

**STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT**

STATE OF NEW MEXICO,

Plaintiff,

vs.

D-202-CR-2013-00536

NEHEMIAH G.,

Child.

**REDACTED ORDER REGARDING
SECOND AMENABILITY DETERMINATION**

THIS MATTER came before the Court for hearing on the matter of Nehemiah G.'s (Child's) amenability. The State was represented by Diana Garcia and Mari Martinez. The Child was present at all court proceedings and was represented by Stephen Taylor and Doreen McKnight. The Court, having reviewed exhibits from the first amenability hearing held in January and February 2016; having reviewed transcripts, recordings, and exhibits from the first portion of the second amenability hearing held from December 3 to 7, 2018; having conducted a continuation of the December proceedings on April 15 and 16, 2019; and having reviewed the relevant case law and considered arguments of counsel, now makes the following findings and conclusions:

FINDINGS OF FACT

Jurisdiction

1. On January 18-19, 2013, in Bernalillo County, New Mexico, Child killed his parents, Greg G. and Sarah G., his nine-year-old brother, Z.G., and his two sisters, five-year-old J.G. and two-year-old A.G.

2. Child was fifteen years old at the time of the killings.

Procedural History

3. A grand jury indictment was filed in the Second Judicial District Court on February 4, 2013, charging Child with five counts of first-degree murder and three counts of intentional child abuse resulting in the death of a child under age twelve.
4. On October 16, 2015, Child pleaded guilty to two counts of second-degree murder and three counts of intentional child abuse resulting in death.
5. In January and February 2016, pursuant to NMSA 1978, Section 32A-2-20 (2009), an amenability hearing was conducted before Judge John Romero.
6. On February 26, 2016, Judge Romero entered an order finding “the State failed to prove by clear and convincing evidence that [Child] is not amenable to treatment or rehabilitation as a child in available facilities” and ordered that Child would be subject to a juvenile disposition.
7. Child was committed to the custody of the New Mexico Children, Youth and Families Department (CYFD) until his twenty-first birthday on March 20, 2018.
8. On March 25, 2016, the State appealed the amenability determination.
9. On March 9, 2018, the Court of Appeals reversed the district court, vacated the 2016 amenability determination, and remanded the matter back to district court to conduct a second amenability determination. *State v. Nehemiah G.*, 2018-NMCA-034, ¶ 1, 417 P.3d 1175.
10. Specifically, the Court of Appeals found the district court abused its discretion by
 - (1) insufficiently considering and failing to make proper findings regarding each of the seven statutory factors upon which the amenability determination rests, (2) misinterpreting precedent to conclude that the first four statutory factors related to the commission of the crime were of lesser

or no applicability to the ultimate determination, and (3) arbitrarily disregarding uncontradicted expert testimony that indicated Child would not be rehabilitated by his twenty-first birthday[.]

Id.

11. On April 9, 2018, Child filed a *Petition for Writ of Certiorari to the New Mexico Court of Appeals* in the Supreme Court.
12. On April 26, 2018, the Supreme Court denied Child's petition.
13. On April 27, 2018, the case was reopened in district court pursuant to a mandate from the Court of Appeals.
14. Judge Romero began a second amenability hearing on December 3, 2018.
15. After four days of testimony, Judge Romero declared from the bench that he would recuse himself from the case.
16. On December 31, 2018, Judge Romero entered an order of recusal.
17. On January 4, 2019, the matter was assigned to this Court.
18. In March 2019, upon stipulation of the parties, this Court reviewed all exhibits from the first and second amenability hearings as well as the testimony from the second evidentiary hearings conducted in December 2018.
19. At a hearing on April 15 and 16, 2019, Child concluded the presentation of his evidence, and both sides argued their positions regarding the second amenability hearing.
20. The parties stipulated that Child is not eligible for commitment to an institution for children with developmental disabilities or mental disorders, pursuant to Section 32A-2-20(B)(2).
21. The parties both filed proposed findings of fact and conclusions of law on May 17, 2019.

Section 32A-2-20(C) Factors

22. Pursuant to Section 32A-2-20(C), in determining Child's amenability, the Court is required to consider the following factors:

- a. The seriousness of the offense;
- b. Whether the offense was committed in an aggressive, violent, premeditated, or willful manner;
- c. Whether a firearm was used to commit the offense;
- d. Whether the offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury results;
- e. The maturity of the child as determined by consideration of the child's home, environmental situation, social and emotional health, pattern of living, brain development, trauma history, and disability;
- f. The record and previous history of the child;
- g. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child by the use of procedures, services, and facilities currently available; and
- h. Any other relevant factor, provided the factor is stated on the record.

Factor 1: Seriousness of the offense

23. Child was indicted on five counts of first-degree murder and three counts of intentional child abuse resulting in the death of a child under age twelve.

24. Pursuant to NMSA 1978, Section 32A-2-3(H) (as amended through 2009), due to Child's age and charges, Child was categorized as a serious youthful offender and would have been subject to adult sentencing if convicted as charged.

25. First-degree murder is a capital felony.
26. Intentional child abuse resulting in the death of a child is a first-degree felony resulting in the death of a child.
27. For an adult defendant, each charged offense carries a sentence of life imprisonment.
28. The original indictment included a firearm enhancement on all non-capital felony charges.
29. Child pleaded guilty to two counts of second-degree murder and three counts of intentional child abuse resulting in death.
30. For an adult defendant, second-degree murder carries a sentence of fifteen years imprisonment.

Factor 2: Whether the offense was committed in an aggressive, violent, premeditated, or willful manner

31. On January 18 and 19, 2013, Child shot and killed his mother, three siblings, and father at the family's residence.
32. Child had thought of killing his parents prior to the night of the killings. During an interview conducted by Dr. Kris Mohandie on July 29, 2015, as part of a psychological evaluation, Child disclosed having thoughts of killing his parents when he was eleven or twelve. [State's Ex. 2 at 11] Child did not act on these thoughts because he did not want to deal with the consequences. [*Id.*] The next time he thought of killing his parents was the day of Child's offenses. [*Id.*] When asked why he followed through on the date of the offenses, Child said that his parents' abuse increased and became more regular, and Child became older and meaner. [*Id.*]

33. There was no evidence of a specific precipitating event leading up to the murders other than Child's report that his father became angrier after being fired from his job, which happened a few months prior to the offenses. [*Id.* at 19]
34. When the killings began, Child's father was away from the home working. [State's Ex. 63 at unnumbered page 10]
35. Child told Dr. Mohandie that, on the night of January 18, 2013, he waited for his mother to fall asleep before killing her so that she would not fight back. [State's Ex. 2 at 11]
36. On January 20, 2013, Child was interviewed by Detectives Kyle Hartsock and Adam Gaitan. [State's Ex. 75]
37. The detectives testified that Child was able to interact with others coherently after the deaths of his family members and displayed calmness and a lack of emotion. Child was cooperative and respectful with law enforcement.
38. During the interview with detectives, Child shared details about the incident. [State's Ex. 75]
39. When Child's mother fell asleep, Child took a .22 caliber rifle out of the closet and pulled the trigger, shooting her in the face. [*Id.*] Child shot a second round at his mother's face to be sure she was dead. [*Id.*]
40. After shooting his mother, Child woke his nine-year-old brother, Z.G., who was asleep in the same bed. [*Id.*] Child told his brother their mother was dead. [*Id.*] Z.G. did not believe Child. [*Id.*] Child turned his dead mother's bloody face toward his brother to show him their mother was dead. [*Id.*] Child shot his brother in the head with the .22 caliber rifle. [*Id.*]

41. In recalling the incident later, Child said he said “you’re next” before shooting his brother. [State’s Ex. 2 at 8] At the time, Z.G. was crying and trying to clean his mother’s face with a tissue. [*Id.*]
42. Child’s sisters were crying. [State’s Ex. 75] Child went into his sisters’ bedroom. [*Id.*] Child recalled that he turned off his conscience completely, “just let the beast come out,” and pointed the gun at them and fired a few rounds. [*Id.*] Child shot his five-year-old sister before shooting his two-year-old sister. [*Id.*]
43. Child killed his mother and siblings at approximately 1:00 a.m. [*Id.*]
44. Child knew that his father would not be home until approximately 6:00 a.m. [*Id.*]
45. Child obtained a more powerful rifle, an AR-15, to use against his father. [*Id.*]
46. In his interview with Dr. Mohandie, Child said that prior to his father returning home, Child went outside the home to “practice” with the assault rifle. [State’s Ex. 2 at 9] He clarified that he was practicing how to ambush his father. [*Id.*]
47. Child later said that while waiting for his father, he petted the family dog and drank an energy drink. [State’s Ex. 63 at unnumbered page 4]
48. When Child saw his father driving up, Child returned to the house and waited for his father in the downstairs bathroom with the AR-15 rifle. [State’s Ex. 75]
49. When his father arrived home and passed by the bathroom, Child stepped out and shot his father with the AR-15 rifle four or five times, causing his death. [*Id.*]
50. Child said that he took ammunition and reloaded most of the weapons, including a twelve-gauge shotgun. [*Id.*] He described himself as starting to become really hateful and suicidal. [*Id.*] Child said that he was not planning on taking his own life but was going to shoot other people and “let the cops kill him.” [*Id.*]

51. When questioned about where he would have gone, Child indicated he would have started at the West Mesa because it was more populated than the South Valley. [Id.] Child thought about Walmart or the shelter with the firefighters as possible locations. [Id.]
52. Child recalled thinking that if he turned off his conscience again he would have shot at law enforcement. [State's Ex. 75]
53. When questioned about whether he might do something like this again if he did not get help, Child indicated it was possible and he just wanted people to get off his back. [Id.]
54. When asked about whether his mother deserved to be killed, Child indicated that she did not deserve to die and that she was a great mom. [Id.] When asked if anyone deserved it, Child responded that his brother deserved it. [Id.] Child described his father as an ex-soldier and an ex-gangster. [Id.] Child indicated that he killed his father because if his father found the bodies he would have gone after Child. [Id.] Child thought it would be better to kill his father before his father got a gun.
55. After the killings, Child later told an interviewer, he went to Calvary Chapel and spent some time with his girlfriend. [State's Ex. 63 at unnumbered page 4] Child went out to lunch with his girlfriend and her grandmother. [Id.] After lunch, Child went to his girlfriend's home and took a nap, went to a friend's house and watched a movie, and then went back to the church and attended church service. [Id.]
56. When the church pastor questioned Child about his parents, Child claimed his parents died in a car accident three months prior. [Id.] When the pastor explained he had seen Child's parents a few days prior, Child was driven to his family residence to wait for law enforcement. [Id.] Law enforcement entered the residence with keys provided by Child.

Child was then taken into custody. [*Id.*] Rounds of ammunition were located in Child's pockets at the time of his booking. [*Id.*]

57. After Child was detained, law enforcement located an AR-15 rifle and another rifle in the family van Child had driven to Calvary Chapel after the killings. [State's Ex. 75]

58. Child's electronic device contained evidence of communications between Child and his twelve-year-old girlfriend before and after the killings. [State's Ex. 3]

59. Child exchanged text messages with his girlfriend from 11:20 p.m. on January 18, 2013 until 9:22 p.m. on January 19, 2013. [*Id.*]

60. Between 11:20 p.m. on January 18, 2013 and 12:55 a.m. on January 19, 2013, Child and his girlfriend exchanged text messages about the following:

- a. waiting for his mother to go to sleep so he could kill her;
- b. being insane;
- c. arranging a location to meet his girlfriend after he kills his family;
- d. loving his girlfriend more than he loves killing people;
- e. suggesting his girlfriend should kill her own mother and agreeing to kill his girlfriend's mother after he kills his own family;
- f. knowing that killing his brother will not be that much of a problem since he knows he can kill his mother;
- g. planning to just shoot his brother as opposed to knocking him out;
- h. planning to shoot his sisters; and
- i. waiting to kill his family.

[*Id.*]

61. At 1:01 a.m. on January 19, 2013, six minutes after messaging his girlfriend that he loved her, Child sent her a message that he just killed his mother and siblings. [*Id.*]
62. At 1:03 a.m., Child texted that now he just needed to wait for his father. [*Id.*]
63. At 1:09 a.m., Child asked his girlfriend if she would like to see the bodies. [*Id.*]
64. Child took a picture of his dead mother and brother and sent it to his girlfriend. [State's Ex. 4]
65. At 1:20 a.m., Child said his father is not going to die without blood. [State's Ex. 3]
66. At 6:13 a.m., Child texted that he just killed his father. [*Id.*]
67. Other text messages during this time period were sexually explicit. [*Id.*]
68. When asked why he killed his family, Child stated that he "can't answer why." [State's Ex. 63 at unnumbered page 5]
69. The killings of Child's family members were not committed in self-defense or defense of another.
70. The killings of Child's family members were calculated and willful.
71. Child was not under the influence of alcohol or drugs at the time of the killings. [State's Ex. 75]
72. Dr. Mohandie described the fact pattern of Child's offenses as being "highly consistent with what is known as predatory violence as opposed to affective violence" and explained:

Predatory violence is proactive, driven by a cognitive process[,] has no time limited sequence, and is goal oriented and purposeful, often involving a weapon or weapons that must be prepared. Affective violence, by contrast, is instinctive, defensive, and reactive, in response to an immediate perceived threat, involves an emotionally charged state, has a short time limited sequence (moments to minutes), and is geared towards threat reduction. The alleged criminal behavior is highly consistent with

predatory violence, which is the usual mode of violence in mass homicide cases.

[State's Ex. 2 at 27]

Factor 3: Whether a firearm was used to commit the offense

73. A .22 caliber rifle was used to kill Child's mother and siblings.

74. An AR-15 assault rifle was used to kill Child's father.

Factor 4: Whether the offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury resulted

75. Dr. Clarissa Krinsky was admitted at the first amenability hearing as an expert in forensic pathology.

76. Dr. Krinsky, who supervised the performance of the autopsies on the five bodies, testified about the injuries the victims sustained and the likely circumstances of the shootings.

77. Child shot his mother two times in the face, resulting in death.

78. There were two entrance wounds on Child's mother's face, one on the right nose and one on the left upper-lip. There were no exit wounds. The projectiles converged inside Child's mother's head in the brain and skull. Both wounds were fatal. The wounds were consistent with wounds caused by a handgun or lower-powered rifle.

79. Child shot his nine-year-old brother, Z.G., one time in the head, resulting in death.

80. The entrance wound was on the right side of the head, and the exit wound was on the left side of the head near the left ear. The projectile went through the center of Z.G.'s brain, causing destruction to the tissue inside the brain and brainstem. The wounds were consistent with wounds caused by a handgun or lower-powered rifle.

81. Child shot his five-year-old sister, J.G., one time in the head, resulting in death.

82. The entrance wound was on the right side of J.G.'s scalp, and the exit wound was on the back right side of her head. The projectile hit the brain but did not strike major structures inherent to survival. There was evidence of acute inflammation suggesting J.G. likely survived for a brief period of time. The wounds were consistent with wounds caused by a handgun or lower-powered rifle.
83. Child shot his two-year-old sister, A.G., three times in the head, back, and chest, resulting in death.
84. There was an entrance wound on A.G.'s left forehead near the left eye with an exit wound on the top of her head. This projectile traversed through the left side of her brain causing damage to the brain. There was an entrance wound on her right back with an exit wound on her left neck. This projectile traveled through her chest and up through her neck, causing significant damage to the spinal cord and also striking her lung. There was an entrance wound and an exit wound on her right chest. This projectile traveled sharply upward through the right chest wall, bruising the lung. The wounds were consistent with wounds caused by a handgun or lower-powered rifle.
85. Child shot his father two times in the back and two times in the head, resulting in death.
86. There were two entrance wounds on the father's left back. The projectiles entered his left back and then traveled through his chest, lungs, heart, diaphragm, and liver, causing significant massive destruction internally. There were two entrance wounds to the right side of his head. Through x-ray images, tiny fragments of bullet were seen scattered throughout his head. There was massive destruction fragmenting his skull into numerous pieces, and partial exits on the left side of his head with large lacerations.

87. Child's father's injuries were significantly different from the injuries noted on Child's mother and siblings. There was significant damage to the head, deformation of the face and skull, and extrusion of brain matter that was readily apparent at the time of autopsy. The injuries were consistent with wounds caused by a high-powered rifle.

Factor 5: The maturity of the child as determined by consideration of the child's home, environmental situation, social and emotional health, pattern of living, brain development, trauma history, and disability

Home, Environmental Situation, Social Health, and Pattern of Living

88. Earlier in Child's father's life he was in the military. [Defendant's Ex. I at 11] After his military experience, Child's father became involved in a gang lifestyle in California and was involved in drugs and violence. [*Id.* at 5, 11]

89. After facing the possibility of a lengthy prison sentence for his involvement in a drive-by shooting, Child's father converted to Christianity. [*Id.*] He completely changed his life and became involved with Calvary Church in Montabello, California. [*Id.*]

90. Child's mother was raised by a drug-dependent parent and did not finish high school. [*Id.* at 17]

91. Child's father and mother married in Calvary Church in Montabello. [*Id.* at 5]

92. Child was born in California in 1997, and moved to Albuquerque, in Bernalillo County, with his family in 1999. [*Id.* at 5, 13] He lived with his parents, his older sister Vanessa, and his three younger siblings. [*Id.* at 5]

93. At the time of the killings, Child's older sister Vanessa was no longer living in the family residence. [*Id.* at 8] Vanessa left the family home when Child was twelve. [*Id.*]

94. Child has five half-siblings from his father's prior relationships. [*Id.* at 4-5] Child's half-siblings do not reside in New Mexico. [*Id.*]

95. Child's half-sister, Annette, remained in California when her father relocated to Albuquerque when Annette was thirteen. [*Id.* at 5] Annette would see her father and his family two or three times a year. [*Id.*] Annette's father and his family would come to California during holidays, and Annette would come to Albuquerque every summer for two or three weeks. [*Id.*]
96. Annette testified that when she graduated high school she lived with her father's family in Albuquerque for approximately three years. Child would have been seven to ten years of age during this time period.
97. After moving to Albuquerque, Child's father began working for Calvary Church and ultimately became a pastor. [Defendant's Ex. I at 6] His ministry was at the Metropolitan Detention Center. [*Id.*] Child's father lost his job at Cavalry Church in 2012. [*Id.* at 7] After that, he worked the nightshift at the Rescue Mission. [*Id.*]
98. Child's mother did not work outside the home. [*Id.* at 8]
99. The family was not wealthy and at times struggled financially. [*Id.* at 7]
100. In 2003, when Child was six, his family moved to the home where Child's offenses occurred. [*Id.* at 13]
101. The family home was located on approximately one and a half acres in the South Valley.
102. The neighborhood is described as having mostly farmland and older neighbors. [Defendant's Ex. I at 8] The Los Padilla gang has a presence nearby and Child's father had some contact with Los Padilla gang members due to his work at the jail. [*Id.*]
103. Child's father had a halfway house on the property for a period of time. [*Id.* at 11]

104. Child's father instructed him to patrol the property due to his father's paranoia and distrust of neighbors and the government. [*Id.* at 7, 11, 14] Child would sometimes patrol the property with a gun. [*Id.*]
105. Child's father was described as authoritative and controlling; he viewed himself as the master of the house. [*Id.* at 11]
106. Child's father showed two sides. [*Id.* at 10] There was a public father who seemed loving and friendly, and there was a family father who seemed angry and irritable. [*Id.*]
107. Child's mother never went anywhere without Child's father.
108. It was against the rules for any of the children to go outside the property into the neighborhood unaccompanied, and Child did not have friends in the neighborhood. [Defendant's Ex. I at 8, 13]
109. Child's aunt and uncle reported that it appeared that Vanessa managed the children, especially at public and family events. [*Id.* at 9-10]
110. The older children were expected to help with the younger children. [*Id.* at 8, 15]
111. Child was homeschooled initially by his mother until third grade, when she lost interest and Child continued his homeschooling at his own direction. [State's Ex. 63 at unnumbered page 7; State's Ex. 2 at 20; Defendant's Ex. I at 17]
112. There were a lot of rules but little structure in the home as evidenced by the fact there were no set times for sleeping, eating, or doing schoolwork.
113. Vanessa described Child as being a handful and having a bad attitude. [Defendant's Ex. I at 15] She further described Child as a rebellious teenager who would throw a fit and yell at his mother when she would try to give Child redirection. [*Id.*] Child did not seem to care about the consequences. [*Id.*]

114. Child's older sister, Vanessa, and half-sister, Annette, described Child as having a preference for being alone as opposed to being with his siblings. [Defendant's Ex. I at 15; Testimony of Annette V.]
115. Child's hobbies included playing in a church band, skateboarding, and playing video games, including a World War II game called "Call of Duty." [Defendant's Ex. I at 14, 16; State's Ex. 2 at 20]
116. Child enjoyed reading encyclopedias and loved history. [Defendant's Ex. I at 15]
117. Coaches and teachers as outside role models were missing in Child's life.
118. The family went to church three times per week. [Defendant's Ex. I at 16]
119. The only friends Child was allowed to have were from church. [*Id.* at 5]
120. The family attended gatherings with their extended family. [*Id.* at 9]
121. Child's aunt reported seeing her brother and his family a few times per month. [State's Ex. 63 at unnumbered page 12]
122. Child's aunt never saw Child or his siblings with friends at family gatherings.
123. Child's youth pastor described Child as small for his age, both physically and mentally. [Defendant's Ex. I at 16] Child associated with other children who were two to three years younger than Child and who were considered as being in the lower spectrum of "popularity." [*Id.*] In the youth pastor's opinion, Child was trying to feel older and more of a leader, like his dad. [*Id.*]
124. Child met his twelve-year-old girlfriend at church. [*Id.* at 16]
125. Child was involved with music at church and at a Spanish ministry. [*Id.* at 16]
126. Even at church, Child's parents were very protective and Child was under strict orders to meet his family right after church. [*Id.* at 16]

127. Child reported first using marijuana at age twelve. [State's Ex. 63 at unnumbered page 8] Child would use marijuana on occasion while at a park near his family's church. [*Id.*]
128. Child was taught to be prejudiced and to judge others and think of people critically. [*Id.* at unnumbered page 11]
129. Child's father glorified violence, and Child's parents encouraged him to use violence against the family pets and even neighbors. [Defendant's Ex. I at 11]
130. Child lived in a strict, isolated environment where firearms and ammunition were unsecured and readily available to the children in the home. [*Id.* at 7, 8, 15]
131. Over the years, Child's father acquired more guns that were kept unsecured in the family home. [*Id.*]
132. Child's aunt describes Child as being bonded to his father and having looked up to him. [Defendant's Ex. I at 9; State's Ex. 63 at unnumbered page 9]
133. Child always wore military fatigues and black military boots and talked about wanting to be in the military "to kill people." [Defendant's Ex. I at 11]
134. Even though Child has made claims to the contrary, there is no evidence Child has ever been involved in a gang. [*Id.* at 30]
135. At the first amenability hearing, Vince Harrison, the safety director at Calvary Church, testified as follows:
 - a. The time prior to the killing was a chaotic time for Child's father. He had been experiencing difficulty with his prior job at the jail. A woman was hired over Child's father and he was being pushed out by a professional.

- b. Child's father had issues with Calvary Church and was disciplined by being assigned to the church's satellite campus in Santa Fe. He became bitter and was subsequently placed on a six-month sabbatical.
 - c. After being placed on sabbatical, the family's attendance at Calvary was on and off and they stopped attending all of the church services.
136. According to Child's aunt, when Child's father lost his job as an assistant pastor with Calvary Chapel in early 2012, his level of anger increased and the family seemed more stressed. [Defendant's Ex. I at 10]
137. The extended family had Thanksgiving dinner in 2012 at Child's aunt's home. [State's Ex. 63 at unnumbered page 12] Child's father was angry and bitter as a result of his removal from the jail ministry.
138. Child's father felt "set up" by an associate pastor at Calvary Church because he was Hispanic.

Trauma History and Emotional Health

139. Child had a very traumatic childhood based on descriptions by Child, investigations prior to treatment, and family sources.
140. Child has reported being physically abused, physically neglected, emotionally abused, educationally neglected, and medically neglected. [State's Ex. 2 at 8-20; State's Ex. 63 at unnumbered pages 6, 11; Defendant's Ex. I at 8, 12]
141. Child's sister, Vanessa, estimated Child's father would hit Child approximately twice per week. [Defendant's Ex. I at 8]
142. Child admired his powerful father who would also turn around and hit him and laugh when Child cried. [State's Ex. 2 at 18-19]

143. Child's mother would hit him with a belt, but her abuse of Child was also emotional when she would tell him he never should have been born and that if they lived in biblical times she would stone him to death. [State's Ex. 2 at 19-20; Defendant's Ex. I at 12]

144. Any testimony from Annette to contradict the allegations of abuse has limited value since she did not live with the family full-time, except for a brief time before Child said the abusive behavior began intensifying.

145. According to a baseline assessment completed by Jennifer Parkins on January 14, 2016, Child denied receiving routine medical check-ups or seeing a doctor when ill. [State's Ex. 63 at unnumbered page 8]

146. Child had little contact with the medical world. There were no medical records for him other than those pertaining to his birth. [Defendant's Ex. I at 13]

147. [REDACTED]

149. [REDACTED]

150.

[Redacted]

155. The State introduced evidence related to the Adverse Childhood Experiences (ACEs) study of the effects of adverse experiences on youth. The factors include the following: emotional abuse, physical abuse, sexual abuse, emotional neglect, physical neglect, parental divorce or separation, family violence, household substance abuse, and household member incarceration.

156. A study on children in custody at YDDC finds that 89% of the males in the ACEs study had an ACEs' score of four or more and 63% of the male youth had an ACEs' score of seven and above. [State's Ex. 88]

157. No witness testimony was received during the second amenability hearing regarding Child's ACEs' score by a professional. The evidence presented suggests Child has endured a minimum of four ACEs' factors: emotional abuse, physical abuse, emotional neglect, and physical neglect.

158. [REDACTED]

159. Child reported in January 2016 that he does not have contact with any of his siblings.

[State's Ex. 63 at unnumbered page 6]

160. Throughout the legal proceedings, Child has had the support of one paternal aunt and one paternal uncle and their spouses. [*Id.* at unnumbered page 6] His aunt and uncle have participated in family therapy, and Child reports feeling close to both his aunt and uncle. [*Id.*]

Brain Development

[REDACTED]

[Redacted text block]

167.

[Redacted text block]

Disability

[Redacted text block]

169. [REDACTED]
[REDACTED]
[REDACTED]

Factor 6: The record and previous history of the child

170. Child had no prior contact or supervision history with the Juvenile Justice Division.
[Defendant's Ex. I at 18]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

173. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

174. Child was involved with abuse of his animals. In an interview with an investigator from the Law Offices of the Public Defender, Mike White, a tenant who lived in a detached apartment on the family's property, described how the family would abuse animals, including kicking and hitting the dog with sticks. [Defendant's Ex. I at 11]

[REDACTED]

176. In another investigator interview, Anthony Robinson, who rented a barn on Child's family's property, said Child would go around holding a knife with the dull side to the throats of his dog and brother while making a slicing motion. [Defendant's Ex. I at 10-11] When confronted, Child would say he was play-practicing for when he would go into the military. [*Id.*]

177. Child reported using marijuana on occasion at church. [Defendant's Ex. I at 19]

178. [REDACTED]

Factor 7: The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child by the use of procedures, services, and facilities currently available

Likelihood of reasonable rehabilitation of the child

[REDACTED]

[REDACTED]

[REDACTED]

180. [REDACTED]

[Redacted]

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Expert Opinions Prior to YDDC Commitment

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Individual Therapy

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Family Therapy

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Transition Planning

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Current Expert Opinions

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431. During the time Child was participating in therapy sessions with Ms. Scarry-Monteith, Child was placed in segregation as a result of engaging in a sexual act with a developmentally delayed inmate on May 7, 2018. Child and the other inmate reported the sex act as consensual. The other inmate reported Child threatened to physically harm him if he told anyone about the incident. When Child was confronted about the allegations against him and oral sex was mentioned, Child responded “what’s that?”

432. No criminal charges have been filed as a result of the May 7, 2018 incident.

433. There is no evidence before the Court that Child has been removed from segregation.

Adequate Protection of the Public

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CONCLUSIONS OF LAW

Jurisdiction

1. This Court has jurisdiction over this matter because the killings occurred in Bernalillo County, New Mexico. NMSA 1978, § 30-1-14 (1963).

General

2. Child was charged as a serious youthful offender pursuant to Section 32A-2-3.
3. As a serious youthful offender, Child was facing the possibility of being sentenced as an adult.
4. “[T]he Legislature has determined that serious youthful offenders cannot be rehabilitated using existing resources in the time available” given “the age of these offenders and the seriousness of the offense, including the requisite intent[.]” *State v. Gonzales*, 2001-NMCA-025, ¶ 16, 130 N.M. 341, 24 P.3d 776.
5. Upon entering a plea of guilty to the lesser offenses of second-degree murder, Child became eligible for either a juvenile or an adult sentence. *State v. Jones*, 2010-NMSC-012, ¶ 13, 148 N.M. 1, 229 P.3d 474.
6. An adult sentence may only be imposed upon Child if the Court finds Child is not amenable to treatment or rehabilitation as a child in available facilities, and Child is not eligible for commitment to an institution for children with developmental disabilities or mental disorders. Section 32A-2-20(B).
7. The standard of proof for the amenability findings articulated in Section 32A-2-20(B) is clear and convincing evidence. *Gonzales*, 2001-NMCA-025, ¶ 16.
8. “For evidence to be clear and convincing, it must instantly tilt the scales in the affirmative when weighed against the evidence in opposition and the fact finder’s mind is

left with an abiding conviction that that evidence is true.” *Nehemiah G.*, 2018-NMCA-034, ¶ 23 (internal quotation marks and citation omitted).

9. No evidence has been presented to support a finding that Child is eligible for commitment to an institution for children with developmental disabilities or mental disorders.
10. The parties stipulate that the Child is not eligible for commitment to an institution for children with developmental disabilities or mental disorder.

Section 32A-2-20(C) Factors

11. In determining whether Child is not amenable to treatment or rehabilitation as a child in available facilities, the Court must consider the factors in Section 32A-2-20(C).

Factor 1: Seriousness of the offense

12. On January 18-19, 2013, Child shot and killed his father, mother, and three younger siblings.
13. Child pleaded guilty to two counts of second-degree murder and two counts of intentional child abuse resulting in the death of a child under age twelve.
14. The charges to which Child pled are extremely serious.
15. If Child were an adult, he would be facing three life sentences, plus thirty years if the charges to which he pleaded guilty were run consecutively.
16. This factor weighs in favor of a finding that Child is not amenable to treatment and rehabilitation as a child in available facilities.

Factor 2: Whether the offense was committed in an aggressive, violent, premeditated, or willful manner

17. The offenses were committed in a highly aggressive and violent manner. Child shot his mother twice in the face, shot his nine-year-old brother one time in the head, shot his

- five-year-old sister one time in the head, shot his two-year-old sister three times in the head, back, and chest, and shot his father two times in the back and two times in the head.
18. On the day of the offense, Child planned to kill his family hours before taking their lives.
 19. Child conducted the killings in a manner in which his father would not be present to protect the family and his mother would be killed first making her unable to protect her young children from Child.
 20. Child waited for his mother and siblings to fall asleep before shooting them while they would be most vulnerable.
 21. Child waited for his mother to fall asleep so that she would not fight back.
 22. Child unnecessarily woke his brother before shooting him for the purpose of showing his brother their mother was dead.
 23. After killing his mother and siblings, Child waited approximately five hours for his father to return from work so he could carry out his plan to kill his father.
 24. Child waited in hiding to ambush his father from behind to ensure he would be successful in his plan to take his father's life.
 25. This factor weighs in favor of a finding that Child is not amenable to treatment and rehabilitation as a child in available facilities.

Factor 3: Whether a firearm was used to commit the offense

26. Child used a .22 caliber rifle to kill his mother and three young siblings.
27. After determining that he needed a more powerful firearm to kill his father, Child used an AR-15 assault rifle to kill his father.
28. This factor weighs in favor of a finding that Child is not amenable to treatment and rehabilitation as a child in available facilities.

Factor 4: Whether the offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury resulted

29. Child's offenses were against those persons closest to him, his father, mother, and very young siblings.
30. Child took away the lives of five human beings.
31. Child's offense has caused immeasurable emotional pain to other surviving members of Child's family.
32. Child's offense has caused conflict and division between the extended family.
33. This factor weighs in favor of a finding that Child is not amenable to treatment and rehabilitation as a child in available facilities.

Factor 5: The maturity of the child as determined by consideration of the child's home, environmental situation, social and emotional health, pattern of living, brain development, trauma history, and disability

34. [REDACTED].
35. Child was severely isolated by his parents.
36. Child had limited access to friends or other influences outside of the immediately family.
The only access to people outside the family was through church. Even child's church involvement was closely monitored by his parents.
37. [REDACTED].
38. Child was homeschooled by his mother who was academically incapable of teaching.
Child's mother gave up on Child's schooling in the third grade and allowed Child to direct his own learning.
39. [REDACTED].
40. [REDACTED].
[REDACTED].

41. [REDACTED]

42. [REDACTED]

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43. [REDACTED]

44. [REDACTED]

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45. [REDACTED]

46. [REDACTED]

47. [REDACTED]

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48. Given the number of years of exposure to profoundly negative influences and the pervasive nature and extent of those negative influences on Child's development, and considering the amount of therapeutic effort required to reverse the impact of these influences, this factor weighs in favor of a finding that Child is not amenable to treatment and rehabilitation as a child in available facilities.

Factor 6: The record and previous history of the child

49. [REDACTED]

50. Child had little opportunity to interact with anyone outside of his family's home and church. Even while at church, Child's freedom was limited by his parents.

51. [REDACTED]
[REDACTED]
[REDACTED]

52. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

53. [REDACTED]
[REDACTED].

54. [REDACTED]
[REDACTED]
[REDACTED].

55. This factor weighs in favor of a finding that Child is amenable to treatment and rehabilitation as a child in available facilities.

Factor 7: The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child by the use of procedures, services, and facilities currently available

56. Due to the unusual procedural posture of this case, the Court must determine whether Child has been rehabilitated or treated sufficiently to protect society’s interest. *See Nehemiah G.*, 2018-NMCA-034, ¶ 69.

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78. [REDACTED]

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79. This factor weighs in favor of a finding that Child is not amenable to treatment and rehabilitation as a child in available facilities.

Factor 8: Any other relevant factor, provided that factor is stated on the record

80. Under the current law, the factors presented by Child related to treatment offered through the services of [REDACTED] may be relevant for purposes of argument at sentencing. The services offered through [REDACTED] are not relevant to a determination of amenability where the Court's jurisdiction over the Child under the Children's Code terminates upon Child reaching age twenty-one.

81. Even if the Court had jurisdiction over Child beyond his twenty-first birthday under the Children's Code, due to Child's moderate to high risk assessment, this Court is not satisfied that release to [REDACTED] will adequately protect the safety of the public at this point in Child's treatment.

82. Considering the seriousness of the Child's offense, his prior expressed desire to shoot innocent civilians as well as law enforcement officers in a mass shooting scenario, his statement that [REDACTED], and his need for continued significant guidance to move Child away from the profoundly negative influences of his upbringing, this Court cannot risk public safety by placing

Child in an unlocked treatment setting with the hope that he will not evade his supervisor, and leave the program prior to full completion of his treatment.

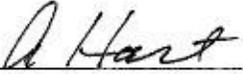
83. A locked treatment facility that offers services such as those offered by ██████████ may be the most beneficial option for both Child and the public at this stage of Child's rehabilitation.

84. This factor neither weighs for or against a finding that Child is not amenable to treatment and rehabilitation as a child in available facilities under the current posture of this case. The arguments raised by Child under this factor are more appropriately made at sentencing.

WHEREAS, six of the eight factors outlined in Section 32A-2-20(C) weigh against a finding of amenability, one factor weighs in favor of amenability, and one factor has no weight for or against amenability. This Court hereby finds the State has shown by clear and convincing evidence that:

1. Child is not amenable to treatment or rehabilitation as a child in available facilities.
2. Child is not eligible for commitment to an institution for children with developmental disabilities or mental disorders.

IT IS HEREBY ORDERED that Child shall be sentenced as an adult.



JUDGE ALISA A. HART
DIVISION XXI

This is to certify that a true and correct copy of the foregoing document was electronically delivered or otherwise provided to counsel of record on 8/9/2019.