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Teen crime, adult time

Laws converge to put teens away forever

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A teenager serves life in prison because authorities found his fingerprints at the scene of a murder. But jurors doubted he killed the victim, and police failed to fully investigate other key suspects.

"I'm just a ghost now," writes Sam Mandez, who was 14 at the time of the crime in 1992 and had no previous violent offenses. "I'm the living dead."

Another teen faces life behind bars for killing his mother. Jurors didn't hear his story of parental abuse because his attorney never investigated.

Testimony in the trial of 16-year-old Nathan Ybanez lasted only a day.

A third teen with a history of alcohol problems is serving a life sentence for a fatal hit-and-run incident after a day of heavy drinking. Prosecutors cast the circumstances as a gang killing - a theory even the victim's mother discounted.

At 17, Dietrick Mitchell became a "throwaway" into the prison system.

All three youths were prosecuted in adult criminal court during the past two decades as part of Colorado's crackdown on juvenile crime. All three

were swept into prison under questionable circumstances by a combination of tough sentencing laws and Colorado district attorneys who wield some of the broadest powers in the country to prosecute juveniles.

Colorado is among 14 states where prosecutors can charge juveniles with adult crimes that could lead to life in prison with no chance of parole. With 45 people now locked away forever for crimes committed when they were younger than 18, Colorado ranks 11th in the nation for the rate at which life sentences are imposed on juveniles.

The process that put them away has struck a nerve with judges, jurors, lawyers and legislators who believe the adult system has mishandled some juveniles' cases.

"I want to be tough on crime," says state Rep. Lynn Hefley, R-Colorado Springs, who has unsuccessfully fought for reforms and wants to give juveniles serving life a shot at parole. "But I also want us to be smart on crime and use our heads. Some of these kids don't deserve life (without parole)."

During the past three decades, Colorado has eroded long-standing legal protections for juveniles and cut treatment options while adopting harsher penalties.

The trend unfolded amid frustrations - aggravated by some shocking, high-profile cases in the 1980s - that the juvenile system failed to adequately balance punishment and public safety with its role of rehabilitation.

More recently, sentences that put juveniles in adult prisons with no chance for release have provoked cries for reform. But little public attention has focused on the convergence of circumstances that can put young offenders away for life.

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A Denver Post investigation has found:

Colorado prosecutors filed 1,244 cases that resulted in juvenile convictions in adult courts since 1998, according to an analysis of state court administrator data. The actual number of juveniles convicted and sentenced to prison or other sanctions can't be determined from the data.

Forty-four cases involved offenders who were 14 - the earliest they can be directly charged as adults - at the time of their crimes. Of 1,625 total charges, about one-third involved robbery or assault; less than 3 percent involved homicide.

Flawed investigations and questionable defense work have compounded legal problems for teens in life-without-parole cases. In the Ybanez case, the teen's attorney never seized on evidence that his client was abused. In the Mandez case, authorities decided to revive a murder investigation to seek additional suspects in response to questions from The Post.

Felony murder charges are applied disproportionately to Colorado youths. Among juveniles sentenced to life since 1998, 60 percent went to prison on felony murder convictions, compared with 24 percent of adult cases. Felony murder allows prosecutors to hold someone responsible if a person died during the commission of certain felonies - even if there was no intent to kill or that person's actions didn't directly cause the death.

A growing body of research indicates teens often are confused by the court system and perhaps not competent to stand trial in adult court. But Colorado law provides no guarantees that a guardian ad litem or parent will be present during police interrogations and other steps in the adult justice system. In at least six cases reviewed, an adult

advocate was not present during a key phase in the legal process.

A push for punishment

Public furor erupted over rising juvenile crime in the late 1980s and the 1990s when the number of juveniles arrested in violent crimes rose from 947 in 1982 to more than 1,800 by the time of the so-called Summer of Violence in 1993.

By the early '90s, lawmakers began shifting resources and attention from juvenile rehabilitative programs to the Department of Corrections. Mandatory life without parole for some crimes became effective in 1991. Legislators expanded direct-file laws, by which prosecutors can bypass the juvenile justice system to charge teens as adults without review by a judge or uniform criteria imposed by the state.

Lawmakers' stated emphasis: protect the public from a new breed of juvenile criminal - one who seems more unpredictable and more menacing.

"This state unleashed a lot of anger toward its kids through its laws," says Jerry Adamek, former director of Colorado's juvenile justice programs, who watched the state race from a treatment approach to more punitive measures.

Since the state's crackdown began, 45 juveniles have been sentenced to life without parole. The last commutation of a juvenile serving prison time came almost 30 years ago.

Colorado has put 18.34 of every 100,000 youths ages 14 to 17 away for life without parole, according to the advocacy groups Human Rights Watch and Amnesty International. In terms of total cases, 12 other states have more people serving life without parole in prison for crimes committed when

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they were juveniles.

GRAPHIC:

[Click here to view a timeline of juvenile justice in Colorado.](#)

Hefley and The Pendulum Foundation, a nonprofit advocacy group based in Colorado Springs, have led an unsuccessful movement in recent years to challenge prosecutorial powers and seek reconsideration of prison sentences.

But the young offenders often defy sympathy: Many carried guns, used drugs, moved with predatory packs or were linked to gruesome acts of violence. Some killed their parents. And amid a falling crime rate, reform hasn't been an easy sell to prosecutors.

The Colorado District Attorney's Council, which aggressively lobbied for prosecutors' expanded powers, has resisted attempts to limit them. Some lawmakers, as well as Gov. Bill Owens, say they haven't seen enough evidence to persuade them that the system isn't working. Last year, Owens vetoed a Hefley-sponsored bill requiring a study of the system, arguing that it involved an "unrealistic and unworkable" time frame.

Leaders of the DA council say they're charged with preserving public safety and therefore remain the best arbiters for deciding whether juveniles should be tried as adults.

But given recent scientific research on adolescent brain development and other studies showing that some young offenders lack the maturity and competency of adults, more district attorneys and judges are open to a discussion about ways to improve how the state handles young offenders. Brain science was cited by the U.S. Supreme Court last year in overturning the juvenile death penalty.



"With societal changes, you never say things are fine and just leave them alone," says Dave Thomas, new executive director of the DA council and former Jefferson County DA. "You generate discussion and stimulate people to think about the issues and what's fair."

Pueblo District Attorney Bill Thiebaut says all teens - and adults - should be considered for rehabilitative treatment and parole. Automatic sentencing measures adopted by the General Assembly strike him as reaching outside the realm of reason, he says.

"We don't want public vendettas; we want public policy for the public good," says Thiebaut, a former state legislator. "In the end, when we reflect on our crime policy, we'll see it's cost us millions or billions of dollars."

But former Denver District Attorney Bill Ritter, now a gubernatorial candidate, says he has opposed previous reform efforts in part because sentencing proposals would have stripped serious crimes of

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adequate consequences and created inequities throughout the sentencing system.

"You'd have to undo the entire juvenile sentencing structure," he says.

El Paso County District Judge Jane Looney believes the new brain research supports the need to re-examine Colorado's approach to violent juveniles.

"They're not completely formed as human beings," she says.

Prosecutors hold power Before the mid-1970s, teens facing felonies were primarily channeled through the juvenile justice system, which focuses on rehabilitative programs.

A juvenile court judge would weigh criteria mandated by the state, such as home environment and prior violent-crime history, before determining whether a young offender would be transferred to adult court.

Now, the number of transfer hearings held each year has dropped to zero.

Colorado is one of only 15 states that allow prosecutors, instead of judges, to decide whether youths should be charged as adults through direct files. They are not required to follow any criteria before charging kids 14 or older with the most serious felony offenses.

"Colorado prosecutors could be considered among the most powerful in the country in terms of their discretion," says Melissa Sickmund, senior research associate for the National Center for Juvenile Justice. In most direct-file states, prosecutors are required to satisfy minimum criteria or use guidelines before filing criminal charges, she notes.

Two of Colorado's neighbors, Nebraska and Wyoming, for example, require that district attorneys consider the same factors weighed by their juvenile courts in the transfer process, according to an NCJJ review.

The decision to move a juvenile to adult court exposes the defendant to significantly harsher penalties. A 14-year-old who commits a burglary in which an innocent person dies can be sentenced by a juvenile court to a maximum sentence of five years.

The same juvenile in the same circumstances facing a judge in adult district court - and facing felony murder charges - could be sentenced to life in prison without the chance of parole.

From 1998 through 2004, prosecutors averaged 176 direct-file convictions a year. More than 300 of those cases wound up in the Youthful Offender System, a DOC-run "last chance" for juveniles with violent or chronic criminal histories.

Thomas of the DA council points to a drop in violent crimes during much of that period - juvenile arrests for violent crime fell from 1,446 in 1995 to 1,027 in 2003, according to state data - as an indicator that the system works.

But he acknowledges the difficulty of drawing definitive cause-and-effect conclusions. And researchers note that juvenile crime nationwide is down, even in states that don't give prosecutors tools such as direct-file discretion.

Questioning justice

In addition to boosting prosecutors' powers in recent decades, state lawmakers have expanded police authority and sentencing laws that have affected juveniles.

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In 1996, for example, they gave police more latitude to interrogate suspects younger than 18 without an adult present.

The law now allows authorities to seek waivers from parents, who frequently don't understand the process or consequences.

Denver teen Chris Selectman was convicted of felony murder when he was 16, partly based on an interrogation conducted outside his mother's presence. At trial, the accounts of Selectman and the interviewing officer diverged, but the prosecutor seized on the interviewing officer's account, a fact that helped seal the conviction, Selectman and his attorneys believe.

"They began to build their case upon a misconception," Selectman says in a letter from prison.

Colorado also is one of 14 states with three controversial laws on its books: direct-file discretion; the charge of felony murder; and life without parole.

"Prosecutors have been given enormous powers that can be a source of injustice," says Kathleen Lord, chief appellate deputy for the state public defender's office, who has vigorously fought felony murder convictions against juveniles. "When you throw in felony murder and the life sentence, you don't need as much evidence to throw a kid away."

Prosecutors are bringing felony murder charges against youths far more often than adults, according to state court administrator data. Prosecutors must prove only an underlying offense, such as burglary, and that someone died in the course of the crime. Of 15 juveniles sentenced to life without parole since 1998, nine were convicted of felony murder. That compares with 30 of 127 adult cases.

The Sam Mandez case, handled on appeal by Lord, raises the question of whether a flawed murder investigation and felony murder combined to convict a youth whose fingerprints were found at the murder scene, halting a fuller probe into the killing.

"I just don't believe in our system after going through that," says Kim Wise, who sat on the Mandez jury. "It's terrible law. If more people went through it, they would understand."

Although national data on juveniles convicted of felony murder aren't available, Human Rights Watch reports that 26 percent of juvenile lifers who self-reported nationally on the subject said they'd been sentenced for felony murder - a figure well below Colorado's 60 percent since 1998.

Another twist of the felony- murder law surfaced in the 1996 case of 17-year-old Trevor Jones.

Although jurors hashed out the circumstances surrounding his fatal shooting of 16-year-old Matthew Foley and found him guilty of reckless manslaughter, an accompanying robbery count led to a felony murder conviction as well.

With the two conflicting convictions surrounding Foley's death, an appeals court threw out reckless manslaughter, and its six-year sentence, and kept the felony murder conviction - with its automatic life-without- parole sentence.

Nathan Ybanez's prosecution illustrates the adult system's weaknesses in handling parent- killers.

Ybanez, who was 16 when he strangled his mother with a fireplace tool, was not given access to a guardian ad litem - a legal advocate assigned to defendants in juvenile courts when abuse or another conflict in the home is suspected - even though abuse allegations in his case were known to the

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court. Instead, his father steered his defense, and the abuse was never detailed for the jury.

Though state law gives an adult court judge discretion to appoint a guardian ad litem, lawyers and judges say it isn't used often.

Dietrick Mitchell, who was 16 when charged with first-degree murder after authorities said he intentionally drove over teen Danny Goetsch, went on trial at a time of rising public concern over gang activity. Prosecutors focused on Mitchell's self-portrayal as a gang member as a motive for murder, even though there was scant evidence that he was a gangster.

Because prosecutors direct- filed on him as an adult, Mitchell - identified as an alcoholic years earlier - had no chance for rehabilitation programs available in the juvenile system when he was convicted at age 17. His attorneys say Mitchell's case illustrates the simultaneous expansion of get-tough measures and decline of treatment options.

The Pendulum Foundation promises to renew its reform campaign this year, possibly by going around the legislature - through a ballot initiative. Their own polls reflect that citizens want rehabilitation options for teen offenders, Pendulum officials say.

"We want fairness and compassion injected into the system," says director Mary Ellen Johnson.

Denver Post computer-assisted reporting editor Jeffrey A. Roberts and staff research librarian Monnie Nilsson contributed to this report.

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