect of a guilty plea is a complete admission of guilt to the offense to which the plea is entered, which goes well beyond proof beyond a reasonable doubt if a guilty plea is to be quantified. Crim.R. 11(B)(1). . . . Pickens entered his guilty plea and the effect of that plea is a complete admission to committing the acts that constituted the offenses to which he pleaded guilty.

Pickens’s guilty plea to improper discharge of a firearm into a habitation . . . was based on the same facts underlying the probable-cause determination. . . . His guilty plea effectively concedes there was sufficient evidence of his committing acts that would constitute the felony offenses, . . . and as a result, there can be no error with the juvenile court’s factual determination. *See, e.g., State v. Griggs*, 103 Ohio St.3d 85, 2004-Ohio-4415, 814 N.E.2d 51, ¶ 19 (guilty plea subsumes an admission of guilt, and therefore, the guilty plea is an admission to committing the underlying acts on which the conviction is based).

*Pickens* at ¶ 16-18.

{¶ 69} In *Pickens*, as in this case, the State argued that a defendant bound over to the general division cannot raise any nonjurisdictional error relating to that bindover on appeal after pleading guilty to the offenses for which the defendant was bound over. *Id.* at ¶ 14, 19. This court, however, rejected the State’s attempt to seek “a definitive, bright-line rule that an offender waives all nonjurisdictional errors in

the juvenile proceedings after the case is transferred to the general division if the offender pleads guilty to the felony offenses,” concluding that it “need not reach that broad of a conclusion” in resolving the case. *Id.* (“[W]e do not take any position on the applicability of that general principle [i.e., that pleading guilty waives all nonjurisdictional defects in the proceedings that occur prior to the plea] to other aspects of an appeal involving bindover and guilty plea.”), citing *Jordan*, 2023-Ohio-311 (8th Dist.) (after a discretionary bindover and pleading guilty, defendant unsuccessfully challenged amenability determination on appeal); see also *State v. Carter*, 2023-Ohio-4310, ¶ 1, 26 (8th Dist.) (vacating convictions entered following a guilty plea where the juvenile court’s amenability determination was not supported by the preponderance of the evidence); *State v. Walker*, 2024-Ohio-729, ¶ 26-27 (8th Dist.) (declining to address the issue of whether defendant waived his right to challenge the sufficiency of the evidence supporting the juvenile court’s amenability finding by entering guilty pleas in adult court because it found the juvenile court’s amenability finding was “supported by sufficient information in the record”); *State v. Poole*, 2012-Ohio-5739, ¶ 1, 8-26, fn. 1 (8th Dist.) (when addressing defendant’s claims that juvenile court should not have ordered his discretionary transfer to the general division because (1) the juvenile court failed to state its specific reasons in support of bindover on the record and (2) the juvenile court abused its discretion by finding the amenability factors set forth in R.C. 2152.12(D) justified his transfer, noting “[a] guilty plea made following a bindover or transfer from the juvenile division does not waive the right to appeal the bindover

or transfer”). *But see State v. Moore*, 2022-Ohio-460, ¶ 24 (4th Dist.) (By pleading guilty to offenses in adult court, defendant waived alleged nonjurisdictional errors challenging the juvenile court’s exercise of its discretion finding probable cause that defendant committed offenses and concluding that defendant was not amenable to rehabilitation within the juvenile justice system.).

{¶ 70} Further, as this court pointed out in *In re D.T.*, there are other considerations as well. *In re D.T.*, 2024-Ohio-4482, at ¶ 79 (8th Dist.). The Ohio Supreme Court has held that a defendant may not immediately appeal a juvenile court’s order transferring jurisdiction of his or her case to adult court but must wait to appeal any error stemming from the order until it becomes a final judgment, following conviction and sentencing, in the general division. *See In re D.H.*, 2018-Ohio-17, ¶ 1, 22; *In re Becker*, 39 Ohio St.2d 84 (1974), syllabus. We do not believe a defendant must choose to go to trial, rather than enter a guilty plea, in order to preserve his or her right to challenge errors in the juvenile court’s amenability determination. *See Smith v. May*, 2020-Ohio-61, ¶ 29 (“Juveniles facing bindover to an adult court maintain the right to object to a juvenile court’s noncompliance with bindover procedures and the right to appeal from any error in the ordinary course of law.”) (Emphasis deleted.)).

{¶ 71} Accordingly, T.S.’s guilty pleas in adult court do not preclude us from considering the issues he has raised with the juvenile court’s amenability determination in this case.

### **A. Juvenile Court’s Decision to Transfer T.S.’s Case to General Division**

{¶ 72} In his sole assignment of error, T.S. contends that the juvenile court abused its discretion when it transferred his case to adult court “without sufficient credible evidence of non-amenable.”

{¶ 73} Ohio’s juvenile courts possess “exclusive jurisdiction over children alleged to be delinquent for committing acts that would constitute crimes if committed by an adult.” *In re M.P.*, 2010-Ohio-599, ¶ 11, citing R.C. 2151.23(A); *State v. Mays*, 2014-Ohio-3815, ¶ 17 (8th Dist.). Under certain circumstances, however, if a child is old enough and is alleged to have committed an act that would be a felony if committed by an adult, the juvenile court may transfer a case, or bind a juvenile over, to the general division where the juvenile may be tried as an adult and face criminal sanctions. R.C. 2152.10; 2152.12; 2151.23(H); *In re M.P.* at ¶ 11.

{¶ 74} There are two types of transfers in Ohio’s juvenile justice system: discretionary transfers and mandatory transfers. *State v. Nicholas*, 2022-Ohio-4276, ¶ 3. With discretionary transfer, the juvenile court has the discretion to transfer to adult court certain juveniles who do not appear to be amenable to care or rehabilitation within the juvenile system and who appear to be a threat to public safety. *Id.*; R.C. 2152.12(B). Mandatory transfer removes discretion from juvenile court judges and requires the transfer of a juvenile to adult court. *Nicholas* at ¶ 3; R.C. 2152.12(A). This case involves discretionary transfer.

**{¶ 75}** R.C. 2152.12(B) governs discretionary transfer of cases from juvenile court to the general division. After a complaint has been filed charging a child with an offense that would be a felony if committed by an adult, a juvenile court may transfer jurisdiction of the case to the general division if it finds, following a hearing, that (1) the child was 14 years of age or older at the time of the act charged in the complaint, (2) probable cause exists that the child committed the act charged in the complaint and (3) “[t]he child is not amenable to care or rehabilitation within the juvenile system, and the safety of the community may require that the child be subject to adult sanctions.” R.C. 2152.12(B)(1)-(3).

**{¶ 76}** If the juvenile court finds that the age and probable cause elements are met, the juvenile court must order a “full investigation” into “the child’s social history, education, family situation, and any other factor bearing on whether the child is amenable to juvenile rehabilitation, including a mental examination of the child by a public or private agency or a person qualified to make the examination.” R.C. 2152.12(C); Juv.R. 30(C).

**{¶ 77}** After the investigation is complete, the juvenile court holds an amenability hearing to determine whether to exercise its discretion to transfer a juvenile to adult court under R.C. 2152.12(B). In making its determination, the juvenile court must consider all “relevant factors,” including specific factors identified in R.C. 2152.12(D) and (E), that weigh in favor of and against a transfer. R.C. 2152.12(B)(3), (D), (E).

**{¶ 78}** The specific statutory factors “in favor of a transfer” the juvenile court must consider in determining whether to transfer a child’s case to adult court include whether:

- (1) The victim of the act charged suffered physical or psychological harm, or serious economic harm, as a result of the alleged act.
- (2) The physical or psychological harm suffered by the victim due to the alleged act of the child was exacerbated because of the physical or psychological vulnerability or the age of the victim.
- (3) The child’s relationship with the victim facilitated the act charged.
- (4) The child allegedly committed the act charged for hire or as a part of a gang or other organized criminal activity.
- (5) The child had a firearm on or about the child’s person or under the child’s control at the time of the act charged, the act charged is not a violation of section 2923.12 of the Revised Code, and the child, during the commission of the act charged, allegedly used or displayed the firearm, brandished the firearm, or indicated that the child possessed a firearm.
- (6) At the time of the act charged, the child was awaiting adjudication or disposition as a delinquent child, was under a community control sanction, or was on parole for a prior delinquent child adjudication or conviction.
- (7) The results of any previous juvenile sanctions and programs indicate that rehabilitation of the child will not occur in the juvenile system.
- (8) The child is emotionally, physically, or psychologically mature enough for the transfer.
- (9) There is not sufficient time to rehabilitate the child within the juvenile system.

R.C. 2152.12(D). The specific statutory factors “against a transfer” the juvenile court must consider in determining whether to transfer a child’s case to adult court include whether:

- (1) The victim induced or facilitated the act charged.
- (2) The child acted under provocation in allegedly committing the act charged.
- (3) The child was not the principal actor in the act charged, or, at the time of the act charged, the child was under the negative influence or coercion of another person.
- (4) The child did not cause physical harm to any person or property, or have reasonable cause to believe that harm of that nature would occur, in allegedly committing the act charged.
- (5) The child previously has not been adjudicated a delinquent child.
- (6) The child is not emotionally, physically, or psychologically mature enough for the transfer.
- (7) The child has a mental illness or intellectual disability.
- (8) There is sufficient time to rehabilitate the child within the juvenile system and the level of security available in the juvenile system provides a reasonable assurance of public safety.

R.C. 2152.12(E). R.C. 2152.12(B)(3) requires that the juvenile court record “indicate the specific factors that were applicable and that the court weighed.” R.C. 2152.12(B)(3). R.C. 2152.12 is silent with regard to how a juvenile court should weigh the factors in R.C. 2152.12(D) and (E). *State v. Ramsden*, 2021-Ohio-3071, ¶ 23 (12th Dist.); *State v. Marshall*, 2016-Ohio-3184, ¶ 15 (1st Dist.). “There is no requirement that every factor must be ‘resolved against the juvenile so long as the totality of the evidence supports a finding that the juvenile is not amenable to

treatment.” *State v. Bryant*, 2024-Ohio-1192, ¶ 16 (2d Dist.), quoting *State v. Haynie*, 1995 Ohio App. LEXIS 517, \*13 (12th Dist. Feb. 13, 1995). “No one factor controls over any other.” *Jordan*, 2023-Ohio-311, at ¶ 8, 11 (8th Dist.) (“No one factor under R.C. 2152.12(D) or (E) is outcome determinative.”).

**{¶ 79}** If the juvenile court determines that transfer is warranted, the juvenile court must state the reasons for transfer on the record and in the order of transfer. R.C. 2152.12(I); Juv.R. 30(G). A juvenile court’s decision to exercise its discretion to transfer a juvenile to adult court must be supported by a preponderance of the evidence. *Nicholas*, 2022-Ohio-4276, at ¶ 29, 35. The State bears the burden of persuasion when it asks the juvenile court to transfer a case to adult court. *Id.* at ¶ 27. “Thus, the facts presented to the juvenile court with respect to a discretionary transfer must persuade the court that the juvenile is not amenable to care or rehabilitation in the juvenile system.” *Id.*; see also *Walker*, 2024-Ohio-729, at ¶ 21 (8th Dist.).

**{¶ 80}** Because an amenability hearing is “a broad assessment of individual circumstances,” “inherently individualized and fact-based” and because R.C. 2152.12 is silent with regard to how a juvenile court should weigh the relevant factors, the decision regarding amenability rests in the discretion of the juvenile court. *In re M.P.*, 2010-Ohio-599, at ¶ 14; *State v. Gregory*, 2020-Ohio-5207, ¶ 32 (2d Dist.). We, therefore, review a juvenile court’s amenability decision for abuse of discretion. *In re M.P.* at ¶ 14.



**{¶ 81}** A court abuses its discretion “when a legal rule entrusts a decision to a judge’s discretion and the judge’s exercise of that discretion is outside of the legally permissible range of choices.” *State v. Hackett*, 2020-Ohio-6699, ¶ 19; *see also Johnson v. Abdullah*, 2021-Ohio-3304, ¶ 35 (describing the “common understanding of what constitutes an abuse of discretion” as “a court exercising its judgment, in an unwarranted way, in regard to a matter over which it has discretionary authority”). A decision is an abuse of discretion when it is unreasonable, arbitrary or unconscionable. *See, e.g., State v. Brusiter*, 2023-Ohio-3794, ¶ 10 (8th Dist.); *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). A decision is “unreasonable” when “no sound reasoning process” supports that decision. *State v. Ford*, 2019-Ohio-4539, ¶ 106, quoting *AAAA Ents. v. River Place Community Urban Redevelopment Corp.*, 50 Ohio St.3d 157, 161 (1990). A decision is “arbitrary” if “made ‘without consideration of or regard for facts [or] circumstances.’” *State v. Beasley*, 2018-Ohio-16, ¶ 12, quoting *Black’s Law Dictionary* (10th Ed. 2014).

**{¶ 82}** When applying an abuse-of-discretion standard, this court may not substitute its judgment for that of the lower court. *State v. McFarland*, 2022-Ohio-4638, ¶ 21 (8th Dist.). Ordinarily, given the discretion afforded the juvenile court by the legislature in determining a juvenile’s amenability to the juvenile justice system, so long as the juvenile court considers the appropriate statutory factors and there is some rational, factual basis in the record to support the juvenile court’s findings when applying those factors, the juvenile court’s amenability determination

cannot be reversed. *State v. Nicholson*, 2022-Ohio-2037, ¶ 206 (8th Dist.); *Jordan*, 2023-Ohio-311, at ¶ 11 (8th Dist.). However, this is not such a case.

{¶ 83} Here, the juvenile court found, with respect to the factors that favor a transfer, that R.C. 2152.12(D)(1), (5), (8) and (9) applied, i.e., that the victim suffered physical or psychological harm or serious economic harm as a result of the alleged act, that T.S. had a firearm on or about his person or under his control at the time of the act charged and allegedly used or displayed the firearm, brandished the firearm, or indicated that he possessed a firearm during the commission of the act charged, that T.S. was emotionally, physically or psychologically mature enough for transfer and that there was not sufficient time to rehabilitate T.S. within the juvenile system. With respect to R.C. 2152.12(D)(7) — the results of any previous juvenile sanctions and programs indicate that rehabilitation of the child will not occur in the juvenile system — the juvenile court found that T.S. had “not had prior juvenile sanctions,” but that he had “had community or school based access to and contact with” multiple agencies “throughout his life going back to age three” and “failed to benefit from any prior service referrals either through failure of family to follow up on assessments, failure to show for appointments, and/or child was non compliant with any school based counseling service.” With respect to the factors against a transfer, the juvenile court found that only R.C. 2152.12(E)(5) applied, i.e., that T.S. had not been previously adjudicated a delinquent child. Based on these findings,<sup>5</sup> the juvenile

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<sup>5</sup> Aside from its discussion of T.S.’s “community or school based access” to services in connection with R.C. 2152.12(D)(7), the juvenile court did not identify or discuss the facts or evidence that supported its findings as to any of the amenability factors, did not

court concluded that there were “reasonable grounds to believe” that T.S. was “not amenable to care or rehabilitation with[in] the juvenile system.”

{¶ 84} T.S. argues that the juvenile court abused its discretion in transferring T.S. to adult court because (1) the juvenile court was “flatly incorrect in the application of several of the factors and its findings were contrary to the evidence established by the record,” (2) the juvenile court failed to consider “important context” with respect to T.S.’s use of a gun in the commission of the act charged under R.C. 2152.12(D)(5); (3) the juvenile court failed to explain why the time the juvenile court had left in its jurisdiction was insufficient to rehabilitate T.S., why ODYS, an SYO sentence or other less restrictive options “would not work” for T.S. or why T.S. was considered sufficiently “mature” to be transferred, (4) the juvenile court’s conclusion that “more juvenile rehabilitation was not possible” was “unreasonable,” “arbitrary” and “at odds with the principles and purposes of juvenile sentencing” and (5) transferring T.S. to adult prison “on this record at this juncture” harms T.S. and “does not protect the public interest.” T.S. also contends that the trial court abused its discretion because it did not provide an adequate explanation of its bindover decision — either at the amenability hearing or in its transfer order — sufficient to allow this court to conduct a meaningful appellate review of that decision. T.S. asserts that “there is no way of discerning or determining,” based on the record and the absence of reasoning in the juvenile

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explain its evaluation of, or the weight given to, any of the factors it considered and made no specific finding that the factors in favor of a transfer outweighed the factors against a transfer.

court's journal entry, "what weight the court applied to certain factors over others" and "whether more weight was assigned for an impermissible purpose."

**{¶ 85}** The State responds that "the juvenile court did not abuse its discretion in finding [T.S.] not amenable to juvenile court sanctions" because (1) the State presented "competent, credible evidence" to support the juvenile court's findings, including "sufficient evidence" to find R.C. 2152.12(D)(1), (5), (7), (8) and (9) applied and that R.C. 2152.12(E)(7) did not apply, (2) the juvenile court was not required to consider "additional context" in evaluating R.C. 2152.12(D)(5), (3) the juvenile court was not limited to consideration of the factors enumerated in R.C. 2152.12(D) and (E) and was authorized to consider "any other relevant factors" in favor of a transfer in determining whether to transfer T.S. to adult court and (4) the juvenile court's transfer order was "sufficient for a meaningful review" because it "listed" the "specific factors" under R.C. 2152.12(D) and (E) "that were applicable and that the court weighed."

**{¶ 86}** As an initial matter, we note that the juvenile court failed to make two specific findings required under R.C. 2152.12(B)(3) prior to transferring the case to the general division. As stated above, to support a discretionary transfer under R.C. 2152.12(B), R.C. 2152.12(B)(3) requires that the juvenile court find that "[t]he child is not amenable to care or rehabilitation within the juvenile system, and the safety of the community may require that the child be subject to adult sanctions."

**{¶ 87}** In this case, the juvenile court made no findings at the conclusion of the amenability hearing. Instead, it indicated that it would take the matter under

advisement and, after reviewing all of the reports admitted as exhibits, rule by journal entry. In its May 18, 2023 journal entry setting forth its amenability determination and transferring the case to adult court, the juvenile court stated, “The court finds . . . that *there are reasonable grounds to believe that* the child herein is not amenable to care or rehabilitation with[in] the juvenile system” — not that it had, in fact, been persuaded, based on the evidence presented, that T.S. was “not amenable to care or rehabilitation in the juvenile system.” (Emphasis added.) Although we do not believe that “magic words” are required under R.C. 2152.12(B)(3), we do believe that there is a meaningful difference between finding that there are “reasonable grounds to believe” a fact or circumstance exists and finding that a fact or circumstance, in fact, exists.<sup>6</sup> Further, the juvenile court made no finding that “the safety of the community may require that [T.S.] be subject to adult sanctions.” For this reason alone, we could reverse the juvenile court’s amenability determination.

**{¶ 88}** However, even if the juvenile court had made the requisite findings under R.C. 2152.12(B)(3), we would reach the same result. Following a thorough review of the record, we conclude that the evidence presented at the amenability hearing does not support a finding, by a preponderance of the evidence, that T.S. was not amenable to care or rehabilitation within the juvenile system.

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<sup>6</sup> The “reasonable grounds to believe” language was found in an earlier version of the statute. See former R.C. 2151.26. Effective 2002, R.C. 2151.26 was amended and recodified as R.C. 2152.12. *Smith*, 2022-Ohio-274, at ¶ 39, fn. 5, citing Am.Sub.S.B. No. 179, 148 Ohio Laws, Part IV, 9447, 9549.

{¶ 89} Let there be no doubt. We acknowledge that the offenses with which T.S. has been charged are very serious. It is alleged that when he was 15 years old, T.S. shot a 13-year-old child, causing him serious, life-long injuries. But the seriousness of T.S.’s alleged offenses cannot be the only consideration in determining whether T.S. was properly bound over to adult court.<sup>7</sup> Were it otherwise, the General Assembly would have made such cases subject to mandatory transfer.

{¶ 90} We take our responsibility reviewing cases involving the discretionary transfer of juvenile cases to adult court very seriously. In the past decade, Cuyahoga County has consistently bound over more children to adult court than any other Ohio county. In 2023, nearly one-third of all children transferred to adult court in the State of Ohio were in Cuyahoga County. In 2023, Cuyahoga County transferred more children to adult court than Franklin, Hamilton and Summit counties combined. Most of those children — over 90 percent in the last decade and over 91 percent in 2023 — are black. Nearly all of them are male. DataOhio, *Youth Transferred to Adult Court*, <https://data.ohio.gov/wps/portal/gov/data/view/youth-transferred-to-adult-court> (accessed Sept. 4, 2024). These statistics are

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<sup>7</sup> We are aware that Ohio courts have repeatedly recognized that “[t]he more serious the offense, the less amenable the juvenile will be to rehabilitation in the juvenile system.” *State v. Johnson*, 2015-Ohio-96, ¶ 43 (8th Dist.), quoting *State v. West*, 2006-Ohio-3518, 856 N.E.2d 285, ¶ 24 (4th Dist.), citing *State v. Watson*, 47 Ohio St.3d 93, 96 (1989). However, this is little more than a recognition that “a juvenile who has committed a major felony such as murder may require more time for rehabilitation than a juvenile whose offense is less serious.” *Johnson* at ¶ 43, quoting *West* at ¶ 25.

concerning — particularly given the consequences of a transfer order. As the Ohio Supreme Court has stated,

Research has shown that transferring a youth to adult court can have long-lasting negative impacts, including increased recidivism, a higher likelihood of physical and sexual abuse throughout their stay in prison, a significantly increased risk of suicide, inability to access appropriate education, and being subjected to harmful isolation. Research recommends transferring youth to the adult court system rarely.

Ohio Supreme Court, *Youth in Adult Court* (2018), <https://www.supremecourt.ohio.gov/JCS/CFC/resources/juvenileBenchCards/8youthAdultCourt.pdf> (accessed Sept. 4, 2024) [<https://perma.cc/ZUU7-C6KK>], citing Children’s Law Center, *Falling Through the Cracks: A New Look at Ohio Youth in the Adult Criminal Justice System* (2012), available at [nicic.gov/library/026406](http://nicic.gov/library/026406) (reporting that youth who are bound over and sentenced to prison are five times more likely to be sexually assaulted and two times more likely to be physically attacked by other inmates or injuries by staff, that youth in adult prisons are eight times more likely to commit suicide than youth held in juvenile detention centers and that, on average, children who are prosecuted as adults are 34 percent more likely to commit additional felonies than children who commit similar offenses but remain in the juvenile system).

**{¶ 91}** We recognize that a juvenile court has discretion to decide how much weight to give to each factor under R.C. 2152.12(D) and (E) and that a disagreement with the way in which the juvenile court weighed the relevant factors is not a reason to reverse the court’s discretionary decision regarding transfer to adult court.

*Carter*, 2023-Ohio-4310, at ¶ 26 (8th Dist.), citing *Jordan*, 2023-Ohio-311, at ¶ 10, 12 (8th Dist.). However, although our review is deferential, our role is not to simply “rubber stamp” the juvenile court’s amenability determination. We must conduct a meaningful review to ensure that the juvenile court’s amenability determination complies with R.C. 2152.12 and is the product of an accurate, reasoned, individualized assessment of the alleged juvenile offender and his or her particular circumstances as supported by the record. *See, e.g., In re D.T.*, 2024-Ohio-4482, at ¶ 132 (8th Dist.); *Jordan* at ¶ 11 (“Because the [juvenile] court concluded that the R.C. 2152.12(D) factors outweighed the factors considered under R.C. 2152.12(E), appellate review must include analysis and discussion of the totality of that consideration.”).

**{¶ 92}** Courts have reversed discretionary transfers where the record does not support a determination, by a preponderance of the evidence, that a juvenile offender is not amenable to care or rehabilitation within the juvenile system.

**{¶ 93}** In *Nicholas*, 2022-Ohio-4276, for example, the juvenile court transferred jurisdiction over a juvenile offender, Nicholas, to adult court pursuant to R.C. 2152.12(B), where a jury then found Nicholas guilty of aggravated murder and murder for killing his father’s live-in girlfriend when he was 14 years old. *Id.* at ¶ 1, 15-16.

**{¶ 94}** In its journal entry setting forth its amenability determination, the juvenile court made numerous factual findings. As to factors that weighed in favor of transfer, the juvenile court found that the victim suffered physical and



psychological harm, that Nicholas' relationship with the victim facilitated the charged acts and that Nicholas had used a firearm when committing the charged acts. As to factors that weighed against transfer, the juvenile court found that Nicholas had not previously been adjudicated a delinquent child and that he had a mental illness, "most likely Dissociative Identity Disorder." *Id.* at ¶ 14, 41.<sup>8</sup> In concluding that the factors favoring transfer outweighed the factors disfavoring transfer, the juvenile court stressed one finding in particular. The court stated, "In particular, the Court finds that because [ODYS] cannot offer the specific treatment necessary to rehabilitate [Nicholas], the juvenile system cannot provide a reasonable assurance of public safety." *Id.* at ¶ 43. That determination was based primarily on its finding that ODYS "does not have the resources or capability" to treat dissociative-identity disorder, which requires long-term intensive treatment with 24-hour-a-day and 7-day-a-week supervision and support. *Id.* After he was transferred to adult court, a jury found Nicholas guilty of aggravated murder and murder, both with firearm specifications, and was sentenced to life in prison with parole eligibility after 25 full years, plus 3 years of mandatory imprisonment. *Id.* at ¶ 16. Nicholas appealed and the Second District affirmed. *Id.* at ¶ 17-18.

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<sup>8</sup> The juvenile court also found that Nicholas appeared to be "highly intelligent," that he presented to the court "with a level of maturity that belies the circumstances of this matter" and that the court could maintain jurisdiction over Nicholas for six years. The juvenile court "did not distinguish between Nicholas's emotional, physical, and psychological maturity, nor did it state whether it weighed Nicholas's 'maturity' in favor of or against transfer." *Id.* at ¶ 14, 42.

**{¶ 95}** The Ohio Supreme Court accepted jurisdiction and found that the testimony presented during the amenability hearing did not support the juvenile court’s finding regarding ODYS’s inability to treat Nicholas. *Id.* at ¶ 20, 56, 58. As such, it reversed the decision to transfer Nicholas to adult court and remanded the case to the juvenile court for further proceedings. *Id.* at ¶ 58. The Court explained:

The juvenile court’s findings regarding the requirements for treating dissociative-identity disorder and regarding DYS’s capability to meet those requirements are based on the court’s mischaracterization of the testimony . . . and are not supported by evidence in the record. And it was upon those unsupported findings that the court determined that Nicholas was not amenable to care or rehabilitation in the juvenile system. We therefore conclude that the juvenile court’s decision to transfer Nicholas to adult court was not supported by the preponderance of the evidence and that the juvenile court abused its discretion by relinquishing jurisdiction.

*Id.*

**{¶ 96}** The Court also rejected the notion that the State can deny a juvenile access to the rehabilitative goals of the juvenile justice system based on its own failure to make necessary services available. The Court stated that “[t]he question of a juvenile’s amenability to care and rehabilitation in the juvenile system is one of the juvenile’s rehabilitative potential, and it is separate from the question of the services the [S]tate has to offer or the services a juvenile-court judge perceives the [S]tate has to offer.” (Emphasis deleted.) *Id.* at ¶ 54.

**{¶ 97}** Similarly, in *Carter*, 2023-Ohio-4310 (8th Dist.), this court held that the juvenile court abused its discretion by transferring a juvenile’s case to adult court where its finding that there were no other mental health or rehabilitative services in the juvenile system to offer the juvenile was not supported by evidence in the record.

*Id.* at ¶ 22, 26.<sup>9</sup> In that case, Carter was charged with multiple offenses after he and two accomplices robbed a man at a gas station, stealing his gun, phone, car keys and car. *Id.* at ¶ 5-6. At the time of the incident, Carter was 15. *Id.* at ¶ 6. Following an amenability hearing, the juvenile court found, as to the factors against transfer, that Carter had not previously been committed to ODYS and had “an extensive mental health diagnosis,” including unspecified bipolar disorder, but that he was not intellectually disabled. With respect to the factors favoring transfer, the juvenile court found that the victim had suffered physical, psychological or economic harm, that, as of the time of the act charged, Carter was awaiting adjudication or disposition as a delinquent child and was on community control, that Carter was emotionally, physically and psychologically mature enough for transfer, that he had been “offered” services from multiple agencies and the juvenile system did not “have anything left” and that “based on the offenses that [he] had,” there was insufficient time to rehabilitate Carter within the juvenile system,” *Id.* at ¶ 17. The juvenile court further found that the factors in favor of transfer outweighed those against transfer and transferred the case to the general division. *Id.* After he pled guilty to various offenses and was sentenced in adult court, Carter appealed to this court. *Id.* at ¶ 18.

**{¶ 98}** On appeal, Carter argued that “the juvenile court’s nonamenability finding was based on a demonstrably false premise that there were no remaining juvenile court options to hold him accountable and restore and rehabilitate him.”

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<sup>9</sup> The court also found that the juvenile court’s conclusion that the victim suffered economic and psychological harm was not supported by any evidence in the record. *Carter* at ¶ 25.

*Id.* at ¶ 21. This court agreed and found that “the juvenile court’s conclusion that there was nothing left to offer [Carter] in the juvenile court system was not supported by the evidence presented at the amenability hearing.” *Id.* at ¶ 22. The court indicated that although evidence established that Carter had been provided school-based services and community services with multiple agencies while he was attending school, evidence also established that all of the community-based services that had been offered to Carter while he was in the juvenile system (other than a two-day psychiatric hospitalization) had failed, through “no fault” of Carter’s, i.e., requested services were either declined by the providers or never even started. The court concluded that “because the offered services had never even begun, much less been completed, [Carter] could have participated in the services while in the juvenile system if offered the opportunity.” *Id.* at ¶ 22-23. Citing *Nicholas*, 2022-Ohio-4276, the court held that because the juvenile court’s finding that there were no other mental health or rehabilitative services in the juvenile system to offer Carter was unsupported by and contrary to the evidence in the record, “the juvenile court’s amenability determination was not supported by the preponderance of the evidence” and the juvenile court abused its discretion in relinquishing jurisdiction. *Id.* at ¶ 26. The court vacated Carter’s convictions and remanded the case to the juvenile court for further proceedings. *Id.* at ¶ 27. A similar result is warranted here.

**{¶ 99}** We agree that certain of the juvenile court’s findings are not supported by the record. Here, the juvenile court, after considering the R.C. 2152.12(E) factors against transfer, found that only R.C. 2152.12(E)(5) applied, i.e., that T.S. had not

previously been adjudicated a delinquent child. Although the record clearly reflects otherwise, the juvenile court did not find that R.C. 2152.12(E)(7) — “[t]he child has a mental illness or intellectual disability” — also applied. Both Williams and Hrinko reported that, as a resident of the detention center, T.S. was on the mental health caseload; had current diagnoses of ADHD, PTSD and major depressive disorder and was taking multiple psychiatric medications for his conditions. Based on her evaluation, Williams suggested diagnoses of conduct disorder, ADHD, PTSD, major depressive disorder and cannabis use disorder. Although Hrinko did not offer a specific diagnosis, he opined that T.S. “suffer[ed] from significant symptoms of mental illness,” explaining:

Regarding his mental illness, I think there’s clear evidence to suggest that he has a mental illness with behavior problems early on being identified as emotionally disturbed by the school, being diagnosed with Attention Deficit Hyperactivity Disorder at MetroHealth as well as Post-Traumatic Stress Disorder, his depression and anxiety that were both reported by several sources, as well as his own report, and his difficulty coping with emotions as evidenced by his angry outbursts and his self-injurious behavior[.] [A]ll point to problems that would be considered a mental illness.

**{¶ 100}** The State asserts that Williams’ statement that T.S. “did not suffer from severe psychiatric disturbance” was sufficient to support the juvenile court’s finding that R.C. 2152.12(E)(7) did not apply. We disagree. Although a juvenile court is generally permitted to assign whatever weight it chooses to a particular factor — provided it acts reasonably in doing so — and although the fact that T.S. did not suffer from a “severe psychiatric disturbance” might be a reason for giving less weight to that factor, a juvenile court may not reasonably find that a factor does not

apply where uncontroverted, credible evidence shows that it applies or to find that a factor applies where uncontroverted, credible evidence shows that it does not apply. *See, e.g., In re D.T.* at ¶ 118.

{¶ 101} Further, the evidence in the record does not support the juvenile court’s findings that “rehabilitation of the child will not occur in the juvenile system,” R.C. 2152.12(D)(7)), and that “[t]here is not sufficient time to rehabilitate the child within the juvenile system,” R.C. 2152.12(D)(9).

{¶ 102} At the time of amenability hearing, T.S. had just turned 16. Accordingly, the juvenile justice system would have had nearly five years to rehabilitate him. T.S. had no prior adjudications or dispositions in the juvenile court. Before being remanded to the juvenile detention center, he had not been subject to any juvenile sanctions. T.S.’s only prior involvement with the juvenile court involved an unadjudicated charge of criminal trespass.

{¶ 103} Although there is no requirement that a juvenile offender have a “juvenile history” or that “a juvenile first be committed to the [ODYS] before he may be transferred to the general division for trial as an adult offender,” *Bryant*, 2024-Ohio-1192, at ¶ 19 (2d Dist.), quoting *State v. Whisenant*, 127 Ohio App.3d 75, 91 (11th Dist.1998), it is, nevertheless, noteworthy that, prior to this case, T.S. had never been adjudicated a delinquent, had never been “locked up” in ODYS or any other type of secure facility and had never been subject to any other type of “juvenile sanction.”

**{¶ 104}** The juvenile court acknowledges this but, nevertheless, found that transfer was favored and that “rehabilitation will not occur in the juvenile system” because T.S. had had community or school-based “access to” and “contact with” various agencies “throughout his life going back to age three” and had “failed to benefit from any prior service referrals” due to the failure of his family to follow up on assessments and show up for appointments and/or because T.S. was “non compliant with any school based counseling service.” This finding appears to have been the “crux” of the juvenile court’s decision to transfer the case to adult court. *See Nicholas, 2022-Ohio-4276, at ¶ 15.*

**{¶ 105}** There is limited information in the record regarding any school-based counseling T.S. may have been offered and the extent to which T.S. complied with any such services. Hrinko testified that although T.S. had apparently received “some outpatient counseling services provided [in] an in-school setting from places such as Applewood, Beech Brook, Cleveland Christian Home, PEP Tapestry and Berea Children’s Home,” he was “never able to get those records.” Williams likewise stated in her report that she had not received complete medical or school records for T.S. Williams described T.S.’s school-based counseling as “sporadic” and “intermittent” but did not explain why that was the case or describe in any detail what type of school-based counseling was offered or when it was offered. Hrinko testified that, to the extent that T.S. was offered school-based services, those services would have focused primarily on school-based behavioral problems and would not have likely addressed the “fundamental issues” with which T.S. was dealing.

**{¶ 106}** With respect to T.S.’s “access to” other community services, the record reflects that T.S.’s mother first sought mental health services for T.S. at MetroHealth when he was three years old. The record reflects that, in the years that followed, T.S. had intermittent contact with numerous service providers and underwent multiple assessments but received little, if any, substantive treatment. The record reflects that T.S.’s mother consistently failed to follow up on referrals and that she discontinued medication T.S. was prescribed. As Williams described it, “[T.S.] had multiple mental health assessments through the years; however, ongoing services were never consistent, and referrals were not followed up on.” Hrinko described the situation as “[T.S.] tended to be assessed, addressed, and then kind of dropped off the radar.”

**{¶ 107}** Williams reported that there was “no documentation” of T.S. receiving “any mental health services” after 2016 (when T.S. would have been 9), before he was placed in juvenile detention. Hrinko testified that he “didn’t see any real mental health treatment records” after 2013 (when T.S. would have been 6) and that based on his review of the available records, he found no “evidence of treatment services being provided that would have a reasonable likelihood of successfully addressing [T.S.’s] problems at any point in his life.”

**{¶ 108}** T.S.’s supervising social worker from the detention center reported improvements in T.S.’s functioning after his receipt of supportive counseling and medication at the juvenile detention center. Although Hrinko acknowledged that the focus of those services were “on coping with being in detention and . . . the reality



of [T.S.'s] legal situation” rather than “to attempt to deal with his past traumas or fundamental functioning problem,” he indicated that the fact that T.S. “did as well as he did” during his time in juvenile detention “suggests that there is a willingness and an ability to move forward with therapeutic services, so that once the next level of services become available, . . . he will continue his process of delving deeper and deeper into those services.” Hrinko stated that, based on what he had seen, T.S. was “a good candidate for rehabilitation with the services available within the juvenile justice system” and opined that it was “more likely than not” that he could “benefit from treatment services” within the time available in the juvenile justice system. While Williams stated in her report that, based on his score on the RSTI, she believed that T.S. had a low probability of treatment amenability, she explained that that determination was based largely on the fact that T.S. had not completed treatment programs in the past — a fact which she acknowledged was, in large part, not his fault.

**{¶ 109}** As stated by Ohio Supreme Court, “[t]he question of a juvenile’s amenability to care and rehabilitation in the juvenile system is one of *the juvenile’s* rehabilitative potential.” *Nicholas*, 2022-Ohio-4276, at ¶ 54. T.S.’s mother’s failure to “follow up on assessments” for T.S., obtain necessary services for T.S. and ensure T.S. “show[s] up for appointments” is not a reasonable indicator of *T.S.’s* “rehabilitative potential.” A child cannot follow up on treatment recommendations on his or her own. Even putting aside the issue of parental consent required for treatment, issues such as locating an appropriate service provider, establishing a

patient relationship, handling insurance issues, paying for services and securing transportation to appointments are not matters that can be handled by children. The fact that T.S. failed to benefit from prior “*service referrals*” on which his mother failed to follow up — as found by the juvenile court — is not indicative of his rehabilitative potential from *participation and engagement* in services he could receive at ODYS, where access to and receipt of services would not be contingent on the initiative, consent, support and cooperation of adult family members. The State presented no evidence that appropriate services would not be available to treat T.S. if he were to remain in the juvenile justice system or that the security measures in place at ODYS were insufficient to ensure the safety of the community.

{¶ 110} We sustain T.S.’s assignment of error. The juvenile court erred in transferring this case to the general division without making the findings required R.C. 2152.12(B)(3). Further, the record lacks sufficient evidence to support a finding, by a preponderance of the evidence, that T.S. is not amenable to care or rehabilitation within the juvenile system. Accordingly, the juvenile court abused its discretion in relinquishing jurisdiction and transferring the case to the general division for criminal prosecution. *Nicholas* at ¶ 56; *Carter*, 2023-Ohio-4310, at ¶ 26 (8th Dist.).

{¶ 111} We reverse the trial court’s judgment, vacate T.S.’s convictions, vacate the juvenile court’s transfer order and remand the case to the juvenile court for further proceedings.

It is ordered that appellant recover from appellee the costs herein taxed.

The court finds that there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.



EILEEN A. GALLAGHER, PRESIDING JUDGE

MARY J. BOYLE, J., CONCURS;

MICHELLE J. SHEEHAN, J., DISSENTS (WITH SEPARATE OPINION)

MICHELLE J. SHEEHAN, J., DISSENTING:

{¶ 112} Respectfully, I dissent.

{¶ 113} I do not read R.C. 2152.12 as requiring the trial court to make an amenability finding verbatim on the record. While R.C. 2152.12(B) provides that the juvenile court “may transfer the case if the court finds . . . [t]he child is not amenable to care or rehabilitation within the juvenile system, and the safety of the community may require that the child be subject to adult sanctions,” the statute on its face only has two mandatory requirements. R.C. 2152.12(B)(3) provides that “[t]he record shall indicate the specific factors that were applicable and that the court weighed[,]” and R.C. 2152.12(I) provides that “[u]pon the transfer of a case . . . the juvenile court shall state the reasons for the transfer on the record.” There is no mandate from the statute that the R.C. 2152.12(B) language be recited verbatim on the record. The

juvenile court here specifically indicated its consideration of T.S.'s use of a firearm, which relates to issue of the community safety. Therefore, I do not find the omission of the “safety of the community” verbiage to be a reversible error.

{¶ 114} Furthermore, I do not find an abuse of discretion in the juvenile court's finding of nonamenability. “[A] juvenile court's decision to exercise its discretion to transfer a juvenile to adult court must be supported by a preponderance of the evidence,” *State v. Nicholas*, 2022-Ohio-4276, ¶ 35, and we review the juvenile court's amenability determination for an abuse of discretion. *Id.* at ¶ 22. Under the deferential standard of review, “[i]f there is some competent, credible evidence to support the trial court's decision, there is no abuse of discretion.” *Middendorf v. Middendorf*, 82 Ohio St.3d 397, 401 (1998).

{¶ 115} The question of a juvenile's amenability primarily relates to the juvenile's rehabilitative potential. *Nicholas* at ¶ 54. While Hrinko opined that if T.S. was given the opportunity to participate in appropriate services, it is “more likely than not” he will benefit from them, the juvenile court is “entitled to disagree with the opinion of a medical expert and may take into account the severity of the offenses when considering whether a juvenile is mature enough for transfer and whether enough time exists to rehabilitate in the juvenile-justice system.” *State v. Marshall*, 2016-Ohio-3184 (1st Dist.), citing *State v. Johnson*, 2015-Ohio-96, ¶ 40 (8th Dist.), and *State v. Morgan*, 2014-Ohio-5661, ¶ 37 (10th Dist.) (holding that a juvenile court is not bound by an expert opinion).

{¶ 116} Instead, the juvenile court “may assign any weight to expert opinion that it deems appropriate.” *State v. Morgan*, 2014-Ohio-5661, ¶ 37 (10th Dist.), quoting *State v. West*, 2006-Ohio-3518, ¶ 30 (4th Dist.). The State’s expert Williams reported that T.S. scored in the “low offender range” in amenability to treatment. She explained that the low scoring was due to significant behavioral issues at a young age that were untreated outside of sporadic school-based counseling and his problems in adhering consistently to rules and expectations in school. Williams also observed that T.S.’s “motivations for additional interventions cannot be determined.”

{¶ 117} In its decision, the juvenile court referred to its consideration of the expert opinion in the record and indicated the factors in favor of transfer, including a determination that T.S.’s rehabilitation will not occur in the juvenile system and there is not sufficient time to rehabilitate him within the juvenile system. Furthermore, based on Williams’s conclusion that T.S. “did not suffer from severe psychiatric disturbance,” the trial court did not find his mental health issue a relevant factor for its transfer decision. “As long as the court considers the appropriate statutory factors and there is some rational basis in the record to support the court’s findings when applying those factors, we cannot conclude that the [juvenile] court abused its discretion in deciding whether to transfer jurisdiction.” *State v. Blair*, 2017-Ohio-5865, ¶ 40 (5th Dist.), quoting *State v. West*, 2006-Ohio-3518 (4th Dist.). *See also D.M. v. D.M.*, 2017-Ohio-8768, ¶ 47 (6th Dist.).

{¶ 118} “The appellate focus is on the totality of the consideration required under R.C. 2152.12(B)-(E).” *State v. Jordan*, 2023-Ohio-311, ¶ 12 (8th Dist.). My review indicates the trial court considered the appropriate statutory factors and there is some competent, credible evidence to support its nonamenability determination in favor of transfer. I recognize T.S. had an unstable upbringing and his parents failed to follow through with recommended services to address his emotional and behavioral issues. However, under the well-established abuse-of-discretion standard of review in amenability cases, even if we would choose to decide this matter differently, we are not free to substitute our judgment for that of the juvenile court. *Berk v. Matthews*, 53 Ohio St.3d 161, 169 (1990). Consequently, I dissent.