UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2637

September Term, 2014

FREDDIE NICHOLAS PAOLETTI, JR.

v.

STATE OF MARYLAND

Arthur,
Reed,
Eyler, James R.
(Retired, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: August 8, 2016

In 2014, the State's Attorney for Cecil County obtained an indictment charging Freddie Nicholas Paoletti with numerous counts of second-degree and fourth-degree sexual offenses. The alleged offenses had occurred almost 30 years earlier in 1985, a few months after Paoletti had turned 16.

Although Paoletti allegedly committed the offenses when he was still a juvenile, the State charged and tried him as an adult. A jury convicted him of nine counts of second-degree sexual offense. The circuit court sentenced Paoletti to three, consecutive 12-year terms of incarceration and suspended the sentences on the remaining six counts.

Paoletti took a timely appeal.

QUESTIONS PRESENTED

Paoletti presents 11 issues,[1] but we need only decide the first, which we have rephrased as follows: Did the circuit court lack subject-matter jurisdiction to decide the case because Paoletti should have been charged, in the first instance, as a juvenile? We hold that the circuit court lacked subject-matter jurisdiction to try, and eventually to convict, Paoletti as an adult.[2]

[1] In the interest of concision and completeness, we have listed Paoletti's 11 questions in Appendix A to this opinion.

[2] Paoletti did not raise his jurisdictional challenge in the circuit court. Nonetheless, "[t]he issue[] of jurisdiction of the trial court over the subject matter . . . may be raised in and decided by the appellate court whether or not raised in and decided by the trial court." Md. Rule 8-131(a); *see Casey v. Mayor and City Council of Rockville*, 400 Md., 259, 322 (2007) (a court "may render an opinion regarding a question not previously raised where the issue involves the trial court's subject matter jurisdiction over the action"); *County Council of Prince George's County v. Dutcher*, 365 Md. App. 399, 405 n.4 (2001) ("[l]ack of subject matter jurisdiction may be raised at any time, (continued…)

We shall reverse Paoletti's convictions and remand the case to the circuit court for further proceedings consistent with this opinion. We decline to reach the merits of the ten other questions that Paoletti presents.

FACTUAL AND PROCEDURAL BACKGROUND

Because we decide this case on jurisdictional grounds, it is unnecessary to engage in a detailed recitation of the evidence at Paoletti's two-day trial. Suffice it to say that, according to the evidence at trial, Paoletti sexually abused his cousin, N., on multiple occasions during the summer of 1985. N. was seven years old at that time. Although N. disclosed the alleged abuse to a relative when he was 20, he did not complain to the authorities until 2014, when he was 37.[3]

DISCUSSION

Paoletti contests the circuit court's jurisdiction to try him as an adult for the second-degree sexual offense that he allegedly committed as a juvenile. Although Paoletti's brief does not discuss the boundaries between juvenile and circuit court jurisdiction at the time of his alleged offenses, the State, with admirable candor, acknowledges that in 1985, "the juvenile court had exclusive original jurisdiction over a second-degree sexual offense if committed by a person under the age of 18 years at the

including initially on appeal[,]" and "the issue of subject matter jurisdiction need not be raised by a party, but may be raised by a court *sua sponte*").

[3] Some of the evidence at trial suggested that when Paoletti was a child, he had been sexually abused by N.'s father, who was Paoletti's uncle.

time the offense was committed." *See* Md. Code (1974, 1984 Repl. Vol.), § 3-804(d) of the Courts and Judicial Proceedings Article ("CJP 1984").[4]

At the time of Paoletti's alleged offenses in 1985, the juvenile court did have the power to waive its exclusive original jurisdiction over a child who (like Paoletti) was 15 years old or older, so as to permit a criminal prosecution in circuit court. CJP 1984 § 3-817(a). Absent such a waiver, however, a person subject to the exclusive original jurisdiction of the juvenile court could not be prosecuted for a criminal offense committed before he or she reached 18 years of age. *Id.*, § 3-807(a).

In 1994, almost nine years after Paoletti's alleged offenses, the General Assembly added the crime of second-degree sexual offense, committed with force or the threat of force, by a person who was 16 years of age or older, to the list of offenses over which a juvenile court did not have exclusive original jurisdiction. 1994 Md. Laws ch. 641.[5] As a consequence of the 1994 legislation, the State could commence a prosecution in the circuit court against a 16- or 17-year-old child who was alleged to have committed that specific kind of a second-degree sexual offense. The 1994 legislation remained in effect at the time of Paoletti's indictment in 2014 and remains in effect today. *See* Md. Code (1974, 2013 Repl. Vol.), § 3-8A-03(d)(4) of the Courts and Judicial Proceedings Article ("CJP 2013").

[4] As Appendix B to this opinion, we have attached a copy of Title 3, Subtitle 8, of the Courts and Judicial Proceedings as it stood in 1984.

[5] The 1994 legislation is available on the Archives of Maryland Online website, http://aomol.msa.maryland.gov/html/laws.html, which contains the records of the General Assembly and its predecessors from 1635 to the present.

In indicting Paoletti as an adult and proceeding against him in the circuit court, the State evidently contemplated that the current law, as adopted in 1994, applied to the offenses that Paoletti allegedly committed as a 16-year-old youth in 1985. Paoletti's jurisdictional challenge requires us to decide whether the circuit court's power over him is governed by the law at the time of his alleged offenses or by the law at the time of the indictment.

This is a matter of significant import. Under the law in effect in 1985, the 16-year-old Paoletti would have been deemed to have committed a delinquent act, and not to have committed a crime. CJP 1984 § 3-801(k) (defining "delinquent act" as "an act which would be a crime if committed by an adult"). Absent the juvenile court's considered decision to waive its jurisdiction, the proceedings against him would have been civil in nature (*see*, *e.g.*, *In re Victor B.*, 336 Md. 85, 91 (1994)), and Paoletti would not have been subjected to punishment, but would have been afforded treatment, guidance, and rehabilitation. *Smith v. State*, 399 Md. 565, 580-81 (2007). By contrast, because the State charged Paoletti as an adult and succeeded in convicting him of crimes, he is now facing as much as 36 years – effectively the rest of his life – behind bars, for offenses that he allegedly committed before he was an adult.[6]

[6] The passage of time alone does not transform a delinquent act into a crime and divest the juvenile court of jurisdiction. *See In re Saifu K.*, 187 Md. App. 395, 407 (2009) (rejecting the State's argument "that the character of a juvenile offense that could not have been prosecuted in the criminal court because of the juvenile's age when the act was committed could be transformed into a criminal act that the State could prosecute in adult criminal court should the State wait until the respondent turns 21"); *see also* CJP 2013 § 3-8A-05(a) ("[i]f a person is alleged to be delinquent, the age of the (continued…)

In defending the convictions, the State argues that the juvenile court's jurisdiction is controlled by the "law in effect at the time the charging document is filed," not the law in effect when the offense was allegedly committed. At the time of the "charging document" in this case, the 1994 amendment, as expressed in CJP 2013 § 3-8A-03(d)(4), dictated that the juvenile court "does not have jurisdiction over" a "child at least 16 years old" who is alleged to have committed a second-degree sexual offense in violation of Md. Code (2002, 2012 Repl. Vol.), § 3-306(a)(1) of the Criminal Law Article. Therefore, the State concludes that the juvenile court did not have jurisdiction over the charges against Paoletti.

In support of its argument that jurisdiction is controlled by the "law in effect at the time the charging document is filed," the State relies on *In re Appeals Nos. 1022 and 1081*, 278 Md. 174 (1976) ("*In re Appeals*"), and *Parojinog v. State*, 282 Md. 256 (1978). We reject the State's argument, because those cases concern how a juvenile court should proceed when a change of law affects a proceeding over which the juvenile court has exclusive original jurisdiction; they do not concern the situation in this case, in which a change of law has removed a category of cases from the juvenile court's exclusive original jurisdiction and placed them within the circuit court's jurisdiction.

In *In re Appeals*, the defendants were 17-year-old juveniles at the time of their offenses, but 18-year-old adults at the time when the petitions were filed. *See In re Appeals*, 278 Md. at 176. Under former CJP § 3-807(b) (Supp. 1975), the juvenile court

person at the time the alleged delinquent act was committed controls the determination of jurisdiction under this subtitle"); CJP 1984 § 3-805(a) (same).

retained "exclusive original jurisdiction, but only for the purpose of waiving it, over an adult who is alleged to have committed a delinquent act while a child." The juvenile court determined that it was inappropriate to waive its jurisdiction and to permit the cases to proceed as criminal prosecutions in circuit court. *In re Appeals*, 278 Md. at 176. The juvenile court then dismissed the cases, reasoning that former CJP § 3-807(b) precluded it from exercising jurisdiction once it had decided not to waive its jurisdiction. *Id.*

On appeal, the State argued, among other things, that because the alleged offenses had occurred before the effective date of former CJP § 3-807(b), the statute did not apply. *Id.* at 179-80. The Court of Appeals rejected that contention because "the jurisdiction of the juvenile court did not attach until" the filing of the juvenile petitions, which occurred "after the effective date of [former] § 3-807(b)." *Id.* at 180. In other words, *In re Appeals* holds that, in a case over which the juvenile court has exclusive original jurisdiction, it applies the law that is in effect at the time when it acquires its jurisdiction through the filing of a juvenile petition, not the law in effect at the time when the juvenile allegedly committed the offense. *See id. In re Appeals* does not address the effect of a change of law that divests the juvenile court of exclusive original jurisdiction after a juvenile commits an offense, but before the State brings charges.

Parojinog is much like *In re Appeals*, except that the State filed the juvenile petition against Parojinog *before* rather than *after* the effective date of former § 3-807(b). Like the respondents in *In re Appeals*, Parojinog was 18 when the State filed the petition, but 17 when he allegedly committed the delinquent acts. *Parojinog*, 282 Md. at 257-58. The juvenile court eventually waived its jurisdiction (*id.* at 258-59), but not before

ordering Parojinog to pay restitution and to undergo therapy. *Id.* When the State later indicted Parojinog on adult criminal charges, he argued that he was being subjected to double jeopardy because the juvenile court had made a de facto adjudication of guilt and imposed punishment. *Id.* at 259. The Court of Appeals agreed. *Id.* at 262-63.

In reaching its decision, the Court rejected the State's contention that jeopardy could not have attached in the juvenile court because under former § 3-807(b) that court had jurisdiction only to waive it. As in *In re Appeals*, the Court reasoned that "[i]t is the time the petition is filed, not the time of adjudication, which determines the jurisdiction of the juvenile court and the applicability of [sec. 3-807(b)]." *Parojinog*, 282 Md. at 265. In contrast to *In re Appeals*, however, the State had filed Parojinog's juvenile petition *before* former § 3-807(b)'s effective date; therefore, the statute did *not* "divest[]" the juvenile court of jurisdiction to make an adjudication and disposition. *Id.*

Like *In re Appeals*, *Parojinog* concerns the rules that a juvenile court must apply in a case that begins within its exclusive original jurisdiction. Like *In Re Appeals*, *Parojinog* holds that the juvenile court must apply that law that was in effect at the time when it obtained jurisdiction through the filing of the petition, not the law that was in effect at the time of the allegedly delinquent acts or at the time of the adjudication. Neither *In re Appeals* nor *Parojinog* concern the specific problem in this case: which court has subject-matter jurisdiction if the General Assembly removes an offense from the juvenile court's exclusive original jurisdiction after a person has allegedly committed the offense, but before the State brings charges?

In citing *In re Appeals* and *Parojinog* for the proposition that the juvenile court's jurisdiction is controlled by the "law in effect at the time the *charging document* is filed," the State engages in a measure of equivocation. *In re Appeals* and *Parojinog* do not talk about "charging documents"; they talk about juvenile petitions. They talk about juvenile petitions because they are concerned only with determining how a juvenile court must respond to changes in the law in cases within its exclusive original jurisdiction. *In re Appeals* and *Parojinog* say that the juvenile court applies the law in effect when it acquires jurisdiction, which is at the time of the petition, and not at the time of the offense or the time of the adjudication. They say nothing about whether the State may file a "charging document" in circuit court to prosecute a person for an offense that was within the exclusive original jurisdiction of the juvenile court at the time when he or she allegedly committed it.

To address whether the 1994 amendment could divest the juvenile court of jurisdiction over Paoletti's alleged misconduct in 1985 and vest jurisdiction in an adult, criminal court, we look, first, to the principles concerning retroactive legislation. The question of whether a law applies retroactively "ordinarily is one of legislative intent[,]" and "[i]n determining such intent . . . , there is a general presumption in the law that an enactment is intended to have purely prospective effect." *Langston v. Riffe,* 359 Md. 396, 406 (2000) (citation and quotation marks omitted). "In the absence of clear legislative intent to the contrary, a statute is not given retro[a]ctive effect." *Id.* at 406 (citation and quotation marks omitted).

The Court of Appeals adheres to four principles concerning the retroactive application of statutes:

> (1) statutes are presumed to operate prospectively unless a contrary intent appears; (2) a statute governing procedure or remedy will be applied to cases pending in court when the statute becomes effective; (3) a statute will be given retroactive effect if that is the legislative intent; but (4) even if intended to apply retroactively, a statute will not be given that effect if it would impair vested rights, deny due process, or violate the prohibition against *ex post facto* laws.

Pautsch v. Md. Real Estate Comm'n, 423 Md. 229, 263 (2011) (citation omitted); *see id.* (stating that first step is to "determine whether the [General Assembly] intended the statute to have the kind of retroactive effect that is asserted").

We need not consider the second, third, and fourth principles, because it is, at best, ambiguous whether the General Assembly intended the 1994 amendment to operate retroactively.

Section 2 of Chapter 641 of the Laws of 1994 states simply that the legislation "shall take effect October 1, 1994." The language does not expressly state whether the legislation applies to conduct that occurred before October 1, 1994, but that the State does not prosecute until some later date. In fact, one could reasonably interpret the uninformative language to mean that it applies only to conduct that occurs after October 1, 1994. Because the General Assembly did not unambiguously express its intention that the 1994 amendment should apply retroactively to conduct that predated its effective

date, we must presume that it operates prospectively – i.e., that it applies only to conduct that occurs thereafter.[7]

In reaching this conclusion, we are guided by the principle that "a court will, whenever reasonably possible, construe and apply a statute to avoid casting serious doubt upon its constitutionality." *VNA Hospice of Maryland v. Dept. of Health and Mental Hygiene*, 406 Md. 584, 606 (2008) (citation and quotation marks omitted). *See Harryman v. State*, 359 Md. 492, 509 (2000) (reciting principle that "an interpretation which raises doubts as to a legislative enactment's constitutionality should be avoided if the language of the act permits"); *Curran v. Price*, 334 Md. 149, 172 (1994) ("[i]f a statute is susceptible of two reasonable interpretations, one of which would involve a decision as to its constitutionality, the preferred construction is that which avoids the determination of constitutionality").

It would raise serious constitutional questions if the 1994 amendment, as reflected in CJP 2013 § 3-8A-03(d)(4), were construed to apply retroactively to permit the State to punish and imprison a person who would previously have been subject only to civil, remedial measures absent a waiver of the juvenile court's exclusive original jurisdiction.

[7] In contrast to the 1994 amendment, later amendments unambiguously state that they "only apply to *offenses* committed on or after [the effective date] and may not be construed to apply in any way to *offenses* committed before [that date]." 1996 Md. Laws, ch. 632, § 3; 2000 Md. Laws, ch. 288, § 3 (emphasis added). The absence of similar language in the 1994 amendment suggests that the General Assembly might have intended that amendment to apply to offenses that were committed before October 1, 1994, but prosecuted thereafter. On the other hand, in the later legislation, the General Assembly may simply have found a way to unambiguously express the intention that it had held all along. The unambiguous formulation in the later legislation does not eliminate the ambiguity in the 1994 legislation.

See U.S. Const. Art. I, § 1 ("[n]o State shall . . . pass any . . . ex post facto Law"); Md. Decl. of Rts., Art. 17 ("That retrospective Laws, punishing acts committed before the existence of such Laws, and by them only declared criminal, are oppressive, unjust and incompatible with liberty; wherefore, no ex post facto Law ought to be made; nor any retrospective oath or restriction be imposed, or required"). To avoid a potentially unconstitutional construction of CJP 2013 § 3-8A-03(d)(4), we hold that it does not apply to offenses that were allegedly committed before its effective date of October 1, 1994.

As an additional ground for our decision, we rely on the rule of lenity, which "instructs that courts will not interpret a . . . criminal statute so as to increase the penalty that it places on an individual when such an interpretation can be based on no more than a guess as to what [the legislature] intended." *Gardner v. State*, 420 Md. 1, 16 (2011) (citations and quotation marks omitted). It is, at best, ambiguous as to whether the General Assembly, in 1994, intended to authorize serious criminal penalties against persons like Paoletti, who had allegedly committed offenses as juveniles, under a statutory scheme that envisioned only civil, remedial measures unless the juvenile court waived its jurisdiction. Applying the rule of lenity, therefore, we hold that CJP 2013 § 3-8A-03(d)(4) does not apply to offenses that were allegedly committed before its effective date of October 1, 1994.

Because CJP 2013 § 3-8A-03(d)(4) does not apply to offenses that were allegedly committed before October 1, 1994, the statute did not divest the juvenile court of its exclusive original jurisdiction over Paoletti's alleged offenses. Nor did CJP 2013 § 3-8A-03(d)(4) permit the State to pursue criminal charges against Paoletti in circuit

court without a waiver of the juvenile court's jurisdiction. Unless and until the juvenile court waived its jurisdiction, the circuit court lacked subject-matter jurisdiction over the charges against Paoletti.

We realize that it is highly unusual to require a potential criminal proceeding against a middle-aged man to commence in the juvenile court. The unusual nature of the proceeding, however, is a result of the unusual nature of this case. The State is pursuing criminal charges against Paoletti for acts that he allegedly committed more than three decades ago, when, in the contemplation of the law, he was still a child. At the time of the alleged offenses, the juvenile court would have had exclusive original jurisdiction over Paoletti, and the 1994 amendment did not (and more than arguably could not) divest that court of its jurisdiction. The circuit court, therefore, lacked subject-matter jurisdiction to consider and decide the criminal charges against Paoletti.

Because the circuit court lacked subject-matter jurisdiction, the trial and convictions were a nullity. *See Franklin v. State*, 264 Md. 62, 67 (1972). Consequently, constitutional and common-law principles of double jeopardy do not prohibit the State from instituting proceedings against Paoletti in the court that has exclusive original jurisdiction – the juvenile court. *See Tipton v. State*, 8 Md. App. 91, 94-95 (1969) (no double jeopardy as a result of retrial after acquittal by tribunal that lacked jurisdiction to try defendant).[8]

[8] At the close of the State's case-in-chief, the court granted Paoletti's motions for judgment of acquittal on one count of second-degree sexual offense and 10 counts of fourth-degree sexual offense. Because the circuit court trial was a nullity, (continued…)

If the State files a juvenile petition against Paoletti, the juvenile court, upon notice and a hearing, may decide whether to waive its exclusive original jurisdiction. *See* CJP 2013 § 3-8A-06. "'[A] waiver hearing held with respect to an adult who,'" like Paoletti, "'had allegedly committed delinquent acts must be conducted according to the same standards that would have been applicable if the State proceeded against him while still a child.'" *In re Saifu K.*, 187 Md. App. 395, 407 (2009) (quoting *In re Appeals*, 287 Md. at 179). The State may not prosecute Paoletti for his alleged offenses against N. unless the juvenile court has waived its jurisdiction. *See* CJP 2013 § 3-8A-07(d). Because Paoletti is over 21 years of age and is alleged to have committed a delinquent act while he was a child, the juvenile court has exclusive original jurisdiction "only for the purpose of waiving it." *Id.*, § 3-8A-07(d); CJP 1984 § 3-817.[9]

JUDGMENTS OF THE CIRCUIT COURT FOR CECIL COUNTY REVERSED. CASE REMANDED WITH INSTRUCTIONS TO DISMISS THE INDICTMENT AND FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY CECIL COUNTY.

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double jeopardy would not appear to preclude the State from including those offenses in a petition in the juvenile court.

[9] Although all the evidence at trial indicated that the alleged offenses occurred in the summer of 1985, a few months after Paoletti turned 16, Paoletti seizes upon N.'s statement at sentencing that the offenses occurred "over thirty years ago." Because the sentencing occurred on January 15, 2015, Paoletti argues that the offenses may have before 1985, when he was only 15. Under the view that we take of the case, the alleged discrepancy is inconsequential. Under the law that was in effect in both 1984 and 1985, the juvenile court could waive its exclusive original jurisdiction over Paoletti if he was "15 years old or older" at the time of the delinquent act. *See* CJP 1984 § 3-817(a).

APPENDIX A

Paoletti originally phrased his eleven issues for appeal as follows:

1. The circuit court lacked jurisdiction, as the defendant should have been charged and tried as a juvenile.

2. The circuit court erred in allowing the indictment to proceed, as the defendant was prejudiced by extreme pre-indictment delay.

3. The circuit court erred in asking the jury, during voir dire, whether the 29-year time lapse in bringing charges would prevent the jurors from being fair and impartial in this case.

4. The circuit court erred in allowing an unduly prejudicial photograph of the complaining witness at the age of seven years old to be admitted and viewed by the jury.

5. The circuit court erred in allowing illegally obtained wiretap evidence (one-party consent telephone calls) to be admitted into evidence.

6. The circuit court erred in allowing an audiotape of a custodial interrogation of the appellant to be admitted into evidence, when said audiotape contained inadmissible hearsay that was unduly prejudicial to the appellant.

7. The circuit court erred in allowing to be admitted evidence regarding text messages that were illegally obtained, not properly authenticated, and contained inadmissible hearsay.

8. The circuit court erred in allowing numerous instances of inadmissible hearsay evidence to be heard by the jury.

9. The evidence presented by the state was insufficient, and the circuit court erred in failing to grant the appellant's motion for judgment of acquittal, in light of the insufficient evidence offered at trial.

10. The circuit court erred by instructing the jury to disregard the appellant's statement that he had never been accused before, thus drawing attention to the statement and implying to the jury that he had faced similar accusations in the past.

11. The circuit court erred by considering improper factors at sentencing.

APPENDIX B

THE ANNOTATED CODE
OF THE PUBLIC GENERAL LAWS
OF MARYLAND

Courts and Judicial Proceedings

ENACTED BY CHAPTER 2, ACTS 1973
FIRST EXTRAORDINARY SESSION

Prepared by the Editorial Staff of the Publishers
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in the making of a determination, following conviction, whether, vel non, admission to bail is to be allowed. The same process is applicable in setting the amount of the bail. Bigley v. Warden, Md. Correctional Inst. for Women, 16 Md. App. 1, 294 A.2d 141 (1972).

When judgment becomes final. — A judgment becomes final when direct appeal rights have been exhausted, including the right to petition the Supreme Court of the United States for certiorari. Long v. State, 16 Md. App. 371, 297 A.2d 299 (1972).

Denial of bail not improper. — After conviction, where it was patent that trial judge was concerned about possibility of flight by applicants for bail if released, and was fearful they would return to their alleged illicit dope trafficking and cause the community to be threatened, and had considered a probation report based on information obtained from law enforcement agencies providing substantial evidence upon which to predicate his denial of bail, there was no indication that trial judge exercised his discretion in an arbitrary, capricious, fanciful or cavalier manner. Bigley v. Warden, Md. Correctional Inst. for Women, 16 Md. App. 1, 294 A.2d 141 (1972).

Stated in Superintendent, Clifton T. Perkins State Hosp. v. Zeserman, 46 Md. App. 426, 418 A.2d 1220 (1980).

Subtitle 8. Juvenile Causes.

§ 3-801. Definitions.

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

(b) *Adjudicatory hearing.* — "Adjudicatory hearing" means a hearing to determine whether the allegations in the petition, other than allegations that the child requires the court's assistance, treatment, guidance or rehabilitation, are true.

(c) *Adult.* — "Adult" means a person who is 18 years old or older.

(d) *Child.* — "Child" means a person under the age of 18 years.

(e) *Child in need of assistance.* — "Child in need of assistance" is a child who requires the assistance of the court because

(1) He is mentally handicapped or is not receiving ordinary and proper care and attention, and

(2) His parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and his problems provided, however, a child shall not be deemed to be in need of assistance for the sole reason he is being furnished nonmedical remedial care and treatment recognized by State law.

(f) *Child in need of supervision.* — "Child in need of supervision" is a child who requires guidance, treatment, or rehabilitation and

(1) He is required by law to attend school and is habitually truant; or

(2) He is habitually disobedient, ungovernable, and beyond the control of the person having custody of him; or

(3) He deports himself so as to injure or endanger himself or others; or

(4) He has committed an offense applicable only to children.

(g) *Citation.* — "Citation" means the written form issued by a police officer which serves as the initial pleading against a child for a violation and which is adequate process to give the court jurisdiction over the person cited.

(h) *Commit.* — "Commit" means to transfer legal custody.

(i) *Court.* — "Court" means the circuit court of a county or Baltimore City sitting as the juvenile court. In Montgomery County, it means the District Court sitting as the juvenile court.

(j) *Custodian.* — "Custodian" means a person or agency to whom legal custody of a child has been given by order of the court, other than the child's parent or legal guardian.

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

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

(m) *Detention.* — "Detention" means the temporary care of children who, pending court disposition, require secure custody for the protection of themselves or the community, in physically restricting facilities.

(n) *Disposition hearing.* — "Disposition hearing" means a hearing to determine:

(1) Whether a child needs or requires the court's assistance, guidance, treatment or rehabilitation; and if so

(2) The nature of the assistance, guidance, treatment or rehabilitation.

(o) *Intake officer.* — "Intake officer" means the person assigned to the court by the Juvenile Services Administration to provide the intake services set forth in this subtitle.

(p) *Mentally handicapped child.* — "Mentally handicapped child" means a child who is or may be mentally retarded or mentally ill.

(q) *Party.* — "Party" includes a child who is the subject of a petition, the child's parent, guardian, or custodian, the petitioner and an adult who is charged under § 3-831 of this subtitle.

(r) *Shelter care.* — (1) "Shelter care" means the temporary care of children in physically unrestricting facilities.

(2) "Shelter care" does not mean care in a State mental health facility.

(s) *Violation.* — "Violation" means a violation of §§ 400, 400A, 401, 402, or 403 of Article 27 of the Code and § 26-103 of the Education Article for which a citation is issued. (An. Code 1957, art. 26, §§ 51, 70-1, 71A; 1973, 1st Sp. Sess., ch. 2, § 1; 1974, ch. 691, § 8; 1975, ch. 554, §§ 1, 3; 1976, ch. 463; 1977, ch. 265; 1978, ch. 814; 1980, ch. 552; 1981, ch. 285; 1982, ch. 844.)

Effect of amendment. — The 1982 amendment, effective Jan. 1, 1983, inserted present subsection (g), redesignated former subsections (g) through (q) as present subsections (h) through (r) and added present subsection (s).

Editor's note. — Section 2, ch. 844, Acts 1982, provides "that all laws or parts of laws, public general or public local, inconsistent with this act, are repealed to the extent of the inconsistency."

Maryland Law Review. — For note discussing the legal implications of counseling minors without parental consent, see 31 Md. L. Rev. 332 (1971).

For comment, "Strengthening Equal Protection Analysis in Maryland: Territorial Classification and In re Trader," see 35 Md. L. Rev. 312 (1975).

For comment discussing the parent-child conflict of interest, see 36 Md. L. Rev. 153 (1976).

For survey of Court of Appeals decisions on juvenile law for the year 1974-1975, see 36 Md. L. Rev. 405 (1976).

For article, "The Court of Appeals of Maryland: Roles, Work and Performance," see 37 Md. L. Rev. 1 (1977).

For article, "Regarding Psychologists Testily: Legal Regulation of Psychological Assessment in the Public Schools," see 39 Md. L. Rev. 27 (1979).

For note discussing the standard of proof in a juvenile waiver hearing and the problem of unreported opinions, see 41 Md. L. Rev. 169 (1981).

University of Baltimore Law Review. — For comment discussing the history, analysis and proposed reform of Maryland law on child

abuse and neglect, see 6 U. Balt. L. Rev. 113 (1976).

For discussion of child abduction by a relative and Maryland's misdemeanor offense to deter parental child-stealing, see 8 U. Balt. L. Rev. 609 (1979).

"Child". — A child is a person who has not attained 18 years of age. In re Smith, 16 Md. App. 209, 295 A.2d 238 (1972).

A child means a person who has not reached his 18th birthday. Aye v. State, 17 Md. App. 32, 299 A.2d 513 (1973).

Child who has reached his 18th birthday may be prosecuted for crime as adult. Hughes v. State, 14 Md. App. 497, 287 A.2d 299, cert. denied, 409 U.S. 1025, 93 S. Ct. 467, 34 L. Ed. 2d 317 (1972).

Committed "child" means person under 18 years. — There is nothing in the contextual usage of the word "child" in § 3-830 of this article which would "indicate otherwise," as required by subsection (a) of this section, than that "child" means a person under the age of 18 years. In re Stephen K., 289 Md. 294, 424 A.2d 153 (1981).

Purpose of subsection (f). — The creation of present subsection (f) (formerly subsection (e)) reflects a studied design of the legislature to insure that treatment of children guilty of misconduct peculiarly reflecting the propensities and susceptibilities of youth will acquire none of the institutional, quasi-penal features of treatment. In re Spalding, 273 Md. 690, 332 A.2d 246 (1975).

"Child in need of supervision" is not delinquent child. Mayor of Baltimore v. State Dep't of Health & Mental Hygiene, 38 Md. App. 570, 381 A.2d 1188 (1978).

Delinquent act includes an act which would be a crime if done by a person who is not a child. Aye v. State, 17 Md. App. 32, 299 A.2d 513 (1973).

"Delinquent child". — A delinquent child means a child who commits a delinquent act, and who requires supervision, treatment or rehabilitation. Aye v. State, 17 Md. App. 32, 299 A.2d 513 (1973).

Process by which child is determined to be delinquent consists of a two-step procedure: An adjudicatory hearing, then a disposition hearing. In re Ernest J., 52 Md. App. 56, 447 A.2d 97 (1982).

Only after the adjudicatory judge finds that the juvenile has committed a delinquent act and the dispositional judge finds that the child is in need of treatment or guidance, can a juvenile be classified as a "delinquent child." In re Ernest J., 52 Md. App. 56, 447 A.2d 97 (1982).

Sufficiency of evidence under subsection (f). — There was sufficient evidence before the trier of fact for him to conclude that the young man improperly struck the complaining witness with a baseball bat, and thus was a delinquent child within the meaning of subsection (f) of this section. In re Appeal No. 1327, 32 Md. App. 478, 361 A.2d 156 (1976).

"Neglected child". — Evidence was sufficient in law to support the determination that the child suffered and was likely to suffer serious harm from an improper home environment, where it tended to show that the child was hospitalized as a result of an episode at home of breathing difficulty and cyanosis while the mother was alone with her, that five other children died on prior separate occasions of an episode of a similar nature which occurred at home or commenced at home, and that in at least four of these cases, only the mother was present. Woods v. Department of Social Servs., 11 Md. App. 10, 272 A.2d 92, cert. denied, 261 Md. 730, cert. denied, 404 U.S. 965, 92 S. Ct. 340, 30 L. Ed. 2d 285 (1971).

Legislative intent regarding emancipation with respect to matters concerning pregnancy. — The law authorizing the marriage of minors supports the conclusion that the legislative intent was that a female minor over 16 years of age is emancipated from the control of the parent with respect to matters concerning pregnancy. In re Smith, 16 Md. App. 209, 295 A.2d 238 (1972).

The legislature did not intend that a parent have the power, for reasons not within the ambit of the abortion statute, to compel a minor daughter in the parent's custody who has attained the age of 16 years over the child's opposition to submit herself to procedures which may lead to an abortion. In re Smith, 16 Md. App. 209, 295 A.2d 238 (1972).

Applied in In re Appeals No. 1022 & No. 1081, 278 Md. 174, 359 A.2d 556 (1976); In re Appeal No. 1038, 32 Md. App. 239, 360 A.2d 16 (1976); In re Johanna F., 284 Md. 643, 399 A.2d 245 (1979); In re Virgil M., 46 Md. App. 654, 421 A.2d 105 (1980); In re Damien D., 50 Md. App. 411, 438 A.2d 932 (1982).

Quoted in In re Appeal No. 245, 29 Md. App. 131, 349 A.2d 434 (1975); In re Appeal No. 1258, 32 Md. App. 225, 360 A.2d 27 (1976); In re Appeal No. 507, 34 Md. App. 440, 367 A.2d 553 (1977); In re Appeal No. 267, 38 Md. App. 224, 380 A.2d 239 (1977); Montgomery County Dep't of Social Servs. v. Sanders, 38 Md. App. 406, 381 A.2d 1154 (1978); In re John R., 41 Md. App. 22, 394 A.2d 818 (1978); Maryland State Dep't of Health & Mental Hygiene v. Prince George's County Dep't of Social Servs., 47 Md. App. 436, 423 A.2d 589 (1980), cert. denied, 290 Md. 714, — A.2d — (1981).

Stated in Parojinog v. State, 282 Md. 256, 384 A.2d 86 (1978); In re Glenn S., 293 Md. 510, 445 A.2d 1029 (1982).

Cited in Aldridge v. Dean, 395 F. Supp. 1161 (D. Md. 1975); In re Appeal No. 769, 25 Md.

App. 565, 335 A.2d 204 (1975); Cheek v. J.B.C. Properties, Inc., 28 Md. App. 29, 344 A.2d 180 (1975); In re Appeal No. 653, 277 Md. 212, 352 A.2d 845 (1976); In re Appeal No. 180, 278 Md. 443, 365 A.2d 540 (1976); Parojinog v. State, 35 Md. App. 619, 371 A.2d 729 (1977); In re Appeal No. 631 (77), 282 Md. 223, 383 A.2d 684 (1978); Stewart v. State, 287 Md. 524, 413 A.2d 1337 (1980); In re Bobby C., 48 Md. App. 249, 426 A.2d 435, aff'd, 292 Md. 114, 437 A.2d 660 (1981).

§ 3-802. Purposes of subtitle.

(a) The purposes of this subtitle are:

(1) To provide for the care, protection, and wholesome mental and physical development of children coming within the provisions of this subtitle; and to provide for a program of treatment, training, and rehabilitation consistent with the child's best interests and the protection of the public interest;

(2) To remove from children committing delinquent acts the taint of criminality and the consequences of criminal behavior;

(3) To conserve and strengthen the child's family ties and to separate a child from his parents only when necessary for his welfare or in the interest of public safety;

(4) If necessary to remove a child from his home, to secure for him custody, care, and discipline as nearly as possible equivalent to that which should have been given by his parents;

(5) To provide judicial procedures for carrying out the provisions of this subtitle.

(b) This subtitle shall be liberally construed to effectuate these purposes. (An. Code 1957, art. 26, § 70; 1973, 1st Sp. Sess., ch. 2, § 1; 1974, ch. 691, § 8; 1975, ch. 554, §§ 1, 3.)

Maryland Law Review. — For note discussing the legal implications of counseling minors without parental consent, see 31 Md. L. Rev. 332 (1971).

For survey of Court of Appeals decisions on juvenile law for the year 1974-1975, see 36 Md. L. Rev. 405 (1976).

For note discussing the standard of proof in a juvenile waiver hearing and the problem of unreported opinions, see 41 Md. L. Rev. 169 (1981).

University of Baltimore Law Review. — For comment discussing the history, analysis and proposed reform of Maryland law on child abuse and neglect, see 6 U. Balt. L. Rev. 113 (1976).

Legislative intent. — The General Assembly has clearly expressed its recognition of the principle that the primary right to rear and nurture a child rests in its parents and not in the State, and it is only under the most extraordinary circumstances that a parent may be divested of that right and custody of a child placed in the hands of others. In re McNeil, 21 Md. App. 484, 320 A.2d 57 (1974).

Juvenile proceedings are of a special species that has been designed by the General Assembly in response to a particular need and to meet a peculiar problem. In re Appeal Misc. No. 32, 29 Md. App. 701, 351 A.2d 164 (1976).

Philosophy of juvenile court enactments. — By revising the law governing juvenile causes in 1969 the legislature intended no departure in philosophy from that underlying previous juvenile court enactments in Maryland, as interpreted by the Court of Appeals, viz., that juvenile proceedings are of a special nature designed to meet the problems peculiar to the adolescent; that the proceedings of a juvenile court are not criminal in nature and its dispositions are not punishment for crime; that the juvenile law has as its underlying concept the protection of the juvenile, so that judges, in making dispositions in juvenile cases, think not in terms of guilt, but of the child's need for protection or rehabilitation; that the juvenile act does not contemplate the punishment of children where they are found to be delinquent, but rather an attempt to correct and rehabilitate them in "a wholesome family environment whenever possible," although rehabilitation may have to be sought in some instances in an institution. In re Hamill, 10 Md. App. 586, 271 A.2d 762 (1970); In re Arnold, 12

Md. App. 384, 276 A.2d 658 (1971); In re Carter, 20 Md. App. 633, 318 A.2d 269 (1974), aff'd, 273 Md. 690, 332 A.2d 246 (1975); In re Appeal No. 179, 23 Md. App. 496, 327 A.2d 793 (1974).

Juvenile proceedings are of a special nature designed to meet the problems peculiar to the adolescent; the proceedings of a juvenile court are not criminal in nature and its dispositions are not punishment for crime; the juvenile law has as its underlying concept the protection of the juvenile, so that judges, in making dispositions in juvenile cases, think not in terms of guilt, but of the child's need for protection or rehabilitation. In re Wooten, 13 Md. App. 521, 284 A.2d 32 (1971); In re Davis, 17 Md. App. 98, 299 A.2d 856 (1973).

The raison d'être of the Juvenile Causes Act is that a child does not commit a crime when he commits a delinquent act and therefore is not a criminal. He is not to be punished but afforded supervision and treatment to be made aware of what is right and what is wrong so as to be amenable to the criminal laws. In re Davis, 17 Md. App. 98, 299 A.2d 856 (1973); In re Dewayne H., 290 Md. 401, 430 A.2d 76 (1981); In re David K., 48 Md. App. 714, 429 A.2d 313 (1981).

Juvenile court proceedings are of a special and informal nature designed to meet the problems peculiar to the adolescent. In re Fletcher, 251 Md. 520, 248 A.2d 364 (1968), cert. denied, 396 U.S. 852, 90 S. Ct. 112, 24 L. Ed. 2d 101 (1969).

Juvenile proceedings are not criminal proceedings. Jackson v. State, 17 Md. App. 167, 300 A.2d 430, cert. denied, 268 Md. 749, — A.2d — (1973).

The transgression by a child under this subtitle is not a crime at all, but a different kind of misdeed known as a "delinquent act." In re Davis, 17 Md. App. 98, 299 A.2d 856 (1973).

The dispositions of the juvenile court are not to be considered as punishment for a crime nor are adjudications of delinquency "convictions," as that word is generally applied with respect to criminal proceedings. In re Appeal Misc. No. 32, 29 Md. App. 701, 351 A.2d 164 (1976).

Judges in juvenile cases do not think in terms of guilt, but rather in terms of the need of the child for protection, guidance, or rehabilitation. In re Appeal Misc. No. 32, 29 Md. App. 701, 351 A.2d 164 (1976); In re Dewayne H., 290 Md. 401, 430 A.2d 76 (1981).

Child under jurisdiction of juvenile court conclusively presumed doli incapax. — Under this section, by its purpose and the very principles it advances, a child under the jurisdiction of a juvenile court is conclusively presumed doli incapax. In re Davis, 17 Md. App. 98, 299 A.2d 856 (1973).

When a juvenile court has exclusive original jurisdiction over a person alleged to be a delinquent child and does not waive that jurisdiction, or when a proceeding charging a person meeting the definition of a delinquent child has been removed to a juvenile court by order of the court exercising jurisdiction, the result, stated in terms of the common law, is that the age under which a person is conclusively presumed to be incapable of committing a crime has been raised from seven to eighteen. In re Davis, 17 Md. App. 98, 299 A.2d 856 (1973).

Thus, Juvenile Causes Act has in effect changed substantive law itself. In re Davis, 17 Md. App. 98, 299 A.2d 856 (1973).

Since under common law presumption was rebuttable after age of seven. — Under the common law there is a presumption of criminal incapacity on the part of an infant below the age of fourteen, which is conclusive prior to the age of seven and rebuttable thereafter. When the presumption of doli incapax is rebuttable, the burden of rebutting it is on the State. In re Davis, 17 Md. App. 98, 299 A.2d 856 (1973).

Common-law rule concerning presumption of criminal incapacity is not applicable to juvenile proceedings with respect to the determination of delinquency vel non. In re Davis, 17 Md. App. 98, 299 A.2d 856 (1973).

Juvenile Causes Act shall be liberally construed to effectuate its purposes. In re Davis, 17 Md. App. 98, 299 A.2d 856 (1973).

Provisions of § 3-820 (b) and (c) of this article must be considered in pari materia with legislatively-declared purposes of this subtitle, as set forth in subsection (a) of this section. In re David K., 48 Md. App. 714, 429 A.2d 313 (1981).

Maryland law clearly contemplates retention of delinquent child in his home where possible, consistent with his own as well as the public interest. In re Wooten, 13 Md. App. 521, 284 A.2d 32 (1971); In re Roberts, 13 Md. App. 644, 284 A.2d 621 (1971).

Juvenile court can remove child from custody of its parents when circumstances demand. In re Darius A., 47 Md. App. 232, 422 A.2d 71 (1980).

But court not empowered to provide for adoption. — The express statement of purpose in subsection (a) of this section does not go so far as to empower the juvenile court to deal with the transcendent problem of severing all legal ties and providing for the adoption of the child by another. In re Darius A., 47 Md. App. 232, 422 A.2d 71 (1980).

When § 3-602 (b) of this article spells out the unimpaired jurisdiction of the juvenile court, contrasting it with the circuit court, the subject of adoption is not a part of that catalogue. In re Darius A., 47 Md. App. 232, 422 A.2d 71 (1980).

Department of social services empowered to petition for guardianship. —

Within the broad legislative grant of authority to the Social Services Administration under Article 88A and the appropriately promulgated rules and regulations of that administration, COMAR 07.02.11.16, the Montgomery County department of social services is empowered to petition for guardianship with the right to consent of adoption. In re Darius A., 47 Md. App. 232, 422 A.2d 71 (1980).

And juvenile court cannot restrain exercise of such authority. — The juvenile court cannot restrain the proper exercise by the Montgomery County department of social services of its lawful authority to act in filing a petition for guardianship with the right to consent of adoption. In re Darius A., 47 Md. App. 232, 422 A.2d 71 (1980).

When commitment to training school necessary. — Where the evidence at the disposition hearing shows that the parents, no matter how well motivated or intentioned, are incapable, unwilling, or unable to control or rehabilitate their delinquent child, a commitment to the training school may be necessary for the welfare of the delinquent or in the interests of public safety. In re Hamill, 10 Md. App. 586, 271 A.2d 762 (1970).

Ignoring recommendation of probation officer. — Trial judge who ignored recommendation of probation officer failed to give proper effect to this section and § 3-801 of this article. In re Arnold, 12 Md. App. 384, 278 A.2d 658 (1971).

Disposition in juvenile case rests within sound discretion of juvenile judge and will only be disturbed on appeal upon a finding of an abuse of that discretion. In re Appeal No. 179, 23 Md. App. 496, 327 A.2d 793 (1974).

Discretion abused. — Juvenile judge who committed boys aged eleven and thirteen to Maryland Training School abused his discretion in failing to consider "a program of treatment, training and rehabilitation consistent with the protection of public interest." In re Arnold, 12 Md. App. 384, 278 A.2d 658 (1971).

An abuse of discretion was demonstrated where the record did not show that the separation of the child from his parents was in "his welfare or in the interest of public safety." In re Appeal No. 179, 23 Md. App. 496, 327 A.2d 793 (1974).

Applied in Wentworth v. State, 33 Md. App. 242, 364 A.2d 81 (1976).

Quoted in In re Appeals No. 1022 & No. 1081, 278 Md. 174, 359 A.2d 556 (1976); In re No. 1140, S.T. 1977, 39 Md. App. 609, 387 A.2d 315 (1978); Johnson v. Solomon, 484 F. Supp. 278 (D. Md. 1979); Bingman v. State, 285 Md. 59, 400 A.2d 765 (1979).

Stated in In re Stephen K., 289 Md. 294, 424 A.2d 163 (1981).

Cited in In re Laurence T., 285 Md. 621, 403 A.2d 1255 (1979); In re Randolph T., 292 Md. 97, 437 A.2d 230 (1981), cert. denied, 455 U.S. 993, 102 S. Ct. 1621, 71 L. Ed. 2d 854 (1982).

§ 3-803. Assignment and rotation of judges.

(a) In Baltimore City, Prince George's County and in any county in which the case load requires it, one or more judges shall be assigned specially to handle cases arising under this subtitle. The assignment shall be made by the administrative judge of the circuit, subject to the approval of the Chief Judge of the Court of Appeals, except that in Montgomery County, the assignment shall be made by the Chief Judge of the District Court, subject to the approval of the Chief Judge of the Court of Appeals. The judges so assigned are not subject to an automatic regular rotation.

(b) To the extent feasible, the judges assigned to hear juvenile causes shall be those who

(1) Desire to be so assigned;

(2) Have the temperament necessary to deal properly with the cases and children likely to come before the court; and

(3) Have special experience or training in juvenile causes and the problems of children likely to come before the court. (An. Code 1957, art. 26, § 51; 1973, 1st Sp. Sess., ch. 2, § 1; 1975, ch. 554, §§ 1, 3; 1976, ch. 442; 1977, ch. 789.)

Maryland Law Review. — For note discussing the standard of proof in a juvenile waiver hearing and the problem of unreported opinions, see 41 Md. L. Rev. 169 (1981).

Cited in In re Appeal No. 507, 34 Md. App. 440, 367 A.2d 553 (1977).

§ 3-804. Jurisdiction of court.

(a) The court has exclusive original jurisdiction over a child alleged to be delinquent, in need of supervision, in need of assistance or who has received a citation for a violation.

(b) The court has exclusive original jurisdiction over proceedings arising under the Interstate Compact on Juveniles.

(c) The court has exclusive original jurisdiction over proceedings against an adult for the violation of § 3-831 of this subtitle. However, the court may waive its jurisdiction under this subsection upon its own motion or upon the motion of any party to the proceeding, if charges against the adult arising from the same incident are pending in the criminal court. Upon motion by either the State's Attorney or the adult charged under § 3-831, the court shall waive its jurisdiction, and the adult shall be tried in the criminal court according to the usual criminal procedure.

(d) The court does not have jurisdiction over:

(1) A child 14 years old or older alleged to have done an act which, if committed by an adult, would be a crime punishable by death or life imprisonment, as well as all other charges against the child arising out of the same incident, unless an order removing the proceeding to the court has been filed under Article 27 § 594A;

(2) A child 16 years old or older alleged to have done an act in violation of any provision of the Transportation Article or other traffic law or ordinance, except an act that prescribes a penalty of incarceration;

(3) A child 16 years old or older alleged to have done an act in violation of any provision of law, rule, or regulation governing the use or operation of a boat, except an act that prescribes a penalty of incarceration;

(4) A child 16 years old or older alleged to have committed the crime of robbery with a dangerous or deadly weapon or attempted robbery with a dangerous or deadly weapon, as well as all other charges against the child arising out of the same incident, unless an order removing the proceeding to the court has been filed under Article 27, § 594A.

(e) If the child is charged with two or more violations of the Maryland Vehicle Law, another traffic law or ordinance, or the State Boat Act, allegedly arising out of the same incident and which would result in the child being brought before both the court and a court exercising criminal jurisdiction, the court has exclusive jurisdiction over all of the charges. (An. Code 1957, art. 26, §§ 70-2, 94; 1973, 1st Sp. Sess., ch. 2, § 1; 1974, ch. 691, § 8; 1975, ch. 554, §§ 1, 3; 1977, ch. 489; ch. 765, § 23; 1979, chs. 348, 558; 1980, ch. 377; 1982, ch. 844.)

Effect of amendment. — The 1982 amendment, effective Jan. 1, 1983, deleted "or" following "supervision" and added "or who has received a citation for a violation" in subsection (a).

Editor's note. — Section 2, ch. 844, Acts 1982, provides "that all laws or parts of laws, public general or public local, inconsistent with this act, are repealed to the extent of the inconsistency."

Maryland Law Review. — For note discussing the legal implications of counseling minors without parental consent, see 31 Md. L. Rev. 332 (1971).

For survey of Court of Appeals decisions on juvenile law for the year 1974-1975, see 36 Md. L. Rev. 405 (1976).

For note discussing the standard of proof in a juvenile waiver hearing and the problem of unreported opinions, see 41 Md. L. Rev. 169 (1981).

University of Baltimore Law Review. — For note, "Rape and Other Sexual Offense Law Reform in Maryland, 1967-1977," see 7 U. Balt. L. Rev. 151 (1977).

This section gives "exclusive original jurisdiction" to juvenile court over delinquent child, the definition of which includes one who has committed an act which would be a crime if done by a person who is not a child. Franklin v. State, 264 Md. 62, 285 A.2d 616 (1972).

Jurisdiction of circuit court. — When a circuit court lawfully acquires jurisdiction of a juvenile by reason that the charge against him was exempt from juvenile jurisdiction the court does not lose jurisdiction because a verdict of guilty or a plea of guilty of a lesser included offense is entered. State v. Coffield, 17 Md. App. 305, 301 A.2d 44, cert. denied, 268 Md. 746 (1973).

When circuit court exercises its powers as juvenile court, it may exercise only those powers granted to it by statute, and it may not exercise powers it otherwise could exercise if it were sitting as a criminal court. In re Glenn S., 293 Md. 510, 445 A.2d 1029 (1982).

Power of juvenile court to transfer jurisdiction to circuit court pursuant to § 3-817 of this article, only applies in cases where the juvenile court has exclusive original jurisdiction. In re Glenn S., 293 Md. 510, 445 A.2d 1029 (1982).

Where jurisdiction over a case is first in the circuit court under subsection (d) (4) of this section, but jurisdiction is then transferred to the juvenile court pursuant to Article 27, § 594A, the juvenile court has no power to waive jurisdiction and order the case returned to the circuit court. In re Glenn S., 293 Md. 510, 445 A.2d 1029 (1982).

Offense not specifically exempt from jurisdiction of juvenile court may or may not arise out of some other act which is specifically exempt and whether it does can only be determined by a finding of fact by the court. State v. Coffield, 17 Md. App. 305, 301 A.2d 44, cert. denied, 268 Md. 746 (1973).

Jurisdiction may be waived. — The exclusive original jurisdiction of the juvenile court (with certain limitations) may be waived, and the child may be held for trial under the regular procedures of the court which would have jurisdiction of the offense if committed by an adult. Franklin v. State, 264 Md. 62, 285 A.2d 616 (1972).

A court conferred with jurisdiction in juvenile causes may waive the exclusive jurisdiction over a delinquent child conferred upon it by this section. Aye v. State, 17 Md. App. 32, 299 A.2d 513 (1973).

But full waiver hearing is required for the juvenile court to waive its jurisdiction with respect to a minor coming within the provisions of subsection (a) of this section when that minor is awaiting trial in a criminal court for a crime punishable by death or life imprisonment. In re Waters, 13 Md. App. 95, 281 A.2d 560, cert. denied, 263 Md. 722 (1971).

Trial of juvenile in criminal court without waiver by the juvenile court was no more than form — it had no substance and no validity, and the conviction it produced was a nullity. It could not have life breathed into it, and it could not be made valid and effective nunc pro tunc by a waiver made by the juvenile court after the trial had been had. Franklin v. State, 264 Md. 62, 285 A.2d 616 (1972); In re Ingram, 15 Md. App. 356, 291 A.2d 78 (1972).

A court exercising criminal jurisdiction ordinarily has neither the right nor the power to try a child who is within the jurisdiction of a juvenile court and who has not been sent to it for trial by the juvenile court under the statutory waiver procedures. Aye v. State, 17 Md. App. 32, 299 A.2d 513 (1973).

Proceedings in which waiver is not necessary. — There are certain types of proceedings involving a child in which the waiver of a juvenile court is not necessary in order to prosecute the child in a criminal action. These proceedings are those over which a juvenile court does not have jurisdiction. Aye v. State, 17 Md. App. 32, 299 A.2d 513 (1973).

Juvenile court has no power to modify order of circuit court sitting in a criminal case. In re Glenn S., 293 Md. 510, 445 A.2d 1029 (1982).

Section inapplicable to case of contempt. — This section conferring exclusive original jurisdiction over a juvenile is inapplicable to a case of direct contempt committed in another court. Thomas v. State, 21 Md. App. 572, 320 A.2d 538 (1974).

Jurisdiction over adult formerly child adjudicated delinquent. — A child adjudicated delinquent, who later becomes an adult, but is under the age of 21 years, has her rights as an adult subject to the jurisdiction of the court, and that jurisdiction continues until she becomes 21. In re Johanna F., 284 Md. 643, 399 A.2d 245 (1979).

Jurisdiction and custody are separate and distinct. In re Johanna F., 284 Md. 643, 399 A.2d 245 (1979).

Jurisdiction exists beyond end of custody order. — The running of the time period which a custody order may not exceed serves only to bring an end to that order, the jurisdiction of the court over the person still exists. In re Johanna F., 284 Md. 643, 399 A.2d 245 (1979).

Exception to subsection (d). — An exception to the jurisdictional mandates, subsection (d) of this section, which permits the removal of the proceedings to the juvenile court, is Article 27, § 594A. In re Appeal No. 507, 34 Md. App. 440, 367 A.2d 553 (1977).

Crimes encompassed by subsection (d)(1). — Subsection (d)(1) of this section embraces the crimes of first degree murder, first-degree rape, a first-degree sexual offense, an attempt to commit any of those three crimes in the first degree, and a conspiracy to commit any of those three crimes in the first degree. State v. Hardy, 53 Md. App. 313, 452 A.2d 1299 (1982), cert. granted, 295 Md. 529, — A.2d — (1983).

The crime of attempted murder is "a crime punishable by . . . life imprisonment" within the contemplation of subsection (d)(1) of this section. State v. Hardy, 53 Md. App. 313, 452 A.2d 1299 (1982), cert. granted, 295 Md. 529, — A.2d — (1983).

Paragraph (4) of subsection (d) of this section is not unconstitutionally vague or indefinite. Broadway v. State, 23 Md. App. 68, 326 A.2d 212 (1974).

Capital offenses. — This section controls with respect to jurisdiction over juveniles between the ages of 14 and 15 who are charged with capital offenses. 60 Op. Att'y Gen. 168 (1975).

Rape. — As rape is an act which, if committed by an adult, would be a crime punishable by life imprisonment, the juvenile court was without jurisdiction as to charges against a child of 15 years, absent a "reverse waiver" order pursuant to Article 27, § 594A. Brafman v. State, 38 Md. App. 465, 381 A.2d 687 (1978).

Where petition did not allege any willful act or omission on the part of either parent which could cause the child to be adjudicated neglected, but the allegation was simply that the child was a neglected child, the juvenile court had no power to try either parent or punish them, and the allegations were properly to be proved by a preponderance of the evidence and it was not required that they be established beyond a reasonable doubt. Woods v. Department of Social Servs., 11 Md. App. 10, 272 A.2d 92, cert. denied, 261 Md. 730, cert. denied, 404 U.S. 965, 92 S. Ct. 340, 30 L. Ed. 2d 265 (1971).

Applied in Parojinog v. State, 282 Md. 256, 384 A.2d 86 (1978).

Quoted in Maryland State Dep't of Health & Mental Hygiene v. Prince George's County Dep't of Social Servs., 47 Md. App. 436, 423 A.2d 589 (1980), cert. denied, 290 Md. 714, — A.2d — (1981).

Stated in In re Appeal No. 1038, 32 Md. App. 239, 360 A.2d 18 (1976); In re Appeal No. 857, 35 Md. App. 635, 371 A.2d 717 (1977); King v. State, 36 Md. App. 124, 373 A.2d 292, cert. denied, 281 Md. 740, — A.2d — (1977); In re Randolph T., 292 Md. 97, 437 A.2d 230 (1981), cert. denied, 455 U.S. 993, 102 S. Ct. 1621, 71 L. Ed. 2d 854 (1982).

Cited in Aldridge v. Dean, 395 F. Supp. 1161 (D. Md. 1975); Gardner v. State, 29 Md. App. 314, 347 A.2d 881 (1975); Francis v. Maryland, 606 F.2d 747 (4th Cir. 1979); Johnson v. Solomon, 484 F. Supp. 278 (D. Md. 1979); In re Ricky B., 43 Md. App. 645, 406 A.2d 690 (1979); In re David K., 48 Md. App. 714, 429 A.2d 313 (1981).

§ 3-805. Determination of jurisdiction.

(a) *Cases of delinquency.* — If a person is alleged to be delinquent, the age of the person at the time the alleged delinquent act was committed controls the determination of jurisdiction under this subtitle.

(b) *Other cases.* — In all other cases the age of the child at the time the petition is filed controls the determination of jurisdiction under this subtitle. (An. Code 1957, art. 26, § 70-2; 1973, 1st Sp. Sess., ch. 2, § 1; 1975, ch. 554, §§ 1, 3; 1976, ch. 463.)

Child who has reached his eighteenth birthday may be prosecuted for crime as adult. Hughes v. State, 14 Md. App. 497, 287 A.2d 299, cert. denied, 409 U.S. 1025, 93 S. Ct. 467, 34 L. Ed. 317 (1972).

Age of child at time alleged delinquent act was committed is controlling. — In determining the jurisdiction of a juvenile court over persons alleged to be delinquent children, the age of the child at the time the alleged delinquent act was committed is controlling. In re Davis, 17 Md. App. 98, 299 A.2d 856 (1973).

With respect to award of custody under § 3-820 of this article, Maryland Rule 917 (a)

requires that the question must arise in connection with a matter which is within the exclusive jurisdiction of the court, and the determination of the question must be necessary to make an appropriate disposition. In re Johanna F., 284 Md. 643, 399 A.2d 245 (1979).

Quoted in In re Appeal No. 1258, 32 Md. App. 225, 360 A.2d 27 (1976); Parojinog v. State, 282 Md. 256, 384 A.2d 86 (1978); In re Stephen K., 289 Md. 294, 424 A.2d 153 (1981).

Cited in In re Appeal No. 1038, 32 Md. App. 239, 360 A.2d 18 (1976).

§ 3-806. Retention or termination of jurisdiction.

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

(b) This section does not affect the jurisdiction of other courts over a person who commits an offense after he reaches the age of 18.

(c) Unless otherwise ordered by the court, the court's jurisdiction is terminated over a person who has reached 18 years of age when he is convicted of a crime, including manslaughter by automobile, unauthorized use or occupancy of a motor vehicle, or operating a vehicle while under the influence of intoxicating liquors or drugs, but excluding a conviction for a violation of any other traffic law or ordinance or any provision of the State Boat Act, or the fish and wildlife laws of the State. (An. Code 1957, art. 26, § 70-3; 1973, 1st Sp. Sess., ch. 2, § 1; 1974, ch. 358; ch. 691, § 8; 1975, ch. 554, §§ 1, 3; 1976, ch. 463.)

Jurisdiction over adult formerly child adjudicated delinquent. — A child adjudicated delinquent, who later becomes an adult, but is under the age of 21 years, has her rights as an adult subject to the jurisdiction of the court, and that jurisdiction continues until she becomes 21. In re Johanna F., 284 Md. 643, 399 A.2d 245 (1979).

Jurisdiction and custody are separate and distinct. In re Johanna F., 284 Md. 643, 399 A.2d 245 (1979).

Jurisdiction exists beyond end of custody order. — The running of the time period which a custody order may not exceed serves only to bring an end to that order; the jurisdiction of the court over the person still exists. In re Johanna F., 284 Md. 643, 399 A.2d 245 (1979).

Dispositional process is directed toward the termination of a committal or other disposition when the court finds the child to be rehabilitated, and directed away from setting mandatory periods of commitment, which would be more in the nature of punishment. In re No. 1140, S.T. 1977, 39 Md. App. 609, 387 A.2d 315 (1978).

Applied in In re Appeal No. 1038, 32 Md. App. 239, 360 A.2d 18 (1976).

Quoted in In re Stephen K., 289 Md. 294, 424 A.2d 153 (1981).

Stated in Parojinog v. State, 282 Md. 256, 384 A.2d 86 (1978).

§ 3-807. Prosecution barred in absence of waiver.

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

(b) The court has exclusive original jurisdiction, but only for the purpose of waiving it, over a person 21 years of age or older who is alleged to have committed a delinquent act while a child. (An. Code 1957, art. 26, § 70-16; 1973, 1st Sp. Sess., ch. 2, § 1; 1975, ch. 554, §§ 1, 3; 1976, ch. 463.)

Time of filing petition determinative under subsection (b). — It is the time of the filing of the petition, not the time of the adjudicatory hearing, which is determinative of the application of subsection (b) of this section. In re Appeal No. 1038, 32 Md. App. 239, 360 A.2d 18 (1976).

Where juvenile petition, charging the defendant, then 18 years old, with delinquent acts committed when he was 17 years old, was filed on May 23, 1975, and ch. 554, Acts 1975, restricting the court's jurisdiction, did not become law until July 1, 1975, the court was not divested of jurisdiction by this section to make an adjudication and disposition regarding the defendant. It is the time the petition is filed, not the time of adjudication, which determines the jurisdiction of the court. Peroginog v. State, 282 Md. 256, 384 A.2d 86 (1978).

Waiver not mandatory. — Waiver under subsection (b) of this section is not mandatory. In re Appeals No. 1022 & No. 1081, 278 Md. 174, 359 A.2d 556 (1976).

Nothing in subsection (b) of this section purports to authorize or require the juvenile court to waive its jurisdiction without first determining that waiver is appropriate in light of the statutory criteria set forth in § 3-817 of this article. In re Appeals No. 1022 & No. 1081, 278 Md. 174, 359 A.2d 556 (1976).

Prosecution barred until validity of waiver determined. — Until there is a final appellate determination that the waiver was valid, prosecution for a criminal offense is barred. In re Trader, 20 Md. App. 1, 315 A.2d 528, rev'd on other grounds, 272 Md. 364, 325 A.2d 398 (1974).

Quoted in Stewart v. State, 287 Md. 524, 413 A.2d 1337 (1980).

Cited in In re Appeal No. 1258, 32 Md. App. 225, 360 A.2d 27 (1976).

§ 3-808. Venue.

(a) If delinquency or violation of § 3-831 is alleged or if a citation is issued, the petition, if any, or the citation shall be filed in the county where the alleged act occurred subject to transfer as provided in § 3-809.

(b) If the alleged delinquent act is escape or attempted escape from a training school or similar facility operated by the Juvenile Services Administration, the petition, if any, shall be filed and the adjudicatory hearing held in the county where the alleged escape or attempted escape occurred unless the court in the county of the child's domicile requests a transfer. For purposes of the disposition hearing, proceedings may be transferred as provided in § 3-809 to the court exercising jurisdiction over the child at the time of the alleged act. (An. Code 1957, art. 26, § 70-4; 1973, 1st Sp. Sess., ch. 2, § 1; 1975, ch. 554, §§ 1, 3, 1978, ch. 814; 1979, ch. 65; 1982, ch. 844; 1983, ch. 7.)

Cross reference. — As to general venue provisions, see Title 6 of this article.

Effect of amendments. — The 1982 amendment, effective Jan. 1, 1983, deleted former subsection (a), redesignated former subsection (b) as present subsection (a), inserted "or if a citation is issued" and "or the citation" therein, and redesignated former subsection (c) as present subsection (b).

The 1983 amendment, effective July 1, 1983, also deleted the subsection (a) which had previously been deleted by the 1982 amendment.

Editor's note. — Section 2, ch. 844, Acts 1982, provides "that all laws or parts of laws, public general or public local, inconsistent with this act, are repealed to the extent of the inconsistency."

Bill review letter. — Chapter 844, Acts 1982 (House Bill 85), was approved for constitutionality and legal sufficiency, although it was determined that the deletion of the provision relating to venue in certain cases involving children was not described in the title of the bill and could not be given effect. (Letter of Attorney General dated May 25, 1982).

Section applies to venue, not jurisdiction. In re Carter, 20 Md. App. 633, 318 A.2d 269 (1974), aff'd, 273 Md. 690, 332 A.2d 246 (1975).

And determination of venue is left to the sound discretion of the court. In re Carter, 20 Md. App. 633, 318 A.2d 269 (1974), aff'd, 273 Md. 690, 332 A.2d 246 (1975).

§ 3-809. Transfer of proceedings.

(a) (1) If a petition is filed in a county other than the county where the child is living or domiciled, the court on its own motion or on motion of a party, may transfer the proceedings to the county of residence or domicile at any time prior to final termination of jurisdiction, except that the proceedings may not be transferred until after an adjudicatory hearing if the allegation is escape or attempted escape from a training school or similar facility operated by the Juvenile Services Administration.

(2) In its discretion, the court to which the case is transferred may take further action.

(b) Every document, social history, and record on file with the clerk of court pertaining to the case shall accompany the transfer. (An. Code 1957, art. 26, § 70-5; 1973, 1st Sp. Sess., ch. 2, § 1; 1974, ch. 691, § 8; 1975, ch. 554, §§ 1, 3; 1978, ch. 814.)

Cited in In re David K., 48 Md. App. 714, 429 A.2d 313 (1981).

§ 3-810. Complaint; preliminary procedures.

(a) The intake officer shall receive:

(1) Complaints from a person or agency having knowledge of facts which may cause a person to be subject to the jurisdiction of the court; and

(2) Citations issued by a police officer under § 3-835 of this article.

(b) (1) Except as otherwise provided in this subsection, in considering the complaint, the intake officer shall make a preliminary inquiry within 15 days as to whether the court has jurisdiction and whether judicial action is in the best interests of the public or the child. He may, after such inquiry and in accordance with this section, (i) authorize the filing of a petition, (ii) conduct a further investigation into the allegations of the complaint, (iii) propose an informal adjustment of the matter, or (iv) refuse authorization to file a petition.

(2) If a complaint that concerns a child alleged to be in need of assistance is brought by a local department of social services, the intake officer shall file the petition without further investigation.

(3) (i) If a complaint is filed that alleges the commission of a delinquent act by a child who is 16 years old or older, which would be a felony enumerated in Article 27, § 441 (e) of the Code if committed by an adult, the intake officer shall immediately forward the complaint to the State's Attorney.

(ii) If a complaint is filed that alleges the commission of a delinquent act by a child who is 16 years old or older, which would be a felony other than one enumerated in Article 27, § 441 (e) of the Code if committed by an adult, and if the intake officer has denied authorization to file a petition, the intake officer shall immediately:

1. Forward the complaint to the State's Attorney; and

2. Forward a copy of the entire intake case file to the State's Attorney with information as to any and all prior intake involvement with the child.

(4) The State's Attorney shall make a preliminary review as to whether the court has jurisdiction and whether judicial action is in the best interests of the public or the child. The need for restitution may be considered as one factor in the public interest. After the preliminary review the State's Attorney shall within 30 days of the receipt of the complaint by the State's Attorney, unless the court extends the time:

(i) File a petition;

(ii) Seek a waiver under § 3-817 of this article;

(iii) Refer the complaint to the Juvenile Services Administration for informal disposition; or

(iv) Dismiss the complaint.

(c) (1) The intake officer may authorize the filing of a petition if, based upon the complaint and his preliminary inquiry, he concludes that the court has jurisdiction over the matter and that judicial action is in the best interests of the public or the child. The need for restitution may be considered as one factor in the public interest.

(2) The intake officer shall inform the parties of his decision to authorize the filing of a petition and the reasons for his decision.

(3) If the following persons are not parties and it is practicable, the intake officer shall also inform, preferably in person, these persons of his decision to authorize the filing of a petition and the reasons for his decision:

(i) The victim;

(ii) The arresting police officer; and

(iii) The person or agency that filed the complaint or caused it to be filed.

(d) The intake officer may conduct a further investigation if he concludes based upon the complaint and his preliminary inquiry, that further inquiry is necessary in order to determine whether the court has jurisdiction or whether judicial action is in the best interests of the public or the child. The further investigation shall be completed and a decision made by the intake officer within 10 days, unless that time is extended by the court.

(e) The intake officer may propose an informal adjustment of the matter if based on the complaint, his preliminary inquiry, and such further investigation as he may make, he concludes that the court has jurisdiction but that an informal adjustment, rather than judicial action, is in the best interests of the public and the child. If the intake officer proposes an informal adjustment, he shall inform the parties of the nature of the complaint, the objectives of the adjustment process, the conditions and procedures under which it will be conducted, and the fact that it is not obligatory. The intake officer shall not proceed with an informal adjustment unless all parties to the proceeding consent to that procedure.

(f) During the informal adjustment process, the child shall be subject to such supervision as the intake officer deems appropriate; however, no party is compelled to appear at any conference, produce any paper, or visit any place. The informal adjustment process shall not exceed 90 days unless that time is extended by the court. If all of the parties do not consent to an informal adjustment, or such adjustment cannot, in the judgment of the intake officer, be completed successfully, he shall authorize the filing of a petition or deny authorization to file a petition pursuant to subsection (g).

(g) If based upon the complaint, his preliminary inquiry, and such further investigation as he may make, the intake officer concludes that the court has no jurisdiction, or that neither an informal adjustment nor judicial action is appropriate, he may deny authorization to file a petition. He shall, in that event, inform the following persons, through use of the form prescribed by § 3-810.1 of this article, of his decision, the reasons for it, and their right of review provided in this section:

(1) The victim;

(2) The arresting police officer; and

(3) The person or agency that filed the complaint or caused it to be filed.

(h) (1) If the complaint alleges the commission of a delinquent act and the intake officer denies authorization to file a petition, the following persons, may appeal the denial to the State's Attorney:

(i) The victim;

(ii) The arresting police officer; and

(iii) The person or agency that filed the complaint or caused it to be filed.

In order for an appeal to be made, it must be received by the State's Attorney's office within 30 days after the form prescribed by § 3-810.1 is mailed by the juvenile intake officer to the person being informed of the intake officer's decision.

(2) The State's Attorney shall review the denial. If he concludes that the court has jurisdiction and that judicial action is in the best interests of the public or the child, he may file a petition. This petition shall be filed within 30 days of the receipt of the complainant's appeal.

(i) If the complaint does not allege the commission of a delinquent act, the person or agency that filed the complaint or caused it to be filed, within 15 days of personal notice to him or the mailing to their last known address of the denial, may submit the denial for review by the regional supervisor of the intake officer. The supervisor shall review the denial. If, within 15 days, he concludes that the court has jurisdiction and that judicial action is in the best interests of the public and the child, he may direct the filing of a petition in writing. The petition shall be filed within five days of the decision.

(j) If the complaint alleges that a minor 16 years of age or older has committed an act in violation of any provision of the Maryland Vehicle Law or other traffic law or ordinance under the jurisdiction of the juvenile court, the complaint shall be filed directly with the State's Attorney of the jurisdiction in which the alleged violation occurred. If the State's Attorney elects to proceed with the case, he may prepare a petition for filing with the court of proper jurisdiction.

(k) If the intake officer receives a citation, the intake officer shall:

(1) If the child denies commission of the violation, forward the citation to the State's Attorney;

(2) If the child admits commission of the violation:

(i) Refer the child to an alcohol rehabilitation program;

(ii) Assign the child to a supervised work program for not more than 20 hours for the first violation and not more than 40 hours for the second or subsequent violation; or

(iii) Require the parent or guardian of the child to withdraw the parent or guardian's consent to the child's license to drive, and advise the Motor Vehicle Administration of the withdrawal of consent; or

(3) If the parent or guardian of the child refuses to withdraw consent to the child's license to drive under paragraph (2) (iii) of this subsection, forward the citation to the State's Attorney. (An. Code 1957, art. 26, §§ 70-6, 70-7; 1973, 1st Sp. Sess., ch. 2, § 1; 1974, ch. 209; ch. 691, § 8; 1975, ch. 554, §§ 1, 3; 1976, ch. 457; 1978, chs. 803, 814; 1979, ch. 257; 1980, chs. 88, 304, 552, 685; 1981, ch. 279; 1982, chs. 469, 612, 844.)

Effect of amendments. — Chapter 469, Acts 1982, effective July 1, 1982, added paragraphs (3) and (4) in subsection (b).

Chapter 612, Acts 1982, effective July 1, 1982, substituted "30 days" for "15 days" in the second sentence in subparagraph (iii) of paragraph (1) in subsection (h).

Chapter 844, Acts 1982, effective Jan. 1, 1983, rewrote subsection (a), and added subsection (k).

Editor's note. — Section 2, ch. 844, Acts 1982, provides "that all laws or parts of laws, public general or public local, inconsistent with this act, are repealed to the extent of the inconsistency."

Allegation of delinquency is made by filing of petition under this section and § 3-812 of this article. In re Appeal No. 1038, 32 Md. App. 239, 360 A.2d 18 (1976).

Role of State's Attorney. — Delinquency proceeding petitions must be prepared, signed and filed by the State's Attorney. United States v. Ramapuram, 432 F. Supp. 140 (D. Md. 1977), aff'd, 577 F.2d 738 (4th Cir.), cert. denied, 439 U.S. 926, 99 S. Ct. 309, 58 L. Ed. 2d 318 (1978).

Intake officer of Juvenile Services Administration has substantial discretion in considering whether to file a petition regarding a particular child. In re Laurence T., 285 Md. 621, 403 A.2d 1256 (1979).

Quoted in In re James S., 286 Md. 702, 410 A.2d 586 (1980).

Cited in Maryland State Dep't of Health & Mental Hygiene v. Prince George's County Dep't of Social Servs., 47 Md. App. 436, 423 A.2d 589 (1980), cert. denied, 290 Md. 714, — A.2d — (1981).

§ 3-810.1. Form of notice of intake officer's decision on complaint.

(a) An intake officer shall use the following form to inform persons, in accordance with § 3-810, of his decision to deny authorization to file a petition for the alleged commission of a delinquent act:

Date: (Date form is mailed)
Re: . . . . . .
Offense No.: . . . . . .
Date of Offense: . . . . . .
Nature of Offense: . . . . . .

. . . . . .
. . . . . .
. . . . . .
Dear . . . . . :

I have reviewed the facts concerning the offense referred to above and have decided not to authorize juvenile court action. This decision included consideration of the facts of the case and the juvenile's involvement. Home, school, and community adjustment along with parental concern and control were examined. Past history with the police and court was also considered.

The reasons for this decision are as follows:

. . . . . The juvenile was issued a reprimand and warned against future involvement in delinquent activities.

. . . . . The juvenile is currently under supervision of the juvenile court.

. . . . . The juvenile will receive informal supervision by this intake officer. This will include counseling, and possibly referral to a program or agency to further work with problems seen as important to the juvenile's future adjustment.

. . . . . The juvenile has successfully completed a pretrial program of intensive counseling and supervision of 45 to 90 days, and has shown a satisfactory adjustment during this time.

. . . . . This case is not legally sufficient.

Additional comments: . . . . . .

. . . . . .

. . . . . .

If you disagree with this decision and desire to appeal, you must fill in the form provided below and send it to the State's Attorney's office so that it is received in that office by . . . . . .

(Date)

If you have any questions or want to talk about this case with me before making a decision on whether to appeal, please call me at . . . . . .

(Phone Number)

However, if you do this, it will not extend the 15-day period within which you are allowed to appeal.

Sincerely,

. . . . . .

Intake Officer

. . . . . .

. . . . . .

If you disagree with the above decision of the intake officer, fill out the form below and send it to:

. . . . . .
. . . . . .
. . . . . .
(Name and address of appropriate State's Attorney authority)

(To be filled in by intake officer prior to mailing to person being informed of intake decision)

Re: . . . . . .
Offense: . . . . . .
Date of Offense: . . . . . .
Nature of Offense: . . . . .

(To be filled in by intake officer prior to mailing to person being informed of intake decision)

I have been informed by the juvenile intake officer of his decision not to forward this case for action in the juvenile court.

I disagree with this decision and ask that the State's Attorney's office review it and decide whether court proceedings should be carried out.

. . . . . .

Signed

(b) The use of the form prescribed by subsection (a) of this section does not preclude the Juvenile Services Administration from sending other information, in addition to this form, to explain the intake officer's decision and advise persons of their right to appeal the decision of the intake officer. (1980, ch. 685.)

§ 3-811. Certain information inadmissible in subsequent proceedings.

(a) A statement made by a participant while counsel and advice are being given, offered, or sought, in the discussions or conferences incident to an informal adjustment may not be admitted in evidence in any adjudicatory hearing or in a criminal proceeding against him prior to conviction.

(b) Any information secured or statement made by a participant during a preliminary or further inquiry pursuant to § 3-810 or a study pursuant to § 3-818 may not be admitted in evidence in any adjudicatory hearing except on the issue of respondent's competence to participate in the proceedings and responsibility for his conduct as provided in § 12-107 of the Health-General Article where a petition alleging delinquency has been filed, or in a criminal proceeding prior to conviction.

(c) A statement made by a child, his parents, guardian or custodian at a waiver hearing is not admissible against him or them in criminal proceedings prior to conviction except when the person is charged with perjury, and the statement is relevant to that charge and is otherwise admissible.

(d) If jurisdiction is not waived, any statement made by a child, his parents, guardian, or custodian at a waiver hearing may not be admitted in evidence in any adjudicatory hearing unless a delinquent offense of perjury is alleged, and the statement is relevant to that charge and is otherwise admissible. (An. Code 1957, art. 26, §§ 70-7, 70-8, 70-16; 1973, 1st Sp. Sess., ch. 2, § 1; 1974, ch. 691, § 8; 1975, ch. 554, §§ 1, 3; 1978, ch. 814; 1982, ch. 770, § 4.)

Effect of amendment. — The 1982 amendment, effective July 1, 1982, substituted "§ 12-107 of the Health-General Article" for "Article 59, § 25" in subsection (b).

§ 3-812. Petition; general procedures.

(a) A petition shall allege that a child is either delinquent, or in need of assistance, or in need of supervision. If it alleges delinquency, it shall set forth in clear and simple language the alleged facts which constitute the delinquency, and shall also specify the laws allegedly violated by the child. If it alleges that the child is in need of assistance or in need of supervision, the petition shall set forth in clear and simple language the alleged facts supporting that allegation.

(b) Petitions alleging delinquency or violation of § 3-831 shall be prepared and filed by the State's Attorney. A petition alleging delinquency shall be filed within 30 days after the receipt of a referral from the intake officer. All other petitions shall be prepared and filed by the intake officer.

(c) The form of petitions and all other pleadings, and except as otherwise provided in this subtitle, the procedures to be followed by the court, shall be as specified in the Maryland Rules.

(d) The State's Attorney, upon assigning his reasons, may dismiss in open court a petition alleging delinquency.

(e) The court shall conduct all hearings in an informal manner. It may exclude the general public from a hearing, and admit only those persons having a direct interest in the proceeding and their representatives.

(f) The court shall try cases without a jury.

(g) Whenever a child in need of assistance petition is filed at the request of the local department of social services, the local department shall be a party to the proceeding and shall present to the court the evidence in support of the petition. (1975, ch. 554, §§ 1, 3; 1978, ch. 814; 1980, chs. 34, 88, 304.)

Maryland Law Review. — For note discussing the standard of proof in a juvenile waiver hearing and the problem of unreported opinions, see 41 Md. L. Rev. 169 (1981).

University of Baltimore Law Review. — For comment discussing the history, analysis and proposed reform of Maryland law on child abuse and neglect, see 6 U. Balt. L. Rev. 113 (1976).

Allegation of delinquency is made by the filing of a petition under this section and § 3-810 of this article. In re Appeal No. 1038, 32 Md. App. 239, 360 A.2d 18 (1976).

Filing of petition creates jurisdiction. — When a delinquency petition has been filed, the court, sitting as a juvenile court, has "exclusive original jurisdiction" over the child. Parojinog v. State, 282 Md. 256, 384 A.2d 86 (1978).

State's Attorney has absolute discretion in deciding whether delinquency proceedings are appropriate. United States v. Ramapuram, 432 F. Supp. 140 (D. Md. 1977), aff'd, 577 F.2d 738 (4th Cir.), cert. denied, 439 U.S. 926, 99 S. Ct. 309, 58 L. Ed. 2d 318 (1978).

Juvenile causes in Maryland cannot proceed without the approval of the State's Attorney, and his discretion operates independently of the courts. United States v. Ramapuram, 432 F. Supp. 140 (D. Md. 1977), aff'd, 577 F.2d 738 (4th Cir.), cert. denied, 439 U.S. 926, 99 S. Ct. 309, 58 L. Ed. 2d 318 (1978).

Applied in In re Laurence T., 285 Md. 621, 403 A.2d 1256 (1979).

Quoted in Maryland State Dep't of Health & Mental Hygiene v. Prince George's County Dep't of Social Servs., 47 Md. App. 436, 423 A.2d 589 (1980), cert. denied, 290 Md. 714, — A.2d — (1981).

Stated in In re James S., 286 Md. 702, 410 A.2d 586 (1980).

§ 3-813. Masters.

(a) (1) The judges of a circuit court may not appoint a master for juvenile causes unless the appointment and the appointee are approved by the Chief Judge of the Court of Appeals. The standards expressed in § 3-803, with respect to the assignment of judges, are applicable to the appointment of masters. A master, at the time of his appointment and thereafter during his service as a master, shall be a member in good standing of the Maryland Bar.

(2) In Prince George's County, the judges of the Circuit Court may not appoint or continue the appointment of masters for juvenile causes, except for the purpose of conducting probable cause hearings, detention hearings, arraignments, and restitution hearings in delinquency cases, and shelter care and adjudicatory hearings in child in need of assistance cases. A master may not conduct adjudicatory or disposition hearings in delinquency cases.

(b) If a master is appointed for juvenile causes, he is authorized to conduct hearings. These proceedings shall be recorded, and the master shall make findings of fact, conclusions of law, and recommendations as to an appropriate order. These proposals and recommendations shall be in writing, and, within 10 days after the hearing, the original shall be filed with the court and a copy served upon each party to the proceeding.

(c) Any party, in accordance with the Maryland Rules, may file written exceptions to any or all of the master's findings, conclusions, and recommendations, but shall specify those items to which he objects. The party who files exceptions may elect a hearing de novo or a hearing on the record before the court. The hearing shall be limited to those matters to which exceptions have been taken.

(d) The proposals and recommendations of a master for juvenile causes do not constitute orders or final action of the court. They shall be promptly reviewed by the court; and in the absence of timely and proper exceptions, they may be adopted by the court and appropriate orders entered based on them. Detention or shelter care may be ordered by a master pending court review of his findings, conclusions and recommendations.

(e) If the court, on its own motion and in the absence of timely and proper exceptions, decides not to adopt the master's findings, conclusions, and recommendations, or any of them it shall conduct a de novo hearing. However, if all parties and the court agree, the hearing may be on the record. (1975, ch. 554, §§ 1, 3; 1977, chs. 259, 789; 1980, ch. 664; 1982 ch. 820, § 3; 1983, ch. 559.)

Effect of amendments. — The 1982 amendment, effective Jan. 1, 1983, in subsection (a), deleted "and the Supreme Bench of Baltimore City," following "court" in the first sentence and deleted the last sentence.

The 1983 amendment, effective July 1, 1983, designated the provisions of subsection (a) as paragraph (1), deleted the second sentence therein, and added paragraph (2).

Editor's note. — Section 5, ch. 820, Acts 1982, provides that "the provisions of this act are intended solely to correct references and delete surplus language and provisions and there is no intent to revise or otherwise affect law that is the subject of other acts, whether those acts were signed by the Governor prior to or after the signing of this act."

Section 6 of ch. 820 provides that "it is the intent of this act that the Circuit Court for Baltimore City is for all purposes to be treated as the circuit court for a county."

Maryland Law Review. — For article, "The Federal Criminal Code Reform Act of 1977 and Prosecutorial Appeal of Sentences: Justice or Double Jeopardy?", see 37 Md. L. Rev. 739 (1978).

For note, "Does a Juvenile Court Rehearing on the Record After a Master Has Made Proposed Findings Violate Double Jeopardy or Due Process?", see 39 Md. L. Rev. 395 (1979).

Section provides statutory basis for use of masters. — In enacting this section, the General Assembly, for the first time, provided a statutory basis for the use of masters in juvenile court proceedings. Swisher v. Brady, 438 U.S. 204, 98 S. Ct. 2699, 57 L. Ed. 2d 705 (1978).

Rule governs over section. — Although Maryland Rule 911 differs from this section, under Maryland decisional law the Rule governs. Swisher v. Brady, 438 U.S. 204, 98 S. Ct. 2699, 57 L. Ed. 2d 705 (1978).

Juvenile is placed in jeopardy when the State begins to offer evidence in an adjudicatory hearing before a master. Aldridge v. Dean, 395 F. Supp. 1161 (D. Md. 1975).

Filing exceptions and obtaining de novo hearing are violative of Fourteenth Amendment. — The rights of a juvenile under the Fourteenth Amendment of the federal Constitution are violated in a case where, in the absence of a valid consent or waiver by or on behalf of the juvenile, after a master has held an adjudicatory hearing and has announced his finding "charge not sustained," the State is allowed to file exceptions to the finding of the master and to obtain a de novo adjudicatory hearing before a judge on the question of whether the juvenile is delinquent by reason of the alleged act. Aldridge v. Dean, 395 F. Supp. 1161 (D. Md. 1975).

Double jeopardy clause precludes subsequent adjudicatory hearing where mistrial had been declared in a previous juvenile adjudicatory hearing without manifest necessity and without the juvenile's consent. In re Mark R., 294 Md. 244, 449 A.2d 393 (1982).

Quoted in In re Dewayne H., 290 Md. 401, 430 A.2d 76 (1981).

§ 3-814. Taking child into custody.

(a) A child may be taken into custody by any of the following methods:

(1) Pursuant to an order of the court,

(2) By a law enforcement officer pursuant to the law of arrest,

(3) By a law enforcement officer or other person authorized by the court if he has reasonable grounds to believe that the child is in immediate danger from his surroundings and that his removal is necessary for his protection, or

(4) By a law enforcement officer or other person authorized by the court if he has reasonable grounds to believe that the child has run away from his parents, guardian, or legal custodian.

(b) If a law enforcement officer takes a child into custody he shall immediately notify, or cause to be notified, the child's parents, guardian, or custodian of the action. After making every reasonable effort to give notice, the law enforcement officer shall with all reasonable speed:

(1) Release the child to his parents, guardian, or custodian or to any other person designated by the court, upon their written promise to bring the child before the court when requested by the court, and such security for the child's appearance as the court may reasonably require, unless his placement in detention or shelter care is permitted and appears required by § 3-815, or

(2) Deliver the child to the court or a place of detention or shelter care designated by the court.

(c) If a parent, guardian, or custodian fails to bring the child before the court when requested, the court may issue a writ of attachment directing that the child be taken into custody and brought before the court. The court may proceed against the parent, guardian, or custodian for contempt. (An. Code 1957, art. 26, §§ 70-9, 70-10; 1973, 1st Sp. Sess., ch. 2, § 1; 1974, ch. 691, § 8; 1975, ch. 554, §§ 1, 3.)

University of Baltimore Law Review. — For comment discussing the history, analysis and proposed reform of Maryland law on child abuse and neglect, see 6 U. Balt. L. Rev. 113 (1976).

Filing of complaint and obtention of petition required unless section applies. — Unless a police officer or other authorized person has reason to arrest a juvenile pursuant to the provisions of paragraphs (3) and (4) of subsection (a) of this section, without a warrant, then the provisions relating to the filing of a juvenile complaint and obtention of a juvenile petition must be followed to the exclusion of the issuance of a warrant. 60 Op. Att'y Gen. 419 (1975).

Sheriff is responsible for transporting juveniles to detention centers throughout the State. 57 Op. Att'y Gen. 623 (1972).

Where sheriff's office is in lawful custody of a juvenile subject to a detention order, it is that office which must see to the delivery of the juvenile at the proper place of detention. 57 Op. Att'y Gen. 623 (1972).

Applied in In re Anthony F., 49 Md. App. 294, 431 A.2d 1361, cert. granted, 291 Md. 776, — A.2d — (1981).

§ 3-815. Detention and shelter care prior to hearing.

(a) Only the court or an intake officer may authorize detention or shelter care.

(b) If a child is taken into custody, he may be placed in detention or shelter care prior to a hearing if:

(1) Such action is required to protect the child or person and property of others;

(2) The child is likely to leave the jurisdiction of the court; or

(3) There are no parents, guardian, or custodian or other person able to provide supervision and care for the child and return him to the court when required.

(c) If the child is not released, the intake officer shall immediately file a petition to authorize continued detention or shelter care. A hearing on the petition shall be held not later than the next court day, unless extended by the court upon good cause shown. Reasonable notice, oral or written, stating the time, place, and purpose of the hearing, shall be given to the child and, if they can be found, his parents, guardian, or custodian. Detention and shelter care shall not be ordered for a period of more than 30 days unless an adjudicatory or waiver hearing is held. However, detention time may be extended for not more than 30 days where the petition charges the child with a delinquent act and where the court finds, after a subsequent hearing, that extended detention is necessary either for the protection of the child or for the protection of the community.

(d) A child alleged to be delinquent may not be detained in a jail or other facility for the detention of adults.

(e) A child alleged to be in need of supervision or in need of assistance may not be placed in detention and may not be placed in a State mental health facility. If the child is alleged to be in need of assistance by reason of a mental handicap, the child may be placed in shelter care facilities maintained or licensed by the Department of Health and Mental Hygiene or if these facilities are not available, then in a private home or shelter care facility approved by the court. If the child is alleged to be in need of assistance for any other reason, or in need of supervision, he may be placed in shelter care facilities maintained or approved by the Social Services Administration, or the Juvenile Services Administration, or in a private home or shelter care facility approved by the court.

(f) The intake officer shall immediately give written notice of the authorization for detention or shelter care to the child's parent, guardian, or custodian, and to the court. The notice shall be accompanied by a statement of the reasons for taking the child into custody and placing him in detention or shelter care. This notice may be combined with the notice required under subsection (c). (An. Code 1957, art. 26, §§ 70-11, 70-12; 1973, 1st Sp. Sess., ch. 2, § 1; 1974, ch. 691, § 8; 1975, ch. 517; ch. 554, §§ 1, 3; 1976, ch. 526, § 2; 1978, ch. 814; 1980, ch. 757; 1981, ch. 285; 1982, ch. 605.)

Effect of amendment. — The 1982 amendment, effective July 1, 1982, deleted "after January 1, 1978," at the beginning of subsection (d) and "or in a facility in which children who have been adjudicated delinquent are detained" at the end of that subsection.

Maryland Law Review. — For note discussing the standard of proof in a juvenile waiver hearing and the problem of unreported opinions, see 41 Md. L. Rev. 169 (1981).

University of Baltimore Law Review. — For discussion of child abduction by a relative and Maryland's misdemeanor offense to deter parental child-stealing, see 8 U. Balt. L. Rev. 609 (1979).

Legislative intent. — This section reveals that the legislature intended to require the separation of children from adults only with respect to jails, detention centers and correctional institutions housing adults charged with or convicted of crimes. In re Appeal No. 653, 277 Md. 212, 352 A.2d 845 (1976).

Intake officer may not place runaway taken into custody by his parents in detention, even if the intake officer believes it is in the child's best interest to do so, unless there is an allegation of delinquency. 61 Op. Att'y Gen. 523 (1976).

Intake officer may authorize detention or shelter care verbally, at a time other than during the court day, provided, however, that he shall, as soon as possible on the next court day, give the written notice required by subsection (f) of this section and, if necessary, the written notice required by subsection (c) of this section. 60 Op. Att'y Gen. 419 (1975).

Quoted in In re James S., 286 Md. 702, 410 A.2d 586 (1980).

§ 3-816. Transfer to other facilities.

(a) The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the court or the intake officer immediately when a person, who is or appears to be under the age of 18 years, is received at the facility and shall deliver him to the court upon request or transfer him to the facility designated by the intake officer or the court, unless the court has waived its jurisdiction with respect to the person and he is being proceeded against as an adult.

(b) When a case is transferred to another court for criminal prosecution, the child shall promptly be transferred to the appropriate officer or adult detention facility in accordance with the law governing the detention of persons charged with crime.

(c) A child may not be transported together with adults who have been charged with or convicted of a crime unless the court has waived its jurisdiction and the child is being proceeded against as an adult. (An. Code 1957, art. 26, § 70-12; 1973, 1st Sp. Sess., ch. 2, § 1; 1975, ch. 554, §§ 1, 3.)

Legislative intent. — This section reveals that the legislature intended to require the separation of children from adults only with respect to jails, detention centers and correctional institutions housing adults charged with or convicted of crimes. In re Appeal No. 653, 277 Md. 212, 352 A.2d 845 (1976).

Stated in Douglas v. Warden, Md. Penitentiary, 399 F. Supp. 1 (D. Md. 1975).

§ 3-817. Waiver of jurisdiction.

(a) The court may waive the exclusive jurisdiction conferred by § 3-804 with respect to a petition alleging delinquency by:

(1) A child who is 15 years old or older, or

(2) A child who has not reached his 15th birthday, but who is charged with committing an act which if committed by an adult, would be punishable by death or life imprisonment.

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

(c) The court may not waive its jurisdiction unless it determines, from a preponderance of the evidence presented at the hearing, that the child is an unfit subject for juvenile rehabilitative measures. For purposes of determining whether to waive its jurisdiction, the court shall assume that the child committed the delinquent act alleged.

(d) In making its determination, the court shall consider the following criteria individually and in relation to each other on the record:

(1) Age of the child;

(2) Mental and physical condition of the child;

(3) The child's amenability to treatment in any institution, facility, or program available to delinquents;

(4) The nature of the offense and the child's alleged participation in it; and

(5) The public safety.

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

(f) An order waiving jurisdiction is interlocutory.

(g) If the court has once waived its jurisdiction with respect to a child in accordance with this section, and that child is subsequently brought before the court on another charge of delinquency, the court may waive its jurisdiction in the subsequent proceeding after summary review. (An. Code 1957, art. 26, § 70-16; 1973, 1st Sp. Sess., ch. 2, § 1; 1974, ch. 691, § 8; 1975, ch. 554, §§ 1, 3; 1977, ch. 490; 1982, ch. 792.)

Effect of amendment. — The 1982 amendment, effective July 1, 1982, substituted "interlocutory" for "immediately appealable" in subsection (f).

Maryland Law Review. — For survey of Court of Appeals decisions on juvenile law for the year 1974-1975, see 36 Md. L. Rev. 405 (1976).

For note discussing the standard of proof in a juvenile waiver hearing and the problem of unreported opinions, see 41 Md. L. Rev. 169 (1981).

Legislative scheme of waiver not violative of due process. — Given the presumption of validity which attaches to legislative enactments, the absence of a constitutional right to treatment as a juvenile, the overriding purpose of the waiver hearing as a determinant of jurisdiction over the juvenile, and the fact that the juvenile is not impermissibly required to prove his innocence of the offenses charged prior to a later trial accompanied by the full panoply of constitutional safeguards, Maryland's legislative scheme of waiver is not violative of any of the accused's due process rights. In re Samuel M., 293 Md. 83, 441 A.2d 1072 (1982).

1982 amendment is to be applied prospectively. — The 1982 amendment, making orders waiving jurisdiction interlocutory rather than immediately appealable, is to be applied prospectively only and does not affect an appeal perfected before the effective date of the amendment. In re Michael W., 53 Md. App. 271, 452 A.2d 1278 (1982).

Fundamental idea behind waiver provisions is that there are some youths who are not in a position to benefit from specialized treatment as youths. Kemplen v. Maryland, 428 F.2d 169 (4th Cir. 1970).

This section is requesting that a judge certify, after weighing all of the evidence adduced before him and considering the factors mandated by the statute, that it is probable that the

child is an unfit subject for juvenile rehabilitative measures. In re Randolph T., 292 Md. 97, 437 A.2d 230 (1981), cert. denied, 455 U.S. 993, 102 S. Ct. 1621, 71 L. Ed. 2d 854 (1982).

Exclusive original jurisdiction of juvenile court may be waived. — Under this section, the exclusive original jurisdiction of the juvenile court (with certain limitations) may be waived, and the child may be held for trial under the regular procedures of the court which would have jurisdiction of the offense if committed by an adult. Franklin v. State, 264 Md. 62, 285 A.2d 616 (1972).

Pursuant to this section, a juvenile court may waive its jurisdiction over a child and may order the child held for trial under regular procedures of the court which would have jurisdiction over the offense if committed by an adult. Aye v. State, 17 Md. App. 32, 299 A.2d 513 (1973).

The power of the juvenile court to transfer jurisdiction of a case to the circuit court pursuant to this section only applies in cases where the juvenile court has exclusive original jurisdiction. In re Glenn S., 293 Md. 510, 445 A.2d 1029 (1982).

Where jurisdiction over a case is first in the circuit court under § 3-804 (d) (4) of this article, but jurisdiction is then transferred to the juvenile court pursuant to Article 27, § 594A, the juvenile court has no power to waive jurisdiction and order the case returned to the circuit court. In re Glenn S., 293 Md. 510, 445 A.2d 1029 (1982).

But only on certain children. — A juvenile court may waive its exclusive original jurisdiction, but only on: (1) A child who has reached his 15th birthday, or (2) a child who has not reached his 15th birthday who is charged with committing an act which, if committed by an adult would be punishable by death or life imprisonment. In re Davis, 17 Md. App. 96, 299 A.2d 856 (1973).

When a child has not reached his 15th birthday the juvenile court may waive its jurisdiction only when the child is charged with committing an act which, if committed by an adult, would be punishable by death, or life imprisonment. Aye v. State, 17 Md. App. 32, 299 A.2d 513 (1973).

Section gives effect to legislative distinction between delinquent and nondelinquent misconduct. In re Carter, 20 Md. App. 633, 318 A.2d 269 (1974), aff'd, 273 Md. 690, 332 A.2d 246 (1975).

Petition alleging delinquency shall be considered charging document for purposes of detaining the respondent pending a bail hearing. In re Appeal No. 1258, 32 Md. App. 225, 360 A.2d 27 (1976).

Time interval between waiver and adjudicatory hearings. — While subsection (b) of this section makes it clear that a waiver hearing is to be "prior to an adjudicatory hearing," there is not specified a particular time interval between the waiver hearing and the adjudicatory hearing. While setting forth no minimum time interval between a waiver hearing and an adjudicatory hearing, Maryland Rule 914 b 1. sets forth a maximum period of 30 days from the conclusion of the waiver hearing. Parejnog v. State, 282 Md. 256, 384 A.2d 86 (1978).

Purpose of juvenile waiver hearing is to resolve the question of waiver vel non and this is done on the assumption that probably the crime alleged was committed and that the juvenile committed it. In re Flowers, 13 Md. App. 414, 283 A.2d 430 (1971).

The purpose of a juvenile waiver hearing is to determine the fitness of the child for juvenile rehabilitative measures giving due consideration to the safety of the public. In re Flowers, 13 Md. App. 414, 283 A.2d 430 (1971). In re Trader, 20 Md. App. 1, 315 A.2d 528, rev'd on other grounds, 272 Md. 364, 325 A.2d 398 (1974); In re Appeal No. 1258, 32 Md. App. 225, 360 A.2d 27 (1976).

The sole function of a waiver hearing is to resolve the question of waiver vel non, and this is done on the assumption that probably the crime alleged was committed and that the juvenile committed it. Thus, the State has no burden at the hearing to establish prima facie or otherwise corpus delicti and criminal agency. In re Waters, 13 Md. App. 95, 281 A.2d 560, cert. denied, 263 Md. 722 (1971); In re Toporzycki, 14 Md. App. 298, 287 A.2d 66 (1972).

The purpose of a juvenile waiver hearing is to determine whether or not the juvenile is a fit subject for juvenile rehabilitative measures. In re Appeal No. 646, 35 Md. App. 94, 369 A.2d 150 (1977).

The purpose of the waiver hearing is to assess whether the child is capable of rehabilitation within the juvenile system, not to determine whether the child is guilty or innocent of the crime alleged, nor even to determine whether he is to be confined. In re Bobby C., 48 Md. App. 249, 426 A.2d 435, aff'd, 292 Md. 114, 437 A.2d 660 (1981).

Waiver hearing is much more than mere preliminary hearing establishing probable cause for the initiation of further action against the juvenile. Hazell v. State, 12 Md. App. 144, 277 A.2d 639, cert. denied, 263 Md. 715, — A.2d — (1971).

Juvenile waiver hearing is not trial but judicial inquiry concerning the advisability of waiving vel non a child from the juvenile system to that of the criminal court. In re Bobby C.,

48 Md. App. 249, 426 A.2d 435, aff'd, 292 Md. 114, 437 A.2d 660 (1981).

Waiver hearing need not conform to all requirements of criminal trial or even of the usual administrative hearing. Hazell v. State, 12 Md. App. 144, 277 A.2d 639, cert. denied, 263 Md. 715, — A.2d — (1971); In re Flowers, 13 Md. App. 414, 283 A.2d 430 (1971).

To decide whether or not the juvenile is a fit subject for juvenile rehabilitative measures, the court needs all available facts without respect to technical objections, provided the hearing is conducted in such a manner as to measure up to the essentials of due process and fair treatment. In re Flowers, 13 Md. App. 414, 283 A.2d 430 (1971).

But procedure at such hearing must nevertheless measure up to essentials of due process and fair treatment. Hazell v. State, 12 Md. App. 144, 277 A.2d 639, cert. denied, 263 Md. 715, — A.2d — (1971).

Waiver can be granted only after a full due process hearing, and is not a perfunctory process. Woodall v. Pettibone, 465 F.2d 49 (4th Cir. 1972), cert. denied, 413 U.S. 922, 93 S. Ct. 3054, 37 L. Ed. 2d 1044 (1973).

Waiver of jurisdiction proceedings is critical stage in guilt determining process and can result in dire consequences for the guilty accused. Kemplen v. Maryland, 428 F.2d 169 (4th Cir. 1970).

The normal waiver proceeding is a critical point in the criminal proceedings against a juvenile. It is the only opportunity an accused has to plead the defense of his diminished responsibility as a juvenile. Woodall v. Pettibone, 465 F.2d 49 (4th Cir. 1972), cert. denied, 413 U.S. 922, 93 S. Ct. 3054, 37 L. Ed. 2d 1044 (1973).

Counsel is of special importance at waiver proceedings because he can provide the juvenile judge with information about the child's background and prior record which may be otherwise unavailable in practice due to the tremendous load now carried by understaffed juvenile courts and social service agencies. Kemplen v. Maryland, 428 F.2d 169 (4th Cir. 1970).

And juvenile facing possible waiver of juvenile jurisdiction is entitled to advice of counsel. Kemplen v. Maryland, 428 F.2d 169 (4th Cir. 1970).

What waiver hearing determines. — The waiver hearing determines whether the accused, if found guilty, will receive nonpunitive rehabilitation as a juvenile from the State's social service agencies or will be sentenced as an adult. Hazell v. State, 12 Md. App. 144, 277 A.2d 639, cert. denied, 263 Md. 715, — A.2d — (1971).

Issue in waiver hearing is not whether the child is guilty of committing the delinquent act but whether he is an unfit subject for juvenile rehabilitative measures. Parojinog v. State, 282 Md. 256, 384 A.2d 86 (1978).

Inquiry at waiver hearing does not require finding of guilt or innocence, or proof of the elements of any criminal offense. Hazell v. State, 12 Md. App. 144, 277 A.2d 639, cert. denied, 263 Md. 715, — A.2d — (1971); In re Waters, 13 Md. App. 95, 281 A.2d 560, cert. denied, 263 Md. 722, — A.2d — (1971).

Waiver issue involves only determination of which court will have jurisdiction over the juvenile for the purpose of deciding whether or not he has committed the acts alleged. In re Samuel M., 293 Md. 83, 441 A.2d 1072 (1982).

Waiver is not automatic in light of the attention to be accorded to statutory criteria, other than the presumption that the child committed the delinquent act alleged, such as the public safety, the nature of the offense, and the child's amenability to treatment. In re Samuel M., 293 Md. 83, 441 A.2d 1072 (1982).

When juvenile jurisdiction properly waived. — Juvenile jurisdiction is to be waived only where the offender is found, by an exercise of sound judicial discretion based upon a thorough investigation, to be an unfit subject for juvenile rehabilitative measures. Hazell v. State, 12 Md. App. 144, 277 A.2d 639, cert. denied, 263 Md. 715, — A.2d — (1971).

Juvenile jurisdiction is properly waived where, under this section, the juvenile is found, by an exercise of sound judicial discretion based upon legally sufficient evidence, to be an unfit subject for juvenile rehabilitative measures. Hazell v. State, 12 Md. App. 144, 277 A.2d 639, cert. denied, 263 Md. 715, — A.2d — (1971); In re Waters, 13 Md. App. 95, 281 A.2d 560, cert. denied, 263 Md. 722, — A.2d — (1971).

Waiver is justified where a preponderance of the legally sufficient evidence shows that such a determination is proper in light of the factors to be considered under this section. Hazell v. State, 12 Md. App. 144, 277 A.2d 639, cert. denied, 263 Md. 715, — A.2d — (1971); In re Waters, 13 Md. App. 95, 281 A.2d 560, cert. denied, 263 Md. 722, — A.2d — (1971).

Presumption that child committed delinquent act alleged is permissible only for determination of waiver issue, and does not interfere with a juvenile's right to proof beyond a reasonable doubt as to every element of the offense charged. The presumption creates no prima facie case of guilt against the juvenile. In re Samuel M., 293 Md. 83, 441 A.2d 1072 (1982).

Burden of State seeking waiver of jurisdiction. — When it is the State that seeks a waiver of jurisdiction from the juvenile court to the adult or criminal court, the State shoulders the onus of showing by a preponderance of the evidence that a weighing of the factors in sub-

section (d) of this section, relating to the juvenile's personal history, tilts in favor of waiver and, patently, against the juvenile. In re Ricky B., 43 Md. App. 645, 406 A.2d 690 (1979).

"Preponderance of evidence" rule embodied in subsection (c) meets constitutional due process test. In re Bobby C., 48 Md. App. 249, 426 A.2d 435, aff'd, 292 Md. 114, 437 A.2d 660 (1981).

"A preponderance of the evidence" is the standard to be used by a trial judge in determining whether to waive juvenile jurisdiction, and it is not unconstitutional. In re Randolph T., 292 Md. 97, 437 A.2d 230 (1981), cert. denied, 455 U.S. 993, 102 S. Ct. 1621, 71 L. Ed. 2d 854 (1982).

Variance of subsection (d) and Article 27, § 594A (b). — The only variance appearing in subsection (d) of this section from that of Article 27, § 594A (b), is the legislative fiat in the former that the hearing court must consider the following "criteria individually and in relation to each other on the record." In re Ricky B., 43 Md. App. 645, 406 A.2d 690 (1979).

There is no real difference between subsection (d) of this section and Article 27, § 594A (b), insofar as the legislative direction as to how the factors are to be weighed is concerned. In re Ricky B., 43 Md. App. 645, 406 A.2d 690 (1979).

Not all factors considered under subsection (d) need be resolved against juvenile to justify waiver. In re Trader, 20 Md. App. 1, 315 A.2d 528, rev'd on other grounds, 272 Md. 364, 325 A.2d 398 (1974).

Not all five factors need be resolved against the juvenile in order for the waiver to be justifiable. In re Johnson, 17 Md. App. 705, 304 A.2d 859 (1973); In re Appeal No. 1258, 32 Md. App. 225, 360 A.2d 27 (1976).

All the factors listed in subsection (d) of this section need not be resolved against the juvenile in order to justify waiver, but the court must consider each factor, weighing them in relation to one another in determining whether the child is an unfit subject for juvenile rehabilitative measures. In re Appeal No. 646, 35 Md. App. 94, 369 A.2d 150 (1977).

Not all the factors listed in subsection (d) of this section need be given equal weight, nor do all the factors need be decided against the child in order for a waiver to be granted. In re Bobby C., 48 Md. App. 249, 426 A.2d 435, aff'd, 292 Md. 114, 437 A.2d 660 (1981).

And court is not required to make arithmetic-type calculation as to weight it assigns each factor. In re Trader, 20 Md. App. 1, 315 A.2d 528, rev'd on other grounds, 272 Md. 364, 325 A.2d 398 (1974); In re Appeal No. 1258, 32 Md. App. 225, 360 A.2d 27 (1976).

Court's discretion. — The final determination to waive jurisdiction is in the court's sound discretion. In re Murphy, 15 Md. App. 434, 291 A.2d 867 (1972).

The court is not obliged to follow the recommendations of the evaluation committee of the Department of Juvenile Services. In re Murphy, 15 Md. App. 434, 291 A.2d 867 (1972).

Waiver in a juvenile case is committed to the sound discretion of the juvenile judge, to be disturbed on appeal only upon a finding that such discretion has been abused. In re Appeal No. 646, 35 Md. App. 94, 369 A.2d 150 (1977).

Courts of equity have jurisdiction to resolve appropriateness of waiver. — Courts of equity have jurisdiction to resolve the question of whether waiver would have been appropriate where person brought before the juvenile court was a juvenile. In re Miles, 269 Md. 649, 309 A.2d 289 (1973).

Waiver after summary review may be made only after a waiver under the authority of and in accordance with this section. In re Toporzycki, 14 Md. App. 298, 287 A.2d 66 (1972).

Reviewing court may determine whether factors properly considered. — The mere statement that the five legislative factors were considered by the hearing judge does not divest court of its right to determine whether vel non those factors were actually considered and properly weighed in relation to each other and relative to the legislative purpose embodied in this section. In re Johnson, 17 Md. App. 705, 304 A.2d 859 (1973).

If direct appeal was not taken from order waiving jurisdiction, the only obligation of the criminal court was to determine if the waiver order is valid on its face. If so it did not need look behind it, and the child, the jurisdiction over whom had been waived by the juvenile court, might be properly tried under regular criminal procedures in the criminal court. Wheeler v. State, 10 Md. App. 624, 272 A.2d 96 (1971).

Mere possibility that effective treatment might extend beyond majority does not justify waiver. — The juvenile court's assigned reason for waiving jurisdiction over appellant — the nature of his difficulty is likely to render him dangerous to the public if he must be released from the juvenile court system when he reaches 21 — does not go beyond a bare showing of the possibility that effective treatment of the appellant might require his detention beyond his majority, and that mere possibility is not enough to justify waiver. In re Barker, 17 Md. App. 714, 305 A.2d 211 (1973).

The lower court erred, although taking into account appellant's age and his mental condition, when it nevertheless concluded that jurisdiction must be waived solely because successful treatment of the appellant's mental

condition would be a long term proposition which might extend beyond his majority. In re Barker, 17 Md. App. 714, 305 A.2d 211 (1973).

When waiver upheld. — The general rule is that a waiver will be upheld where a preponderance of the legally sufficient evidence shows that such a determination is proper in the light of the factors to be considered. In re Trader, 20 Md. App. 1, 315 A.2d 528, rev'd on other grounds, 272 Md. 364, 325 A.2d 398 (1974), In re Appeal No. 1258, 32 Md. App. 225, 360 A.2d 27 (1976).

Waiver even though no evidence presented connecting juvenile with offense. — A juvenile can be waived to adult court even though there has been no evidence presented that would connect him with an offense. In re Murphy, 15 Md. App. 434, 291 A.2d 867 (1972).

Or showing commission of offense. — A juvenile can be waived to adult court even though there has been no evidence presented that would show the commission of an offense. In re Murphy, 15 Md. App. 434, 291 A.2d 867 (1972).

Proof. — Nothing in the Constitution, State or federal, requires the State to satisfy the court beyond a reasonable doubt that waiver is proper. Hazell v. State, 12 Md. App. 144, 277 A.2d 639, cert. denied, 263 Md. 715, — A.2d — (1971); In re Waters, 13 Md. App. 95, 281 A.2d 560, cert. denied, 263 Md. 722, — A.2d — (1971).

This section does not designate or indicate that proof of the corpus delicti and criminal agency is a requisite to waiver. In re Waters, 13 Md. App. 95, 281 A.2d 560, cert. denied, 263 Md. 722, — A.2d — (1971).

It is unnecessary for the State to establish the criminal agency of the accused at the waiver hearing. In re Flowers, 13 Md. App. 414, 283 A.2d 430 (1971).

The State is not required to show that prior criminal convictions or juvenile delinquency determinations were obtained at a time when the accused was represented by counsel, since the purpose of a juvenile waiver hearing is not to determine guilt or to enhance punishment. In re Flowers, 13 Md. App. 414, 283 A.2d 430 (1971).

The measure of the evidence is a preponderance of and not beyond a reasonable doubt. In re Murphy, 15 Md. App. 434, 291 A.2d 867 (1972).

The State has no burden at a waiver hearing to establish prima facie or otherwise corpus delicti and criminal agency, it being assumed for waiver purposes that the crime the juvenile was alleged to have committed was committed and that the juvenile committed it. In re Murphy, 15 Md. App. 434, 291 A.2d 867 (1972).

For the determination of waiver vel non it is assumed that the juvenile committed the criminal offense alleged, but this is not to say that evidence concerning the alleged act is not to be received at the waiver hearing. In re Murphy, 15 Md. App. 434, 291 A.2d 867 (1972).

Evidence with respect to the circumstances surrounding the commission of the alleged crime is material to the factors to be considered in determining the matter of waiver. In re Murphy, 15 Md. App. 434, 291 A.2d 867 (1972).

A dearth of facts before the hearing court concerning the alleged offense may, in some circumstances, raise the risk that the evidence before the court is not legally sufficient to justify a waiver of juvenile jurisdiction. In re Murphy, 15 Md. App. 434, 291 A.2d 867 (1972).

One of the factors to be considered is the nature of the offense, and this may encompass not only the type of crime but the circumstances surrounding its commission. In re Murphy, 15 Md. App. 434, 291 A.2d 867 (1972).

That a victim was beaten or shot during the course of a robbery in addition to having his property stolen is certainly of probative value on the question of waiver. In re Murphy, 15 Md. App. 434, 291 A.2d 867 (1972).

If the accused is to be waived to the adult criminal system, a fair preponderance of the evidence must show that it is reasonably probable, not just possible, that the accused will require treatment extending beyond his 21st birthday and that the safety of the public thus requires that the juvenile court waive jurisdiction. In re Barker, 17 Md. App. 714, 305 A.2d 211 (1973).

The degree of proof required to sustain court's decision to waive jurisdiction is a preponderance of the evidence. In re Trader, 20 Md. App. 1, 315 A.2d 528, rev'd on other grounds, 272 Md. 364, 325 A.2d 398 (1974).

The evidentiary standard for juvenile waiver need not be "clear and convincing" or "beyond a reasonable doubt." In re Bobby C., 48 Md. App. 249, 426 A.2d 435, aff'd, 292 Md. 114, 437 A.2d 660 (1981).

Report of Department of Juvenile Services may be considered. — No constitutional rights of the juvenile were violated by consideration of the report of the Department of Juvenile Services, despite its hearsay character. The cases, the statute, and the Maryland Rules all contemplate that such reports will be utilized at juvenile waiver hearings so long as the juvenile's counsel is afforded reasonable access to the report, an opportunity to challenge or impeach its findings and conclusions, and the right to summon any person he may desire to testify at the waiver hearing. Hazell v. State, 12 Md. App. 144, 277 A.2d 639, cert. denied, 263 Md. 715, — A.2d — (1971).

The cases, this section, and the Maryland Rules all contemplate that such reports as those

of the Department of Juvenile Services will be utilized at waiver hearings despite their hearsay character. In re Murphy, 15 Md. App. 434, 291 A.2d 867 (1972).

The fact that testimony may be hearsay would not per se call for its exclusion from evidence or prohibit it from being considered in making the waiver determination. In re Murphy, 15 Md. App. 434, 291 A.2d 867 (1972).

Effect of waiver order. — An order of waiver, valid on its face, terminates the jurisdiction of the juvenile court and vests jurisdiction in the court having jurisdiction over the criminal offense with which the child is charged. In re Appeal No. 961, 23 Md. App. 9, 325 A.2d 112 (1974).

Criminal court has neither right nor the power to try juvenile who has not been sent to it for trial by the juvenile court under the statutory waiver procedures. In re Ingram, 15 Md. App. 356, 291 A.2d 78 (1972).

A juvenile cannot be tried in Maryland by a criminal court unless — and only unless — the juvenile court so orders after a proper waiver hearing. In re Ingram, 15 Md. App. 356, 291 A.2d 78 (1972).

No criminal proceedings against a juvenile can in any event be commenced until the juvenile court has waived its jurisdiction over him. He is not subject to criminal prosecution before the case is transferred to the criminal court as authorized by this section. Jackson v. State, 17 Md. App. 167, 300 A.2d 430, cert. denied, 268 Md. 749, — A.2d — (1973).

Stigma or labelling of child as allegedly guilty of criminal act does not attach automatically when a court determines that juvenile jurisdiction is waived and the child is to be tried as an adult, even though the waiving court presumes guilt for the purpose of the waiver hearing only. In re Bobby C., 48 Md. App. 249, 426 A.2d 435, aff'd, 292 Md. 114, 437 A.2d 660 (1981).

Exception to full-blown waiver hearing can only occur when there has been a prior waiver by the juvenile court. In re Ricky B., 43 Md. App. 645, 406 A.2d 690 (1979).

Section does not permit "summary review" when there has been merely a "reverse waiver" hearing by the adult or the criminal court. In re Ricky B., 43 Md. App. 645, 406 A.2d 690 (1979).

A summary review for purposes of waiving jurisdiction under this section may not be made where a previous waiver order is pending appeal. In re Darrin M., 44 Md. App. 379, 408 A.2d 777 (1979), appeal dismissed, 287 Md. 689, 415 A.2d 1 (1980).

Summary review may only be conducted in proceeding satisfying due process required. — Although a "full blown" hearing is not required to waive jurisdiction, the due process clause requires that summary review may only be conducted in a proceeding in which the juvenile is provided at least with adequate notice, the right to counsel and the right to be present. In re Michael W., 53 Md. App. 271, 452 A.2d 1278 (1982).

Trial of juvenile in criminal court without waiver by the juvenile court was no more than form — it had no substance and no validity and the conviction it produced was a nullity. It could not have life breathed into it, and it could not be made valid and effective nunc pro tunc by a waiver made by the juvenile court after the trial had been had. Franklin v. State, 264 Md. 62, 285 A.2d 616 (1972); In re Ingram, 15 Md. App. 356, 291 A.2d 78 (1972).

Where a juvenile is tried and convicted in a criminal court without a waiver of jurisdiction by the juvenile court, on appeal the judgment of the criminal court will be vacated of record and the case remanded to the juvenile court in order that it may determine whether or not a waiver should be ordered. If the juvenile court waives, the juvenile may be tried by the criminal court; if it does not waive, the juvenile court will follow the normal procedures prescribed by the statutes for the care and treatment of juveniles under the circumstances. Franklin v. State, 264 Md. 62, 285 A.2d 616 (1972).

Where no waiver hearing (nor even the initial suggestion by the State that there be a waiver hearing) was held, as required by the clear language of this section, "before the adjudicatory hearing," jurisdiction in the case should not have been waived by the juvenile court. In re Brown, 13 Md. App. 625, 284 A.2d 441 (1971).

A waiver hearing held after a conviction by the criminal court complies with Franklin v. State, 264 Md. 62, 285 A.2d 616 (1972), when it is not a nunc pro tunc type of hearing, that is, the conviction in the criminal court is nullified so that for all intent and purposes the waiver hearing is the initial valid step. In re Ingram, 15 Md. App. 356, 291 A.2d 78 (1972).

And a posteriori waiver hearing which seemingly approves an a priori action of the criminal court is prohibited. In re Ingram, 15 Md. App. 356, 291 A.2d 78 (1972).

A conviction by the criminal court and a subsequent waiver by the juvenile court, while the judgment of the criminal court is allowed to stand, is prohibited. In re Ingram, 15 Md. App. 356, 291 A.2d 78 (1972).

Criminal court's duty where waiver order not proper on its face. — Waiver orders which stated that the juvenile court waived jurisdiction under the provisions of a repealed section were not proper on their face. It was then incumbent upon the criminal court, in order to determine if it had jurisdiction, to inquire into the procedure followed by the juve-

nile court. Wheeler v. State, 10 Md. App. 624, 272 A.2d 96 (1971).

Use of expression "may order child or minor held for trial" implies an in futuro act as distinguished from an antecedent one. In re Ingram, 15 Md. App. 356, 291 A.2d 78 (1972).

Proper procedure to be followed where juvenile has been tried in criminal court without waiver under this section is to strike the criminal conviction, when requested, and the juvenile court should then conduct a waiver hearing in accordance with the provisions of this section. In re Ingram, 15 Md. App. 356, 291 A.2d 78 (1972).

If, after said hearing, the juvenile judge determines that the court should waive jurisdiction, the State may then proceed through the normal criminal law process. In re Ingram, 15 Md. App. 356, 291 A.2d 78 (1972).

If, on the other hand, the juvenile court judge finds that waiver should not be granted, then the matter may proceed through the regular juvenile procedures. In re Ingram, 15 Md. App. 356, 291 A.2d 78 (1972).

In determining whether or not to waive juvenile jurisdiction, the judge should not consider any findings of fact or the disposition that may have occurred in the voided criminal court trial, nor should he consider any subsequent proceedings arising from the criminal court trial such as a post-conviction petition or petitions or defective delinquency findings. In re Ingram, 15 Md. App. 356, 291 A.2d 78 (1972).

Applied in In re Appeal No. 507, 34 Md. App. 440, 367 A.2d 553 (1977), Stewart v. State, 287 Md. 524, 413 A.2d 1337 (1980).

Stated in Francis v. Maryland, 459 F. Supp. 163 (D. Md. 1978), aff'd, 605 F.2d 747 (4th Cir. 1979).

Cited in In re Appeals No. 1022 & No. 1081, 278 Md. 174, 359 A.2d 556 (1976), In re Appeal No. 1038, 32 Md. App. 239, 360 A.2d 18 (1976), Goins v. State, 293 Md. 97, 442 A.2d 550 (1982).

§ 3-818. Study and examination of child, etc.

(a) After a petition or a citation has been filed, the court may direct the Juvenile Services Administration or another qualified agency to make a study concerning the child, his family, his environment, and other matters relevant to the disposition of the case.

(b) As part of the study, the child or any parent, guardian, or custodian may be examined at a suitable place by a physician, psychiatrist, psychologist, or other professionally qualified person.

(c) The report of the study is admissible as evidence at a waiver hearing and at a disposition hearing, but not at an adjudicatory hearing. However, the attorney for each party has the right to inspect the report prior to its presentation to the court, to challenge or impeach its findings and to present appropriate evidence with respect to it. (An. Code 1957, art. 26, § 70-14; 1973, 1st Sp. Sess., ch. 2, § 1; 1974, ch. 691, § 8; 1975, ch. 554, §§ 1, 3; 1982, ch. 844.)

Effect of amendment. — The 1982 amendment, effective Jan. 1, 1983, in subsection (a), inserted "or a citation" and substituted "another qualified agency" for "other qualified agency designated by the court" in the first sentence and deleted the last two sentences, and added subsection (c).

Editor's note. — Section 2, ch. 844, Acts 1982, provides "that all laws or parts of laws, public general or public local, inconsistent with this act, are repealed to the extent of the inconsistency."

Section violated where accused's counsel had not received study under consideration by court. — This section has been violated where, prior to any formal adjudication of delinquency, the court acknowledged that it had considered, and was still considering, the contents of an agency study, and where it was clear from the record that the accused's counsel had never received a copy of the study although the judge was considering disposition of the case. In re Jeffrey L., 50 Md. App. 268, 437 A.2d 255 (1981).

Stated in In re Stephen K., 289 Md. 294, 424 A.2d 153 (1981).

Cited in Goins v. State, 293 Md. 97, 442 A.2d 550 (1982).

§ 3-819. Adjudication.

(a) After a petition or citation has been filed, and unless jurisdiction has been waived, the court shall hold an adjudicatory hearing.

(b) (1) Before a child is adjudicated delinquent, the allegations in the petition that the child has committed a delinquent act must be proved beyond a reasonable doubt.

(2) Before a child is found to have committed the violation charged in a citation, the allegations in the citation must be proved beyond a reasonable doubt.

(c) If an adult is charged under this subtitle, the allegations must be proved beyond a reasonable doubt.

(d) In all other cases the allegations must be proved by a preponderance of the evidence. (An. Code 1957, art. 26, §§ 70-17, 70-18; 1973, 1st Sp. Sess., ch. 2, § 1; 1975, ch. 554, §§ 1, 3; 1978, ch. 814; 1982, ch. 844.)

Effect of amendment. — The 1982 amendment, effective Jan. 1, 1983, inserted "or citation" in subsection (a), and designated the provisions of subsection (b) as paragraph (1) and added paragraph (2).

Editor's note. — Section 2, ch. 844, Acts 1982, provides "that all laws or parts of laws, public general or public local, inconsistent with this act, are repealed to the extent of the inconsistency."

Maryland Law Review. — For survey of Court of Appeals decisions on juvenile law for the year 1974-1975, see 36 Md. L. Rev. 405 (1976).

University of Baltimore Law Review. — For comment discussing the history, analysis and proposed reform of Maryland law on child abuse and neglect, see 6 U. Balt. L. Rev. 113 (1976).

Legislature intended to maintain distinct functions of adjudicatory hearing and dispositional hearing by eliminating all inquiry into the child's need for guidance or treatment from the former, thereby preventing irrelevant and potentially prejudicial facts from being taken into consideration in the adjudication of pending charges. In re Ernest J., 52 Md. App. 56, 447 A.2d 97 (1982).

"Adjudicatory hearing" is that phase of the total proceeding whereto witnesses are summonsed; whereat they are sworn, confronted with the alleged delinquent, examined and cross-examined; whereat their demeanor is observed, their credibility assessed and their testimony weighed, whereat the testimony is subject to the rules of evidence and is transcribed by a court reporter, whereat the alleged delinquent is represented by counsel and where he enjoys the right to remain silent under Maryland Rules, Rule 917; whereat the State's Attorney marshals and presents the evidence for the petitioner; and whereat the presiding judge or master makes and announces his finding including "a brief statement of the grounds upon which . . . [he] bases . . . [his] determination." In re Brown, 13 Md. App. 625, 284 A.2d 441 (1971).

The "adjudicatory hearing" is not that phase of the proceeding, frequently conducted ex parte and frequently conducted in camera, whereat the supervising judge ratifies, modifies or rejects the findings and recommendations of the master. In re Brown, 13 Md. App. 625, 284 A.2d 441 (1971).

The adjudicatory hearing is solely to determine the merits of the allegations of delinquency. In re Wooten, 13 Md. App. 521, 284 A.2d 32 (1971).

The primary purpose of the adjudicatory hearing is to determine the merits of the allegation in the petition. In re Ernest J., 52 Md. App. 56, 447 A.2d 97 (1982).

Master himself is empowered to conduct "adjudicatory hearing." In re Brown, 13 Md. App. 625, 284 A.2d 441 (1971).

Double jeopardy. — Where a defendant was put in jeopardy by the action of the court, subsequent prosecution of him as an adult for the same criminal acts would subject him to a successive prosecution and to the risk of multiple punishment, in violation of the federal constitutional prohibition against double jeopardy. Parejinog v. State, 282 Md. 256, 384 A.2d 86 (1978).

Where the court acquired jurisdiction over the defendant and ordered that the defendant undergo therapy at a hospital for six months under the jurisdiction of the Juvenile Services Administration and that he make restitution, these orders were dispositional in nature, and required, as a precondition, an adjudication that the defendant had committed delinquent

acts. Though the record did not disclose whether or not the court expressly made an adjudication of the defendant's guilt, the court implicitly made an adjudication and the defendant was put in jeopardy by this action. Parosinog v. State, 282 Md. 256, 384 A.2d 86 (1978).

Jeopardy attaches to a juvenile adjudicatory hearing under this section and therefore a subsequent criminal trial is precluded. In re Mark R., 294 Md. 244, 449 A.2d 393 (1982).

In considering sufficiency of evidence to sustain finding of delinquency, the State's case is measured in terms of that quantum of evidence which would be necessary to convict the child of the crimes were she an adult. Folk v. State, 11 Md. App. 508, 275 A.2d 184 (1971).

The test of the sufficiency of the evidence to be applied is whether the evidence adduced either showed directly or supported a rational inference of the facts to be proved, from which the trier of fact could be convinced, beyond a reasonable doubt, that appellant was a delinquent child. In re Appeal No. 504, 24 Md. App. 715, 332 A.2d 698 (1975).

Allegations to be proved beyond reasonable doubt. — The evidence adduced must be sufficient in law to prove beyond a reasonable doubt the allegations which were the basis of the determination of delinquency. In re Davis, 17 Md. App. 98, 299 A.2d 856 (1973).

That child is in need of supervision must be established by preponderance of evidence. In re Smith, 16 Md. App. 209, 295 A.2d 238 (1972).

Proof that child is in need of supervision must be by preponderance of evidence. In re Carter, 20 Md. App. 633, 318 A.2d 269 (1974), aff'd, 273 Md. 690, 332 A.2d 246 (1975).

Jurisdiction over adult formerly child adjudicated delinquent. — A child adjudicated delinquent, who later becomes an adult, but is under the age of 21 years, has her rights as an adult subject to the jurisdiction of the court, and that jurisdiction continues until she becomes 21. In re Johanna F., 284 Md. 643, 399 A.2d 245 (1979).

New trial. — No authority can be found, either under the Maryland Rules or any statute, providing for a new trial in juvenile proceedings in this State. In re Fletcher, 251 Md. 520, 248 A.2d 364 (1968), cert. denied, 396 U.S. 852, 90 S. Ct. 112, 24 L. Ed. 2d 101 (1969).

Stated in In re Stephen K., 289 Md. 294, 424 A.2d 153 (1981).

Cited in Aldridge v. Dean, 395 F. Supp. 1161 (D. Md. 1975); In re Appeal No. 769, 25 Md. App. 565, 335 A.2d 204 (1975); In re Dewayne H., 290 Md. 401, 430 A.2d 76 (1981).

§ 3-820. Disposition; costs.

(a) After an adjudicatory hearing the court shall hold a separate disposition hearing, unless the petition or citation is dismissed or unless such hearing is waived in writing by all of the parties. The disposition hearing may be held on the same day as the adjudicatory hearing, if notice of the disposition hearing, as prescribed by the Maryland Rules, is waived on the record by all of the parties.

(b) The priorities in making a disposition are the public safety and a program of treatment, training, and rehabilitation best suited to the physical, mental, and moral welfare of the child consistent with the public interest.

(c) In making a disposition on a petition, the court may:

(1) Place the child on probation or under supervision in his own home or in the custody or under the guardianship of a relative or other fit person, upon terms the court deems appropriate;

(2) Commit the child to the custody or under the guardianship of the Juvenile Services Administration, a local department of social services, the Department of Health and Mental Hygiene, or a public or licensed private agency; or

(3) Order the child, parents, guardian, or custodian of the child to participate in rehabilitative services that are in the best interest of the child and the family.

(d) (1) (i) In making a disposition on a finding that the child has committed the violation specified in a citation, the court may order the Motor Vehicle Administration to initiate an action, under the motor vehicle laws, to suspend the driving privilege of a child licensed to operate a motor vehicle by the Motor Vehicle Administration for a specified period of not less than 30 days nor more than 90 days.

(ii) If a child subject to a suspension under this subsection does not hold a license to operate a motor vehicle on the date of the disposition, the suspension shall commence on the date that the license is issued, or after the child applies and becomes qualified to receive a license, or on the child's eighteenth birthday, whichever occurs first.

(2) In addition to the dispositions under subsection (c) (1) of this section, the court also may:

(i) Counsel the child or the parent or both;

(ii) Impose a civil fine of not more than $25 for the first violation and a civil fine of not more than $100 for the second and subsequent violations;

(iii) Order the child to participate in a supervised work program for not more than 20 hours for the first violation and not more than 40 hours for the second and subsequent violations.

(e) A guardian appointed under this section has no control over the property of the child unless he receives that express authority from the court.

(f) The court may impose reasonable court costs against a respondent, or the respondent's parent, guardian, or custodian, against whom a finding of delinquency has been entered under the provisions of this section.

(g) A child may be placed in an emergency facility on an emergency basis under Title 10, Subtitle 6, Part IV of the Health-General Article.

(h) The court may not commit a child to the custody of the Department of Health and Mental Hygiene for inpatient care and treatment in a State mental hospital unless the court finds on the record based upon clear and convincing evidence that:

(1) The child has a mental disorder;

(2) The child needs inpatient medical care or treatment for the protection of himself or others;

(3) The child is unable or unwilling to be voluntarily admitted to such facility; and

(4) There is no less restrictive form of intervention available which is consistent with the child's condition and welfare.

(i) The court may not commit a child to the custody of the Department of Health and Mental Hygiene for inpatient care and treatment in a State mental retardation facility unless the court finds on the record based upon clear and convincing evidence that:

(1) The child is mentally retarded;

(2) The condition is of such a nature that for the adequate care or protection of the child or others, the child needs in-residence care or treatment; and

(3) There is no less restrictive form of care and treatment available which is consistent with the child's welfare and safety.

(j) (1) Any commitment order issued under subsections (h) or (i) of this section shall require the Department of Health and Mental Hygiene to file progress reports with the court at intervals no greater than every 6 months during the life of the order. The Department of Health and Mental Hygiene shall provide the child's attorney of record with a copy of each report. The court shall review each report promptly and consider whether the commitment order should be modified or vacated. After the first 6 months of the commitment and at 6-month intervals thereafter upon the request of any party, the Department or facility, the court shall grant a hearing for the purpose of determining if the standard in subsection (h) or (i) continues to be met.

(2) At any time after the commitment of the child to a State mental hospital if the individualized treatment plan developed under § 10-705 of the Health-General Article recommends that a child no longer meets the standards in subsection (h), then the court shall grant a hearing to review the commitment order. The court may grant a hearing at any other time for the purpose of determining if the standard in subsection (h) continues to be met.

(3) Any time after the commitment of the child to a State mental retardation facility if the individualized treatment plan developed under § 7-605 of the Health-General Article recommends that a child no longer meets the standards in subsection (i), then the court shall grant a hearing to review the commitment order. The court may grant a hearing at any other time for the purpose of determining if the standard in subsection (i) continues to be met (An. Code 1957, art. 26, §§ 70-17, 70-19; 1973, 1st Sp. Sess., ch. 2, § 1; 1975, ch. 554, §§ 1, 3; 1976, ch. 463; 1978, chs. 680, 814; 1980, ch. 697; 1981, chs. 511, 795; 1982, ch. 770, § 4; ch. 844.)

Effect of amendments. — Chapter 770, Acts 1982, effective July 1, 1982, substituted "Title 10, Subtitle 6, Part IV of the Health-General Article" for "§ 22 of Article 59" at the end of subsection (e), substituted "§ 10-705 of the Health-General Article" for "§ 3A of Article 59" in the first sentence in paragraph (2) of subsection (h) and substituted "§ 7-605 of the Health-General Article" for "§ 8A of Article 59A" in the first sentence in paragraph (3) of that subsection.

Chapter 844, Acts 1982, effective Jan. 1, 1983, inserted "or citation" in the first sentence of subsection (a), designated the second sentence of subsection (b) as present subsection (c) and added "in making a disposition on a petition" at the beginning thereof, inserted present subsection (d), redesignated former subsections (c) through (h) as present subsections (e) through (j), and in subsection (j), substituted "subsections (h) or (i)" for "subsections (f) or (g)" and "subsection (h) or (i)" for "subsection (f) or (g)" in paragraph (1), "subsection (h)" for "subsection (f)" twice in paragraph (2), and "subsection (i)" for "subsection (g)" twice in paragraph (3).

Editor's note. — Section 2, ch. 844, Acts 1982, provides "that all laws or parts of laws, public general or public local, inconsistent with this act, are repealed to the extent of the inconsistency."

Maryland Law Review. — For survey of Court of Appeals decisions on juvenile law for the year 1974-1975, see 36 Md. L. Rev. 405 (1976).

University of Baltimore Law Review. — For comment discussing the history, analysis and proposed reform of Maryland law on child abuse and neglect, see 6 U. Balt. L. Rev. 113 (1976).

For discussion of child abduction by a relative and Maryland's misdemeanor offense to deter parental child-stealing, see 8 U. Balt. L. Rev. 609 (1979).

Disposition hearing separate and distinct from delinquency adjudication hearing is required subsequent to the finding of delinquency and is plainly mandated by this section and by the provisions of Maryland Rules, Rule 914 (Adjudicatory Hearing) and Rule 915 (Disposition Hearing). The reason for such a bifurcated process is equally clear. The adjudicatory hearing is solely to determine the merits of the allegations of delinquency. In re Roberts, 13 Md. App. 644, 284 A.2d 621 (1971).

That a disposition hearing separate and distinct from the delinquency adjudication hearing is required subsequent to the finding of delinquency is plainly mandated by this section and by the provisions of Maryland Rules, Rules 914 and 915. In re Wooten, 13 Md. App. 521, 284 A.2d 32 (1971).

Purpose of "disposition hearing" is to determine whether the delinquent child is in need of supervision, treatment, or rehabilitation and, if so, the nature required. In re Wooten, 13 Md. App. 521, 284 A.2d 32 (1971).

Adjudicatory hearing is not criminal proceeding. In re Appeal No. 544, 25 Md. App. 26, 332 A.2d 680 (1975).

But such hearing attains incidents of criminal proceeding. — When the allegation is that a child is delinquent, the adjudicatory hearing attains many of the incidents of a criminal proceeding. In re Appeal No. 544, 25 Md. App. 26, 332 A.2d 680 (1975).

Application of due process requirements at adjudicatory stage. — Due process requires that various of the federal constitutional guarantees accompanying ordinary criminal proceedings, specifically including the privilege against self-incrimination, be made applicable at the adjudicatory stage of those juvenile proceedings in which the act charged would constitute a crime if committed by an adult and which may result in confinement of the child to a State institution. In re Spalding, 273 Md. 690, 332 A.2d 246 (1975).

Counsel required. — No juvenile shall hereafter be involuntarily committed to a Maryland mental hospital unless counsel has been provided. Johnson v. Solomon, 484 F. Supp. 278 (D. Md. 1979).

Court must consider particular needs of individual child. — Subject to external constraints, a juvenile court must be free to consider each child individually and to fashion a treatment plan, if one is needed, that takes account of his particular needs and situation. In re David K., 48 Md. App. 714, 429 A.2d 313 (1981).

Court's disposition not unbridled. — The disposition of the child which the court may make is not unbridled. In re Johanna F., 284 Md. 643, 399 A.2d 245 (1979).

Although court's discretion is not unbridled, it is broad so as to implement the overriding consideration of devising a program of treatment, training, and rehabilitation best suited to the physical, mental, and moral welfare of the child consistent with the public interest. In re David K., 48 Md. App. 714, 429 A.2d 313 (1981).

Judge's determination as to placement of child. — Maryland Rules, Rule 915 (b) refers to this section and indicates that among the reasons upon which the judge must base his determination as to the placement of a child are the best interests of the child and the feasibility of programs which allow the child to remain at home. In re Virgil M., 46 Md. App. 654, 421 A.2d 105 (1980).

Waiver cannot be inferred from silent acquiescence. — Subsection (a) of this section does not permit an appellate court to infer a waiver from silent acquiescence by one party; that is not a waiver by that party "on the record." In re Jeffrey L., 50 Md. App. 268, 437 A.2d 255 (1981).

Right to treatment.— Persons involuntarily committed under this section have a constitutional right to treatment. Johnson v. Solomon, 484 F. Supp. 278 (D. Md. 1979).

Community services and programs preferred. — No mentally retarded or otherwise civilly committed juvenile shall be admitted to a mental institution if services and programs available in the community can afford such person adequate care, habilitation, and treatment in a setting which is not only suitable and appropriate to his needs, but also less restrictive of his liberty. Johnson v. Solomon, 484 F. Supp. 278 (D. Md. 1979).

Provisions of subsections (b) and (c) must be considered in pari materia with legislatively-declared purposes of this subtitle, as set forth in § 3-802 (a) of this article. In re David K., 48 Md. App. 714, 429 A.2d 313 (1981).

Court lacks right to mandate terms of commitment. — Paragraph (2) of subsection (c) of this section empowers the court to commit a child to the custody of the Department of Health and Mental Hygiene; it does not confer upon the court any right to mandate the specific terms of the commitment. Maryland State Dep't of Health & Mental Hygiene v. Prince George's County Dep't of Social Servs., 47 Md. App. 436, 423 A.2d 589 (1980), cert. denied, 290 Md. 714, — A.2d — (1981).

And authority to order Department to pay for private care. — The Circuit Court for Prince George's County, sitting as a juvenile court, lacked the authority to order the Department of Health and Mental Hygiene to pay for a child's care at a private institution. Maryland State Dep't of Health & Mental Hygiene v. Prince George's County Dep't of Social Servs., 47 Md. App. 436, 423 A.2d 589 (1980), cert. denied, 290 Md. 714, — A.2d — (1981).

Subsection (h) spells out prerequisites of commitment. — When a child is placed in the custody of the Department of Mental Hygiene for inpatient care at a state mental hospital, subsection (h) of this section spells out the prerequisites of such commitment, based upon clear and convincing evidence. In re Jeffrey L., 50 Md. App. 268, 437 A.2d 255 (1981).

Due process mandates that involuntary commitments be given mandatory periodic

review. Johnson v. Solomon, 484 F. Supp. 278 (D. Md. 1979).

Mandatory periodic review will ensure that a redetermination as to both suitability of commitment and the nature of that commitment will be based upon the standards employed during the original commitment hearing Johnson v. Solomon, 484 F. Supp. 278 (D. Md. 1979).

Double jeopardy. — Where a defendant was put in jeopardy by the action of the court, subsequent prosecution of him as an adult for the same criminal acts would subject him to a successive prosecution and to the risk of multiple punishment, in violation of the federal constitutional prohibition against double jeopardy. Parojinog v. State, 282 Md. 256, 384 A.2d 86 (1978).

Where the court acquired jurisdiction over the defendant and ordered that the defendant undergo therapy at a hospital for six months under the jurisdiction of the Juvenile Services Administration and that he make restitution, these orders were dispositional in nature, and required, as a precondition, an adjudication that the defendant had committed delinquent acts. Though the record did not disclose whether or not the court expressly made an adjudication of the defendant's guilt, the court implicitly made an adjudication and the defendant was put in jeopardy by this action. Parojinog v. State, 282 Md. 256, 384 A.2d 86 (1978).

Applicability of Sixth Amendment. — The applicability to adjudicatory hearings of the Sixth Amendment to the federal Constitution cannot be doubted. In re Appeal No. 977, 22 Md. App. 511, 323 A.2d 663 (1974).

Jury trial. — An adjudicatory hearing shall be conducted by the court without a jury. In re Appeal No. 544, 25 Md. App. 26, 332 A.2d 680 (1975).

Dismissal of proceeding concerning juvenile is not proper sanction for violation of 30-day requirement of Md. Rule 915. In re Dewayne H., 290 Md. 401, 430 A.2d 76 (1981).

Juvenile court has no authority to impose fine upon juvenile as such action is entirely inconsistent with the noncriminal nature of this subtitle. In re David K., 48 Md. App. 714, 429 A.2d 313 (1981).

Nor does juvenile court have authority directly to suspend child's driving privileges upon a finding of delinquency, that power is committed by statute exclusively to the Motor Vehicle Administration. In re David K., 48 Md. App. 714, 429 A.2d 313 (1981).

Protection against incriminatory statement not applicable to CINS proceeding. — The use of an incriminatory statement by a child in a CINS proceeding would, in any other proceeding against the child, be constitutionally proscribed. In re Carter, 20 Md. App. 633, 318 A.2d 269 (1974), aff'd, 273 Md. 690, 332 A.2d 246 (1975).

The Fifth Amendment privilege against self-incrimination is inapplicable to a proceeding upon a CINS petition. In re Spalding, 273 Md. 690, 332 A.2d 246 (1975).

When dispositional hearing is required. — A dispositional hearing is required only after the court has held an adjudicatory hearing in a delinquency case and has sustained the allegations of the petition considered at said hearing. In re McNeil, 21 Md. App. 484, 320 A.2d 57 (1974).

There is no requirement that dispositional hearing be held as part of dependency proceeding. In re McNeil, 21 Md. App. 484, 320 A.2d 57 (1974).

Forms of state intervention where child found to be in need of supervision. — The Code ensures that, as respects children in need of supervision, guidance, treatment or rehabilitation are to be the sole forms of State intervention. In re Carter, 20 Md. App. 633, 318 A.2d 269 (1974), aff'd, 273 Md. 690, 332 A.2d 246 (1975).

Separation of children from adults in mental health facilities. — When a child is committed pursuant to this section, there is no legislative intent to mandate the separation of children from adults in mental health facilities administered by the Department of Health and Mental Hygiene. In re Appeal No. 653, 277 Md. 212, 352 A.2d 845 (1976).

The question of whether a child committed to the custody of the Department of Health and Mental Hygiene under this section must be kept separate from adult patients is, at least initially, one of departmental discretion. In re Appeal No. 653, 277 Md. 212, 352 A.2d 845 (1976).

Applied in In re Appeal No. 1038, 32 Md. App. 239, 360 A.2d 18 (1976); In re Phillip P., 50 Md. App. 235, 437 A.2d 892 (1981).

Quoted in In re Appeal No. 1327, 32 Md. App. 478, 361 A.2d 156 (1976).

Stated in Maryland Action for Foster Children, Inc. v. State, 279 Md. 133, 367 A.2d 491 (1977); In re Stephen K., 289 Md. 294, 424 A.2d 153 (1981).

Cited in In re: No. 1140, S.T. 1977, 39 Md. App. 609, 387 A.2d 315 (1978), Goins v. State, 293 Md. 97, 442 A.2d 560 (1982).

§ 3-821. Right to counsel.

A party is entitled to the assistance of counsel at every stage of any proceeding under this subtitle. (An. Code 1957, art. 26, § 70-18; 1973, 1st Sp. Sess., ch. 2, § 1; 1975, ch. 554, §§ 1, 3.)

Maryland Law Review. — For survey of Court of Appeals decisions on juvenile law for the year 1974-1975, see 36 Md. L. Rev. 405 (1976).

Waiver of representation. — Procedural safeguards to assure that a waiver of representation in a juvenile proceeding is a valid waiver are set out in detail in the Maryland Rules. In re Appeal No. 101, 34 Md. App. 1, 366 A.2d 392 (1976).

Hearing to determine parent's liability. — A parent is entitled to representation by legal counsel at a hearing to determine that parent's liability. In re Appeal No. 769, 25 Md. App. 565, 335 A.2d 204 (1975).

Review of commitment hearings. — Hearings before the juvenile court judge for "review of commitment for placement" of a juvenile were "proceedings," and, therefore, there was a requirement that the juvenile be offered counsel. In re Glenn H., 43 Md. App. 510, 406 A.2d 444 (1979).

Applied in In re Appeal No. 245, 29 Md. App. 131, 349 A.2d 434 (1975).

Quoted in Johnson v. Solomon, 484 F. Supp. 278 (D. Md. 1979); In re Johanna F., 284 Md. 643, 399 A.2d 245 (1979).

Stated in In re Michael W., 53 Md. App. 271, 452 A.2d 1278 (1982).

§ 3-822. Emergency medical treatment.

The court may order emergency medical, dental, or surgical treatment of a child alleged to be suffering from a condition or illness which, in the opinion of a licensed physician or dentist, as the case may be, requires immediate treatment, if the child's parent, guardian, or custodian is not available or, without good cause, refuses to consent to the treatment. (An. Code 1957, art. 26, § 70-15; 1973, 1st Sp. Sess., ch. 2, § 1; 1975, ch. 554, §§ 1, 3.)

University of Baltimore Law Review. — For comment discussing the history, analysis and proposed reform of Maryland law on child abuse and neglect, see 6 U. Balt. L. Rev. 113 (1976).

For discussion of child abduction by a relative and Maryland's misdemeanor offense to deter parental child-stealing, see 8 U. Balt. L. Rev. 609 (1979).

§ 3-823. Limitations on place of commitment.

(a) A child may not be detained at, or committed or transferred to a penal institution or other facility used primarily for the confinement of adults charged with or convicted of a crime, except pursuant to § 3-816 (b).

(b) A child who is not delinquent may not be committed or transferred to a facility used for the confinement of delinquent children.

(c) Unless an individualized treatment plan developed under § 10-705 of the Health-General Article indicates otherwise:

(1) A child may not be committed or transferred to any public or private facility or institution unless the child is placed in accommodations that are separate from other persons 18 years of age or older who are confined to that facility or institution; and

(2) The child may not be treated in any group with persons who are 18 years of age or older. (An. Code 1957, art. 26, §§ 70-19, 70-21; 1973, 1st Sp.

Sess., ch. 2, § 1; 1975, ch. 554, §§ 1, 3; 1978, chs. 335, 814; 1982, ch. 770, § 4.)

Effect of amendment. — The 1982 amendment, effective July 1, 1982, substituted "§ 10-705 of the Health-General Article" for "§ 3A of Article 59 of the Code" in the introductory language in subsection (c).

Maryland Law Review. — For note discussing the legal implications of counseling minors without parental consent, see 31 Md. L. Rev. 332 (1971).

Legislative intent. — This section reveals that the legislature intended to require the separation of children from adults only with respect to jails, detention centers and correctional institutions housing adults charged with or convicted of crimes. In re Appeal No. 653, 277 Md. 212, 352 A.2d 845 (1976).

Treatment of children other than delinquent. — This section makes plain that within the juvenile system, treatment of children other than delinquent children is to take a form specifically its own. In re Carter, 20 Md. App. 633, 318 A.2d 269 (1974), aff'd, 273 Md. 690, 332 A.2d 246 (1975).

Mere fact of delinquency does not justify commitment. — The mere fact of delinquency, without more, ordinarily does not justify the taking of the child from his parents and his commitment to a State training school. In re Hamill, 10 Md. App. 586, 271 A.2d 762 (1970); In re Roberts, 13 Md. App. 644, 284 A.2d 621 (1971).

The mere fact of delinquency does not by itself warrant commitment of a juvenile to a training school. In re Wooten, 13 Md. App. 521, 284 A.2d 32 (1971).

To make disposition "most suited to the physical, mental and moral welfare of the child" under this section requires that the juvenile judge consider more than the delinquent act itself, no matter how extreme or violent it may have been. In re Wooten, 13 Md. App. 521, 284 A.2d 32 (1971).

However relevant the nature of the delinquent act and the circumstances surrounding its commission may be in making a proper disposition, those factors cannot be applied without regard to, or wholly apart from, the child's best interests and those of the public viewed in the light of the purposes underlying the juvenile law. In other words, to make disposition most suited to the physical, mental and moral welfare of the child under this section requires that the juvenile judge consider more than the delinquent act itself, no matter how extreme or violent it may have been. In re Roberts, 13 Md. App. 644, 284 A.2d 621 (1971).

Commitment improper where parents able to rehabilitate delinquent child. — Because the legislature has indicated its preference that a delinquent child be placed in the care, custody, and control of individuals rather than an institution whenever consistent with the purposes underlying the juvenile law, a commitment to a training school in a case where the parents would seem able and willing to undertake the rehabilitation of the delinquent child would be improper. In re Hamill, 10 Md. App. 586, 271 A.2d 762 (1970); In re Wooten, 13 Md. App. 521, 284 A.2d 32 (1971).

But commitment may be necessary in other cases. — Where the evidence at the disposition hearing shows that the parents, no matter how well motivated or intentioned, are incapable, unwilling, or unable to control or rehabilitate their delinquent child, a commitment to the training school may be necessary for the welfare of the delinquent or in the interests of public safety. In re Hamill, 10 Md. App. 586, 271 A.2d 762 (1970); In re Wooten, 13 Md. App. 521, 284 A.2d 32 (1971).

Object of disposition is protection and rehabilitation. — Judges should, in making dispositions in juvenile cases, think not in terms of guilt, but of the child's need for protection or rehabilitation; the juvenile court is to make dispositions so as to provide for the care, protection and wholesome mental and physical development of the child by a program of treatment, training and rehabilitation consistent with the protection of the public interest. In re Roberts, 13 Md. App. 644, 284 A.2d 621 (1971).

The juvenile court is to make dispositions so as to provide for the care, protection and wholesome mental and physical development of the child by a program of treatment, training and rehabilitation consistent with the protection of the public interests. In re Wooten, 13 Md. App. 521, 284 A.2d 32 (1971).

Maryland law clearly contemplates retention of delinquent child in his home wherever possible, if that is consistent with his own as well as the public interest. In re Roberts, 13 Md. App. 644, 284 A.2d 621 (1971).

Where the record contained nothing to indicate or suggest that the appellant's physical, mental and moral welfare would be served from separating him from his parents and committing him to a training school, the case was remanded without affirmance or reversal for further considerution by the juvenile judge with respect to the proper disposition to be made. In re Roberts, 13 Md. App. 644, 284 A.2d 621 (1971).

Discretion. — The matter of disposition in a juvenile case is committed to the sound discretion of the juvenile judge, to be disturbed on appeal only upon a finding that his discretion

has been abused. In re Wooten, 13 Md. App. 521, 284 A.2d 32 (1971).

Where juvenile judge, in taking juvenile from his parents and committing him to a training school, neither sought nor provided an opportunity for the introduction of evidence to assist him in making a proper disposition under this section and had no reports nor information concerning the juvenile, his family, or his home environment other than that adduced during the delinquency stage of the proceedings, there was an abuse of discretion. In re Wooten, 13 Md. App. 521, 284 A.2d 32 (1971).

On the evidence the juvenile court did not abuse its discretion in placing a child found in need of supervision in the custody of her mother, under the supervision of the Department of Juvenile Services subject to the further order of the court. In re Smith, 16 Md. App. 209, 295 A.2d 238 (1972).

Applied in In re Johanna F., 284 Md. 643, 399 A.2d 245 (1979).

§ 3-824. Effect of proceedings under subtitle.

(a) (1) An adjudication of a child pursuant to this subtitle is not a criminal conviction for any purpose and does not impose any of the civil disabilities ordinarily imposed by a criminal conviction.

(2) An adjudication and disposition of a child in which the child's driving privileges have been suspended may not affect the child's driving record or result in a point assessment. The State Motor Vehicle Administration may not disclose information concerning or relating to a suspension under this subtitle to any insurance company or person other than the child, the child's parent or guardian, the court, the child's attorney, a State's Attorney, or law enforcement agency.

(3) However, an adjudication of a child as delinquent by reason of his violation of the State vehicle laws shall be reported by the clerk of the court to the Motor Vehicle Administration, which shall assess points against the child under Title 16, Subtitle 4 of the Transportation Article, in the same manner and to the same effect as if the child had been convicted of the offense.

(b) An adjudication and disposition of a child pursuant to this subtitle are not admissible as evidence against the child:

(1) In any criminal proceeding prior to conviction; or

(2) In any adjudicatory hearing on a petition alleging delinquency; or

(3) In any civil proceeding not conducted under this subtitle.

(c) Evidence given in a proceeding under this subtitle is not admissible against the child in any other proceeding in another court, except in a criminal proceeding where the child is charged with perjury and the evidence is relevant to that charge and is otherwise admissible.

(d) An adjudication or disposition of a child under this subtitle shall not disqualify the child with respect to employment in the civil service of the State or any subdivision of the State. (An. Code 1957, art. 26, § 70-21; 1973, 1st Sp. Sess., ch. 2, § 1; 1975, ch. 554, §§ 1, 3; 1977, ch. 765, § 23; 1978, ch. 814; 1981, ch. 275; 1982, ch. 844.)

Effect of amendment. — The 1982 amendment, effective Jan. 1, 1983, designated the provisions of subsection (a) as paragraph (1) thereof, deleted the second sentence therein and added paragraphs (2) and (3).

Legislative intent. — It was the plain legislative intent that a finding of delinquency in a juvenile court should not be equated in any way with a conviction for crime. In re Alexander, 16 Md. App. 416, 297 A.2d 301 (1972), cert. denied, 268 Md. 751, — A.2d — (1973).

Juvenile proceeding is not criminal proceeding. In re Appeal No. 504, 24 Md. App. 715, 332 A.2d 698 (1975).

Inquiry of determinations of prior juve-

nile delinquency is impermissible. — Inquiry, whether by record or by cross-examination, of determinations of prior juvenile delinquency is impermissible in any adjudicatory hearing. In re Alexander, 16 Md. App. 416, 297 A.2d 301 (1972), cert. denied, 268 Md. 751, — A.2d — (1973).

Subsection (b) of this section must be read as proscribing not only the admission into evidence of a juvenile record prior to conviction in a criminal case, but as prohibiting its use at any time in any other type of proceeding. Wentworth v. State, 33 Md. App. 242, 364 A.2d 81 (1976).

Consistency found in subsection (b) (1). — The language in the predecessor of subsection (b) (1) of this section, which provided that no disposition in a juvenile matter should be admissible against such an individual "except after conviction of a crime in proceedings to determine his sentence," is consistent with that found in present subsection (b) (1) of this section. Bingman v. State, 285 Md. 59, 400 A.2d 765 (1979).

Juvenile record inadmissible in criminal proceeding prior to conviction. Carroll v. State, 19 Md. App. 179, 310 A.2d 161 (1973).

But it is admissible after conviction of crime in proceedings to determine sentence but only if the prior finding of delinquency satisfies constitutional requirements. Carroll v. State, 19 Md. App. 179, 310 A.2d 161 (1973).

The permitted use of a juvenile record after conviction under this section is for the edification of the trial judge in his approach to employing a proper disposition. Wentworth v. State, 33 Md. App. 242, 364 A.2d 81 (1976).

Juvenile record not admissible for purposes of sentencing after criminal conviction. — Where it is patent that the juvenile delinquency record was considered by the trial judge for the purpose of enhancing punishment without the required showing that the prior convictions and the prior findings of delinquency were constitutionally valid, the sentence that was imposed must be vacated. Carroll v. State, 19 Md. App. 179, 310 A.2d 161 (1973).

Attacking credibility by asking about record of juvenile offenses. — It is impermissible to attack the credibility of a witness by directly asking him about his past record of juvenile offenses. Westfall v. State, 243 Md. 413, 221 A.2d 646 (1966); Johnson v. State, 3 Md. App. 105, 238 A.2d 286, cert. denied, 250 Md. 732, — A.2d — (1968).

By asking witness if he had ever been confined in Maryland Training School and obtaining an admission of such confinement, the jury was indirectly permitted to learn of his past juvenile record, inasmuch as that institution is for confinement for dependent, neglected, or delinquent youths. Westfall v. State, 243 Md. 413, 221 A.2d 646 (1966).

Admission of juvenile record in subsequent trial. — Where appellant had, in juvenile proceedings, been determined a delinquent child upon evidence that he had committed a robbery, the admission of evidence relating to the robbery at his subsequent trial for murder was not improper, where such admission did not result in imposing civil disabilities on appellant or in deeming him a criminal by reason of his adjudication as a delinquent child and there was no reference made to the juvenile court proceedings. Johnson v. State, 3 Md. App. 105, 238 A.2d 286, cert. denied, 250 Md. 732, — A.2d — (1968).

Applied in Francis v. Maryland, 459 F. Supp. 163 (D. Md. 1978), aff'd, 605 F.2d 747 (4th Cir. 1979).

Quoted in In re David K., 48 Md. App. 714, 429 A.2d 313 (1981).

Stated in In re Stephen K., 289 Md. 294, 424 A.2d 153 (1981).

Cited in In re Laurence T., 285 Md. 621, 403 A.2d 1256 (1979).

§ 3-825. Effective period of order of commitment; renewal of order.

(a) Except as provided in subsections (b) and (c), an order vesting legal custody in an individual, agency, or institution is effective for an indeterminate period of time.

(b) An order providing for custody of a child adjudicated delinquent or in need of supervision may not exceed three years from the date entered. However, the court may renew the order upon its own motion, or pursuant to a petition filed by the individual, institution, or agency having legal custody after notice and hearing as prescribed by the Maryland Rules.

(c) An order under this section is not effective after the child becomes 21 years old. (An. Code 1957, art. 26, § 70-20; 1973, 1st Sp. Sess., ch. 2, § 1; 1975, ch. 554, §§ 1, 3; 1976, ch. 457.)

Jurisdiction and custody are separate and distinct. In re Johanna F., 284 Md. 643, 399 A.2d 245 (1979).

Jurisdiction exists beyond end of custody order. — The running of the time period which a custody order may not exceed serves only to bring an end to that order; the jurisdiction of the court over the person still exists. In re Johanna F., 284 Md. 643, 399 A.2d 245 (1979).

Purpose of three-year limitation on custody order is patently to preclude a person's remaining in custody for an indefinite time without the opportunity to have the need for commitment reconsidered by the court. In re Johanna F., 284 Md. 643, 399 A.2d 245 (1979).

Renewal not required within three years of original order. — There is nothing in subsection (b) of this section which requires that the renewal be within three years from the entry of the original order. In re Johanna F., 284 Md. 643, 399 A.2d 245 (1979).

Court may not impose minimum period of commitment on a juvenile who has been adjudicated delinquent. In re No. 1140, S.T. 1977, 39 Md. App. 609, 387 A.2d 315 (1978).

Subsection (b) of this section does not impose a sanction. In re Johanna F., 284 Md. 643, 399 A.2d 245 (1979).

§ 3-826. Progress reports.

If a child is committed to an individual or to a public or private agency or institution, the court may require the custodian to file periodic written progress reports, with recommendations for further supervision, treatment, or rehabilitation. (An. Code 1957, art. 26, § 70-20; 1973, 1st Sp. Sess., ch. 2, § 1; 1974, ch. 691, § 8; 1975, ch. 554, §§ 1, 3.)

Stated in In re Stephen K., 289 Md. 294, 424 A.2d 153 (1981).

Cited in In re No. 1140, S.T. 1977, 39 Md. App. 609, 387 A.2d 315 (1978).

§ 3-827. Order controlling conduct of person before court.

Pursuant to the procedure provided in the Maryland Rules, the court may make an appropriate order directing, restraining, or otherwise controlling the conduct of a person who is properly before the court, if:

(i) The court finds that the conduct:

(a) Is or may be detrimental or harmful to a child over whom the court has jurisdiction; or

(b) Will tend to defeat the execution of an order or disposition made or to be made; or

(c) Will assist in the rehabilitation of or is necessary for the welfare of the child; and

(ii) Notice of the application or motion and its grounds has been given as prescribed by the Maryland Rules. (An. Code 1957, art. 26, § 70-22; 1973, 1st Sp. Sess., ch. 2, § 1; 1975, ch. 554, §§ 1, 3.)

University of Baltimore Law Review. — For comment discussing the history, analysis and proposed reform of Maryland law on child abuse and neglect, see 6 U. Balt. L. Rev. 113 (1976).

Juvenile court can remove a child from the custody of its parents when circumstances demand. In re Darius A., 47 Md. App. 232, 422 A.2d 71 (1980).

But court not empowered to provide for adoption. — The express statement of purpose in § 3-802 (a) of this article does not go so far as to empower the juvenile court to deal with the transcendent problem of severing all legal ties and providing for the adoption of the child by another. In re Darius A., 47 Md. App. 232, 422 A.2d 71 (1980).

When § 3-802 (b) of this article spells out the

unimpaired jurisdiction of the juvenile court, contrasting it with the circuit court, the subject of adoption is not a part of that catalogue. In re Darius A., 47 Md. App. 232, 422 A.2d 71 (1980).

Department of Social Services empowered to petition for guardianship. — Within the broad legislative grant of authority to the Social Services Administration under Article 88A and the appropriately promulgated rules and regulations of that administration, COMAR 07.02.11.16, the Montgomery County Department of Social Services is empowered to petition for guardianship with the right to consent of adoption. In re Darius A., 47 Md. App. 232, 422 A.2d 71 (1980).

And juvenile court cannot restrain exercise of such authority. — The juvenile court cannot restrain the proper exercise by the Montgomery County Department of Social Services of its lawful authority to act in filing a petition for guardianship with the right to consent of adoption. In re Darius A., 47 Md. App. 232, 422 A.2d 71 (1980).

Authority to require parents to participate in family counseling. — Even absent a "contributing" conviction, juvenile courts have the authority to require parents of children adjudicated "delinquent," "in need of supervision," or "in need of assistance," to participate in family counseling, and to cite recalcitrant parents for contempt of court. 62 Op. Att'y Gen. 516 (1977).

Order of juvenile court directing that abortion be performed would be beyond the power of the court. In re Smith, 16 Md. App. 209, 295 A.2d 238 (1972).

The juvenile court did not have the power to compel a 16-year old, unmarried, pregnant girl to resort to medical procedures relative to a termination of her pregnancy on the ground that her mother wanted her to have an abortion, and such parts of the order of the juvenile court which ordered her to obey her mother in submitting to medical procedures which would terminate the pregnancy were reversed. In re Smith, 16 Md. App. 209, 295 A.2d 238 (1972).

Cited in In re Appeal No. 769, 25 Md. App. 565, 335 A.2d 204 (1975).

§ 3-828. Confidentiality of records.

(a) A police record concerning a child is confidential and shall be maintained separate from those of adults. Its contents may not be divulged, by subpoena or otherwise, except by order of the court upon good cause shown. This subsection does not prohibit access to and confidential use of the record by the Juvenile Services Administration or in the investigation and prosecution of the child by any law enforcement agency.

(b) A juvenile court record pertaining to a child is confidential and its contents may not be divulged, by subpoena or otherwise, except by order of the court upon good cause shown. This subsection does not prohibit access to and the use of the court record in a proceeding in the court involving the child, by personnel of the court, the State's Attorney, counsel for the child, or authorized personnel of the Juvenile Services Administration.

(c) The court, on its own motion or on petition, and for good cause shown, may order the court records of a child sealed, and, upon petition or on its own motion, shall order them sealed after the child has reached 21 years of age. If sealed, the court records of a child may not be opened, for any purpose, except by order of the court upon good cause shown.

(d) This section does not prohibit access to or use of any juvenile record by the Maryland Division of Parole and Probation or the Maryland Parole Commission when the Division or the Commission is carrying out any of their statutory duties either at the direction of a court of competent jurisdiction, or when the Maryland Parole Commission is carrying out any of its statutory duties, if the record concerns a charge or adjudication of delinquency.

(e) This section does not prohibit access to and use of any juvenile record by the Maryland Division of Correction when the Division is carrying out any of its statutory duties if: (1) the individual to whom the record pertains is

committed to the custody of the Division; and (2) the record concerns an adjudication of delinquency.

(f) Subject to the provisions of § 4-102 of the Health-General Article, this section does not prohibit access to or use of any juvenile record for criminal justice research purposes. A record used under the subsection may not contain the name of the individual to whom the record pertains, or any other identifying information which could reveal the individual's name. (An. Code 1957, art. 26, §§ 70-21, 70-23; 1973, 1st Sp. Sess., ch. 2, § 1; 1974, ch. 555, § 1; ch. 691, § 8; 1975, ch. 554, §§ 1, 3; 1978, ch. 814; 1982, ch. 124; 1983, ch. 164.)

Effect of amendments. — The 1982 amendment, effective July 1, 1982, added subsection (d).

The 1983 amendment, effective July 1, 1983, in subsection (d), inserted "or the Maryland Parole Commission", "or the Commission", "either", and "or when the Maryland Parole Commission is carrying out any of its statutory duties" and substituted "their" for "its", and added subsections (e) and (f).

Access by Division of Parole and Probation. — Although court records pertaining to juveniles are to be maintained in a confidential manner as a general rule, agents of the Division of Parole and Probation may have access to such records when they are carrying out, at the direction of a court of competent jurisdiction, any of the Division's statutory duties. 63 Op. Att'y Gen. 502 (1978).

Stated in In re Stephen K., 289 Md. 294, 424 A.2d 153 (1981).

§ 3-829. Liability for acts of child.

(a) The court may enter a judgment of restitution against the parent of a child, or the child in any case in which the court finds a child has committed a delinquent act and during the commission of that delinquent act has:

(1) Stolen, damaged, or destroyed the property of another;

(2) Inflicted personal injury on another, requiring the injured person to incur medical, dental, hospital, or funeral expenses.

(b) Considering the age and circumstances of a child, the court may order the child to make restitution to the wronged party personally.

(c) (1) A judgment rendered under this section may not exceed:

(i) As to property stolen or destroyed, the lesser of the fair market value of the property or $5,000;

(ii) As to property damaged, the lesser of the amount of damage not to exceed the fair market value of the property damaged or $5,000; and

(iii) As to personal injuries, inflicted, the lesser of the reasonable medical, dental, hospital, funeral, and burial expenses incurred by the injured person as a result of the injury or $5,000.

(2) As an absolute limit against any one child or his parents, a judgment rendered under this section may not exceed $5,000 for all acts arising out of a single incident.

(d) A restitution hearing to determine the liability of a parent or a child, or both, shall be held not later than 30 days after the disposition hearing and may be extended by the court for good cause.

(e) A judgment of restitution against a parent may not be entered unless the parent has been afforded a reasonable opportunity to be heard and to present appropriate evidence in his behalf. A hearing under this section may be held as part of an adjudicatory or disposition hearing for the child.

(f) The judgment may be enforced in the same manner as enforcing monetary judgments.

(g) The Juvenile Services Administration is responsible for the collection of restitution payments when the restitution order provides that restitution is to be made in periodic or installment payments, as part of probation, or pursuant to a work plan. (An. Code 1957, art. 26, § 71A; 1973, 1st Sp. Sess., ch. 2, § 1; 1974, ch. 691, § 8; 1975, ch. 554, §§ 1, 3; 1976, ch. 457; 1977, ch. 301; 1978, ch. 814; 1980, ch. 409; 1981, ch. 389; 1982, chs. 16, 388, 478.)

Effect of amendments. — Chapter 16, Acts 1982, effective July 1, 1982, reenacted the section without change.

Chapter 388, Acts 1982, effective July 1, 1982, added present subsection (g).

Chapter 478, Acts 1982, effective July 1, 1982, inserted present subsection (d) and redesignated former subsections (d) and (e) as present subsections (e) and (f).

Legislative history of section. — See In re John H., 49 Md. App. 595, 433 A.2d 1239 (1981), aff'd, 293 Md. 295, 443 A.2d 594 (1982).

Former Article 26, § 71A, not violative of due process. — Former Article 26, § 71A, as implemented by the procedural safeguards of former Article 26, § 70-22 and Maryland Rule 922, did not offend the due process clauses of Maryland and federal Constitutions since the legislative determination that this matter affects the general welfare has not been shown to be arbitrary, oppressive or unreasonable. In re Sorrell, 20 Md. App. 179, 315 A.2d 110 (1974); In re John H., 49 Md. App. 595, 433 A.2d 1239 (1981), aff'd, 293 Md. 295, 443 A.2d 594 (1982).

Legislative intent of section is clear. In any juvenile cause, parents may be held liable for acts of their child under specified conditions. In re Appeal No. 769, 25 Md. App. 565, 335 A.2d 204 (1975).

This section is not exclusively penal in nature as compensation is one of its purposes. In re John H., 49 Md. App. 595, 433 A.2d 1239 (1981), aff'd, 293 Md. 295, 443 A.2d 594 (1982).

Matter of restitution should be considered and resolved no later than at juvenile's disposition hearing. In re Yolande L., 49 Md. App. 310, 431 A.2d 743 (1981), cert. dismissed, 294 Md. 105, 447 A.2d 871 (1982).

This section authorizes restitution against parents in favor of an agency of government. In re John H., 49 Md. App. 595, 433 A.2d 1239 (1981), aff'd, 293 Md. 295, 443 A.2d 594 (1982).

Foster parents excluded. — The General Assembly did not intend that this section should apply to foster parents. 59 Op. Att'y Gen. 356 (1974).

Parent not having actual custody and control over child excluded. — This section does not apply to a father or a mother who did not have actual custody and control over a child at the time of the act in question. In re James D., 295 Md. 314, 455 A.2d 966 (1983).

Section limits liability by dollar amount, not pro rata share. — This section limits a parent's liability only by a dollar amount, not to a pro rata share of the mischief accomplished by the juvenile. In re Appeal No. 321, 24 Md. App. 82, 329 A.2d 113 (1974).

Vicarious liability is imposed as a consequence of a presumed neglect of parental responsibilities, but it is aimed at restoring a measure of the injury incurred. In re Appeal No. 321, 24 Md. App. 82, 329 A.2d 113 (1974).

Recovery was intended to follow ability to pay. In re Appeal No. 321, 24 Md. App. 82, 329 A.2d 113 (1974).

Contribution may be sought. — In the event joint restitution is prescribed against another juvenile or the parents of a codelinquent, contribution may be sought. In re Appeal No. 321, 24 Md. App. 82, 329 A.2d 113 (1974).

But notwithstanding right to contribution, the restitution ordered should assure the injured of payment within the prescribed limit in a manner comparable to the liability of a joint tort-feasor. In re Appeal No. 321, 24 Md. App. 82, 329 A.2d 113 (1974).

Hearing required prior to imposition of liability. — A judge exercising jurisdiction under this section may act only after a hearing, wherein evidence, beyond a mere finding of delinquency of the juvenile, is produced which is legally sufficient to support a conclusion that damages authorized by the court were willfully or maliciously caused by or committed by a child under 18 years of age. In re Sorrell, 20 Md. App. 179, 315 A.2d 110 (1974).

And difference in factual findings. — Factual findings wholly adequate to support a finding of delinquency will not necessarily support the statutory requisites for imposition of judgments against parents. In re Sorrell, 20 Md. App. 179, 315 A.2d 110 (1974).

Finding of willfulness and malice. — Where the statement of facts for which liability is to be imposed recites that the child committed destructive acts in a willful and malicious manner, the trial court need not

make a separate finding of willfulness and malice. In re John H., 49 Md. App. 595, 433 A.2d 1239 (1981), aff'd, 293 Md. 295, 443 A.2d 594 (1982).

Effect of adjudicatory proceeding against child. — A restitution proceeding before a judge was against the parent. She was not a party to the adjudicatory proceeding against the child. The findings of that proceeding were not res judicata as to her. In re Appeal No. 769, 25 Md. App. 565, 335 A.2d 204 (1975).

Right to counsel. — A parent is entitled to representation by legal counsel at a hearing to determine that parent's liability. In re Appeal No. 769, 25 Md. App. 565, 335 A.2d 204 (1975).

Standard of evidence. — The rules of evidence applicable to civil cases shall apply at hearings to determine parent's liability. In re Appeal No. 769, 25 Md. App. 565, 335 A.2d 204 (1975).

Sufficiency of evidence. — It is necessary under this section that evidence sufficient in law be adduced to establish both that the child had committed the acts resulting in the damages the parent may be required to pay, and that he had done so willfully or maliciously. In re Appeal No. 769, 25 Md. App. 565, 335 A.2d 204 (1975).

Restitution involves determination of responsibility for loss. — An order to make restitution necessarily involves a determination that the individual so ordered bears responsibility for the loss. Parojinog v. State, 282 Md. 256, 384 A.2d 86 (1978).

When parent obliged to make restitution. — Unless the child has been properly found to have participated in the theft in such manner that he could be convicted of a crime if he were an adult, his parent may not be obliged to make restitution. In re Appeal No. 504, 24 Md. App. 715, 332 A.2d 698 (1975).

Enforcement of judgment. — A judgment holder (the victim of the juvenile offense) is required to enforce any judgment under this section by the appropriate civil remedy. 63 Op. Att'y Gen. 447 (1978).

Authority of State's Attorney limited. — The State's Attorney has no authority to bring supplementary proceedings under this section or to act in any other way to enforce or collect a judgment on behalf of a victim. 63 Op. Att'y Gen. 447 (1978).

Applied in In re John H., 293 Md. 295, 443 A.2d 594 (1982).

Stated in In re Laurence T., 285 Md. 621, 403 A.2d 1256 (1979).

Cited in In re David K., 48 Md. App. 714, 429 A.2d 313 (1981).

§ 3-830. Parents liable for support after commitment.

After giving the parent a reasonable opportunity to be heard, the court may order either parent or both parents to pay a sum in the amount the court directs to cover the support of the child in whole or in part. (1975, ch. 554, §§ 1, 3.)

Committed "child" means person under 18 years. — There is nothing in the contextual usage of the word "child" in this section which would "indicate otherwise," as required by § 3-801 (a) of this article, than that "child" means a person under the age of 18 years. In re Stephen K., 289 Md. 294, 424 A.2d 153 (1981).

Quoted in In re Appeal No. 769, 25 Md. App. 565, 335 A.2d 204 (1975).

Cited in In re Appeal No. 245, 29 Md. App. 131, 349 A.2d 434 (1975).

§ 3-831. Contributing to certain conditions of child.

(a) It is unlawful for an adult wilfully to contribute to, encourage, cause or tend to cause any act, omission, or condition which results in a violation, renders a child delinquent, in need of supervision, or in need of assistance.

(b) A person may be convicted under this section even if the child has not been found to have committed a violation, adjudicated delinquent, in need of supervision, or in need of assistance. However, the court may expunge a delinquent adjudication from the child's record and enter it as a finding in the adult's case.

(c) An adult convicted under this section is subject to a fine of not more than $2,500 or imprisonment for not more than 3 years, or both. The court may

suspend sentence and place the adult on probation subject to the terms and conditions it deems to be in the best interests of the child and the public. (An. Code 1957, art. 26, §§ 70-24, 91, 93, 99; 1973, 1st Sp. Sess., ch. 2, § 1; 1975, ch. 554, §§ 1, 3; 1977, ch. 846; 1982, chs. 111, 844.)

Effect of amendments. — Chapter 111, Acts 1982, effective July 1, 1982, substituted "$2,500" for "$500" and "3 years" for "two years" in the first sentence in subsection (c).

Chapter 844, Acts 1982, effective Jan. 1, 1983, inserted "results in a violation" in subsection (a) and "found to have committed a violation" in the first sentence in subsection (b).

University of Baltimore Law Review. — For comment discussing the history, analysis and proposed reform of Maryland law on child abuse and neglect, see 6 U. Balt. L. Rev. 113 (1976).

Adulthood is essential element of offense under this section, and under the general rule applicable in criminal cases the burden is upon the State to prove it beyond a reasonable doubt. In re Appeal No. 267, 38 Md. App. 224, 380 A.2d 239 (1977).

Where the evidence fails to show the accused is an adult, a conviction under this section cannot be sustained. In re Appeal No. 267, 38 Md. App. 224, 380 A.2d 239 (1977).

Raising minority. — Under this section, minority is not a matter that must first be raised by the defense. In re Appeal No. 267, 38 Md. App. 224, 380 A.2d 239 (1977).

Parent convicted of "contributing" may be placed on probation and, as a condition thereof, required by the court to participate in such counseling as a condition of the parent's probation. 62 Op. Att'y Gen. 516 (1977).

Applied in Wilson v. State, 36 Md. App. 243, 373 A.2d 320 (1977).

Stated in In re David K., 48 Md. App. 714, 429 A.2d 313 (1981).

§ 3-832. Appeals in Montgomery County.

For purposes of Title 12 of this article, an action, decision, order, or judgment of the District Court in Montgomery County sitting as the juvenile court shall be treated in the same manner as if it had been made, done, or entered by a circuit court. (1975, ch. 554, §§ 1, 3.)

Maryland Law Review. — For article, "The Court of Appeals of Maryland: Roles, Work and Performance," see 37 Md. L. Rev. 1 (1977).

Nature of hearing before juvenile court. — A hearing before the juvenile court, be it conducted by a division of a circuit court or by the District Court in Montgomery County sitting as a juvenile court, is civil in nature, not criminal. In re Appeal Misc. No. 32, 29 Md. App. 701, 351 A.2d 164 (1976).

Cited in In re Appeal No. 653, 277 Md. 212, 352 A.2d 845 (1976).

§ 3-833. Local juvenile court committees.

A juvenile court committee may be created in each county, to serve as an advisory body to the juvenile court for the county. The composition and members of the committee shall be determined by the governing body of the county. (1975, ch. 554, §§ 1, 3.)

§ 3-834. Appointment of attorney to represent child's interest.

(a) In addition to any requirements relating to the appointment of counsel for children, at any time during the pendency of any action where it appears to the court that the protection of the rights of a child requires independent representation, the court may, upon its own motion, or the motion of any party to the action, appoint an attorney to represent the interest of the child in that

particular action. Such actions include but are not limited to those involving a child in need of assistance, child in need of supervision, delinquent child, or mentally handicapped child.

(b) The compensation for the services of the attorney may be assessed against any party or parties to the action. (1977, ch. 935.)

Legal services deemed "necessaries". — Legal services provided to a minor may, in some circumstances, be deemed "necessaries" for which a parent may be required to pay, e.g., where they are reasonable and necessary for the protection or enforcement of the property rights of the minor or for his personal protection, liberty or relief. Serabian v. Alpern, 284 Md. 680, 399 A.2d 267 (1979).

Recovery of legal services provided to minor. — Recovery against the parent for "necessary" legal services provided to a minor must ordinarily be sought in an action at law. Serabian v. Alpern, 284 Md. 680, 399 A.2d 267 (1979).

§ 3-835. Citation for violation of certain alcoholic beverages laws.

(a) *Grounds for issuance.* — A law enforcement officer authorized to make arrests shall issue a citation to a child if the officer has probable cause to believe that the child is violating:

(1) Article 27, §§ 400, 400A, 401, 402, or 403 of the Code; or

(2) § 26-103 of the Education Article.

(b) *Contents.* — A citation issued under this section shall be printed by the Motor Vehicle Administration and signed by the issuing officer and shall contain:

(1) The name, address, and birth date of the child being charged with the violation;

(2) The name and address of the child's parent or legal guardian;

(3) The statute allegedly violated;

(4) The time, place, and date of the violation;

(5) The driver's license number of the child, if the child possesses a driver's license;

(6) The registration number of the motor vehicle, motorcycle, or other vehicle, if applicable;

(7) The signature of the child; and

(8) The penalties which may be imposed under § 3-820 of the Courts Article.

(c) *Required copies.* — A copy of the citation issued under this section shall be:

(1) Given to the child being charged;

(2) Retained by the officer issuing the citation;

(3) Mailed within 7 days to the child's parent or legal guardian; and

(4) Filed with the intake officer of the court having jurisdiction under this subtitle. (1982, ch. 844.)

Editor's note. — Section 3, ch. 844, Acts 1982, provides that the act shall take effect Jan. 1, 1983.