

**STATE OF MINNESOTA****DISTRICT COURT****COUNTY OF HENNEPIN****FOURTH JUDICIAL DISTRICT**

State of Minnesota,

Plaintiff,

**STATE'S MEMORANDUM  
IN SUPPORT OF A DOWNWARD  
DISPOSITIONAL DEPARTURE**

vs.

Court Case No. 27-CR-22-25041  
C.A. Case No. 22A13817

Husayn Braveheart,

Defendant.

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**TO: THE HONORABLE MICHAEL E. BURNS AND COUNSEL FOR HUSAYN  
BRAVEHEART TRACY REID AND ANGELA BAILEY.****INTRODUCTION**

On June 11, 2019, Steven John Markey was murdered. Husayn Braveheart was charged in connection with this murder. On July 31, 2023, Husayn pled guilty to one count of aiding and abetting Murder in the 2nd Degree, With Intent-Not Premeditated, in violation of Minn. Stat. §609.19.1(1). The negotiated resolution calls for Husayn to receive a 261-month sentence, with execution of that sentence stayed for 5 years. This is a dispositional departure based on Husayn's particular amenability to probation, his lesser role in the incident, and the progress he has made in treatment in the 4½ years since the murder occurred. Conditions on probation would include:

- Supervision by the Hennepin County Probation Department's Transition Age Youth (TAY) unit, which includes intensive supervision designed for young adults as the transition into adulthood.
- 365 days in the Hennepin County Workhouse, with furloughs for work programming and school as approved by his probation officer and case manager.

- Transition to a structured living arrangement coordinated by the TAY probation officer, which will include supervised independent living skills training.
- Participate in individual therapy with a culturally experienced trauma informed therapist.
- Participation in a culturally specific mentorship program.
- Vocational / Education programming.
- No use of drugs or alcohol, including random testing, a SUDS assessment if recommended by probation and following any and all recommendations.
- No contact order with the victim's family.
- Restitution.
- Remain law abiding.
- A violation of any condition could result in revocation of the stayed sentence and imposition of the stayed prison commitment.

In the following memorandum, the State asks the court to accept the plea and impose a sentence in accordance with the agreement of the parties.

Husayn Braveheart was 15 years old when he aided in the commission of the murder of Steven Markey – a tragic event that forever changed the lives of the Markey family. Husayn is now 20 years old. The State cannot ignore the fact that, as documented in discharge reports from MCF Red Wing, West Central Regional Juvenile Center, and notes from his therapist, Husayn has changed significantly in the 4½ years since this murder occurred. He has changed from an impulsive 15 year-old boy who was homeless and living on the streets, into a 20 year-old young man who is addressing his PTSD, engaging in treatment, furthering his education, and excelling in programming. The progress Husayn made at the secure residential treatment center where he received services demonstrates his amenability to probation. The programming and treatment he

received also serves public safety in the long-term, as described below. Further, there are multiple mitigating factors present here that support the negotiated resolution. For example, in addition to his youth and strong family and tribal support, Braveheart cooperated with law enforcement and admitted his involvement with the murder, in which he played a lesser role than his co-defendant. He has expressed remorse and demonstrated respect to the court and the process over the past 4 ½ years.

The State asks the court to accept the plea and impose a sentence in accordance with the agreement of the parties.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On June 11, 2019, Husayn Braveheart aided and abetted in the murder of Steven John Markey. Husayn was 15 years old at the time. Along with his co-defendant, Husayn attempted to rob Steven Markey while Markey sat his car. Both Husayn and his co-defendant were armed with guns. During the robbery, the co-defendant fired his gun, inflicting the wound that would kill Steven Markey. Mr. Markey attempted to flee the area in his car and Husayn fired several shots at Mr. Markey's vehicle as it fled. Steven Markey died from his wounds a short time later.

Following this incident, Husayn and his co-defendant were both charged in juvenile court with two counts of aiding and abetting murder:

- Count 1: Murder in the 2nd Degree, With Intent-Not Premeditated, in violation of Minn. Stat. §609.19.1(1). This count carries a presumptive sentence of between 261 months and 367 months.<sup>1</sup>

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<sup>1</sup> The Criminal Record Summary filed in this case indicates that Braveheart has 1 criminal history point, stemming from 2 felony adjudications in juvenile cases. The second of these adjudications, however, occurred on June 12, 2019, the day after the murder offense. Since the Sentencing Guidelines indicate that sentences should be imposed in the order in which the occurred, this

- Count 2: Murder in the 2nd Degree, Without Intent - While Committing a Felony, in violation of Minn. Stat. §609.19.1(1). This count carries a presumptive sentence of between 128 months and 180 months.

At the time of charging, the State filed a motion to transfer the cases for both juveniles into adult court. Because Husayn was 15 years old at the time of the offense, the State filed a non-presumptive certification motion, putting the burden on the State to prove by clear and convincing evidence that retaining the matter in juvenile court does not serve public safety. Minn. R. Juv. Del. P. 18.05, subd. 4(E).

On July 7, 2020, the Honorable Amy Dawson denied the State's certification motion and ordered that the mater remain in juvenile court. The court noted that two expert psychologists had opined that Husayn "would be an appropriate candidate for long-term residential treatment in a structured setting with programming that can address both his history of trauma as well as his delinquency needs." Order Denying Adult Certification and for Designation as Extended Juvenile Jurisdictional, dated July 7, 2020, filed in 27-JV-19-2507 at page 12. The testimony and evidence from the certification trial was that the treatment Braveheart needed was available in the juvenile justice system, but not in the adult system. Id. at page 13. The court noted that:

The amount of time available for [Husayn] to spend in the juvenile system seems woefully inadequate to punish [Husayn] for the seriousness of the offense of second degree murder. It does, however, offer the best chance of protecting public safety. ... The combination of trauma-informed treatment in a secure facility, transitional programming, intense probationary supervision, and the threat of a stayed adult sentence is more likely to protect the public in the long-term than long-term confinement in an adult prison.

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adjudication should not count as adding to Husayn's criminal history score. In addition, Husayn pled to that charge to qualify for the Red Wing program, while the instant case was on appeal. Husayn was discharged from probation on that matter in June of 2022, when he turned 19 years old. In light of all these factors, the State does not believe that Braveheart has a criminal history point going into his sentencing on this murder case.

Id. at page 27. The court noted that both expert psychologists who testified at the certification trial opined that 2-3 years of secure, trauma informed therapy, was needed. The court found that such treatment provided the most appropriate dispositional option for Husayn and would best protect public safety in the long-term by providing him the treatment he needed and had never before been offered.

Following the decision to deny certification, the State appealed. The appeal process lasted nearly 2.5 years, from July 2020 until November 2022, until the Minnesota Supreme Court finally resolved it. On November 16, 2022, the Minnesota Supreme Court found that certification was appropriate. In so holding, the Supreme Court found that the district court had misapplied two factors – factor two, concerning culpability and factor four, concerning programming history. This misapplication of these factors by the trial court led the Supreme Court to hold that transferring the case to adult court was the appropriate result.

The Supreme Court, however, found that the trial court had properly applied the fifth factor, concerning the adequacy of the punishment or programming available in the juvenile justice system. In finding that the trial court decision regarding this factor was not in error, the Supreme Court noted that:

H.B. presented testimony about the type of programming available in a secure juvenile facility, and the district court inferred that the combination of a secure juvenile facility that provides trauma-informed treatment, transitional programming, and probationary supervision, all with the threat of a stayed adult sentence, would be more likely to protect the public in the long term.

Order of the Supreme Court, A20-0954, dated November 16, 2022, page 34.

Within days of the original trial court decision denying certification, and while the appeal process was beginning, Husayn pled guilty to one count of 3<sup>rd</sup> degree burglary in another case. 27-JV-19-2475. He admitted to breaking into a closed cell phone store on June 12, 2019 and asked to be adjudicated delinquent of that offense. He further requested that the court place him at the

Red Wing correctional facility for their long-term residential treatment program. The court accepted his plea and ordered him to complete the Red Wing treatment program. Delinquency Disposition Order, 27-JV-19-2475, dated July 7, 2020. Husayn remained at Red Wing for the next 16 months. He successfully completed the Red Wing program, which included the trauma informed treatment that the expert psychologists had previously testified he needed.

As the appeal was still pending upon his completion of the Red Wing program, Husayn asked to be transferred to another secure residential treatment facility to continue his programming. Husayn entered the West Central Regional Juvenile Center on November 15, 2021. Husayn excelled at this facility. He continued work on his education. He had already obtained a GED while at Red Wing but continued to work on credits to obtain a high school diploma, which he succeeded in obtaining in February 2022. He also engaged in programming at West Central. He participated in the Decisions Points cognitive behavior intervention program. He also participated in weekly feedback groups, completed numerous assessments and courses, and completed his daily assignments. He received specialized treatment for his PTSD. He participated in individual therapy, meeting with a therapist throughout his time at West Central. And he participated in regular medication management with a psychiatric and mental health nurse practitioner.

Husayn aged out of the West Central program when he turned 19 on June 19, 2003. The final discharge report from West Central concludes that:

Overall, Husayn has done excellent in the secure residential program. He entered the program in a mostly positive mindset, but he had fleeting moments of wanting to return to the Hennepin County Juvenile Detention Center to simply sit and wait for the outcome of his pending case. Over time, Husayn came to embrace the program and took advantage of what it had to offer; he excelled in individual therapy, earned his high school diploma, registered for college courses, opened a bank account, and focused on himself.

...

He possesses many of the tools that are critical for the success of a young adult. He also has many supports put into place that he should continue to utilize. He should continue participating in individual therapy and medication management. He should participate in his scheduled college courses and begin to think critically about employment. Should Husayn be retained in the juvenile justice system on extended juvenile jurisdiction, he should enter into a transitional living stepdown placement that will provide him with continued support and guidance.

As the appeal process was proceeding, Husayn was returned to the Hennepin County Juvenile Detention Center to await the Supreme Court decision on whether his case should be transferred into adult court. When that decision came down in late 2022, Husayn was charged in adult court and transferred to adult jail, where he has remained pending trial in this matter.

### ARGUMENT

The law affords trial courts great discretion in the imposition of sentences. State v. Spain, 590 N.W.2d 85, 88 (Minn. 1999). The Court's decision is guided primarily by the Minnesota Sentencing Guidelines, which prescribe a presumptive sentence that is "presumed to be appropriate." Minn. Sent. Guidelines 2.D.1. A sentencing court "must pronounce a sentence within the applicable range unless there exist identifiable, substantial, and compelling circumstances" that distinguish a case and overcome the presumption in favor of the guidelines sentence. Minn. Sent. Guidelines at cmt. 2.D.103. Accordingly, a sentencing court can exercise its discretion to depart from the guidelines "only if aggravating or mitigating circumstances are present," State v. Best, 449 N.W.2d 426, 427 (Minn.1989), and those circumstances provide a "substantial [ ] and compelling" reason not to impose a guidelines sentence, Minn. Sent. Guidelines 2.D.1.

In this case, the negotiated disposition calls for a mitigated dispositional departure to probation with a highly structured step-down process, including 365 days in the Workhouse, a structured group home following his workhouse time, and intensive supervised probation through the Transition Age Youth unit. Pursuant to the agreement, on August 4, 2023, Husayn Braveheart pled guilty to Count 1 in the complaint, alleging Murder - 2nd Degree - With Intent-Not

Premeditated. The agreement calls for the court to impose a guidelines sentence of 261 months, but to stay execution of that sentence for 5 years. The dispositional departure to a stay of execution is based on Braveheart's particular amenability to probation, the lesser role he played in the offense, his age at the time of the offense, and the treatment and rehabilitation he has successfully engaged in over the 4 years and 4 months since the murder. Additionally, this negotiated disposition is not extraordinary. It aligns with dispositions that have been and continue to be accepted in similar cases in Hennepin County and across Minnesota. Finally, the negotiated disposition is carefully tailored to protect community safety, relying on research and evidence which clearly establishes that a highly structured step-down process and intensive probation supervision through DOCCR's Transition Age Youth program provides the best opportunity to continue Husayn's rehabilitation and ensure that this never happens again.

**I. Multiple Mitigating Circumstances Recognized by Minnesota's Sentencing Guidelines Justify This Negotiated Dispositional Departure**

The Sentencing Guidelines contain a "nonexclusive list" of mitigating circumstances that can justify a downward departure. Minn. Sent. Guidelines 2.D.3.a. Case law establishes that both offender related factors (such as amenability to probation) and offense related factors (such as a lesser role in the crime) justify a dispositional departure. State v. Peter, 825 N.W.2d 126, 130–31 (Minn. Ct. App. 2012). As the Minnesota Supreme Court has stated, "the defendant's age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family, are relevant to a determination whether a defendant is particularly suitable to individualized treatment in a probationary setting." State v. Trog, 323 N.W.2d 28, 31 (Minn. 1982). Just as in Trog, the record establishes many of these factors here: Husayn is young; he has strong family and tribal support; he was cooperative with law enforcement from the very



beginning of this investigation, fully admitting his involvement; he played a lesser role in the offense; he has expressed remorse; and he has been respectful throughout the dozens of court appearances over the past 4½ years.

#### **A. Husayn Is Particularly Amenable to Probation**

Analyzing this case under the test of whether the offender is particularly amenable to probation, the record clearly establishes that Husayn meets this standard. State v. Soto, 855 N.W.2d 303 (Minn. 2014). Several years ago, in the early stages of this case, multiple expert psychologists determined that Husayn needed intensive treatment in a secure facility with a structured environment for an extended period of time. Husayn engaged in that treatment and has made significant progress in his rehabilitation. Today he is a young man who has demonstrated that he is particularly suitable to individualized treatment in a probationary setting.

##### i. Experts Opined that Husayn Needed Secure Treatment

During the certification proceedings in this matter, the court appointed psychologist testified that Husayn was an appropriate candidate for long term residential treatment in a structured setting with programming that could address both his history of trauma as well as his delinquency needs. Under questioning on the stand, this expert explained that Husayn would need to be in a secure, structured environment. He needed to receive programming for his emotional needs and history of trauma. The court appointed psychologist testified that he would need long term treatment of 2 to 3 years to receive the most benefit from such programming.

The expert psychologist retained by the defense gave similar testimony, explaining that Husayn was driven to crime by his past trauma which led him to be impulsive, on edge, and always on guard. This psychologist explained that Husayn had never received the treatment he needed – not in any prior program through Child Protection or Delinquency. The psychologist opined that

it would be in the best interest of the broader community to provide Husayn with treatment because if he never received that treatment then he would not be rehabilitated and would be a greater danger to society.

As noted above, following these evaluations and the certification proceedings, a lengthy appeals process ensued. While his certification cases were on appeal, Husayn chose to seek treatment rather than simply wait in custody for the decision to come down. In order to make that happen, he accepted responsibility for a 3<sup>rd</sup> degree burglary and asked to be sent to the Red Wing Correctional Facility where he could receive treatment. It is incredibly rare for a youth to ask to be placed at Red Wing, and to do so while much more serious cases were pending, and while he was looking at possible prison time, is even more remarkable. Husayn chose to go to a place where he could receive the treatment he needed and, despite great uncertainty, he chose to engage with that treatment.

ii. Husayn Engages in Treatment and Makes Significant Rehabilitative Progress

After choosing to go to Red Wing, Husayn spent over a year engaging in individualized treatment and programming. As is often the case with young people entering secure treatment with significant trauma histories and lack of stability, Husayn experienced some challenges and initial inconsistency. However, he stuck with the program and stayed engaged in treatment, and after 16 months he completed all levels of programming and was successfully discharged. While at Red Wing, Husayn made significant educational progress, earned his GED, and “demonstrated increased willingness to manage his emotions, engage with others and assist others in dealing with their problems.” MCF Red Wing Individual Treatment Summary, November 15, 2021. The only potential risk factors noted in his discharge summary related to community re-entry planning, including housing, continued education, work, and connections with positive community supports.

Following Red Wing, Husayn had another choice to make. He could return to the Hennepin County Juvenile Detention Center to await the decision in his case on appeal, or he could choose to continue his treatment at another secure juvenile correctional facility. Husayn again chose treatment, asking to be sent to a second secure correctional treatment facility, West Central Regional Juvenile Facility. The PSI contains much information that underlines the significance of the treatment Husayn received during this time. For example, the therapist at West Central who treated him, Stephanie Froslic, provided information about the work he did to address his extensive trauma history and PTSD. Ms. Froslic attests to Husayn's deep engagement and significant progress over time, including his remorse for his role in Mr. Markey's murder. Additionally, while at West Central, Husayn earned his high school diploma, applied to college, was accepted, and enrolled in three courses. He also successfully completed a number of therapeutic treatment programs, including Decision Points, a cognitive behavior intervention program. Husayn's final report from West Central Regional Juvenile Center, which was submitted to the court by his Juvenile Counselor, included the following Final Summary and Recommendations:

Overall, Husayn has done excellent in the secure residential program. He entered the program in a mostly positive mindset, but he had fleeting moments of wanting to return to the Hennepin County Juvenile Detention Center to simply sit and wait for the outcome of his pending case. Over time, Husayn came to embrace the program and took advantage of what it had to offer; he excelled in individual therapy, earned his high school diploma, registered for college courses, opened a bank account, and focused on himself. He had periods of regression in which he was disrespectful and defied program rules, but these moments were short-lived and infrequent. Following Husayn's midterm staffing, he demonstrated virtually zero notable behavioral issues. Since his midterm staffing, Husayn has earned 2018/2300 possible treatment points (88%) and has only had a few days in which he earned low points. His frustration tolerance has improved, and his interactions with others have remained appropriate and pleasant. He has participated in regular medication management...and reports that his medication has been helpful. In many ways, Husayn has grown and demonstrated the ability to make well-informed decisions that will help set him up for future success. It was a pleasure working with Husayn. He has achieved much that he should be highly proud of.

West Central Regional Juvenile Center – Final Report, June 3, 2022.

All told, Husayn spent nearly two years at these secure correctional treatment facilities. This was the first time in his life that he experienced this level of stability. He received treatment for his extensive trauma and PTSD for the first time in his life. He received medication and therapy for the first time. He engaged in school and obtained his GED and high school diploma. During this time, Husayn deeply and meaningfully engaged in the long-term treatment that the experts who evaluated him at the beginning of this case determined that he needed to be successful in his rehabilitation.

And he did all of this while the State was actively seeking to certify his case into adult court, with no indication that this treatment would help his case. Indeed, there were risks to his choice to engage in treatment, as opening up about his trauma and remorse for his role in Mr. Markey's murder with his case unresolved could make it more likely he would be sent to prison. Despite all of this, Husayn chose to try, to address his trauma, to meaningfully engage. Through this work, these choices, and his follow through, Husayn has demonstrated he is particularly amenable to individualized treatment in a probationary setting.

This case is unique in that the lengthy appeal process and Husayn's decision to engage in the recommended treatment during the pendency of the appeal means that we do not have to speculate how that treatment might impact him. Husayn has gone from a 15-year-old boy living on the street in North Minneapolis, to a 20-year-old young man who is engaged in therapy, has made meaningful progress in addressing his past trauma, obtained his GED and high school diploma, was accepted into college, and engaged in extensive treatment and programming over multiple years. We have abundant evidence from the last 4½ years which clearly demonstrates that his meaningful engagement in this treatment programming has led to significant growth and

rehabilitative progress. The State cannot ignore this fact and we urge the Court to also consider Husayn as he is today, a young man who has demonstrated that he is particularly amenable to individualized treatment in a probationary setting.

**B. Husayn Played a Lesser Role in the Crime**

The facts of this case, as outlined in the complaint, through the police investigation, and through testimony at the certification trial, demonstrate that Husayn played a lesser role in the murder of Steven Markey, which is an additional factor supporting the negotiated dispositional departure. This incident began as a robbery, and Husayn was acting as a lookout for his co-defendant J.A.O. It was J.A.O who approached the driver's side of Steven Markey's car, demanded the vehicle and then fired the fatal shot. Quoting from the complaint filed against the Co-Defendant: "Defendant J.A.O. stated he told Victim to get out of the car and no one would get hurt. Defendant J.A.O. claimed he saw Victim reach for something and thought he might be reaching for a gun, so he fired. Defendant J.A.O. observed his shot strike Victim in the shoulder." 27-CR-20-666. Husayn fired his gun at the car as it fled the scene, hitting the tire. This is consistent with the physical evidence at the crime scene and it is consistent with the admissions of both Husayn and J.A.O., his co-defendant.

Husayn's role in this murder was significantly less serious than is typical in a murder case, and is also less serious than that of his co-defendant, J.A.O. This does not excuse Husayn's actions that day and does not lessen the pain that Steven Markey's family is experiencing through this loss. Husayn is culpable as he planned to commit a robbery, carried a gun with him, and fired that gun at the victim's vehicle. But the fact remains that Husayn played a lesser role in the crime, an important factor supporting this dispositional departure under the sentencing guidelines.

## II. This Negotiated Disposition is Not Outside the Norms of Resolutions in Other Cases.

The agreement of the parties in this matter is not outside the norms of resolutions that are commonly entered and accepted in this courthouse and around the state. In a report in April 2023, the Sentencing Guidelines commission stated that “[I]n 2021, the mitigated dispositional departure rate for cases recommended prison under the Guidelines was 45.7 percent.” 2021 Sentencing Practices - Annual Summary Statistics for Felony Cases, page 30-32. For person offenses, the mitigated dispositional departure rate was 40%. The mitigated dispositional departure rate for assault in the second degree (which includes firing a gun at a person) is 59%. The report notes that “[t]he second-degree assault statute proscribes a broad range of misbehavior” as a possible explanation for the high mitigated dispositional departure rate. Mitigated dispositional departures are common because every case is unique and because it is important for resolutions to capture the conduct at issue in the individual case.

In addition to mitigated dispositional departures, it is common practice to ask a Defendant to plead to a lesser offense and to dismiss the higher counts. Such dispositions are entered in many types of cases – pleading an aggravated robbery to a simple robbery, pleading a drive by shooting to a prohibited person in possession, or pleading a murder to a second-degree assault. There are many examples of these sorts of resolutions in recent years. In one recent case, a youth was charged with aiding and abetting second degree murder for his role in the shooting at a victim whom died when a co-Defendant’s bullets struck him. After considering the role he played in the offense, his age, and many other factors, the court accepted his plea to being a prohibited person in possession and a durational departure to 48 months in prison. These sorts of dispositions are common across the state. In a recent example out of Anoka County, a youth who shot and killed another young person at a party was charged with manslaughter, and received an Extended Jurisdiction Juvenile (EJJ) disposition. In a recent case out of Washington County, a youth was

initially charged with attempted murder for shooting another person during a robbery, but the charge was later amended to simple robbery and resolved as EJJ. It is common for a case to resolve with a plea to a less significant charge.

The negotiated disposition proposed by the parties is not outside the norms of resolutions for people whom commit crimes similar to that at issue here. In this case, Braveheart planned to commit a robbery, he was armed with a gun, and fired his weapon at the victim's car as it fled the scene. Given the fact that the victim died in the incident, the State negotiated a disposition that both acknowledges the seriousness of the case (murder in the second degree), but is also commiserate with Braveheart's actions and the progress he has made since this incident occurred. The sentence gives Braveheart a chance to continue to demonstrate his rehabilitation, but includes a lengthy sentence that can be imposed if he does not follow his conditions of probation.

Husayn Braveheart's case is extraordinary in terms of the intense, international media attention that it has garnered. However, the negotiated disposition is by no means extraordinary, and is well within the norms of resolutions for similar cases in Hennepin County and across the state. Husayn's actions in this case involved planning a robbery and firing his gun at a victim. But the shot that killed the victim was fired by the co-defendant. In addition, Husayn's profound progress over the 4½ years since this incident occurred demonstrate his amenability to probation. The negotiated disposition balances the interests at play in this case and is designed to protect public safety.

### **III. Public Safety is Best Protected Through Individualized Treatment for Husayn in a Probationary Setting**

There are times when incapacitation of a person through incarceration may be necessary to protect public safety. While that was the case for Husayn for 4½ years ago, it is not true today. To the contrary, all evidence clearly demonstrates that committing Husayn to the Department of

Corrections to serve a lengthy adult prison sentence at this point in his rehabilitation will undermine public safety, leaving him more likely to recidivate when he is released.

An extensive and ever-growing body of research demonstrates that incarceration does not improve public safety and may increase risk of recidivism. *See, e.g.,* Stemen (2017), *The Prison Paradox: More Incarceration Will Not Make Us Safer*, Vera Evidence Brief (available at: [https://www.vera.org/downloads/publications/for-the-record-prison-paradox\\_02.pdf](https://www.vera.org/downloads/publications/for-the-record-prison-paradox_02.pdf)); Loeffler and Nagrin (2022), *The Impact of Incarceration on Recidivism*, Annual Review of Criminology (available at: <https://doi.org/10.1146/annurev-criminol-030920-112506>). Recent data from the Minnesota Department of Corrections found that since 2002, nearly 80% of people sent to prison for offenses committed as youth were sent back to prison after their initial release. Of those who returned to prison, 40% went back for committing a new offense, while the remainder were reincarcerated for violating terms of their release. These findings clearly demonstrate the negative public safety implications of sending people to prison for offenses committed as a youth.

On the other hand, research has also demonstrated that carefully tailored interventions and accountability measures focused on rehabilitation, mental health support, building career pathways, community connections and developing independent living skills are most likely to improve outcomes and reduce recidivism for young adults. *See, e.g.,* The Council of State Governments Justice Center, *Reducing Recidivism and Improving Other Outcomes for Young Adults in the Juvenile and Adult Criminal Justice Systems* (New York: The Council of State Governments Justice Center, 2015). This aligns with the negotiated disposition in this matter, which will provide a structured step-down process and intensive, individualized supervision through DOCCR's Transition Age Youth program.



There are times when the need for immediate incapacitation may outweigh the negative public safety impact of incarceration. Given Husayn's significant rehabilitative progress and demonstrated amenability to probation, however, this is not one of those times. Steven Markey's death was an unimaginable tragedy, and we recognize the depth of the Markey family's pain and their desire for a different outcome. As the County Attorney's Office, however, we are responsible for protecting public safety. In doing that, we must account for multiple factors in tailoring our resolutions. Victim impact is critically important, but so too is protecting public safety.

Husayn has been held in secure correctional facilities since he was 15 years old. After he completes his term of 365 days in the workhouse under this agreement, he will have been in secure correctional facilities for 5½ years. And when he completes this negotiated disposition, Husayn will have been under the jurisdiction of the court for over a decade. This is far from an insignificant sentence. The negotiated disposition is carefully tailored to ensure that Husayn can continue his rehabilitation, engage in a structured step-down process, and participate in intensive, individualized supervision through DOCCR's Transition Age Youth program. And if he fails to follow through and continue his rehabilitative progress, he faces imposition of his 261-month prison sentence.

### **CONCLUSION**

The State asks this Court to accept the negotiated disposition in this case. The Markey family has suffered an unimaginable loss, and we recognize their ongoing pain and desire for a different outcome. However, we must look at many important factors in tailoring our resolutions, and sending Husayn to prison at this point in his rehabilitative process will not make society safer. It would only serve to interrupt the progress he has made throughout the last 4½ years. This negotiated disposition accounts for Husayn's particular amenability to probation based on

significant progress through years of meaningful engagement in treatment in secure facilities and his lesser role in the offense, as well as the evidence and research which clearly demonstrates that this approach is best suited to protect public safety.

Respectfully submitted,

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