

*The Case Against Execution of People who Were Youths Under the Age of  
Twenty-One Years Old at the Time of the Offense*

A Position Paper and Call for Research

By Hollis A. Whitson<sup>1</sup>

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*...once a truth has been stated, it cannot disappear from sight entirely; sooner or later it will prevail....*

*-- Alice Miller, in  
THOU SHALT NOT BE AWARE: Society's Betrayal of the Child<sup>2</sup>*

The truth is that the time has come to abolish the practice of executing people for crimes they committed when they were under the age of 21.

Research in developmental psychology and neuroscience in the years that have passed since the United States Supreme Court's 2005 ruling in *Roper v. Simmons*<sup>3</sup> has confirmed that older adolescents ages 18 to 21 years old differ from adults in ways that both diminish their culpability and impair the reliability of the sentencing process.<sup>4</sup> Adolescents of that age are less able to envision or comprehend the full range of potential future consequences of their immediate actions, and less able to control their impulses, especially in peer settings.<sup>5</sup> Indeed, the parts of the brain that enable impulse control and reasoned judgment are not yet fully developed in this age group. The defining feature of late adolescence is that the self is still unformed; in a very real sense, 18, 19, and 20-year-olds are not yet the people they will ultimately become. Their vulnerability and still-developing nature preclude a reliable determination that death is a fit response to their personal culpability and character.<sup>6</sup> Execution of people who were teenaged offenders – in a system that is supposed to identify only the “worst of the worst” – no longer has any basis in science or sound principles of criminology.

The death penalty does not serve as a deterrent, even for adults.<sup>7</sup> Given what we know about the science, it certainly cannot be justified on the grounds that it deters *teenagers*. Minors under age 21 are inherently less capable of being deterred by the prospect of an uncertain future punishment, because they are less able to project into the future, to envision the consequences of their actions, and to apprehend the relevance of an uncertain future cost.<sup>8</sup> Adolescents' immature and impulsive decision-making process is not likely to be a “cold calculus” of risks and benefits.

Execution of people who were under age 21 at the time of the offense reflects a racial disparity that is intolerable. Nationally, from January 2000 through mid-2014, *over 59% of the executions in this group are of minorities.* This charts is compiled from the Clark County Prosecutor’s Website Database of Executions in the United States:<sup>9</sup>

<b>Youth Executions, by Race/Ethnicity Classification, 2000 – July 1, 2014</b>							
<b>Year</b>	<b>Total Executed ≥ Age 18</b>	<b>Total Executed Age 18, 19, 20 (at time of offense)</b>		<b>Total Executed ≥ Age 21 (at time of offense)</b>		<b>Minority Percentage of Total Executed</b>	
		<b>Minority</b>	<b>White</b>	<b>Minority</b>	<b>White</b>	<b>Ages 18, 19, 20</b>	<b>≥ Age 21</b>
2014 (to 7/1/14)	20	2	0	9	9	100.0	50.0
2013	39	2	3	14	20	40.0	41.2
2012	43	3	3	14	23	50.0	37.8
2011	43	6	5	14	18	54.5	43.8
2010	46	5	5	14	22	50.0	38.8
2009	52	9	2	20	21	81.8	48.7
2008	37	7	2	12	16	77.7	42.9
2007	42	7	6	13	16	53.8	44.8
2006	53	9	2	20	22	81.8	47.6
2005	60	2	4	21	33	33.3	38.9
2004	59	8	4	15	32	66.7	31.9
2003	64	5	4	20	35	55.5	36.4
2002	68	4	6	19	39	40.0	32.8
2001	65	2	7	19	37	22.2	33.9
2000	81	11	2	28	40	84.6	41.2
<b>TOTAL</b>	<b>772</b>	<b>82</b>	<b>55</b>	<b>252</b>	<b>383</b>	<b>59.6</b>	<b>39.7</b>

As the number of executions in the country has decreased, however, the minority percentage in this age group has increased, from 54.2% in the years preceding *Roper* (2000-2005), to 64.1% in the years since (2006 through mid-2014). In other words, in the past 8 ½ years, *over 64% of these “youth executions” were of minorities.* This progression is shown in the following charts, which show the breakdown roughly before and after *Roper v. Simmons*:

**BREAKDOWN OF YOUTH EXECUTIONS, 2000-2014  
PRE- AND POST- *ROPER v. SIMMONS* (2005)**

Youth Executions, by Race/Ethnicity Classification, 2006 – July 1, 2014							
Year	Total Executed ≥ Age 18	Total Executed Age 18, 19, 20 (at time of offense)		Total Executed ≥ Age 21 (at time of offense)		Minority Percentage of Total Executed	
		Minority	White	Minority	White	Ages 18, 19, 20	≥ Age 21
2014 (to 7/1/14)	20	2	0	9	9	100.0	55.6
2013	39	2	3	14	20	40.0	41.2
2012	43	3	3	14	23	50.0	37.8
2011	43	6	5	14	18	54.5	43.8
2010	46	5	5	14	22	50.0	38.8
2009	52	9	2	20	21	81.8	48.7
2008	37	7	2	12	16	77.7	42.9
2007	42	7	6	13	16	53.8	44.8
2006	53	9	2	20	22	81.8	47.6
<b>TOTAL</b>	<b>375</b>	<b>50</b>	<b>28</b>	<b>130</b>	<b>165</b>	<b>64.1</b>	<b>44.1</b>

Youth Executions, by Race/Ethnicity Classification, 2000 –2005							
Year	Total Executed ≥ Age 18	Total Executed Age 18, 19, 20 (at time of offense)		Total Executed ≥ Age 21 (at time of offense)		Minority Percentage of Total Executed	
		Minority	White	Minority	White	Ages 18, 19, 20	≥ Age 21
2005	60	2	4	21	33	33.3	38.9
2004	59	8	4	15	32	66.7	31.9
2003	64	5	4	20	35	55.5	36.4
2002	68	4	6	19	39	40.0	32.8
2001	65	2	7	19	37	22.2	33.9
2000	81	11	2	28	40	84.6	41.2
<b>TOTAL</b>	<b>397</b>	<b>32</b>	<b>27</b>	<b>122</b>	<b>216</b>	<b>54.2</b>	<b>36.1</b>

In individual states, the percentages can be even higher.<sup>10</sup> In Texas, since 2000, over 76% of those executed who were ages 18, 19, and 20 years old at the time of the offenses were minorities. In Colorado, 100% of the death row inmates are African-

American men who were convicted of committing offenses that occurred when each man was a youth under 21 years old. Restricting the death penalty to persons at least 21 years old at the time of the offense would assist in correcting the overall racial imbalance in executions and in imposition of death sentences.<sup>11</sup>

Youths under the age of 21 years old remain a protected class for a wide range of purposes, under laws that recognize the diminished capacity of this age group. Most people are familiar with restrictions and protections on youths ages 18-21 under the liquor law. However, there are literally hundreds of other restrictions and protections in the state and federal statutes for youths ages 18-21.<sup>12</sup> Youth under the age of 21 years are usually ineligible for commercial drivers' licenses. They are prohibited from entering sexually oriented businesses. The inheritance laws for adopted beneficiaries use age 21 as the cutoff for preferential treatment under the tax code. Many states include children up to the age of 21 years old in their provisions for public education. State statutes and constitutions often define "child" and "adult" so as to include persons under 21 years old as "children" or "minors" for many purposes. A very wide range of professions are closed to children under the age of 21 years old.<sup>13</sup> Many provisions of state statutes refer to persons under the age of 21 as "children" and "minors." Persons under age 21 are usually minors for purposes of claims before the Industrial Claims Commissions. Certain dependent children between the ages of 18 and 21 are presumed to be wholly dependent, for purposes of the Workers' Compensation statutes compensating the children of deceased workers. Even before passage of the 2010 federal Patient Protection and Affordable Care Act (Title I, Part A, Subpart II, Sec. 2714), which extended health care coverage for young adult children under their parent's health plan up to the age of 26, many states' health care coverage acts already defined a "dependent child" as one who was up to 21 years of age or older.<sup>14</sup> The Uniform Transfers to Minors Act refers to children under 21 years old as *minors*. A person licensed as a physician's assistant by virtue of their status as a child health associate may work on patients only so long as the patient is under the age of 21 years

old. Given the universal recognition of these youths as having diminished capacity or a special need for protection, it is antithetical to permit their classification as the “worst of the worst” and permit their execution.

“Carving out” from the death penalty those persons who committed the offense before they were the age of 21 years old is consistent with the trend in the United States Supreme Court to limit the scope of the “ultimate penalty” to the “worst of the worst,” and to categorically exclude as a matter of constitutional law members of a class that society regards as less culpable. Execution is already prohibited for persons under 18 at the time of the offense, people with mental retardation, some people with mental illness, and people who did not commit a murder.<sup>15</sup> Evolving standards of common decency cry out for a ban on execution of the very young, including teenagers and other children under the age of 21 years.

The emotional, mental, physical, and spiritual/religious changes that are experienced by the youth offender in the decades that pass before the execution are so profound as to challenge the moral legitimacy of the practice. Psychological, behavioral, and spiritual development of persons in the decades between the teens and the forties creates a reality in which the middle-aged man who is eventually executed does not even remotely resemble the teenager who committed the crime. Even more than for adult death row inmates, the extended, extreme conditions of death row confinement may be especially cruel for teenagers who, quite literally, *grow up on death row*.<sup>16</sup>

The practice of execution of persons in this age group is relatively rare enough that eliminating it will not have a significant impact on whatever legitimate function the death penalty as an institution may still serve. In about the last five years (2010 through mid-2014), out of the 36 states (plus the federal government) that maintained a death penalty law for all or part of those years, only 9 states participated in execution of people who were youths at the time of the offense. Almost sixty-four percent (63.8%) of these executions occurred in only three states – Texas (n=15), Ohio (n=4), and

Georgia (n=4) – with the remaining executions scattered among six states, each of which executed only one (Delaware, Mississippi, and Oklahoma), two (Florida) or three (Alabama and Virginia) people who were youths at the time of the offense.<sup>17</sup>

The societal expenditure of an overwhelming amount of resources in an attempt to execute is counterproductive to the goal of ending violence among youth. There is no longer any serious doubt that the maintenance of the death penalty costs millions more than would incarceration for life in prison. Such resources would be better spent upon interventions that might prevent the senseless violence that ends the life of the victim and banishes the youth to death row.

Further research is needed on all aspects of this phenomenon, and might include:

1. The impact of youth on the reliability of a death sentence. Is there a correlation between exonerations<sup>18</sup> and the age of the defendant at the time of the offense? Do the more youthful death row inmates face practical barriers to appeals and postconviction remedies, or to assisting counsel, as a result of their youth?
2. Identification of present death row inmates who were under age 21 years old at the time of the offense of conviction.<sup>19</sup>
3. Analysis of the particular facts of the cases, both of those already executed and those on death row, to attempt to identify (1) factors related to the youth of the defendant that may have contributed to the death sentence, and (2) causes for the disproportionate numbers of executions of minorities in the age range 18- to 21-years-old at the time of the offense. Did the prosecution argue at trial that the defendant's youth was an aggravating circumstance, i.e. a reason to impose a death sentence?<sup>20</sup> Does the case data correlate to the behavioral research, showing, for example, offenses driven or influenced by peer group dynamics?
4. Compilation of state and federal laws that have relevant definitions and provisions that protect persons in the age category 18- to 21-years-old.

5. Research into the breakdown of race of the person executed, and age at the time of the offense, for executions occurring before 2000. Are “youth executions” increasing or decreasing over the very long term?
6. Psychological and developmental research on the impact of maturation and psychological and spiritual growth in the severe lock-down conditions of death row, followed by execution in the person’s mid-thirties to mid-forties. Is there research on the development, psychological and spiritual effects of death row confinement that begins in late adolescence and continues for decades?

Some research is already beginning. Oren M. Gur, M.S., of the Department of Criminology, Law, and Justice at University of Illinois at Chicago, has spearheaded an ongoing Youth Execution Research Team. The YERT presented a poster at the UIC Research Forum held on April 19, 2011: “Lost Youths: Execution of 18, 19, & 20-year-olds in the U.S. Since 2000.”<sup>21</sup> In 2011-2012, law students at the University of Denver Sturm College of Law undertook a national survey to investigate the youth populations on death rows in America and found that racial minorities make up a disproportionate amount of these youth death-row populations.<sup>22</sup> This is an excellent example of the types of research endeavors that should be undertaken.

This short paper cannot begin to describe the depth and breadth of the work that remains to be done in order to bring a greater awareness about this phenomenon. In this intersection of law, morality, and science, the scientists are leading the way. It is now much easier to understand, from a scientific, neurobiological, and development perspective, what has brought many of these teenagers down the long road that has ended in the four corners of their tiny rooms on death row. Now it is time for the social scientists and lawyers to bring their skill to the research effort, and join the work already in progress. Only in this way can we see the day when we can consign to the dustbin of history the bizarre practice of execution of persons who were but teenagers and youths under the age of 21 at the time of the offense.

## ENDNOTES

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2. Miller, A., *THOU SHALT NOT BE AWARE: Society's Betrayal of the Child* (First Meridian Printing, 1986), p. 114. Alice Miller offers much in the way of understanding the psyche that has undoubtedly brought many of these teenagers down a tortuous childhood road of their own to the end of that road, the four corners of their tiny rooms on death row. See also Miller, A., *FOR YOUR OWN GOOD: Hidden Cruelty in Child-rearing and the Roots of Violence* (Farrar-Straus-Giroux, 1984).
3. *Roper v. Simmons*, 543 U.S. 551 (2005). The *Roper* Court noted that the cut-off point of age 18 years old was arbitrary. However, the defendant in that case was 17 years old when he committed the murder, and it was not necessary for the Court to address the age group ages 18-21 years old. Therefore, the Court stated only that:

Drawing the line at 18 years of age is subject, of course, to the objections always raised against categorical rules. The qualities that distinguish juveniles from adults do not disappear when an individual turns 18. By the same token, some under 18 have already attained a level of maturity some adults will never reach. For the reasons we have discussed, however, a line must be drawn. The plurality opinion in *Thompson* drew the line at 16. In the intervening years the *Thompson* plurality's conclusion that offenders under 16 may not be executed has not been challenged. The logic of *Thompson* extends to those who are under 18. The age of 18 is the point where society draws the line for many purposes between childhood and adulthood. It is, we conclude, the age at which the line for death eligibility ought to rest.

*Roper*, at 574, referring to *Thompson v. Oklahoma*, 487 U.S. 815 (1988), in which a plurality of the Court determined that common standards of decency do not permit the execution of any offender under the age of 16 at the time of the crime. This position paper is based in large part upon scientific research that had not been completed at the time the Supreme Court was considering the *Roper* case. See *Graham v. Florida*, 560 U.S. 48, 68 (2010) (“developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds”—for example, in “parts of the brain involved in behavior control.”). See also *Miller v. Alabama*, 132 S.Ct. 2455, 2464, n. 5 (2012) (“the science and social science supporting *Roper*'s and *Graham*'s conclusions have become even stronger.”). Neither *Graham* nor *Miller* involved a youth between the ages of 18 and 21 at the time of the offense.

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4. Giedd, J.N., & Rapoport, J.L., "Structural MRI of pediatric brain development: what have we learned and where are we going?" 2010 NEURON, 67(5):728-734; L. Steinberg, E. Cauffman, J. Woolard, S. Graham, M. Banich, "Are Adolescents Less Mature than Adults? Minors' Access to Abortion, the Juvenile Death Penalty, and the Alleged APA 'Flip-Flop'", 2009 AMERICAN PSYCHOLOGIST (v. 64); L. Steinberg, "Cognitive and affective development in adolescence," 2005 TRENDS IN COGNITIVE SCIENCES (v. 29, no. 2); M. Banich, "Executive Function: the Search for an Integrated Account," 2009 CURRENT DIRECTIONS IN PSYCHOLOGICAL SCIENCE 89 (v. 18, no. 2); J. Herrington, et al., M. Banich, A. Webb, et al., "Emotion-Modulated Performance and Activity in Left Dorsolateral Prefrontal Cortex," 2005 EMOTION 200-207 (v. 5, no. 2); A. Mohanty, A. Engels, J. Herrington, W. Heller, M. Ringo Ho, M. Banich, A. Webb, S. Warren, G. Miller, "Differential engagement of anterior cingulate cortex subdivisions for cognitive and emotional function," 2007 PSYCHOPHYSIOLOGY 343-351 (v. 44); B. Depue, T. Curran, M. Banich, "Prefrontal Regions Orchestrate Suppression of Emotional Memories via a Two-Phase Process," 2007 SCIENCE 215-219 (v. 317); B. Casey, R. Jones, T. Hare, "The Adolescent Brain," 2008 ANN. NY. ACAD. SCI. 1124: 111-126 (v. 1124); P. Shaw, N. Kabani, J. Lerch, K. Eckstrand, R. Lenroot, N. Gogtay, D. Greenstein, L. Clasen, A. Evans, J. Rapoport, J. Giedd, S. Wise, "Neurodevelopmental Trajectories of the Human Cerebral Cortex," 2008 THE JOURNAL OF NEUROSCIENCE 3586-3594; R. Lenroot, J. Giedd, "Brain development in children and adolescents: Insights from anatomical magnetic resonance imaging," 2006 NEUROSCIENCE AND BIOBEHAVIORAL REVIEWS 30: 718-729; J. Giedd, "The Teen Brain: Insights from Neuroimaging," 2008 JOURNAL OF ADOLESCENT HEALTH 42: 335-343.

5. D. Albert, J. Chein, & L. Steinberg, "Peer influences on adolescent decision-making." 2013 CURRENT DIRECTIONS IN PSYCHOLOGICAL SCIENCE, 22, 80-86; J. Chein, D. Albert, L. O'Brien, K. Uckert, & L. Steinberg, "Peers increase adolescent risk taking by enhancing activity in the brain's reward circuitry. Developmental Science," 2011 DEVELOPMENTAL SCIENCE, 14, F1-F10; V. Reyna, F. Farley, "Risk and Rationality in Adolescent Decision Making: Implications for Theory, Practice, and Public Policy," 2006 PSYCHOLOGICAL SCIENCE IN THE PUBLIC INTEREST 1-44 (v. 7, no. 1); A. Galvan, T. Hare, C. Parra, J. Penn, H. Voss, G. Glover, B. Casey, "Earlier Development of the Acumbens Relative to Orbitofrontal Cortex Might Underlie Risk-taking Behavior in Adolescents," 2006 THE JOURNAL OF NEUROSCIENCE 6885-6892; L. Steinberg, L. O'Brien, E. Cauffman, S. Graham, J. Woolard, M. Banich, "Age Differences in Future Orientation and Delay Discounting," 2009 CHILD DEVELOPMENT 28-44 (v. 80, no. 1); M. Banich, A. De La Vega, J. Andrews-Hanna, K. Mackiewicz Seghete, Y. Du, E.D. Claus, "Developmental Trends and Individual Differences In Brain Systems Involved In Intertemporal Choice During Adolescence," 2013 PSYCHOLOGY OF ADDICTIVE BEHAVIORS 416-430 (v. 27(2)); J. Tanabe, L. Thompson, E. Clause, M. Dalwani, K. Hutchison, M. Banich, "Prefrontal Cortex Activity is Reduced in Gambling and Nongambling Substance Users During Decision-Making," 2007 HUMAN BRAIN MAPPING 28:1276-1286; L. Steinberg, "Risk Taking in Adolescence: What Changes, and Why?" 2004 ANN. N.Y. ACAD. SCI. 1021: 51-58; L. Steinberg, "Risk Taking in Adolescence: New Perspectives from Brain and Behavioral Science," 2007 CURRENT DIRECTIONS IN PSYCHOLOGICAL SCIENCE 55 (v. 16, no. 2); E. Olson, P. Collins, C. Hooper, R. Muetzel, K. Lim, M. Luciana, "White Matter Integrity Predicts Delay

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Discounting Behavior in 9- to 23-Year Olds: A Diffusion Tensor Imaging Study,” 2008 JOURNAL OF COGNITIVE NEUROSCIENCE 21:7, pp. 1406-1421; L. Steinberg and D. Albert, M. Banich, E. Cauffman, S. Graham, “Age Differences in Sensation Seeking and Impulsivity as Indexed by Behavior and Self-Report: Evidence for a Dual-Systems Model,” 2008 DEVELOPMENTAL PSYCHOLOGY 1764-1778 (v. 44, no. 6).

6. Dr. Ruben Gur, the Director of the Brain Behavior Laboratory at the School of Medicine at the University of Pennsylvania, reports that the consensus of medical research:

The evidence now is strong that the brain does not cease to mature until the early 20s in those relevant parts that govern impulsivity, judgment, planning for the future, foresight of consequences, and other characteristics that make people morally culpable.... Indeed, age 21 or 22 would be closer to the ‘biological’ age of maturity.

Gur, Ruben C., quoted in American Bar Association, Juvenile Justice Center, “Adolescence, Brain Development, and Legal Culpability” (Jan. 2004), available at [www.abanet.org/crimjust/juvjus](http://www.abanet.org/crimjust/juvjus).

Even during pendency of the *Roper v. Simmons* case, researchers had already begun to lay the groundwork for the studies that now form the body of newer science. In the words of Dr. Jay Giedd, chief of brain imaging in the child psychiatry branch at the National Institute of Mental Health, who has spent decades doing brain imaging studies to determine how, and when, the brain develops: “When we started,” says Giedd, “we thought we’d follow kids until about 18 or 20. If we had to pick a number now, we’d probably go to age 25.” *Time Magazine* Article, “What Makes Teens Tick,” May 10, 2004. Researchers did just that, resulting in a now-indisputably body of scientific literature, only some of which is listed in notes 4 and 5 of this paper.

7. Committee on Deterrence and the Death Penalty, D. Nagin and J. Peppers, editors, Committee on Law and Justice, Division on Behavioral and Social Sciences and Education of the National Research Council, DETERRENCE AND THE DEATH PENALTY (National Academies Press, 2012) (no studies support the theory that capital punishment deters murder). See also M. Radelet, T. Lacoek, “Do Executions Lower Homicide Rates?: The Views of Leading Criminologists,” 2009 JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY 489-508 (v. 99, no. 2); J. Fagan, “Accuracy and Efficiency in the Administration of the Death Penalty,” Testimony to the Maryland Governor’s Commission on Capital Punishment (Sept. 5, 2008).

8. See sources listed above, esp. in note 5.

9. [www.clarkprosecutor.org/html/death/usexecute.htm](http://www.clarkprosecutor.org/html/death/usexecute.htm). Persons executed who were under the age of 18 years old at the time of the offense are not included here, because, in 2005, the execution of such persons was ruled unconstitutional in the Supreme Court case of *Roper v. Simmons*. In the years leading up to *Roper* (2000-2004), there were 9 executions of youth (6 blacks and 3 whites) who were under the age of 18 years old at the time of the offense.

10. The State-by-state data is shown on the chart attached in Appendix 1, which was compiled from the Clark County Prosecutor’s Website.

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11. The Clark County Prosecutor's Website states that of those executed since 1976, 55.6% were White and 33.7% were Black. <http://www.clarkprosecutor.org/html/death/usexecute.htm>. The NAACP's Legal Defense Fund reports that the current death row population throughout the United States is 57% non-white. See NAACP Legal Defense Fund, "Death Row USA" (Winter 2014), at 39. However, this does not tell the whole story with respect to youth executions. Research conducted by law students at the University of Denver Sturm College of Law in 2011-2012 revealed that, among death row inmates (in states in which information about age were available), some 65.5% of the death row inmates who were between the ages of 18 and 21 at the time of the offense were minorities, while only 52% of adult (age 21 years and above) offenders were racial minorities. K. Hennessey, A. Mason, P. McClay, M. Tanda, A. Perko, "The Unreasonable Contradiction: Putting to Death those between 18-21 years old at the Time of the Offense," (unpublished report on file with author).

12. For example, under Colorado law, children under the age of 21 are characterized and treated as "minors" for many purposes. See Appendix 2.

13. There are so many such laws that they cannot all be chronicled in a position paper of this scope. However, some examples of the types of professions that are closed to persons under 21 years old include, in many states: a representative for wholesale manufacturers or sellers of pharmaceutical drugs, a podiatrist, a chiropractor, a dentist, a physician's assistant, a nursing home administrator, an optometrist, a psychologist, a licensed clinical social worker or a licensed social worker, a marriage and family therapist, a physician, a licensed professional counselor, and dozens upon dozens of other professions. See also 21 U.S.C. §859(a) ("Any person at least 18 years of age who distributes a controlled substance to a person under 21 years of age is subject to twice the maximum punishment, and at least twice any term of supervised release, for a first offense involving the same controlled substance and schedule."); 21 U.S.C. §859(b) ("Any person at least 18 years of age who distributes a controlled substance to a person under 21 years of age after a prior conviction is subject to three times the maximum punishment, and at least three times any term of supervised release, for a second or subsequent offense involving the same controlled substance and schedule."); 42 U.S.C. § 290bb-35(e)(2) (Youth offender. "The term 'youth offender' means an individual *who is 21 years of age or younger* who has been discharged from a State or local juvenile or criminal justice system, except that if the individual is *between the ages of 18 and 21 years*, such individual has had contact with the State or local juvenile or criminal justice system prior to attaining 18 years of age and is under the jurisdiction of such a system at the time services are sought."); 18 U.S.C. §5031 ("'Juvenile' is defined as a person who is under 18 years of age, or for purposes of proceedings and disposition because of an act of juvenile delinquency, *a person who is under 21 years of age.*"); 18 U.S.C. §4101(c)(1)-(2) (same); 18 U.S.C. §923(d)(1)(A) (restriction on federal firearms license to persons at least 21 years old); 18 U.S.C. §922(b)(1) (same, other firearms restrictions); 18 U.S.C. §842(d)(1) ("It shall be unlawful for any person knowingly to distribute explosive materials to any individual who is *under 21 years of age.*"); 14 U.S.C. §371(c)(2), 10 U.S.C. §8257(d)(2), and 10 U.S.C.A. §6911(c)(2) (In Navy, Air Force, and Coast Guard, "[n]o person may be enlisted or designated as an aviation cadet unless he has the consent of his parent or guardian to his agreement, if he is under 21 years of age."); 10 U.S.C. § 1072 (2), 10 U.S.C. §1074 i (a), 10 U.S.C. §1079(g) (1), 10 U.S.C. §1079(g) (2)(B) (provisions for benefits for children under the

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age of 21 years for children whose parent is a member of the uniformed services); 8 U.S.C. §1157(a)(5)(c)(2)(B), 8 U.S.C. §1158(b)(3)(B), 8 U.S.C. § 1184(o) (statutes providing for status for children of refugees and applicants for immigration *when children are under 21 years old*); 8 U.S.C. §1151(2)(A)(I), 8 U.S.C. §1153(a)(4), 8 U.S.C. §1153(h)(3), 8 U.S.C. §1154(a)(various provisions defining who is eligible for permanent residency); 6 U.S.C. §774 (the Emergency Child Locator Center, within the National Center for Missing and Exploited Children, defining “adults” as 21 and older, and “child” as under 21 years of age); 5 U.S.C. §8122(d)(1) (the statute of limitations for filing a suit for death or disability of a federal worker does not run against a minor until he reaches 21 years of age); 5 U.S.C. §5561(3)(B) (“‘Dependent’ means an unmarried child (including an unmarried dependent stepchild or adopted child) under 21 years of age.”).

14. The National Conference of State Legislatures (NCSL) reports that, as of June 2010, at least 37 states -- either already prior to 2010 or upon passage of the PPACA -- had set the early-to late-twenties as the age that young adults may remain on their parents' health insurance plan. There is considerable variety among the states, with eligibility sometimes (but not always) depending on residence, marital or student status, or other factors. These statutes are summarized at the NCSL website, from which the following summary list has been compiled: Colo. Rev. Stat. § 10-16-104.3 (up to age 25); Conn. G.S.A. § 38a-497 (up to age 26); Del. Code Ann. Tit. 18, § 3354 (until age 24); Florida 627.6562 (up to age 25 and in some cases, age 30); Ga. Code § 33-30-4 (up to age 25); Ga. Code § 33-24-28 (general exemption from dependent age limits in cases of children incapable of self-sustaining employment due to disability); Idaho Stat. § 41-2103 (until age 21, or if a student, age 25, or if disabled, no limit); 215 ILCS 5/356z.12 (up to age 26 and veteran dependents up to age 30); IC 27-8-5-2,28 and IC 27-13-7-3 (until age of 24, or, if disabled, no limit); Iowa Code § 509.3 and Iowa Code § 514E.7 (under the age of 25); Ky. Rev. Stat. § 304.17A-256 (until the age of 25); La. Rev. Stat. Ann. § 22:1003 (up to age 25 if student); 24-A MRSA § 2742-B (up to 25 years of age); MD Code, Insurance § 15-418 (under the age of 25); Mass. Gen. Laws Ann. Ch. 175 § 108 (until age 26 or 2 years past the age of dependency; Young adults ages 19-26 are eligible for lower-cost insurance coverage offered through the Commonwealth Health Insurance Connector); Minnesota Chapter 62E.02 (defines "dependent" as a spouse or unmarried child under age 25); W. Va. Code § 33-16-1a (same); O.R.S. § 735.720 (same, up to 23); Mo. Rev. Stat. § 354-536 (same, up to age 26); N.H. Rev. Stat § 420-B:8-aa (same; 2009 SB 115 allows those up to age 26 to buy-in to coverage through the state's CHIP program, Healthy Kids); Mont. C.A. 33-22-140 (up to age 25); Nev. Rev. Stat. 689C.055 (up to age 24); N.J.S.A. 17B:27-30.5 (up to age of 31); NM Stat. Ann. § 13-7-8 (up to age 25); N.Y. 2009 AB 9038 (up to age 30); N.D. Cent. Code § 26.1-36-22 (up to age 22 or, if student, up to age 26); Ohio Rev. Code § 1751.14, as amended by 2009 OH H 1 (up to age 28); 2009 SB 189 (up to age 30, or longer if deployed in the reserves or National Guard (51 Pa.C.S.A. § 7309)); R.I. Gen. Laws § 27-20-45 and Gen. Laws § 27-41-61 (until age 19 or, if a student, until age 25); S.C. Code Ann. § 38-71-1330 (up to age 22); S.C. Code Ann. § 38-71-350 (no limit if disabled); SD Codified Laws Ann. § 3-12A-1, 58-17-2.3 (up to age 19 or, if student, age 24 or age 29); and thereafter, if child remains a student, the insurance company shall); Tennessee Code Ann. § 56-7-2302 (up to age 24); Vernon's Texas Code Ann. Insurance Code § 846.260 and § 1201.059 (up to age 25); Utah Code Ann. tit. 31A § 22-610.5 (up to age 26); Va. Code Ann. § 38.2-3525 (up to age 19 or, in some cases, up to age 25); West's Rev. Code

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Washington Ann. 48.44.215 (up to age 25); Wis. Stat. § 632.885 (up to age 27 or, for certain students called to active duty in the armed forces, beyond age 26); Wyo. Stat. § 26-19-302 (up to age 23). Source: State Health Facts and NCSL, 2009, [http://www.ncsl.org/default.aspx?tabid=14497#State\\_Actions](http://www.ncsl.org/default.aspx?tabid=14497#State_Actions)

15. See e.g. *Atkins v. Virginia*, 536 U.S. 304 (2002)(declaring unconstitutional the execution of persons with mental retardation); *Panetti v. Quarterman*, 551 U.S. 930 (2007) and *Ford v. Wainwright*, 477 U.S. 399 (1986) (recognizing unconstitutionality of execution of certain individuals who have mental illness); *Enmund v. Florida*, 458 U.S. 782 (1982), *Coker v. Georgia*, 433 U.S. 584 (1977), and *Kennedy v. Louisiana*, 554 U.S. 407 (2008) (declaring unconstitutional the practice of executing someone who did not kill the victim).

16. Of course, any attempt to argue that these teenaged/youthful offenders do not change much in the decades prior to their execution would reflect a failure to attribute blame to society for failing to provide on death row the types of rehabilitative interventions that would enable these children to grow in any meaningful way during the decades they spend condemned. Individual justices of the United States Supreme Court have expressed dismay that the long delay between conviction and execution, even for offenders who were adults at the time of their offenses, “subjects death row inmates to decades of especially severe, dehumanizing conditions of confinement.” *Johnson v. Bredesen*, 558 U.S. 1067, 130 S. Ct. 541, 543 (2009)(Stevens, J., statement with respect to Court’s denial of a writ of *certiorari*). See also *Valle v. Florida*, 132 S.Ct. 1 (U.S. Sept. 28, 2011)(Breyer, dissenting from Court’s denial of stay); *Thompson v. McNeil*, 556 U.S. 1114, 129 S.Ct. 1299, 1299-1300 (2009)(Stevens, J., statement with respect to Court’s denial of a writ of *certiorari*)(noting that, because most exonerations occur after ten years on death row, delay is inevitable and necessary, but calling such delays “inevitable cruelty” and “unacceptably cruel”), quoting *Furman v. Georgia*, 408 U.S. 238, 288 (1972) (Brennan, J., concurring) (“[T]he prospect of pending execution exacts a frightful toll during the inevitable long wait between the imposition of sentence and the actual infliction of death”) and *People v. Anderson*, 6 Cal.3d 628, 649, 100 Cal.Rptr. 152, 493 P.2d 880, 894 (1972) (“[T]he process of carrying out a verdict of death is often so degrading and brutalizing to the human spirit as to constitute psychological torture”). Compare *In re Medley*, 134 U.S. 160, 171 (1889)(describing the solitary confinement of the condemned in the four weeks preceding the execution “an additional punishment of the most important and painful character”). Justice Stevens’ description of the condemned, living for decades while “spending up to 23 hours per day in isolation in a 6-by 9-foot cell,” *Thompson v. McNeil*, *supra*, is especially disturbing when applied to prisoners who enter those isolation chambers as teenagers or very young adults. (Parenthetically, as of July 1, 2014, Florida still has not executed William Thompson, who is 62 years old and has been on death row since 1978 for an offense that he committed when he was 24 years old; however, on February 16, 2010, Florida executed Martin Grossman at age 45, for commission of a 1984 murder that occurred when Grossman was 19 years old.)

<http://www.dc.state.fl.us/activeinmates/deathrowroster.asp>

17. The State-by-state data is shown on the chart in Appendix 1, compiled from the Clark County Prosecutor’s Website.

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18. The term “exoneration” is used by the Death Penalty Information Center (DPIC), the Innocence Project, and others to refer to persons who, even though they were on death row or have been executed, have been acquitted of all charges related to the crime that placed them on death row, or have had all charges related to that crime dismissed by the prosecution, or have been granted a complete pardon based on evidence of innocence. Dieter, R., “Innocence and the Crisis in the American Death Penalty,” a DPIC Report (September 2004), available at [www.deathpenaltyinfo.org](http://www.deathpenaltyinfo.org). As of July 1, 2014, 144 former death row inmates have been exonerated. “There is no way to tell how many of the over 1,000 people executed since 1976 may have been innocent. Courts do not generally entertain claims of innocence once the defendant is dead. Defense attorneys move on to other cases where clients' lives can still be saved.” DPIC, <http://www.deathpenaltyinfo.org/innocence-and-death-penalty>. See e.g. D. Grann, "Trial by Fire: Did Texas execute an innocent man?" *The New Yorker*, Sept. 7, 2009.

19. K. Hennessey, A. Mason, et. al, *supra* note 11. The Sturm College of Law students provide a snapshot of the death rows for which information was available, and result in a catalogue identifying in almost every state all death row prisoners who were between the ages of 18 and 21 at the time of the offense. Further research and advocacy would be greatly assisted if those agencies that already track, record, and report death row populations on a regular basis could include in their reports and analyses information about the defendant’s age at the time of the offense.

20. This was one of the reasons that the Supreme Court in *Roper v. Simmons* found it necessary to announce a categorical rule, rather than continue with a failed system that left it up to the jury to decide if youth was a mitigating factor in a particular case. The trial judge had instructed the jurors they could consider as a mitigating factor. However, the prosecutor argued that it was an aggravating factor: "Age, he says. Think about age. Seventeen years old. Isn't that scary? Doesn't that scare you? Mitigating? Quite the contrary I submit. Quite the contrary." (*quoted in Roper v. Simmons, supra*, 543 U.S. at 548).

21. Yarkhan, A., Hosi, Y., Kamischke, A., Guinansaca, N., Mirkowicz, M. and Gur, O.M. (April 19, 2011) “Lost Youths: Execution of 18, 19, & 20-year-olds in the U.S. Since 2000.” For further information on the Team and its work, contact Oren M. Gur, M.S., Ph.D. Candidate, Department of Criminology, Law and Justice (M/C 141), University of Illinois at Chicago, 4<sup>th</sup> Floor Behavioral Sciences Building, 1007 W. Harrison St., Chicago, IL 60607-7104, Email: [ogur2@uic.edu](mailto:ogur2@uic.edu), [orengur@gmail.com](mailto:orengur@gmail.com)

22. K. Hennessey, A. Mason, et. al, *supra* note 11.

## Appendix 1

<b>Youth Executions</b> (persons ages 18-21 at the time of the offense) <b>by State* and Race/Ethnicity, Jan. 1, 2000 – July 1, 2014</b>				
<b>State</b>	<b>Total</b>	<b>Black</b> (age at time of offense) [year of execution]	<b>Hispanic</b> (age at time of offense) [year of execution]	<b>White</b> (age at time of offense) [year of execution]
Alabama	6	Ford (18)[2000] Grayson (19)[2007] Mason (19) [2011]		Fortenberry(20)[2003] Parker (19) [2010] Boyd (20) [2011]
Arizona	1	Singleton (20) [2004]		
Delaware	1			Jackson III (20)[2011]
Florida	3	Henyard (18) [2008] Kimbrough (18)[2013]		Grossman (19) [2010]
Georgia	7	High (19) [2001] Isaacs (19) [2003] Osborne (20) [2008] Davis (20) [2011]		Rhode (18)[2010] DeYoung (19)[2011] Cook (20)[2013]
Indiana	3			Johnson (20) [2005] Lambert (20) [2007] Woods (19) [2007]
Mississippi	2			Wilcher (19) [2006] Puckett (18)[2012]
Missouri	2			Roberts (19) [2001] Kreutzer (20) [2002]
N. Carolina	4	Jones (18) [2003]		Chandler (20) [2004] Rowsey (20) [2004] McHone (20) [2005]
Ohio	9	Dennis (18) [2004] Keene (19) [2009] Davie (19) [2010] Garner (19) [2010] Baston (20) [2011]		Byrd (19) [2002] Cooey (19) [2008] Getsey (19) [2009] Treesh (19)[2013]
Oklahoma	11	Bryson (18) [2000] Robinson (18) [2003] Brown (18) [2009]	Revilla (18) [2003] **	LaFevers (19) [2001] Fox (19) [2001] Fowler (20) [2001] Medlock (20) [2001] Neill (19) [2002] Delozier (19) [2009] Selsor (20) [2012]
S. Carolina	2	Young (19) [2000] Ivey (18) [2009]		
S. Dakota	1			Page (18) [2007]
Texas	72	Richardson (19)[2000] Wilkerson (19) [2000] Clayton (20) [2000] Rudd (18) [2001] Reeves (19)[2002] Tigner (20) [2002] Ransom (18) [2003] Dunn (19) [2003]	Soria (18) [2000] San Miguel(19)[2000] Flores (20) [2000] Medina (19)[2002] Martinez (20)[2002] Flores (20)[2004] Fuentes (19) [2004] Salazar (18) [2006]	Dillingham (19)[2000] Massey (20) [2001] Delk (19) [2002] Reneau (20) [2002] Riddle (19) [2003] Busby (19) [2004] Shields (19) [2005] Kunkle (18) [2005]

		McCullum (19)[2004] Green (18) [2004] Green, III (18) [2004] Bruce (19) [2004] Howard (18) [2005] Sterling (20) [2005] Jackson (20)[2006] Frazier (20)[2006] Dudley (20)[2006] Shannon (19)[2006] Fuller (18) [2006] O'Brien (18) [2006] Herron (18) [2006] Smith (18) [2006] Mosley (19) [2007] Parr (18) [2007] Nichols (19) [2007] Dorsey (18) [2008] Turner (19) [2008] Pondexter (19) [2009] Morris (20) [2009] Johnson (18) [2009] Oliver (20) [2009] Simpson (20) [2009] Blanton (18) [2009] Jones (19) [2010] Jackson (20) [2010] Bradford (20) [2011] Mathis (19) [2011] Hearn (19) [2012] Jasper, III (18) [2014] Doyle (18) [2014] <b>40</b>	Amador (18) [2007] Rodriguez (19) [2007] Gutierrez (18)[2007] Medillin (18) [2008] Cantu (18) [2010] Hernandez (20)[2012]** Garza (20)[2013] <b>15</b>	Dickson (18) [2007] Miller (19) [2007] Moore (20) [2007] Ries (19) [2008] Perry (19) [2010] Taylor (20) [2011] Hall (18) [2011] Hines (19) [2012] Cobb (18)[2013] <b>17</b>
Virginia	13	Goins (20) [2000] Ramdass (19) [2000]** Jackson (18) [2008] Yarbrough (18) [2008] Jackson (20) [2011] Adams (19) [2012]		Weeks (20)[2000] Beck (20) [2001] Patterson (19) [2002] Swisher (20) [2003] Cherrix (20) [2004] Hedrick (18) [2006] Powell (20) [2010]
<b>ALL STATES</b>	<b>137</b>	<b>67</b>	<b>16</b>	<b>54</b>

NOTE: Persons under 18 at the time of the offense were executed since 2000, but are not included above, because the execution of such persons is now unconstitutional. These executions were 1 white man in Oklahoma (Hain, 17 years old at offense, executed in 2003); 2 white men in Virginia executed in 2000, both 17 years old at offense (Roach and Thomas); and 6 black men executed in Texas (In 2000, Graham and McGinnis; in 2001, Mitchell; and in 2002, Patterson, Jones, and Beazley).

\* Twenty-two additional jurisdictions retained the death penalty on the books during all or some years since 2000, but executed no one who was 18, 19, or 20 at the time of the offense: Arkansas, California, Colorado, Connecticut, Idaho, Illinois, Kansas, Kentucky, Louisiana, Maryland, Montana, Nebraska, Nevada, New Hampshire, New Mexico, Oregon, Pennsylvania, Tennessee, Utah, Washington, Wyoming, and the Federal Government.

\*\* Daniel Juan Revilla and Bobby Lee Ramdass are both listed in the Clark County Prosecutor's data as "white." Research indicates that Daniel Juan Revilla's father was Hispanic (Victorino Revilla, Jr.) and his mother was white (Judith Fitch). Bobby Lee Ramdass is not only clearly a black man (or mixed race) as seen by the photograph on the link from the website, but also is reported to be a black male by a number of research sources. Rodrigo Hernandez is listed on the Clark County Prosecutor's list as "white," but in the linked file as "Hispanic," which is consistent with his appearance and the other identifying information.

## APPENDIX 2

### PARTIAL LIST OF COLORADO CONSTITUTION AND LAWS PLACING TEENAGERS IN A PROTECTED CLASSIFICATION and RECOGNIZING THEIR DIMINISHED CAPACITY \*

C.R.S. §2-4-401(6)	Unless superceded by specific statute, "“Minor” means any person who has not attained the age of twenty-one years.”
Colo. Const., art. II, §2	“The general assembly shall, as soon as practicable, provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state, wherein all residents of the state, between the ages of six and twenty-one years, may be educated gratuitously.”
§22-33-102 (2)	The Colorado School Attendance Law defines “adult” as “a person who has reached the age of twenty-one years,” <i>id.</i> ,
§22-33-103	all residents up to age 21 may attend public school, and referring to those students as children.
§22-33-102.5	regarding education of homeless children, and including all children under the age of 21 years
§22-2-401	Establishing facility schools unit within the Department of Education to ensure education of “children” in public facilities other than public schools)
§22-2-402(7)	‘Student’ means a child or youth who has attained three years of age on or before August 1 and who is under twenty-one years of age.
§ 19-5-201	“Upon approval of the court, a person eighteen years of age or older and under twenty-one years of age may be adopted as a child, and all provisions of this part 2 referring to the adoption of a child shall apply to such a person.”
§15-12-203(6)(a)	a personal representative under a will must be age 21 or older (“No person is qualified to serve as a personal representative who is: (a) Under the age of twenty-one.”)
§11-50-102(1), (11)	Person under 21 years old cannot manage affairs of another under the Colorado Uniform Transfers to Minors Act (“CUTMA”): ((1) ““Adult” means an individual who has attained the age of

twenty-one years."); (11) ("Minor" means an individual who has not attained the age of twenty-one years.)

§11-50-121

Under CUTMA, 21 years old is the age at which the custodial property held for the benefit of a minor must be distributed to the minor.

§15-14-102(2)

Person under 21 years of age cannot serve as a conservator. ("Conservator" means a person at least twenty-one years of age, resident or non-resident, who is appointed by a court to manage the estate of a protected person.)**Error! Hyperlink reference not valid.**

§15-14-102(4)

A guardian must be at least 21 years of age. ("Guardian" means an individual at least twenty-one years of age, resident or non-resident, who has qualified as a guardian of a minor or incapacitated person pursuant to appointment by a parent or by the court.)

§15-14-431 (1)

A Guardianship terminates at age 21. ("Unless created for reasons other than that the protected person is a minor, a conservatorship created for a minor also terminates when the protected person attains the age of twenty-one years.")

§19-5-202

Only persons 21 years of age and older have the right to petition the court for an adoption; persons under 21 years old must obtain court approval to do so.

§ 12-47-103

"(1) "Adult" means a person lawfully permitted to purchase alcohol beverages."

§18-13-122 (2)(a)

Persons under the age of 21 are legally regarded as "underage persons," and it is a strict liability offense for any such youth to possess alcoholic beverages.

§12-55.5-106 (1)(k)

Youth under 21 can lose licensure if they possess, consumer, or serve alcohol. ("The director may deny, suspend, revoke, or place on probation an outfitter's registration if the applicant or holder... serves or consumes alcohol while engaged in the activities of an outfitter, if the applicant or holder is under twenty-one years of age.")

- §42-2-126 (2)(d) Youth under 21 years old are subject to more stringent prohibitions against driving with a certain blood alcohol content.
- § 12-47-901 It is unlawful to sell alcohol to a person under 21 years of age. (making it unlawful for any person to “sell, serve, give away, dispose of, exchange, or deliver or permit the sale, serving, giving, or procuring of any alcohol beverage to or for any person under the age of twenty-one years.”).
- §25-5-419 Requiring that special cautions be placed on labels, including those of confectionaries, if the alcohol content is such that the commodity cannot be sold to persons under age 21.
- §§ 12-47-103 (1)(a)(VII), 12-47-307. Persons under 21 years old cannot hold liquor licenses.
- § 12-47-801(3)(a)(I), -801(4)(a)(I) As an exception to general laws of liability, holders of liquor licenses, and even social hosts, can be sued if they knowingly serve alcohol to a person under 21 years of age.
- §42-2-105(2) Youth under the age of 21 years cannot hold commercial drivers licenses.
- §§ 30-15-401, 31-15-401 Local governments are permitted to prohibit persons under 21 from entering sexually oriented businesses.
- § 12-47.1-809 Youth under 21 years of age may not sit in a casino, linger in a gambling hall, or even share in gambling proceeds.
- §42-2-106 A person who has been issued a temporary permit to drive while under instruction or while learning can drive only if the person in the front seat of the car with the new driver is at least twenty-one years of age.

§42-4-116(1) A person under 18 years old cannot drive with passengers under the age of 21 in the car, except if such persons are members of the minor driver's immediate family.

§19-5-201 Children between the ages of 18 and 21 years old may be adopted.

§42-2-121 (5)(a)(III) In certain circumstances, they may obtain expungement of their records of conviction and revocation for some UDD's, if the UDD occurred before the age of 21 years old.

Laws 2008,

ch. 311, H.B. 08-1204

noting that "(a) A significant number of children in Colorado are placed in day treatment centers, residential child care facilities, other out-of-home placement facilities, or hospitals and receive their education through programs provided by these facilities;" and defining "student" as "a child or youth who has attained three years of age on or before August 1 and who is under twenty-one years of age."

Laws 2009, ch. 77, H.B. 09-112, codified at Section 18-1.3-407.5, C.R.S. (2009)(effective October 1, 2009). *See also* Laws 2006, Ch. 228, H.B. 06-1315, codified at Section 18-1.3-401(4)(b), Section 17-22.5-104(2)(d)(IV), and *id.*, subsections -402(3), -403.7, and -404

(providing that offenders convicted of first degree murder who were under 18 years old at the time of the offense are eligible for parole after 40 calendar years).

§25-21.5-102(1)(a) Colorado has established a preventive dental program for children under twenty-one years of age. Section("(a) A dental assistance program of preventive, emergency, diagnostic, and limited restorative dental care for **children under twenty-one years of age** who are not insured under a dental plan and are not eligible for medicaid.")

§25-21.5-103(3)(a) Under the above program, "(3) "Eligible child" means a child: (a) Who is under the age of twenty-one years; (b) Who is not covered under a policy of dental insurance; (c) Who is not eligible for medicaid; and (d) Whose family income is equal to or less than one hundred eighty-five percent of the federal poverty level."

- §26-5.3-105(1) Colorado protects with emergency assistance a child under the age of twenty-one if that child is at risk of homelessness. (“(1) Families with children at imminent risk of out-of-home placement shall be eligible for emergency assistance. Assistance shall be available to or on behalf of a needy child under twenty-one years of age and any other member of the household in which the child lives if ...[criteria for emergency assistance].”
- §38-6-302(1)(a) For purposes of the aggravated incest statute, ““child” means a person under twenty-one years of age.”
- §16-11-301(2) “Unless otherwise provided in the “Colorado Children's Code”, title 19, C.R.S., a defendant convicted of a crime which may be punished by imprisonment in a county jail may be sentenced to a correctional facility other than state correctional facilities if at the time of sentencing the defendant is sixteen years of age or older but under the age of twenty-one years, and if, in the opinion of the court, rehabilitation of the person convicted can best be obtained by such a sentence, and if it also appears to the court that the best interests of the person and of the public and the ends of justice would thereby be served.”
- §12-36-106.5 Persons licensed as a physician’s assistant by virtue of their status as a **Child** Health Associate may work on patients only so long as the patient is under the age of 21. The “Shriner’s exception,” which permits physicians from out-of-state to work in Shriner’s hospitals in Colorado, without an in-state license, permits such a practice only if the out-of-state physician “only provide services to **children** under twenty-one years of age.” C.R.S. §12-36-107(5)(a)(IV).<sup>1</sup>

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<sup>1</sup> See Laws 1999, Ch. 63, §1(a). Legislative Declaration: “Shriners Hospitals for Children are a network of pediatric specialty hospitals where children under eighteen years of age receive orthopedic, spinal cord injury, and burn related medical care free of charge and may continue medical care until twenty-one years of age if approved by the Shriners hospital's chief of staff and the board of governors of the hospital.....

“(2) The general assembly hereby finds, determines, and declares that: (a) Colorado children under eighteen years of age, and in some circumstances **children up to twenty-one years of**

By law, a child under the age of 21 is not permitted to be licensed as at least the following professions or occupations:

1. a representative for wholesale manufacturers or sellers of pharmaceutical drugs, C.R.S. §12-22-802(5)(a),
2. a podiatrist (§12-32-105(1)(a)),
3. a chiropractor (§12-33-112),
4. a dentist (§12-35-117(1)(a)),
5. a physician's assistant (§12-36-106(c)(IV)),
6. a nursing home administrator (§12-39-106(1)),
7. an optometrist (§12-40-108(1)(a)),
8. a psychologist (§12-43-304(1)(a)),
9. a licensed clinical social worker or a licensed social worker (§12-43-404 (2)(a), (1)(a)),
10. a marriage and family therapist (§12-43-504(1)(a)),
11. a physician (§12-36-107(2)(a)),
12. a licensed professional counselor (§12-43-603(1)(a)),
13. and dozens upon dozens of other professions.

Many additional provisions of the Colorado statutes refer to persons under the age of 21 as "children" and "minors:"

1. Persons under age 21 are minors for purposes of claims before the Industrial Claims Commission. *Casa Bonita Restaurant v. Industrial Com'n of the State of Colo*, 677 P.2d 344 (Colo. App. 1983) (claimant who at 20 years and six weeks of age was a **minor** at the time of her injury and thereby entitled to maximum benefits).
2. Dependent children between the ages of 18 and 21 are presumed to be wholly dependent, for purposes of the Workers' Compensation statutes compensating

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**age**, who have orthopedic, spinal cord injury, or burn conditions should have ready access to the medical care provided by the Shriners hospitals"

the children of deceased workers, if they were dependent at the time of the worker's death, and are full-time students.<sup>2</sup>

3. The Colorado Employment Security Statute provisions, in discussing the legal significance of a "**child under the age of twenty-one**," states: "Employment' does not include services performed by an individual in the employ of his spouse and service performed by a **child** under the age of twenty-one in the employ of his father or mother." C.R.S. §8-70-129.
4. The Colorado Health Care Coverage Act includes the following definition: "(2) "**Dependent child**" means an adopted or natural **child** of an employee who is (a) Under twenty-one years of age." C.R.S. §10-16-115(2).
5. The Colorado Uniform Transfers to Minors Act also refers to children under 21 years as *minors*: In prescribing when assets of a trust are to be given to the youth, the statute provides: "(1) The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of: (a) The **minor's attainment of twenty-one years of age**; or (b) the minor's death." C.R.S. §11-50-121(1). *See also id.*, §11-50-102 (1) ("**Adult**" means an individual who has attained the age of twenty-one years.") and (11) ("**Minor**' means an individual who has not attained the age of twenty-one years.").

\* *Last updated: 2010*

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<sup>2</sup>"(c) Minor children of the deceased who are eighteen years or over and under the age of twenty-one years if it is shown that: (I) At the time of the decedent's death they were actually dependent upon the deceased for support; and (II) Either at the time of the decedent's death or at the time they attained the age of eighteen years they were engaged in courses of study as full-time students at any accredited school. The period of presumed dependency of such persons shall continue until they attain the age of twenty-one years or until they cease to be engaged in courses of study as full-time students at an accredited school, whichever occurs first." C.R.S. § 8-41-501 (Persons presumed wholly dependent).