

# Thrown Away

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## I. Summary

*“You can’t just tack a label on a kid and throw him away in a box.”*

—Joseph H., Buena Vista Correctional Facility, Buena Vista, Colorado, July 28, 2004.

Across Colorado, residents are beginning to question whether children who commit a crime before the age of eighteen should ever be sentenced to life without parole. Historically, this harshest of prison sentences was restricted to adults. But as the Colorado legislature expanded adult prosecution of child offenders, it also expanded the possibility that life without parole would be imposed on children. At least forty-six such youth offenders are currently incarcerated in Colorado prisons with life without parole sentences.

Youth who break the law should be held accountable. Imprisonment may be a just punishment for those who commit serious violent crimes. But a sentence of life without parole for child offenders is cruel, unfair, and unnecessary. It violates common sense and universally recognized human rights principles. Moreover, while we recognize the importance of efforts to protect community safety, achieving that goal does not necessitate ignoring the potential of children to mature and to reclaim their lives. Change in Colorado’s laws to prevent the imposition of life without parole on youth offenders is long overdue.

The differences between children and adults are obvious. Because of the immaturity of children, state and federal laws require children to achieve a certain age before they can legally engage in a wide range of activities. In Colorado, eighteen is the minimum age to vote, get married without parental consent, serve on a jury, access school records, buy cigarettes, or sign contracts, and twenty-one is the minimum age to buy alcohol.

In Colorado’s system of criminal justice, however, the commission of a serious crime instantly changes young teens of fourteen, and in some cases even twelve-year-olds, into adults for purposes of trial and sentencing. Juvenile court judges and prosecutors can send such young offenders to adult courts with little or no consideration of their maturity, backgrounds, or the public goals to be served by such treatment. Convicted in adult courts, child offenders receive adult sentences, including life without parole. Indeed, Colorado law *requires* judges to impose life without parole on children as young as twelve if they commit first degree murder. As the father of a teen offender serving life without parole said, “I’m a former cop. I’m a true believer in law and order. But my son

was a child when this happened. He wasn't thinking like an adult, and he wasn't an adult . . . how is it that the law can treat him as if he is one?"<sup>1</sup>

Proponents of harsh sentences for children argue that those who commit serious crimes have forfeited their right to childhood. They believe youth who commit adult crimes should receive adult sentences. "Adult time for adult crime" may be a catchy phrase, but it reflects a poor understanding of criminal justice principles. If punishment is to be fair and proportionate, if the punishment is to fit the crime, both the nature of the offense and the culpability of the offender must be taken into account.

Children do not have adults' developed abilities to think, to weigh consequences, to make sound decisions, to control their impulses, and to resist group pressures. They can commit the same acts as adults, but by virtue of their immaturity, they cannot be as blameworthy or culpable. There is also a growing body of scientific evidence of specific, physical differences between the brains of adolescents and adults indicating that impulsive or aggressive acts by child offenders typically have a different origin and warrant a different response than equivalent acts by adults. The anguish and anger of a victim's family and friends may be the same whether a homicide is committed by a child or an adult. But justice requires a different sentence when the offender is a child.

For decades, Colorado children who committed crimes were handled by a juvenile justice system created to ensure their unique characteristics and needs were weighed appropriately in deciding the state's response to their offenses. But in the last thirty years, Colorado changed its laws to permit many children to be tried and sentenced as adults. The legislative changes were part of a nationwide trend to utilize harsh sentencing as a way to respond to juvenile crime and concern about so-called juvenile "super-predators."<sup>2</sup> By the summer of 1993, Colorado's notorious "summer of violence," all the laws were in place to punish teens convicted of serious crimes as harshly as adults, with the exception of the death penalty.

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<sup>1</sup> Human Rights Watch telephone interview with Frank C., Colorado, October 22, 2004. Throughout this report, Human Rights Watch uses the actual first name and initial of the interviewee with their informed consent. Whenever an interviewee preferred his or her identity to be disguised, we have used a pseudonym and expressly indicated such use in the relevant citation. Everyone interviewed for this report was age eighteen or over at the time of the interview.

<sup>2</sup> See, e.g., John J. Dilulio, Jr., "The Coming of the Super-Predators," *Weekly Standard*, November 27, 1995, p. 53 (discussing a purported new breed of extremely violent juvenile offenders); Peter Annin, "Superpredators Arrive: Should We Cage the New Breed of Vicious Kids?," *Newsweek*, January 22, 1996, p. 57. See also Human Rights Watch, *No Minor Matter: Children in Maryland's Jails* (New York: Human Rights Watch 1999), p. 13-16 (explaining that while the super-predator pronouncements made "good sound bites," they did not "match up to the facts.").

The forty-six young (the oldest was born in 1974) men and women in Colorado prisons sentenced to life without parole for crimes they committed as children do not fit a “super-predator” profile. Of the twenty-four about whom Human Rights Watch has detailed information, a few had relatively minor delinquency records, none have histories of repeated violence, and for many the crime for which they were sentenced to life without parole was their first offense of any sort. Some were involved with gangs, but most were not. They came from all walks of life, from wealthy suburbs and small ranching towns. They include honor roll students and kids who maintained a “C” average. They are white, black, Latino, and Asian-American. Their family lives ranged from supportive to abusive, and their psychological health varied as well.

Some of these youth offenders entered Colorado’s prisons while they were still children; others were eighteen or older by the time they were convicted. But all have faced the same conditions in prison as the much older adults with whom they are incarcerated: gangs, sexual predators, and other forms of violence. They also confront special hardships inherent in their sentence. They wrestle with the anger and emotional turmoil of coming to grips with the knowledge they will die in prison. They are denied educational, vocational, and other programs to develop their minds and skills because correctional authorities reserve them for prisoners who will someday be released. They face prison visiting rules that limit visits to people they knew before their incarceration—meaning that someone who enters prison at age sixteen may only receive visits from family or early high school friends for the rest of his life. Not surprisingly, child offenders sentenced to life without parole in Colorado believe their state has thrown them away.

Recognizing the inherent differences between children and adults, international human rights law prohibits sentencing any child (defined as anyone below the age of eighteen) to life without parole or to the death penalty. It recognizes that the diverse purposes of punishment—deterrence, retribution, rehabilitation—can be served by sentencing youth offenders to punishments that take their immaturity, as well as their potential to grow and change, into account. At least 133 countries around the world have decided that children should not be sentenced to die in prison. They agree that all children, however heinous their crimes, should have a chance at freedom when they are mature and can demonstrate their rehabilitation. Colorado’s laws should be changed to give its young offenders that chance.

## **II. Recommendations**

### ***To the Governor of Colorado***

- Work with the state legislature to enact legislation that eliminates the sentence of life without parole for any crime committed by a child under the age of eighteen.
- Until the sentence of life without parole for children is abolished, review the clemency applications of all child offenders sentenced to life without parole and grant clemency to all who meet clemency requirements.
- Ensure that the state of Colorado compiles annual statistics on youth in the adult criminal justice system in Colorado, including: data on children tried in adult court, the nature of the crimes committed, the precise sentence received by each child, and offender demographic information (age, race, sex).

### ***To the Colorado Legislature***

- Enact legislation that abolishes the sentence of life without parole for any offense committed by a child.
- Eliminate the prosecutorial option of filing cases against child offenders directly in adult court. All cases against child offenders, regardless of their alleged crime, should be filed first in juvenile court.
- Provide judges in adult courts with the discretion to send child offenders who have been convicted as adults to juvenile detention facilities within the Colorado youth offender system for a period of years or at least until the individual is twenty-one before he or she is sent to adult prison. Ensure that offenders above the age of eighteen who remain in the youth offender system under such provisions are housed separately from children.
- Include in any sentencing reform a mechanism by which child offenders currently serving life without parole have periodic access to parole procedures.
- Ensure that there is a meaningful transfer hearing for each child offender in juvenile court, and limit such transfers to extraordinarily severe cases. The hearing must weigh several factors, including at a minimum the nature and seriousness of the offense, the age and history of the child, and his or her amenability to treatment. The judicial decision should state in writing all evidence relied upon and reasons for ruling for or against transfer to adult court. Such decisions should be subject to review by a higher tribunal.

### **To Colorado Prosecutors**

- Until the sentence of life without parole is abolished, refrain from seeking a sentence of life without parole for any child offender.
- Refrain from filing charges against child offenders directly in adult court. Instead, charge all child offenders first in juvenile court.
- Request and participate in, as an officer of the court, a full and fair assessment of each child offender's competency to stand trial as an adult before allowing any transfers to adult court.

### **To Colorado Trial and District Court Judges**

- Raise *sua sponte* the issue of child defendants' competency to stand trial as adults.
- Ensure that there is a meaningful transfer hearing for each child offender in juvenile court, and limit such transfers to extraordinarily severe cases. The hearing must weigh several factors, including at a minimum the nature and seriousness of the offense, the age and history of the child, and his or her amenability to treatment. The judicial decision should state in writing all evidence relied upon and reasons for ruling for or against transfer to adult court. Such decisions should be subject to review by a higher tribunal.

### **To Colorado Defense Attorneys**

- Explain to child defendants as well as their parents all procedures, defense strategies, right of the client to participate in decision making, and the seriousness of the charges including possible sentences.
- Vigorously defend child offenders during competency and transfer hearings.
- Assist child offenders in the filing of clemency applications.

### **To the Colorado Juvenile Justice and Delinquency Prevention Council**

- Oppose the sentencing of individuals to life without parole for crimes committed when they were children.
- Oppose the transfer of child offenders to adult court without a meaningful transfer hearing before a judge and without a judicial decision concerning the child's competency to participate in adult proceedings.

## ***To the Colorado Department of Corrections***

- Allow all inmates to participate in educational, vocational, and occupational programs regardless of the length of their sentence; child offenders serving life without parole should have access to all programs available to other prisoners.
- Review and revise visitor restriction policies, consistent with reasonable security needs, to ensure they do not limit inmates to visits only from people they met before going to prison. It is unduly harsh to limit child offenders to visits only with family or persons they knew from childhood.

### **III. Background**

The United States was once internationally-renowned for its progressive stance towards children accused of crimes. In fact, in 1899 the government of Illinois was the first in the world to decide that children accused of crimes should be treated differently from adults. Colorado soon followed Illinois' example.

Also in 1899, Colorado Judge Benjamin Lindsey was presiding over the trial of a boy who had stolen coal from a railroad yard because his family was very poor and his father was too sick to work. Judge Lindsey decided that the boy “was not a criminal, not a bad boy, merely a boy.”<sup>3</sup> Forever changed by this experience, Judge Lindsey began working to reform the way children accused of crimes were treated. Because of his efforts, Colorado’s first juvenile court, the Denver Juvenile Court, opened in 1900, and Judge Lindsey presided over it until 1927. Other juvenile courts opened in the intervening years. In 1964, Colorado’s juvenile courts became juvenile divisions of adult district courts, but they retained their separate jurisdiction and mandate to rehabilitate, not merely punish, children convicted of crimes. The philosophy of the state Children's Code governing the treatment of juvenile offenders was rehabilitation, not punishment, “an objective best accomplished within a system tailored especially for the young.”<sup>4</sup>

### ***Trying Children as Adults***

In 1973, Colorado passed legislation authorizing juvenile courts to transfer to adult court children aged fourteen to seventeen who had been accused of a class one or two felony

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<sup>3</sup> Milan Simonich, “1899 Show Me State Showed Off Missouri to the Nation,” *Pittsburgh Post-Gazette*, May 3, 1999.

<sup>4</sup>See *Briones v. Juvenile Court for Denver*, 188 Colo. 189 (S. Ct. Colo. 1975).



(such as first or second degree murder).<sup>5</sup> The transfer would occur if, “after investigation and a hearing, the juvenile court finds it would be contrary to the best interests of the child or of the public” for it to retain its juvenile jurisdiction.<sup>6</sup> The revised law also allowed prosecutors to file cases directly in adult court against child offenders fourteen and older accused of a class one felony.<sup>7</sup>

A subsequent amendment to the law in 1987 greatly expanded prosecutors’ ability to completely circumvent the juvenile system. They are able to file charges directly in adult court against children fourteen years or older who are alleged to have committed (or attempted, conspired to commit, solicited, or were complicit in the commission of) a class one or two felony, any violent felony, or any one of several other enumerated crimes<sup>8</sup>; who are alleged to have used, possessed, or threatened the use of a deadly weapon; or who fit within one of a series of other statutory categories.<sup>9</sup> The state also lowered the minimum age for transfer to adult court. Children as young as twelve may be transferred to adult court if they are alleged to have committed a class one or two felony or a crime of violence.

Upon conviction in adult court, child offenders face the same array of prison sentences as a person decades older. Some of those sentences are mandatory. That is, the judge has no discretion to impose a different sentence. A judge *must* sentence to life without parole a child offender—even one as young as twelve years old—convicted of a class one felony, such as first degree murder.<sup>10</sup> The sentence is mandatory even if this is the child’s first offense and regardless of the child’s developmental maturity, or whether there were other powerful mitigating circumstances.

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<sup>5</sup> See Colorado Children’s Code, Colo. Rev. Stat. § 19-3-106(4)(b) and § 19-3-108 (1973). Prior to the passage of this law, and at least by 1967, children above the age of sixteen accused of crimes of violence punishable by death or life imprisonment could be transferred from the juvenile system to the adult district court. See Colorado Children’s Code, Colo. Rev. Stat. § 22-1-4(b) (effective date July 1, 1967).

<sup>6</sup> *People v. Moseley*, 193 Colo. 256, 259 (1977). See also Colo. Rev. Stat. § 19-2-518 (1) (a) (II).

<sup>7</sup> Colo. Rev. Stat. § 19-1-104(4)(b).

<sup>8</sup> Colo. Rev. Stat. § 19-2-517(1)(a).

<sup>9</sup> The additional categories of children who may be charged directly in adult court include: a child aged fourteen or older who is alleged to have committed a felony offense described in part 1 of article 12 of Colo. Rev. Stat. § 18 (other than possession of a handgun); or who is alleged to have committed vehicular homicide, vehicular assault, or felonious arson; or is alleged to have committed a delinquent felony act and has previously been tried in adult court either directly or via transfer (unless he is found not guilty of the prior offense); or is alleged to have committed a delinquent felony act and is determined to be a “habitual juvenile offender” (a repeat offender). Or, a child aged sixteen or older who has been adjudicated delinquent for a felony act and is alleged to have committed a class three felony (with some exceptions).

<sup>10</sup> Murder in the first degree (including “felony murder,” “murder of a peace officer or fireman,” and “extreme indifference murder”) is a class one felony. An individual convicted of a class one felony in Colorado faces mandatory sentences of either the death penalty or life without parole. In Colorado, the death penalty may not be imposed on children. See Colo. Rev. Stat. § 18-1.3-1201(1)(a).

Before the expansion of prosecutors' ability to file charges against children directly in adult courts, children accused of serious crimes received meaningful transfer hearings in which the reasons for and against retaining the case in juvenile court were fully developed. As defense attorney Tamara Brady told Human Rights Watch, "transfer hearings used to work. It was a truly adversarial process."<sup>11</sup>

Today, few children in Colorado who have committed serious crimes appear in juvenile courts. Gus Sandstrom, a prosecutor in Colorado, acknowledged to Human Rights Watch that prosecutors prefer to charge children accused of serious crimes directly in adult courts rather than beginning in juvenile court and having a transfer hearing. Douglas Wilson, a public defense attorney told Human Rights Watch that since 1992, his public defenders office in Pueblo, Colorado has not represented a single child offender at a transfer hearing. He explained that he has talked with public defenders throughout the state and has found no one who has represented a child at a transfer hearing over the past ten years. According to Wilson, "it's almost as if it is considered prosecutorial misconduct to [begin in juvenile court and] do a transfer hearing in these cases. Instead, [prosecutors] just file [charges against children] directly in adult court."<sup>12</sup> While Wilson acknowledged it was possible that there were cases in which a private attorney handled a transfer hearing in juvenile court, he pointed out that "the prosecution's burden is much heavier going through a transfer hearing, so why would they do it?"<sup>13</sup>

When charges are filed against children directly in adult courts, there is no hearing to determine whether the child should be in juvenile court. Indeed, judges in adult courts have no authority to withdraw their jurisdiction and send a child charged with a serious crime as an adult back to juvenile court.<sup>14</sup>

Prosecutors can, of course, consider the pros and cons of charging a child in adult court. Indeed, Gus Sandstrom stated that each district attorney's office in the state has its own internal evaluation process to determine whether or not to directly file a case in adult court.<sup>15</sup> But prosecutorial discretion cannot substitute for a full adversarial hearing before a judge. No law requires prosecutors to consider all the factors that juvenile

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<sup>11</sup> Human Rights Watch telephone interview with Tamara Brady, Esq., Colorado, April 2004.

<sup>12</sup> Human Rights Watch telephone interview with Douglas Wilson, Esq., Colorado, September 9, 2004.

<sup>13</sup> Human Rights Watch telephone interview with Douglas Wilson, Esq., Colorado, January 4, 2005.

<sup>14</sup> See Colo. Rev. Stat. § 19-2.518 (1)(d)(III).

<sup>15</sup> Human Rights Watch telephone interview with Gus Sandstrom, Esq., Colorado, September 16, 2004. Mr. Sandstrom explained that factors such as whether the defendant acted out of pure immaturity or with culpable intent are considered, as well as whether the offense is the defendant's first, or whether the child has been involved in multiple crimes or "gang behavior, like someone who has been prosecuted in the past for multiple drive-by shootings."

courts must before transferring a child, nor are they required to provide any written explanation of their decision. Our research suggests that prosecutors' decisions to file in adult court depend almost entirely on the nature of the crime coupled with the extent of news coverage and public outrage. There is little indication they weigh carefully such factors as a child's potential for rehabilitation, mitigating circumstances, or the child's competency to stand trial as an adult.

All defendants in the United States have a right to due process of the law, which requires that they are "competent to stand trial."<sup>16</sup> They must be able to understand the charges against them; have a basic understanding of the roles of their own and opposing attorneys and the functions of judge and jury; be able to consult with their attorney in a meaningful way; and be able to weigh the consequences of the decisions they have to make, such as whether or not to accept a plea.<sup>17</sup> Young adolescents, however, may be ill-equipped to handle trial in adult court.

In fact, it was partly children's poor capacity for adult criminal trials that provided the impetus for the juvenile court system in the United States. Juvenile courts are responsible for adjudicating cases against children based on their status as children (i.e., for violations of laws that are applicable only to children such as running away from home), and delinquency cases against children (i.e., for acts committed by children which would result in criminal prosecution if committed by an adult). The separate juvenile court system in the United States is based on the premise that children are different from adults and as a result are more amenable to treatment and rehabilitation. Juvenile courts seek to focus on each individual child and take into account his or her particular problems and needs while devising a treatment plan that will help the child to change and minimize the potential for future criminal behavior.

Since 1997, the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, whose members include leading legal and scientific professionals as well as academic experts, has been conducting a study of the competency of children to stand trial in adult court. The study has examined a broad range of factors, including children's understanding of basic elements of the judicial process and their rights as defendants; their ability to put facts together and draw logical conclusions; and their ability to make decisions independent of pressure from authority figures. The research indicates that many young adolescents, particularly those fifteen and under, are not developmentally mature enough to be "competent." They are seriously disadvantaged

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<sup>16</sup> See *Kent v. United States*, 383 U.S. 541, 557 (1966) (right to full, adversary-style representation in juvenile transfer proceedings); *In re Gault*, 387 U.S. 1, 3 (1967) (ruling that the constitutional protections afforded to adults must also be afforded to juveniles during delinquency proceedings).

<sup>17</sup> *Dusky v. United States*, 362 U.S. 402 (1960).

by virtue of their age to stand trial in adult courts and to be subject to all the rules, procedures, and consequences of such trials.<sup>18</sup>

### **Juvenile Crime Rates**

The United States experienced a sudden and troubling increase in violent crime by children and adolescents that began in the mid-1980s and continued until the mid-1990s.<sup>19</sup> While a number of factors fueled this increase, experts point particularly to the active recruiting of children into armed drug-dealing gangs, although changes in the way crimes were recorded in the 1990s also contributed to the rising numbers.<sup>20</sup> Between 1985 and 1994, murders committed by children with guns more than tripled.<sup>21</sup> Figure 1 shows the national arrest rate for children charged with murder.<sup>22</sup>

Colorado's experience closely followed this national pattern, with violent juvenile crime rising dramatically from the mid 1980s until the mid 1990s, as revealed in Figure 2. During the "Summer of Violence" in 1993, the state was consumed by a dramatic spate of killing by youths in affluent, white areas and previously crime-free parks.<sup>23</sup> Press stories described child offenders as "kid gangsters," "hard-core juvenile offenders," "scary and dangerous youths," "young thugs preying on their fellow citizens," "the state's nastiest young felons," "kids doing the criminal work of adults," "greedy, self-serving, predatory street punks," "teenage evil," and "tiny terrorists."<sup>24</sup>

Fortunately, the years of high juvenile crime rates were short-lived. Since 1995, the national arrest rates of children aged ten to seventeen for violent crimes has plummeted,

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<sup>18</sup> Thomas Grisso, Laurence Steinberg, Jennifer Woolard, Elizabeth Cauffman, Elizabeth Scott, Sandra Graham, Fran Lexcen, N. Dickon Reppucci, Robert Schwartz, "Juveniles' Competence to Stand Trial," *Law and Human Behavior*, vol. 27 (2003).

<sup>19</sup> The National Center for Juvenile Justice, "Juvenile Arrest Rates by Offense, Sex, and Race (1980-2002)," August 1, 2004, available online at: [http://ojjdp.ncjrs.org/ojstatbb/crime/excel/JAR\\_20040801.xls](http://ojjdp.ncjrs.org/ojstatbb/crime/excel/JAR_20040801.xls), accessed on February 1, 2005.

<sup>20</sup> See Alfred Blumstein and Richard Rosenfeld, "Assessing Recent Ups and Downs in U.S. Homicide Rates," *The National Consortium on Violence Research*, 1998.

<sup>21</sup> Malcolm Young and Jenni Gainsborough, "Prosecuting Juveniles in Adult Court," The Sentencing Project, January 2000, available online at: [http://www.soros.org/initiatives/justice/articles\\_publications/publications/juvenilesasadults\\_20020101/juvenilesadultcourt.pdf](http://www.soros.org/initiatives/justice/articles_publications/publications/juvenilesasadults_20020101/juvenilesadultcourt.pdf), accessed on February 1, 2005.

<sup>22</sup> Figures 1 through 6 appear at the end of Section III.

<sup>23</sup> Two of the most widely reported crimes during the summer involved Lori Ann Rowe, an elementary school teacher, who was murdered allegedly by a sixteen-year-old in a suburban parking lot; and six-year-old Broderick Bell, who was shot in the head, allegedly by a teenage girl in a gang-related drive-by shooting. Bell survived, but with lasting mental and physical disabilities.

<sup>24</sup> Paul Colomy and Laura Greiner, "Making Youth Violence Visible: The News Media and the Summer of Violence," *Denver University Law Review*, Vol. 77, p. 661, 2000.

dropping by 2002 to a rate lower than that in 1980.<sup>25</sup> As Figures 1 and 2 reveal, arrests of children for murder fell sharply nationwide as well as in Colorado in this time period.<sup>26</sup>

### **Adult Court Prosecution Data**

Human Rights Watch was unable to obtain from Colorado's State Court Administrator statewide data on trends in juvenile and adult court prosecution of child offenders prior to 1998. However, we were given data for the five years between 1998 and 2002. The data reveal that 784 children have been charged and convicted in Colorado's adult courts (this number does not include children who were charged in adult court but not convicted) between 1998 and 2002. Of these 784 offenders, the percentages that were ages fourteen to nineteen when their cases were filed in adult court, and the percentages that were ages fourteen to twenty-one at sentencing are displayed in Figures 3 and 4. In addition, 106 of these children, or 13 percent of the total, were originally charged with first degree murder. However, in each case the child was charged with several lesser or different crimes, and the State Court Administrator was unable to give us information on which crimes the children were ultimately convicted of, or what their sentences were.<sup>27</sup>

Although statistics are unavailable, it is likely that the number of adult prosecutions rose between 1987 and 1998, as violent crime by juveniles rose during that period and prosecutors had expanded powers to file charges directly in adult courts. Thereafter, as Figure 5 shows, the number of children convicted in adult court declined each year between 1998 and 2002, which is not surprising given the decline in youth crime overall. Figure 6 shows the resulting decline in the numbers of offenders who were children when they were admitted to adult prison.

Some proponents of adult prosecutions for youth believe the prospect of harsh sentences, including life without parole, contributed to the decline in juvenile crime rates. In 1998, the U.S. Bureau of Justice Statistics (BJS) ran several linear regressions in order to examine this question, trying to discern correlations between sentencing and crime rates. BJS found that trends in punishment severity had an inconsistent

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<sup>25</sup> The National Center for Juvenile Justice, "Juvenile Arrest Rates by Offense, Sex, and Race (1980-2002)," August 1, 2004, available online at: [http://ojjdp.ncjrs.org/ojstatbb/crime/excel/JAR\\_20040801.xls](http://ojjdp.ncjrs.org/ojstatbb/crime/excel/JAR_20040801.xls), accessed on February 1, 2005.

<sup>26</sup> Figures 1 and 2 are based on data obtained from the National Center for Juvenile Justice, "Juvenile Arrest Rates by Offense, Sex, and Race (1980-2001)," May 31, 2003 (developed for the Office of Juvenile Justice and Delinquency Prevention, based on unpublished data from the Federal Bureau of Investigation and from the FBI's Crime in the United States Reports, Population Data from the U.S. Census).

<sup>27</sup> Jessica Zender, Policy Analyst, Planning and Analysis, Colorado Office of the State Court Administrator, November 5, 2004 (data on file with Human Rights Watch).

relationship with trends in crime in the United States across all age groups.<sup>28</sup> Economist Steven Levitt found that increased youth crime rates between 1978 and 1993, and decreasing adult crime rates during the same period in several key states, including California, could be attributed almost entirely to the more punitive sentences available in the adult system.<sup>29</sup> Others have impugned Levitt's findings for a variety of complex reasons, one of which is that, according to these scholars, Levitt's analysis is based on variables that are interrelated, making it impossible to determine whether or not harsher sentences deter crime.<sup>30</sup>

Other studies show that the threat of harsh punishment has *not* deterred youth from committing crimes. Criminologists Simon Singer and David McDowell evaluated the effects of New York's 1978 Juvenile Offender Law, which reduced the age at which children could be tried as adults and face adult sentences. They analyzed arrest rates of children in New York for four years prior to the enactment of the law and for six years after and compared these rates with those for control groups of thirteen- and fourteen-year-olds in Philadelphia, and with slightly older offenders in New York. The researchers found that New York's punitive Juvenile Offender Law "did not affect juvenile crime."<sup>31</sup> Social scientists Eric Jensen and Linda Metsger reached a similar conclusion. They examined arrest rates for five years before and five years after the passage of a law in Idaho that enabled children to be sentenced as adults, and found no evidence that the law had any deterrent effect on the level of crime committed by children.<sup>32</sup>

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<sup>28</sup> U.S. Department of Justice, Bureau of Justice Statistics, "Crime and Justice in the United States and in England and Wales, 1981-96," October 1998, available online at: <http://www.ojp.usdoj.gov/bjs/pub/pdf/cjusew96.pdf>, accessed on February 1, 2005.

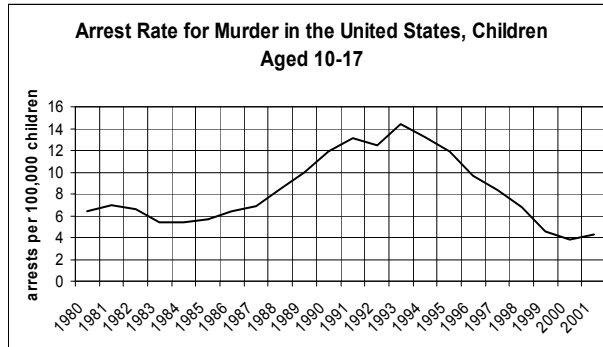
<sup>29</sup> Steven Levitt, "Juvenile Crime and Punishment," *Journal of Political Economy*, Vol. 106, Issue 6, p. 1156, 1998.

<sup>30</sup> See Anthony N. Doob and Cheryl Marie Webster, "Sentence Severity and Crime: Accepting the Null Hypothesis," *Crime & Justice*, Vol. 30, p. 143, 2003 (stating that Levitt's study, "which examines the drop in offending as youths shift from the juvenile justice system to the adult system, is a complex paper that appears to us to have little relevance for the question at issue. The main focus—for deterrence purposes—is on the ratio of two quotients: (a) adult prisoners divided by adult violent crime, and (b) juvenile delinquents/juvenile violent crime. The ratio of a/b is said to be the "relative punitiveness" of the two systems. This ratio is subsequently said to relate to the crime rate of those over the age of majority. Aside from whether this ratio has anything to do with the relative severity of sentences, we do not appear to have independent measures of "crime" that are not, themselves, related to the relative punitiveness of the system.") (Internal citations to Levitt's study omitted).

<sup>31</sup> Simon I. Singer and David McDowell, "Criminalizing Delinquency: The Deterrent Effects of the New York Juvenile Offender Law," *Law and Society Review*, Vol. 22, p. 521, 1988; cited in Donna Bishop, "Juvenile Offenders in the Adult Criminal System," *Crime and Justice*, Vol. 27, p. 81, 2000.

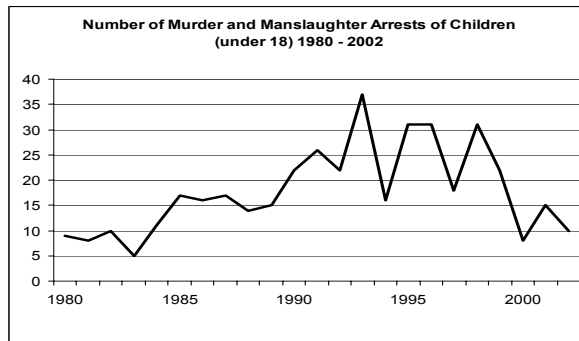
<sup>32</sup> Eric L. Jensen and Linda K. Metsger, "A Test of the Deterrent Effect of Legislative Waiver on Violent Juvenile Crime," *Crime and Delinquency*, Vol. 40, p. 96, 1994.

**Figure 1**



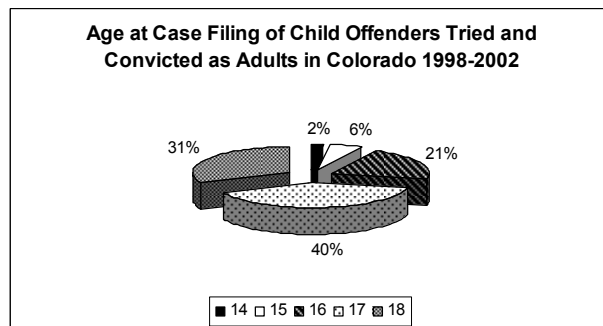
Source: Data obtained from the National Center for Juvenile Justice, “Juvenile Arrest Rates by Offense, Sex, and Race (1980-2001),” May 31, 2003 (developed for the Office of Juvenile Justice and Delinquency Prevention, based on unpublished data from the Federal Bureau of Investigation and from the FBI’s Crime in the United States Reports, Population Data from the U.S. Census).

**Figure 2**



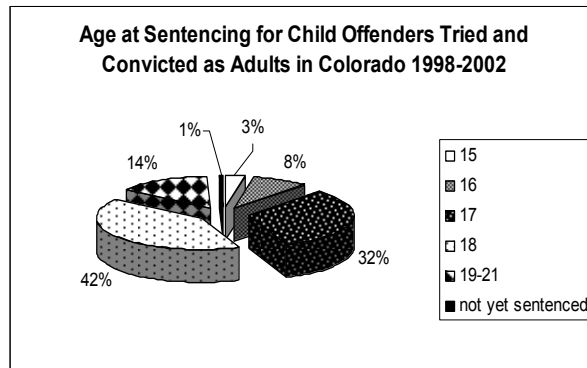
Source: Arrest data—Colorado Bureau of Investigations Annual Reports (1980-2002). Population data—Colorado State Demographer’s Office, Department of Local Affairs.

**Figure 3**



Source: Jessica Zender, Policy Analyst, Planning and Analysis, Colorado Office of the State Court Administrator, November 5, 2004.

**Figure 4**



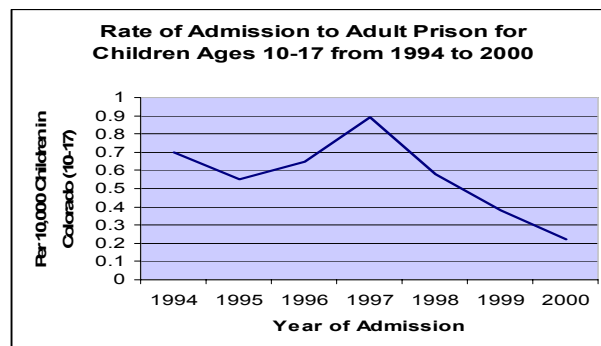
Source: Jessica Zender, Policy Analyst, Planning and Analysis, Colorado Office of the State Court Administrator, November 5, 2004.

**Figure 5**

Year	Number of child offenders tried in adult court
1998	201
1999	197
2000	142
2001	127
2002	117
<b>Total</b>	<b>784</b>

Source: Jessica Zender, Policy Analyst, Planning and Analysis, Colorado Office of the State Court Administrator, November 5, 2004.

**Figure 6**



Source: SB94 N-Trails Report, Fiscal Year 1999-2000, Omni Institute, April 2001 (report prepared for the Colorado legislature on the implementation of Senate Bill 94).

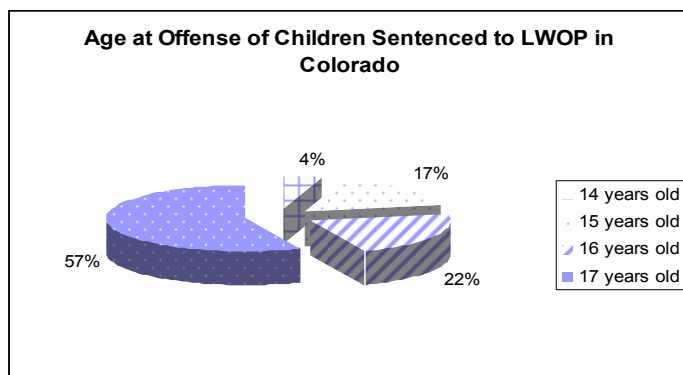


## IV. Children Sentenced to Life without Parole in Colorado

### Data

Human Rights Watch has compiled the most comprehensive list to date of children sentenced to life without parole (LWOP) in Colorado. Using data from the Colorado Department of Corrections (DOC), the Pendulum Foundation of Denver, Colorado, and our own independent research, Human Rights Watch has counted forty-six child offenders serving life without parole sentences in Colorado.<sup>33</sup> The actual number may be higher.<sup>34</sup> All but one of the forty-six are male. As Figure 7 illustrates, 57 percent of those serving the sentence committed their crimes at the age of seventeen, 22 percent were sixteen, 17 percent were fifteen, and 4 percent (comprising two children) were fourteen years old.

Figure 7



Source: combination of data produced for Human Rights Watch by Colorado Department of Corrections on May 19, 2004; data collected by the Pendulum Foundation in July 2003; and correspondence received on March 3, 2004 and subsequent interviews with a child offender sentenced to LWOP who was not counted by either organization.

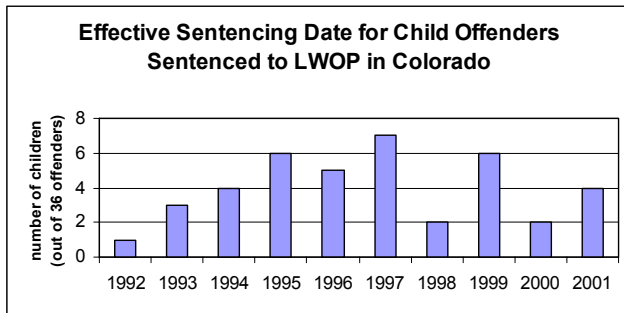
As Figure 8 demonstrates, the number of children sentenced to life without parole increased between 1992 and 1997. In subsequent years, the number of children sentenced per year has varied widely. Given the relatively small number of children

<sup>33</sup> Neither Colorado's DOC nor the Pendulum Foundation's data collections were complete. DOC missed ten offenders on Pendulum's data collection, and Pendulum missed four that were included in the DOC data. In addition, Human Rights Watch was able to locate one additional child offender not counted by either organization through correspondence received on March 3, 2004, an in-person interview, subsequent interviews with his mother, and independent press sources.

<sup>34</sup> Since the DOC data missed ten cases tracked by the Pendulum Foundation, and Pendulum is not sure that they have identified all child offenders serving life without parole, and Human Rights Watch located one offender not counted by either organization, the numbers presented may be an undercount.

involved and the lack of complete data on child offenders who received sentences other than life without parole during these years, it is difficult to draw any conclusions about whether the percentage of life without parole sentences imposed increased or decreased as compared with the total number of child offenders sentenced for serious crimes. Comparing the data in Figure 8 with those in Figure 5, however, it is apparent that the number of children sentenced to life without parole is a small fraction of the total number of child offenders tried in adult court and sent to prison.

**Figure 8**



Source: Data produced for Human Rights Watch by Colorado Department of Corrections on May 19, 2004.

Relative to their proportion in the state's population of children, blacks constitute a disproportionately large percentage of children sentenced to life without parole.<sup>35</sup> As shown in Figure 9, 4.4 percent of all children in Colorado are black, whereas black children make up 26 percent of those serving life without parole. Conversely, 70.9 percent of children in Colorado are white, and yet they make up only 29 percent of the children serving life without parole.<sup>36</sup>

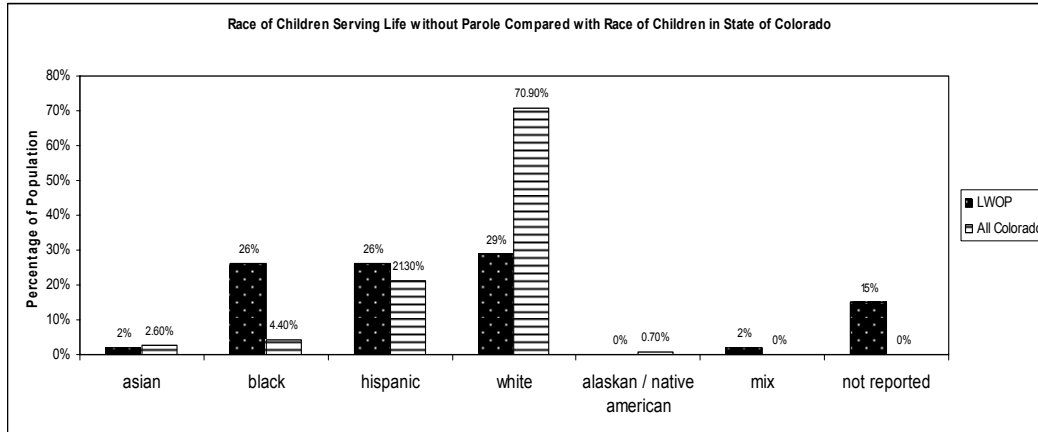
Human Rights Watch was unable to locate youth criminal justice data for Colorado that would enable further analysis of the racial disparity among child offenders sentenced to life without parole. We do not know, for example, the relative proportion of serious crimes committed by children of different racial categories in Colorado; nor do we have data on whether children from racial minorities are transferred to adult court at different rates or sentenced to life without parole more frequently than white children charged

<sup>35</sup> Human Rights Watch has data on the race of 39 of 46 of the youth offenders sentenced to life without parole in Colorado.

<sup>36</sup> In order to produce this comparison, Human Rights Watch compared a static measurement (the 2000 census) of the racial make-up of Colorado's population between the ages of ten and seventeen with a time series sample of forty-six children sentenced to life without parole across time. There are inherent difficulties in comparing a static sample with a time series sample, which are partially ameliorated by the fact that Colorado has not experienced a marked rise in the population of any particular race between the census of 1990 and that of 2000 (excluding those of Hispanic origin, who were not counted by the 2000 census).

with similar offenses. Nationwide, black children receive harsher treatment in the criminal justice system than white children accused of comparable offenses, including more frequent trial in adult court.<sup>37</sup>

**Figure 9**



Source: Combination of data produced for Human Rights Watch by Colorado Department of Corrections on May 19, 2004; data collected by the Pendulum Foundation in July 2003; and correspondence received on March 3, 2004 and subsequent interviews with a child offender sentenced to LWOP who was not counted by either organization—compared with 2000 U.S. census data on the race of youth between the ages of ten and seventeen in the state of Colorado.

### **Crimes and Life Situations**

Through personal interviews and correspondence, Human Rights Watch has been able to obtain details about the crimes and lives of twenty-four youth offenders sentenced to life without parole as summarized in Figure 10.

As Figure 10 indicates, two-thirds of the convictions were for murder. The remaining third of the convictions were for felony murder (cases in which the child offender did not personally kill anyone but played a role in a robbery or other dangerous felony in which an accomplice killed someone). Most crimes involved the use of guns. All but two

<sup>37</sup> See, e.g., Eileen Poe-Yamagata and Michael A. Jones, “And Justice for Some,” Building Blocks for Youth Initiative for the National Council on Crime and Delinquency, 2000, available online at: <http://www.buildingblocksforyouth.org/justiceforsome/jfs.pdf>, accessed on February 1, 2005. (finding that youth of color are overrepresented and receive disparate treatment at every stage of the juvenile justice system); Mike Males and Dan Macallair, “The Color of Justice: An Analysis of Juvenile Adult Court Transfers in California,” Justice Policy Institute, Building Blocks for Youth Initiative, February 2000, available online at: <http://www.buildingblocksforyouth.org/colorofjustice/coj.pdf>, accessed on February 1, 2005, (showing that youth of color are 8.3 times more likely than white youth to be sentenced by an adult court to imprisonment in a California Youth Authority facility); Jolanta Juskiewicz, “Youth Crime/Adult Time: Is Justice Served?” the Pretrial Services Resource Center, Building Blocks for Youth Initiative, October 2000, available online at: <http://www.buildingblocksforyouth.org/ycat/ycat.html>, accessed on February 1, 2005, (showing overrepresentation and disparate treatment of youth of color in the adult system and questioning the fairness of prosecuting youth as adults).

of the youth offenders committed their crimes with other teenagers or adults. Most of the youth had never broken the law prior to the offense that led to their life without parole sentence. That is, their first offense put them behind bars for the rest of their lives. Only three of the twenty-four had ever been previously convicted of a violent juvenile crime—assaults in all three cases.

**Figure 10: Backgrounds of 24 child offenders sentenced to LWOP**

Case	Age at crime	Date of Offense	Most serious conviction	Committed w/ others?	No. of others	Age of others	Gun	Gang related	Previous offense	Details	Time in Supermax
1	14	7/25/1992	1st degree felony murder	No	n/a	n/a	no	No	Yes	Juvenile underage drinking	Yes
2	15	7/15/1999	1st degree felony murder	yes	2	15, 17	yes	No	yes	juvenile assault	Yes
3	15	3/18/1993	1st degree murder	yes	1	16	yes	Yes	no		
4	15	12/21/1995	1st degree murder	yes	2	15, 16	yes	Yes	unknown		Yes
5	15	11/4/1992	1st degree murder	yes	1	15	yes	No	no		yes
6	15	4/10/1995	1st degree murder	yes	2	13, 15	Yes	Yes	no		yes
7	15	12/28/1992	1st degree murder	yes	1	17	yes	No	no		yes
8	15	7/11/1994	1st degree felony murder	yes	1	20	yes	No	no		Yes
9	16	6/6/1998	1st degree murder	yes	1	16	no	No	no		Yes
10	16	5/31/1997	1st degree murder	yes	7	Not reported	yes	Yes	unknown		Yes
11	17	10/31/1996	1st degree murder	yes	1	13	no	No	yes	juvenile arson, assault	Yes
12	17	3/28/1994	1st degree felony murder	yes	1	19	no	No	no		Yes
13	17	6/28/1993	1st degree murder	yes	8	Not reported	yes	Yes	unknown		
14	17	4/26/1995	1st degree murder	yes	2	17, 19	yes	Yes	no		
15	17	10/10/1999	1st degree felony murder	yes	2	17, 20	yes	No	no		
16	17	3/1/1994	1st degree felony murder	yes	Not reported	Not reported	yes	No	no		
17	17	10/10/1999	1st degree murder	yes	2	17, 20	yes	No	unknown		
18	17	4/21/2000	1st degree murder	yes	2	18, 18	yes	Yes	no		
19	17	11/21/1996	1st degree felony murder	yes	1	17	yes	No	yes	juvenile drug and alcohol	
20	17	2/16/1995	1st degree murder	no	n/a	n/a	no	No	no		
21	17	5/1/1998	1st degree murder	yes	1	16	no	No	no		Yes
22	17	11/14/1996	1st degree murder	yes	1	Not reported	no	No	yes	car theft	Yes
23	17	4/26/1995	1st degree murder	yes	3	17, 17, 17	yes	Yes	yes	2nd degree assault	
24	17	1/31/1995	1st degree felony murder	yes	2	17, 17	yes	No	no		yes

Source: Combination of data produced for Human Rights Watch by Colorado Department of Corrections on May 19, 2004; data collected by the Pendulum Foundation in July 2003; correspondence received by Human Rights Watch from youth offenders in February through October 2004 and subsequent in-person interviews with child offenders sentenced to LWOP.

There is no readily apparent pattern to the lives of the youth offenders who were sentenced to life without parole. Their family lives and economic situations were varied. Some were economically poor, and others were middle class or even wealthy. Three had lived in juvenile detention centers, a few struggled with drug addiction, and one third were involved in gangs. Some came from apparently nurturing and non-abusive families and three others told Human Rights Watch that they grew up in violent, abusive households. Most strikingly, the stories of the youth we interviewed reveal how relatively normal most of their lives were. There was nothing to predict that their adolescent rule-breaking and boundary-pressing would result in deadly crime.

One third of the individuals interviewed by Human Rights Watch committed gang-related offenses. Several of the young people admitted to being directly involved in gangs, to dealing drugs, to “living the gang life”<sup>38</sup>—and they explained that those activities led to the crimes for which they were charged. One young man who was seventeen at the time of his crime wrote, “I was not in school nor living at home. I was out in the streets running wild with no respect for human life, I was very deep into gang activity. I was just living with no purpose and no direction at all.”<sup>39</sup> In all cases, the gang-related crimes were burglaries or robberies that went wrong, resulting in a first degree murder or felony murder charge. In one other case, a youth was involved in the drive-by shooting of members of a rival gang. Two child offenders who were fifteen at the time of their crimes were not in gangs but they told Human Rights Watch that they were not interested in school, and hung out with the “wrong crowd.”<sup>40</sup>

The following vignettes offer some details about the life situations and crimes committed by youth in Colorado who are now sentenced to life without parole.

\* \* \*

Samuel M. was convicted in November 1996 of felony murder for attempting, at the age of fourteen, a burglary during which an elderly woman was killed.<sup>41</sup> He was convicted of felony murder because the prosecution did not prove Samuel had actually committed the murder or that he definitely was alone during the commission of the crime. He had no

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<sup>38</sup> Human Rights Watch interview with Paul L., Buena Vista Correctional Facility, Buena Vista, Colorado, May 27, 2004.

<sup>39</sup> Letter from Oscar B. to Human Rights Watch, Sterling, Colorado, March 4, 2004 (pseudonym).

<sup>40</sup> Human Rights Watch interview with Donnell C., Colorado State Penitentiary, Cañon City, Colorado, July 27, 2004; and Human Rights Watch interview with Gregory C., Colorado State Penitentiary, Cañon City, Colorado, July 26, 2004 (pseudonym).

<sup>41</sup> Human Rights Watch interview with Samuel M., Colorado State Penitentiary, Cañon City, Colorado, July 26, 2004.

prior criminal record, although he had previously been found delinquent for underage drinking.

When Human Rights Watch interviewed Samuel in 2004, he maintained his innocence.<sup>42</sup> According to Samuel, he and his grandfather had worked for the murder victim doing odd jobs and house painting and he may have touched a basement window—leaving fingerprints on it. However, an appeals court rejected the idea that Samuel’s fingerprints were placed on the window when he painted the victim’s home.<sup>43</sup> A prosecution fingerprint expert testified that some of the fingerprints were in arrangements such that they were likely caused by Samuel gripping broken pieces of glass; and that while it was impossible to ascertain how long his fingerprints had been on the window, fingerprints are fragile, easily destroyed and do not last indefinitely. The appeals court also decided that the discovery of the “probable murder weapons” in a culvert midway between the victim’s home and Samuel’s grandparents’ home bolstered the fingerprint evidence. In a letter to Human Rights Watch, Samuel explained what his life was like at the time of his crime:

I was about to enter the ninth grade and be a freshman in junior high school. . . . I played baseball for the city and the year before I made the Greeley Allstar baseball team for B Prep Babe Ruth Little League. . . . I would play outdoors a lot with my friends, sports and ride bikes. I played video games at home and out a lot and collected sports cards. Sometimes I would drink alcohol and smoke marijuana and do acid with my friends. . . . My family was strict about school, I had to keep my grade average above a C level and do all my school work and behave well. I went to church and to church youth group.<sup>44</sup>

\* \* \*

Trevor J., who had several previous convictions on minor charges of drug and alcohol use, was convicted of felony murder in July 1997. The crime occurred when he was seventeen. According to Trevor, the murder occurred during a robbery that went bad. Trevor had attempted the robbery to get money to support his drug habit. He explained

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<sup>42</sup> Letter from Samuel M. to Human Rights Watch, Colorado State Penitentiary, Cañon City, Colorado, March 10, 2004. The prosecution’s theory in the case is that whoever murdered the victim entered her home by breaking a basement window. Samuel’s fingerprints were on the glass pane, and this was considered crucial evidence of his guilt.

<sup>43</sup> *Colorado v. Mandez*, 997 P.2d 1254 (Colorado Ct. of Appeals, Div. 2, November 12 1999).

<sup>44</sup> Letter from Samuel M. to Human Rights Watch, Colorado State Penitentiary, Cañon City, Colorado, March 10, 2004.

to Human Rights Watch that he and another boy had developed a scheme to “con” another teen out of money under the pretense of selling him a gun:

The plan was for me to meet the victim in Denver. I would give him the gun, he would give me the money, and then I would get the gun back from him under the pretext of showing him how to determine when the gun has a bullet in its chamber. After getting the gun back, me and my co-defendant would simply leave with the money and the gun. The events happened exactly as planned until we left. As I was leaving, I waved the gun at the victim and told him ‘not to tell anybody about this.’ Horrifically, as I waved the gun, it accidentally went off and I shot the victim in the side of his head. He died around an hour and a half later.<sup>45</sup>

Human Rights Watch was unable to examine trial documents to determine whether additional evidence was introduced supporting Trevor’s claim that the death was accidental. Trevor turned himself in the day after the crime occurred. He said he “knew how horrible my crime was and I felt a lot of guilt about it.”<sup>46</sup> In a letter to Human Rights Watch as well as in our interview with him, Trevor emphasized that he had been a “mess” at the time of the crime:

My life situation at the time of my crime was not great but not awful [sic] either. I was more messed up than my situation. My family was clearly dysfunctional though. I was a heavy drug and alcohol abuser and had been for a few years prior to this crime. I was not in school as I was expelled a number of times and after I turned seventeen truancy courts no longer had legal involvement in my school situation. I really was a mess, I had several convictions of minor charges in my teen years concerning fights and drug and alcohol abuse, etc...but never went to jail as I only received fines. I did still live at home (however, a few hours before my crime occurred my mom spoke with me about maybe needing to find another place to live) and had many opportunities. I was just out of touch with reality and didn’t know how good I had it and

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<sup>45</sup> Letter from Trevor J. to Human Rights Watch, Limon Correctional Facility, Limon Colorado, March 1, 2004. Human Rights Watch also interviewed Trevor in person in May 2004 at Limon Correctional Facility, Limon, Colorado. His account was partially corroborated by a contemporaneous newspaper article. See “Metro Digest,” The Denver Post, November 28, 1996 (stating “Police said Foley (the victim in the crime), a Bennett High School football player, had driven into the Denver area apparently to see about buying a gun. Police said the gun went off and Foley was shot in the head.”).

<sup>46</sup> Human Rights Watch interview with Trevor J., Limon Correctional Facility, Limon, Colorado, May 2004.

how I could have really done something with my life in light of the advantages and opportunities I had.<sup>47</sup>

\* \* \*

Andrew M. was sentenced to life without parole in July 2001 for a felony murder committed when he was fifteen. He had one previous juvenile conviction for fighting with another youth. He was living at home with his mother and younger brother at the time of the crime.

The details of the crime for which Andrew was convicted are not clear; indeed, the evidence is contradictory as to Andrew's exact role in the crime. Defense counsel argued that while he was at the scene of the crime, and may have touched one of the guns at some point in time, he did not shoot at the victim.<sup>48</sup> What is clear is that Andrew, with two other youth, intended to steal a car. Two guns were fired during the attempted robbery, killing the car's driver. There was some evidence that Andrew may have fired one of the guns. Andrew was convicted of felony murder, which only required proof that he had participated in the attempted robbery.<sup>49</sup> In an interview, Andrew told Human Rights Watch what his life was like before his crime:

I played basketball and football for the boys and girls club. . . . I'm really into the model rockets, building model cars, I'm really into hot rods and low riders. My dad and a couple of my uncles, they worked on their cars, and I kinda got some little tips from them and that was a pretty cool experience. . . .

Me and my mom, we can't get any closer. It's hard to put into words, but my father is an alcoholic and he used to beat her and I used to watch that. After time went on I would step in and take the beating for my mom so as time went on we always had that real close bond.

At that time, I liked to go to school, but I was blind. I couldn't see. I was too much into the streets, partying, doing drugs, and stuff like that. Back

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<sup>47</sup> Letter from Trevor J. to Human Rights Watch, Limon Correctional Facility, Limon Colorado, March 1, 2004.

<sup>48</sup> Human Rights Watch email correspondence with Thomas Carberry, Esq., Andrew's appellate attorney, December 28, 2004.

<sup>49</sup> The evidence and legal theories contained in this vignette are summarized from defendant's appellate brief, which is on file with Human Rights Watch. All statements summarized here were cited to the transcript of the original trial. See also Erin Emery, "Teens Charged as Adults in Student's Gun Death," *Denver Post*, July 23, 1999.



then I didn't care what was going on in the world, with other families, other people. But now, I look at like all them kids in Africa and all the kids with cancer, it really hurts me to see that. Now that I've been locked up, I can see their pain. Like what's in my mother's eyes when she comes to see me through the glass. It really tears me up.<sup>50</sup>

\* \* \*

Raymond C. was from an upper-middle-class background, and was convicted of felony murder and sentenced to life without parole in January 1996 for a crime he committed when he was seventeen. Raymond told Human Rights Watch that he and two friends were driving around Durango, Colorado one night looking for a way to get some money to buy drugs. According to Raymond, he “just went along for the ride.” They eventually stopped two Native American girls who had just been given “coming of age” money by their tribe. During the robbery a “situation” broke out. Some shots were fired; one of the girls was killed and the other seriously wounded. Raymond claims, “I never touched a weapon. I never handled a weapon.”<sup>51</sup>

Raymond told Human Rights Watch that at the time of the crime “there were no problems at home. I lived with my dad, my parents were divorced . . . even though my parents are divorced, they get along.”<sup>52</sup> Raymond's father told Human Rights Watch what his son was like at the time of the crime, “I have the feeling he was going into the drugs and all that, he was a kid. But I always checked his car, there were never any weapons in there or drug stuff . . . To kill somebody, to hurt somebody, especially a girl? No way.”<sup>53</sup> His mother said:

He had dyed his hair blond and just re-painted his bathroom. He was working hard at his job and he loved snowboarding and skiing. He kept a collection of beer cans from around the world. His father and I used to bring him back empty cans from Israel and other places we traveled. He kept the cans lined up on his bedroom window, like any teenage boy would. . . . They used that against him in court!<sup>54</sup>

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<sup>50</sup> Human Rights Watch interview with Andrew M., Colorado State Penitentiary, Cañon City, Colorado, July 26, 2004.

<sup>51</sup> Human Rights Watch interview with Raymond C, Centennial Correctional Facility, Cañon City, Colorado, July 27, 2004.

<sup>52</sup> Ibid.

<sup>53</sup> Human Rights Watch telephone interview with Frank C., Colorado, October 22, 2004.

<sup>54</sup> Human Rights Watch telephone interview with Judy C., Colorado, October 22, 2004.

\* \* \*

Not one of the crimes committed by the youth described in the above vignettes or by other child offenders who received life without parole can be excused. Some of the crimes appear calculated, some show utter recklessness, and some are almost incomprehensible. Some of the victims were strangers, some were acquaintances, and some were family members. But whatever the circumstances of the crime and the identity of the victim, all of these crimes were committed by teenagers.

## V. The Difference between Children and Adults

As a matter of every day experience, everyone knows there are striking differences between adults and adolescents. Adults are able to think before they act, to reason through situations, and to rely on logic and experience to make decisions. Adults are able to withstand pressure from others, to interpret what others do and say, and to map their own responses using judgment. These are qualities adolescents are growing towards, but have not yet fully developed.

The difference in mental and emotional functioning between adults and teenagers has prompted the emergence of an entire specialty of adolescent and developmental psychology. Professionals in this field have identified numerous traits specific to youth, including a higher propensity for risk-taking than adults and a tendency to make decisions on impulse without weighing either the short- or long-term consequences of their actions.<sup>55</sup>

The anatomical basis in the brain for at least some of these traits can now be identified by neuroscientists. Using magnetic resonance imaging (MRI), they can produce images of the anatomy and function of the brain at different ages and while an individual performs a range of tasks.<sup>56</sup> Through this technique, scientists have uncovered striking differences between the brains of adolescents and those of adults. Most of the research has focused on adolescents' frontal lobe, which is composed of different quantities and types of cell matter than the adult brain. Researchers have linked the frontal lobes to

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<sup>55</sup> Elizabeth Scott, Laurence Steinberg, "Blaming Youth," *Texas Law Review*, Vol. 81, p. 799, 2003. See also, Jeffrey Fagan, "Atkins, Adolescence and the Maturity Heuristic: Rationales for a Categorical Exemption for Juveniles from Capital Punishment," *New Mexico Law Review*, Vol. 33, p. 207, 2003.

<sup>56</sup> See e.g. Jay N. Giedd et al., "Brain Development During Childhood and Adolescence: A Longitudinal MRI Study," *Nature Neuroscience*, Vol. 2, p. 861, 1999 (MRI study of the brains of 145 children, images taken up to five times per child over ten years); Kenneth K. Kwong et al. "Dynamic Magnetic Resonance Imaging of Human Brain Activity During Primary Sensory Stimulation," *Proceedings of the National Academy of Science*, Vol. 89, p. 5675, 1992.

“regulating aggression, long-range planning, mental flexibility, abstract thinking, the capacity to hold in mind related pieces of information, and perhaps moral judgment.”<sup>57</sup> After puberty, the brain produces a dramatically larger volume of gray matter (which contains cell bodies) in the frontal lobes. Through late adolescence, the brain prunes excess neurons and their linkages in the gray matter, producing substantial declines in its volume.<sup>58</sup>

While the brain’s composition is transformed through this pruning process, the connections between cells also change. Using MRI scanners on healthy teenagers and young adults, Elizabeth R. Sowell of the University of California, Los Angeles reported in 1999 that myelin, the fatty tissue around nerve fibers that fosters transmission of electrical signals, accumulates especially slowly during this pruning process in the frontal lobe. Myelination improves the connections between neurons in the brain. By allowing the frontal lobe’s cells to communicate more quickly and efficiently, myelination increases a person’s ability to undertake decision-making that projects into the future, and to weigh rationally the consequences of a particular course of action.<sup>59</sup>

This late phase of myelin formation, which occurs at the end of the teenage years, provides a neural basis for concluding that teens are on average less responsible for criminal acts than adults are. According to neuropsychologist Ruben Gur of the University of Pennsylvania, there is no way to determine whether, for example, a seventeen-year-old possesses a fully mature brain. “But the biological age of maturity generally falls around age twenty-one or twenty-two,” in Gur’s view.<sup>60</sup>

Because their frontal lobes function poorly, adolescents tend to use a part of the brain called the amygdala during decision-making.<sup>61</sup> The amygdala is responsible for impulsive and aggressive behavior, and its dominance makes adolescents “more prone to react with gut instincts.”<sup>62</sup> In adult brains, the frontal lobes offer a check on the emotions and

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<sup>57</sup> Bruce Bower, “Teen Brains On Trial: The Science Of Neural Development Tangles With The Juvenile Death Penalty,” *Science News Online*, Vol. 165, No. 19, May 8, 2004.

<sup>58</sup> *Ibid.*

<sup>59</sup> Elkhonon Goldberg, *The Executive Brain: Frontal Lobes and the Civilized Mind* (New York: Oxford University Press, 2001), p. 434. See also Allan L. Reiss et al., “Brain Development, Gender and IQ in Children: A Volumetric Imaging Study,” *Brain*, Vol. 119, p. 1768, 1996; Elizabeth R. Sowell et al., “Mapping Continued Brain Growth and Gray Matter Density Reduction in Dorsal Frontal Cortex: Inverse Relationships During Postadolescent Brain Maturation,” *Journal of Neuroscience*, Vol. 21, p. 8821, 2001.

<sup>60</sup> Bruce Bower, “Teen Brains On Trial: The Science Of Neural Development Tangles With The Juvenile Death Penalty,” *Science News Online*, Vol. 165, No. 19, May 8, 2004.

<sup>61</sup> See, e.g. Jan Glascher and Ralph Adolphs, “Processing of the Arousal of Subliminal and Supraliminal Emotional Stimuli by the Human Amygdala,” *Journal of Neuroscience*, Vol. 23, p. 10274, 2003.

<sup>62</sup> National Juvenile Defender Center, “Adolescent Brain Development and Legal Culpability,” April 2003 (quoting Dr. Deborah Yurgelun-Todd of Harvard Medical School).

impulses originating from the amygdale. But this check does not work to the same extent in children's brains.<sup>63</sup>

Gregory C., who was convicted of shooting a police officer who had pulled a friend and him over for speeding in a car that they had just stolen, described to Human Rights Watch acting irrationally and in response to uncontrolled impulses:

A kid just does something—whether it's an accident or intentional. I mean personally, me, I was fifteen years old . . . I didn't know what I was doing. I was still a kid. . . . Kids do a lot of stupid things. . . . The person I was when I was fifteen, I really didn't have any morals, I didn't even know who I was at that time. I hate to admit it, but I was real ignorant.<sup>64</sup>

The MRI studies of the brain and developmental science provide a physiological explanation for features of adolescence that developmental psychologists—as well as parents and teachers—have identified for years.<sup>65</sup> Children are less responsible for their actions than adults because they have physiologically less developed means of controlling themselves.

## VI. Just Sentencing for Children

Conviction for even a very serious crime does not extinguish a child offender's claim to just treatment at the hands of the state, nor does it free the state to ignore the offender's fundamental rights when determining punishment. Colorado's current law mandating and permitting the imposition of life without parole sentences on child offenders runs contrary to important human rights principles embedded in state and federal constitutional law as well as international human rights treaties.

Punishment should not exceed the gravity of the crime and the culpability or moral responsibility of the offender. This principle of proportionality is deeply woven into all of the world's criminal justice systems. It is the cornerstone of international criminal law,

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<sup>63</sup> Gargi Talukder, "Decision-Making is Still a Work in Progress for Teenagers," July 2000, available online at: <http://www.brainconnection.com/topics/?main=news-in-rev/teen-frontal>, accessed on February 1, 2005.

<sup>64</sup> Human Rights Watch interview with Gregory C., Colorado State Penitentiary, Cañon City, Colorado, July 2, 2004 (pseudonym).

<sup>65</sup> See, e.g. Jeffrey Arnett, "Reckless Behavior in Adolescence: A Developmental Perspective," *Developmental Review*, Vol. 12, p. 339, 1992; Charles E. Irwin, Jr., "Adolescence and Risk Taking: How are They Related?," *Adolescent Risk Taking*, p. 7, 1993.

human rights laws applicable to crime, and U.S. criminal law.<sup>66</sup> When an offender is a child, his or her diminished culpability must be taken into account to determine a fair and proportional sentence.

Conventional wisdom, developmental psychology, and neuroscience all agree that children are less able to make rational decisions and control impulsive behavior. Their lesser capacities reduce their moral responsibility for their crimes. Substituting children as somewhat analogous to the mentally retarded individuals examined by the Supreme Court in its 2002 decision in *Atkins v. Virginia*, their “deficiencies do not warrant an exemption from criminal sanctions, but they do diminish their personal culpability.”<sup>67</sup> That is, a child and an adult who commit the same crime have different levels of culpability, and those differences must be reflected in their sentences if justice is to be served.

Under U.S. law, punishment that is disproportionately severe can violate the Eighth Amendment’s prohibition on cruel and unusual punishment.<sup>68</sup> The U.S. Supreme Court has never directly ruled on the constitutionality of life without parole sentences for children. It has found, however, that because children are less responsible and mature, “less culpability should attach to a crime committed by a juvenile than to a comparable crime committed by an adult.”<sup>69</sup>

There is only one Colorado ruling on the constitutionality of the life without parole sentence for children. In 1994, the Colorado Supreme Court decided that the sentence of life without parole was not a disproportionate sentence under Colorado’s constitution for the crime of first degree murder committed by a seventeen-year-old.<sup>70</sup> The court also did not consider the lesser culpability of children; it merely decided without explanation

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<sup>66</sup>See, e.g. *Harmelin v. Michigan*, 501 U.S. at 1021 (White, J. dissenting) (“Punishment must be tailored to a defendant’s personal responsibility and moral guilt”); Rome Statute of the International Criminal Court, U.N. Doc. A/CONF.183/9, July 17, 1998, Article 78 (“In determining the sentence, the Court shall, in accordance with the Rules of Procedure and Evidence, take into account such factors as the gravity of the crime and the individual circumstances of the convicted person.”).

<sup>67</sup> *Atkins v. Virginia*, 122 S.Ct. 2242, 2251 (2002).

<sup>68</sup> Prison sentences are sometimes subjected to a proportionality analysis by the U.S. Supreme Court under the U.S. Constitution’s Eighth Amendment. See, e.g. *Lockyer v. Andrade*, 538 U.S. 63 (2003) (analyzing two consecutive prison terms of twenty-five years to life using proportionality principle when defendant was found guilty of two counts of petty theft, with a prior conviction for stealing video tapes valued under two hundred dollars).

<sup>69</sup> *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988). The Supreme Court’s current thinking on the differences between adults and children and the criminal sentencing consequences that should flow from those differences may be revealed in *Roper v. Simmons*, a case concerning the constitutionality of the death penalty when applied to sixteen and seventeen-year-olds. The decision is expected in early 2005.

<sup>70</sup> See *People v. Fernandez*, 883 P.2d 491, 495 (Colo. Ct. App., 1994). It can be assumed that the court was ruling under the state Constitution since it did not specify that it was interpreting the U.S. Constitution. Regardless, both Colorado’s Constitution and the U.S. Constitution state “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” See Colorado Constitution, Article II § 20; and U.S. Constitution, Eighth Amendment.

that age was not a relevant factor. Other courts throughout the country have determined that it is constitutionally permissible to sentence a youth offender to life without parole. Applying tests developed by the U.S. Supreme Court,<sup>71</sup> these courts have generally examined the severity of the crime committed by the child offender standing trial and concluded that the sentence was not “grossly disproportionate” to the crime.<sup>72</sup>

Courts in other states have come to the opposite conclusion, finding that life without parole for youth offenders is a disproportionate and hence cruel sentence. For example, interpreting both the U.S. and Nevada constitutions, the Nevada Supreme Court held that life without parole constituted a disproportionately “cruel and unusual” punishment for a fourteen-year-old convicted of murder. The court pointed to the “undeniably lesser culpability of children for their bad actions, their capacity for growth and society’s special obligation to children.”<sup>73</sup> Two decades earlier, the Supreme Court of Kentucky determined that the sentencing of two fourteen-year-olds convicted of rape to life without parole violated the Kentucky state constitution and “shocks the conscience of society today and is intolerable to fundamental fairness.”<sup>74</sup> More recently, the Illinois Supreme Court held that sentencing a defendant who was fifteen at the time of his crime of felony murder to life without parole violated the Illinois state constitution.<sup>75</sup>

## VII. Internationally Recognized Human Rights

International human rights law recognizes that children are different from adults in salient and fundamental ways, and it insists those differences must inform state practice towards children. Government officials are under a special obligation to pay attention to those differences when a child is accused of a crime and his or her liberty is at stake.

In 1959, the United Nations General Assembly adopted the Declaration on the Rights of the Child, which recognized that “the child, by reason of his physical and mental

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<sup>71</sup> See *Harmelin v. Michigan*, 501 U.S. 957 (1991) (modifying *Solem v. Helm*, 463 U.S. 277, (1983)).

<sup>72</sup> See, e.g. *State v. Pilcher*, 655 So. 2d 636, 644 (La. Ct. App. 1995) (holding life sentence without possibility of parole for fifteen-year-old murderer was not unconstitutional under the Eighth Amendment); *Swinford v. State*, 653 So. 2d 912, 918 (Miss. 1995) (upholding trial court’s sentence of life imprisonment for fourteen-year-old who aided and abetted murder); *State v. Garcia*, 1997 N.D. 60, 561 (ND 1997) (holding a life sentence without possibility of parole for a sixteen-year-old did not violate Eighth Amendment) cert. denied, 118 S. Ct. 193; *State v. Massey*, 60 Wash. App. 131 (Wash Ct App 1990) (finding no cause to create a distinction between thirteen-year-old juvenile and an adult who are sentenced to life imprisonment without parole for first degree aggravated murder) cert. denied by *Massey v. Washington*, 499 U.S. 960 (1991); *State v. Foley*, 456 So. 2d 979, 984 (La. 1984) (affirming life sentence without parole of fifteen-year-old convicted of rape against assertion it was cruel and unusual punishment); *White v. State*, 374 So. 2d 843, 847 (Miss. 1979) (upholding a sixteen-year-old’s sentence of life imprisonment without parole for armed robbery against assertion that it was cruel and unusual punishment).

<sup>73</sup> *Naovarath v. State*, 779 P2d 944, 948 (Nev. S. Ct. 1989).

<sup>74</sup> *Workman v. Kentucky*, 429 S.W.2d 374 (Ky. S. Ct. 1968).

<sup>75</sup> *People v. Miller*, 781 N.E.2d 300 (Ill. S. Ct. 2002).

immaturity, needs special safeguards and care. . . .”<sup>76</sup> The United States was one of the then seventy-eight members of the U.N. General Assembly, which voted unanimously to adopt the Declaration.<sup>77</sup>

In 1992, the United States ratified the International Covenant on Civil and Political Rights (ICCPR), which mandates special treatment of children in the criminal justice system.<sup>78</sup> Criminal procedures involving juveniles should “take account of their age and desirability of promoting their rehabilitation”<sup>79</sup> and juveniles should be “segregated from adults and be accorded treatment appropriate to their age and legal status.”<sup>80</sup> When it became a party to the ICCPR, the United States reserved the right to treat juveniles as adults in exceptional circumstances.<sup>81</sup>

The subsequent Convention on the Rights of the Child (CRC), the world’s most universally ratified human rights treaty, codifies and expands safeguards for children.<sup>82</sup> The CRC unequivocally prohibits sentencing children to life sentences without parole. Article 37(a) states:

Neither capital punishment *nor life imprisonment without possibility of release* shall be imposed for offences committed by persons below eighteen years of age.<sup>83</sup>

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<sup>76</sup> General Assembly Resolution 1386 (XIV), November 20, 1959.

<sup>77</sup> While United Nations General Assembly resolutions do not, in and of themselves, constitute binding international law, passage of resolutions by unanimous consent is strong authority for asserting their status as customary international law. See, e.g., Schwebel, “The Effect of Resolutions of the U.N. General Assembly on Customary International Law,” *Proceedings of the American Society of International Law*, Vol. 73, p. 301, 1979. But other authorities do not recognize General Assembly resolutions as having a binding legal nature. See Arangio-Ruiz, “The Normative Role of the General Assembly of the United Nations and the Declaration of Principles of Friendly Relations,” *Recueil Des Cours*, Vol. 137, p. 419, 1972.

<sup>78</sup> International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force, March 23, 1976.

<sup>79</sup> ICCPR, Art. 14 (4).

<sup>80</sup> ICCPR, Art. 10 (3).

<sup>81</sup> United Nations Treaty Collection, International Covenant on Civil and Political Rights, United States of America: Reservations, para. 5. In its report to the ICCPR, the United States explained that it entered this reservation in order to “retain a measure of flexibility to address exceptional circumstances in which trial or incarceration of juveniles as adults might be appropriate, for example, prosecution of juveniles as adults based on their criminal histories or the especially serious nature of their offences, and incarceration of particularly dangerous juveniles as adults in order to protect other juveniles in custody.” See “Initial Reports of States Parties Due in 1993: United States of America,” Human Rights Committee, CCPR/C/81/Add.4, para. 286, August 24 1994.

<sup>82</sup> Convention on the Rights of the Child (CRC), art. G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, at 167, U.N. Doc. A/44/736 (1989) (entered into force Sept. 2, 1990), reprinted in 28 I.L.M. 1448, 1470. The CRC in article 40(1) asks governments to treat children in a manner that “takes into account the child’s age”, and Article 40(3)(a) asks governments to seek to establish a “minimum age below which children shall be presumed not to have the capacity to infringe the penal law.” This latter provision not only contemplates lesser culpability for some children, but no legal culpability at all for children below a certain age.

<sup>83</sup> CRC, art. 37(a) (emphasis added).

The United States and Somalia are the only two countries in the world that have failed to ratify the CRC. However, the United States signed the CRC on February 16, 1995.<sup>84</sup> As a signatory to the convention, it may not take actions that would defeat the CRC's object and purpose.<sup>85</sup> Moreover, as the only major industrialized nation that has failed to ratify the treaty, the United States should do so out of a sense of legal obligation as well as international comity.

The domestic laws and practice of the world's governments provide another clear measure of the almost universal rejection of imposing life without parole sentences on youth offenders. Out of 154 countries whose sentencing laws and practices Human Rights Watch has researched, 133 never sentence children to life without parole, either because their laws prohibit it or because, though the laws may allow it, they are not used.<sup>86</sup> For example, not one of the original fifteen member states of the European Union allows children to be sentenced to life without parole.<sup>87</sup> Human Rights Watch has identified twelve countries in addition to the United States whose laws or practice allow for the sentence or an equivalent (such as the sentence "detention for the duration of her majesty's pleasure") to be imposed: Antigua and Barbuda, Bangladesh, Brunei, Burkina Faso, Dominica, Israel, Kenya, Saint Vincent and the Grenadines, Solomon Islands, Sri Lanka, and Tanzania. In many of these countries, while the sentence is on

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<sup>84</sup> United Nations Treaty Collection Database, available online at: <http://untreaty.un.org/>, accessed on July 16, 2004.

<sup>85</sup> See Vienna Convention on the Law of Treaties, art. 18, concluded May 23, 1969, 1155 U.N.T.S. 331 (entered into force Jan. 27, 1980). Although the United States has signed but not ratified the Vienna Convention on the Law of Treaties, it regards this convention as "the authoritative guide to current treaty law and practice." S. Exec. Doc. L., 92d Cong., 1st sess., p. 1, 1971. See also Theodor Meron, "The Meaning and Reach of the International Convention on the Elimination of All Forms of Racial Discrimination," *American Journal of International Law*, Vol. 79, p. 283, 1985. The U.S. government has also accepted that it is bound by customary international law not to defeat a treaty's object and purpose. See e.g. "Albright Says U.S. Bound by Nuke Pact; Sends Letters to Nations Despite Senate Vote," *Washington Times*, A1, November 2, 1999 (describing the Clinton administration's acceptance of obligations under the Comprehensive Test Ban Treaty despite the Senate's failure to ratify). One U.S. court has also ruled that, based on its widespread acceptance, the CRC represents customary international law to the extent that it codifies long-standing and generally accepted principles. See *Beharry v. Reno*, 183 F. Supp. 2d 584, 598 (E.D.N.Y. 2002), reversed on other grounds by 329 F.3d 51, 55, 63-64 (2nd Cir. 2003) (overturning on grounds of failure to exhaust administrative remedies and citing without comment the District Court's references to the CRC and to customary international law).

<sup>86</sup> Human Rights Watch researched this question using the following methodology: we examined the reports of 166 countries to the U.N. Committee on the Rights of the Child under Article 37 of that treaty (as noted above, Article 37 prohibits sentencing child offenders to life without parole). Unfortunately, fifty-three countries failed to report to the Committee on their laws or practices under Article 37. Therefore, we used a variety of additional methods to obtain a definitive answer. These included inquiries with: the UNICEF Child Protection Officer in the country concerned, reputable criminal defense attorneys, reputable judges, reputable criminal justice non-governmental organizations, and press articles covering recent sentencing decisions.

<sup>87</sup> The original fifteen members of the EU are: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, and the United Kingdom. In fact, many of these states do not even sentence adults to life imprisonment without parole.



the books, it is in fact rarely used.<sup>88</sup> For the remaining nine countries of the 154 researched, we were unable to obtain the necessary sources to make a definitive determination whether or not the sentence was imposed.

## **VIII. A Child's Life in Colorado's Adult Prisons**

“Doing time” is hard for any prisoner. Prisons are tense, cheerless, and often degrading places in which all inmates struggle to maintain their equilibrium despite violence, exploitation, and lack of privacy; stringent limitations on family and community contacts; and a paucity of opportunities for meaningful education, work, or other productive activities. But “doing time” is particularly difficult for individuals who come to prison as adolescents or even very young adults. Teenagers lack many of the physical and mental coping mechanisms that adult prisoners use to maintain their self-respect and their mental health. Not only are teens ill-equipped to handle prison, it is also an unlikely place for them to gain the life experiences and education necessary for healthy mental and physical development. The youth offenders highlighted in this report face an additional and daunting challenge—they must come to terms with the fact that they must live in prison for the rest of their lives.

### ***Confinement of Children with Adults***

Human rights law and correctional standards call for separating incarcerated children from adults; Human Rights Watch interviewed some offenders in Colorado, however, who said they were housed in close proximity to adults, most often in county jails, but also in prison, while they were still below the age of eighteen.<sup>89</sup> This practice violates non-binding standards of the American Correctional Association (ACA) supporting placement of youth offenders, including youths who are transferred or sentenced to adult prison, in separate juvenile facilities.<sup>90</sup> The ACA also recommends keeping children in pre-trial detention out of sight and sound of adults, in accordance with federal “sight

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<sup>88</sup> For example, in Bangladesh in January 2000, only four children were known to be serving the sentence. See “Bangladesh State Party Report to the CRC,” CRC/C/65/Add.22, March 14, 2003. Similarly, Israel reported on four youth that have been sentenced to life imprisonment to date. See “Israel State Party Report to the CRC,” CRC/C/8/Add.44 at 346.

<sup>89</sup> For example, Roosevelt H., who told Human Rights Watch that he was housed with adults upon entering Colorado's prison system at age sixteen, said, “when they sent me to DRDC [Denver Reception and Diagnostic Center, the point of entry into the prison system] . . . I was scared and angry to be in there with adults from what I heard about prisons killing, rapes, etc.,” Letter to Human Rights Watch from Roosevelt H., Pueblo, Colorado, February 26, 2004.

<sup>90</sup> American Correctional Association, “Public Correctional Policy on Youthful Offenders Transferred to Adult Criminal Jurisdiction,” Delegate Assembly, Congress of Correction, Nashville, Tennessee, August 21, 1996 (unanimously ratified).

and sound” requirements.<sup>91</sup> Human rights set a much higher and very simple standard: all incarcerated children must be separated from adults until they turn eighteen.<sup>92</sup>

### ***Access to Education and Programming***

Children sent to adult prisons find their academic and vocational education truncated. Juvenile detention facilities are supposed to provide education to all inmates below the age of eighteen. The child offenders interviewed or corresponded with for this report entered prison while they were still young, though some had recently passed their eighteenth or nineteenth birthdays. Of the thirty-eight offenders for whom we have ages at entrance to prison, the youngest age of entry was sixteen-years-old and the oldest was nineteen. Regardless of whether they entered prison at sixteen or nineteen, these youth offenders were incarcerated during the years when education and skill development are crucial.

Colorado’s Administrative Regulations state that “every offender in a correctional facility who lacks basic communication and functional literacy skills shall be required to attend academic programs unless such person . . . is serving a life sentence, life without parole, or is under sentence of death.”<sup>93</sup> This means that inmates, including those who are child offenders, serving a sentence of life without parole who do not insist on being able to take the General Equivalency Diploma (GED) will not be required to do so.

Once a youth offender has obtained his GED or if he has already from graduated high school, he faces an uphill battle to obtain additional educational opportunities in prison. The DOC’s educational policy states that its goals are to “ensure that every inmate who leaves the Colorado penal system . . . has the vocational skills needed to obtain employment upon release.”<sup>94</sup> By definition no child offender sentenced to life without parole in Colorado will ever “leave the Colorado penal system”—unless they are one of the very few to obtain clemency in the state.<sup>95</sup> As a result, they are not able to access the

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<sup>91</sup> See Juvenile Justice and Delinquency Prevention Act (JJDP), 1974. While the ACA references the JJDP’s requirements in its standards, the JJDP does not apply to youth in adult facilities who are being prosecuted as adults in state court.

<sup>92</sup> See, e.g. Convention on the Rights of the Child, Article 37b (stating “every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so.”). Two additional international agreements require separation of children from adults in distinct institutions or in separate parts of a single institution. See Article 13.4 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, G.A. Res. 40/33, Annex, 40 U.N. GAOR Supp. (No 53) at 207, U.N. Doc. A/40/53 (1985); and Article 26 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, G.A. Res. 45/113, Annex, 45 U.N. GAOR Supp. (No. 49A) at 205, U.N. Doc. A/45/49 (1990).

<sup>93</sup> Colorado Administrative Regulations Number 500-01.

<sup>94</sup> See Colorado Department of Corrections, Educational Policy, available online at: [www.doc.state.co.us/Education/ed\\_main.htm](http://www.doc.state.co.us/Education/ed_main.htm), accessed on February 1, 2005 (emphasis added).

<sup>95</sup> On average, Colorado governor Roy Romer had pardoned 4.5 individuals each year and commuted the sentences of 1.75. Governor Bill Owens, elected in 1999 offered two pardons and one commutation in his first



He said, “I’ve been in fights with prisoners on many occasions. Luckily, I received nothing more than a few black eyes, fat lips, chipped tooth, and swollen knuckles.”<sup>101</sup>

While no one interviewed by Human Rights Watch admitted that he had been raped, almost everyone described having been approached by inmates for sexual favors, or having to fight to protect themselves from rape. Nathan Y., who entered prison at age eighteen, wrote,

When I first went to jail / prison, when I was young, it was disorienting and scary, like a fish thrown in water not knowing how to swim. Everyone seemed big and dangerous and threatening, I was challenged and intimidated a lot. Canines [sexual predators] stalked me, and at all times I expected to be attacked.<sup>102</sup>

Luke J., who entered prison at age seventeen said, “When I first came into prison [a] dude told me that he was gonna make me his “bitch” and he beat me up real bad.”<sup>103</sup> Anthony C. told a Human Rights Watch researcher, “I’ve had a few experiences when I first came to prison as a youngster [Anthony was sixteen]. I had to deal with gays trying to turn me out, people looking to beat me (trick or jive) because I was young, and although I never caught anything I was aware of the diseases going around.”<sup>104</sup>

## ***Isolation***

The difficulties of adjusting to prison life and defending oneself often lead to disciplinary infractions and punishment. All prisoners who engage in violence or are disruptive may be confined for prolonged periods of time in Colorado’s supermaximum security prison, Colorado State Penitentiary (CSP). Life at CSP, especially for newcomers, is one of isolation twenty-three or more hours a day in a cell. Of the twenty-four child offenders interviewed or corresponded with for this report, just over 50 percent, or thirteen inmates, spent between six months and four years in CSP. All were over the age of eighteen when they entered CSP. They reported the devastating loneliness of spending their days alone, without any human contact except for when a guard passes them a food tray through a slot in the door, or when guards touch their wrists when handcuffing

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<sup>101</sup> Letter from Gregory C. to Human Rights Watch, Colorado State Penitentiary, Cañon City, Colorado, March 10, 2004 (pseudonym).

<sup>102</sup> Letter from Nathan Y. to Human Rights Watch, Sterling Correctional Facility, Sterling, Colorado, March 16, 2004.

<sup>103</sup> Human Rights Watch interview with Luke J., Colorado State Penitentiary, Cañon City, Colorado, July 27, 2004 (pseudonym).

<sup>104</sup> Letter to Human Rights Watch from Anthony C., Colorado State Penitentiary, Cañon City, Colorado, March 4, 2004 (pseudonym).

them through the same slot before taking them to the exercise room or for a shower once a week.

Dennis Burbank, an Administrative Officer at CSP who headed up the original team of correctional officers who designed the prison, offered an explanation for why child offenders serving life without parole sentences would end up confined in a supermaximum security prison:

One [factor] is age—when you come in at a young age with life without, there’s not a whole lot of light at the end of the tunnel. Also, it’s kind of a guy thing, the young ones come in with a lot of fear, anxiety, paranoia, and they want to make a name for themselves—so they have a tendency to act out. And if they are part of a gang they are almost required to act out . . . any of the young guys, they see it as a feather in their cap to work themselves to CSP . . . and they don’t think about the repercussions. . . . They say [to themselves] “I’ve got to impress everyone with what a bad-ass I am.”<sup>105</sup>

Membership in a security threat group (or prison gang) is also a cause for transfer to isolation.<sup>106</sup> Christopher W. explained to Human Rights Watch:

You got me in a place where I’m surrounded by nothing but gangs, so the only way not to be a victim of one of those gangs is to join them. But when you become a member you’re a part of a security threat group, so now they say “we’re gonna keep you in a room alone for the rest of your life.”<sup>107</sup>

Since the late 1990s, Human Rights Watch has documented the serious human rights violations suffered by prisoners in supermaximum security prisons in the United States and advocated reform of the policies responsible for such abuse.<sup>108</sup> Prolonged periods of

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<sup>105</sup> Human Rights Watch telephone interview with Dennis Burbank, Administrative Officer III, Colorado State Penitentiary, Cañon City, Colorado, December 1, 2004.

<sup>106</sup> See Colorado Department of Corrections, Administrative Regulation 600-02 (stating at ¶ IV(A)(4) that membership in a “security threat group” is one of five factors that “may be considered in initiating placement in administrative segregation”).

<sup>107</sup> Human Rights Watch interview with Christopher W., Colorado State Penitentiary, Cañon City, Colorado, July 28, 2004.

<sup>108</sup> See, e.g. “Out of Sight: Supermaximum Security Confinement in the United States,” A Human Rights Watch Report, Vol. 12, No. 1(G), February 2000; “Red Onion State Prison: Supermaximum Security Confinement in Virginia,” A Human Rights Watch Report, Vol. 11, No. 1(g), May 1999; *Cold Storage: Supermaximum Security Confinement in Indiana* (New York: Human Rights Watch, 1997).

isolation can be devastating for anyone, especially young offenders.<sup>109</sup> None of the offenders contacted for this report were subjected to such isolation while they were still children; however long periods in isolation raise human rights concerns for all prisoners, irrespective of age. For this reason, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (the expert prison-monitoring body associated with the Council of Europe) has instructed governments:

The principle of proportionality calls for a balance to be struck between the requirement of the situation and the imposition of a solitary-confinement-type regime, which can have very harmful consequences for the person concerned. Solitary confinement can in certain circumstances amount to inhuman and degrading treatment; in any event, all forms of solitary confinement should last for as short a time as possible.<sup>110</sup>

### ***Coping with the Life without Parole Sentence***

Child offenders have a difficult time understanding the true significance of their crimes. But it is even harder for them to fathom what a life without parole sentence actually means. Andrew M., who was fifteen at the time of his offense said “at first I didn’t think they were serious” about his life without parole sentence. “But,” he said,

as time went on, I realized they were serious, but then again it never kicked in, but as time keeps going by, I’m starting to realize how serious they are and it’s starting to effect my thinking. I mean, I just turned twenty.<sup>111</sup>

Even when they do understand, young people often hang on to a hope that someday they will be free. Christopher W. described hope as the only thing preventing him from committing suicide:

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<sup>109</sup> For adults, U.S. courts have questioned arbitrary placement into isolation, the length of isolation time imposed, and conditions in the isolation cell. See U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, “Juveniles in Adult Prisons and Jails,” p. 25, October 2000 (citing *Harris v. Maloughney*, 827 F. Supp. 1488 (D. Mont. 1993); *McCray v. Burrell*, 516 F.2d 357 (4th Cir. 1975); *Lareau v. MacDougal*, 473 F.2d 974 (2d Cir. 1972)).

<sup>110</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), “Report to the Icelandic Government on the visit to Iceland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 6 to 12 July 1993,” Strasbourg, France, CPT/Inf (94) 8, p. 26, June 28, 1994.

<sup>111</sup> Human Rights Watch interview with Andrew M., Colorado State Penitentiary, Cañon City, Colorado, July 26, 2004.

The only reason I don't kill myself is cuz there's still hope. I mean at least if you got a dog that you know is never going to get adopted, that's never going to live free again, I mean they kill it. They put it to sleep. That's more humane than keeping him in this cage the next twenty years, making him live with his own shit and his own piss. I came in here at seventeen years old and what are they going to do, keep me for sixty or seventy years? I mean c'mon now . . . that's a long time!<sup>112</sup>

Another young man spoke about his inability to cope with his current situation, and his suicidal thoughts:

I started doing drugs [when I came to prison]. I mean I always smoked weed, but then I started doing like heroin and stuff. Sometimes I try to escape. I went to mental health one time and they put me on a pain killer. I told them I was starting to have suicidal thoughts . . . and they said that was normal and just go back to my cell. I cut up my wrist. Well, I thought that drugs helped me to escape. But then reality is still here when I wake up.<sup>113</sup>

Being in prison for such a long time can be devastating for any prisoner's relationships, regardless of age. But losing social interactions with friends and family can be particularly harmful to children. Several child offenders felt unnecessarily cut off from society because of a Colorado Department of Correction visiting policy that "a person may only be approved to visit an offender if there was an established relationship prior to the offender's incarceration."<sup>114</sup> Offenders must provide documentary proof of such a relationship.

Christopher W., who was twenty-five when Human Rights Watch interviewed him, had lived in several group homes for years before coming to prison. He explained that the last documentary proof he had to show he had a relationship with someone other than his family members was a grade school yearbook. He said, "so that means the only

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<sup>112</sup> Human Rights Watch interview with Christopher W., Colorado State Penitentiary, Cañon City, Colorado, July 28, 2004.

<sup>113</sup> Human Rights Watch interview with Luke J., Colorado State Penitentiary, Cañon City, Colorado, July 27, 2004 (pseudonym). During this interview Luke showed multiple scars across his right arm to a Human Rights Watch researcher.

<sup>114</sup> Colorado Department of Corrections, Offender Visiting Program, available online at: [www.doc.state.co.us/visitors/visitors.htm](http://www.doc.state.co.us/visitors/visitors.htm), accessed on February 1, 2005.

people that I can show them I knew when I was twelve, from some photo when I was in school, those are the only people that I can know for the rest of my life?”<sup>115</sup>

## IX. Protecting Colorado’s Communities

Criminal punishment serves Colorado’s legitimate interests in protecting communities from crime through deterrence, retribution, and rehabilitation.<sup>116</sup> Life without parole sentences for youth offenders do not further any of these purposes. The state would lose nothing significant in its crime fighting arsenal if it eliminated this harshest of prison sentences for children.

Given adolescents’ limited ability to anticipate the consequences of their actions and rationally assess their options, it is not surprising that research has failed to show that the threat of adult punishment has any deterrent effect on them.<sup>117</sup> But even if children did pause to consider possible sentences before committing a crime, there is no reason to believe that a prison sentence for a term of years would not deter crime just as well as the sentence of life without parole. This is particularly likely given that adolescents cannot really grasp the true significance of the sentence.

Punishment serves a retributive purpose when it gives the offender his or her “just deserts.”<sup>118</sup> But as the Supreme Court has stated, “The heart of the retribution rationale is that a criminal sentence must be directly related to the personal culpability of the criminal offender.”<sup>119</sup> Given the lower culpability of child offenders, a sentence for a term of years, rather than life without parole, is surely the only punishment that a child offender “deserves.”

With regard to Colorado’s final sentencing goal, that of rehabilitation, the sentence of life without parole not only does not further it—it negates it. The sentence sends an

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<sup>115</sup> Human Rights Watch interview with Christopher W., Colorado State Penitentiary, Cañon City, Colorado, July 28, 2004.

<sup>116</sup> Colorado’s stated purposes for sentencing are “(a) To punish a convicted offender by assuring the imposition of a sentence he deserves in relation to the seriousness of his offense; (b) To assure the fair and consistent treatment of all convicted offenders by eliminating unjustified disparity in sentences, providing fair warning of the nature of the sentence to be imposed, and establishing fair procedures for the imposition of sentences; (c) To prevent crime and promote respect for the law by providing an effective deterrent to others likely to commit similar offenses; and (d) To promote rehabilitation by encouraging correctional programs that elicit the voluntary cooperation and participation of convicted offenders.” See Colo. Rev. Stat. § 18-1-102.5.

<sup>117</sup> See Simon Singer and David McDowall, “Criminalizing Delinquency: The Deterrent Effects of the New York Juvenile Offender Law,” *Law and Society Review*, Vol. 22, p. 529, 1988.

<sup>118</sup> See *Shepard v. Taylor*, 556 F.2d 648, 653 (2d Cir., 1977) (citing *United States v. Kaylor*, 491 F.2d 1133 (2d Cir. 1974) (en banc), vacated for reconsideration on other grounds, 418 U.S. 909 (1974); *United States v. Waters*, 141 U.S. App. D.C. 289 (1970)).

<sup>119</sup> *Tison v. Arizona*, 481 U.S. 137, 149 (1987).



unequivocal message to children that they are banished from the community forever, so there is no point or opportunity to attempt to learn or reform themselves in prison. As one young man told a Human Rights Watch researcher, “Seems like they believe that since we’re sentenced to life in prison, society says, ‘well we locked them up, they are disposed of, removed.’”<sup>120</sup>

Colorado has the responsibility of ensuring community safety, and it uses the criminal justice system to do so. But the state is also responsible for ensuring that justice is in fact served when a person is tried, convicted, and sentenced. The terrible crimes committed by children can ruin lives, causing injury and death. Colorado’s sentencing choices must reflect the harm the children have caused. But it must also acknowledge their youth—their immaturity and their capacity to grow and change. Sentencing children to prison for life contradicts the very principles of justice Colorado seeks to uphold.

## **X. Acknowledgements**

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<sup>120</sup> Human Rights Watch interview with Samuel M., Colorado State Penitentiary, Cañon City, Colorado, July 26, 2004.

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