District Court, City and County of Denver, Colorado Lindsey-Flanigan Courthouse 520 W. Colfax Avenue Denver, Colorado 80204	**COURT USE ONLY**
Plaintiff: THE PEOPLE OF THE STATE OF COLORADO Defendant:	Case number: Division: Criminal Courtroom:
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GUARDIAN AD LITEM'S REVERSE TRANSFER HEARING BRIEF	

TABLE OF CONTENTS

PAGE NO.

TABLE OF AUTHORITIES

CASES PAGE(S)

STATUTES

LEARNED TREATISES ADMITTED INTO EVIDENCE

INTRODUCTION

The Guardian ad Litem in the above-captioned case hereby submits the following brief with respect to the reverse transfer issue currently pending before this honorable Court. This brief, consistent with the Notice to the Court filed October 17, 2013, addresses subsections IV, V, VI, VII, and X of 19-2-517 (3)(b) C.R.S. It is respectfully submitted that only these factors apply to the assigned role of the Guardian ad Litem in this proceeding. It is submitted that the "preliminary hearing issue" is beyond the parameters of the Guardian ad Litem's participation, and therefore this brief will not address that issue.

STATEMENT OF THE ISSUES PRESENTED FOR ANALYSIS

I. DOES THE AGE OF THE JUVENILE AND THE MATURITY OF THE JUVENILE AS DETERMINED BY CONSIDERATIONS OF THE JUVENILE'S HOME, ENVIRONMENT, EMOTIONAL ATTITUDE, AND PATTERN OF LIVING SUPPORT A TRANSFER OF JURISDICTION TO THE JUVENILE COURT?

II. DOES THE RECORD AND PREVIOUS HISTORY OF THE JUVENILE IN PRIOR COURT RELATED MATTERS SUPPORT A TRANSFER OF JURISDICTION TO THE JUVENILE COURT?

III. DOES THE CURRENT AND PAST MENTAL HEALTH STATUS OF THE JUVENILE AS EVIDENCED BY RELEVANT MENTAL HEALTH OR PSYCHOLOGICAL ASSESSMENT OR SCREENING THAT WERE MADE AVAILABLE TO BOTH THE DISTRICT ATTORNEY AND DEFENSE COUNSEL SUPPORT A TRANSFER OF JURISDICTION TO THE JUVENILE COURT?

IV. DOES THE LIKELIHOOD OF THE JUVENILE'S REHABILITATION BY USE OF THE SENTENCING OPTIONS AVAILABLE IN THE JUVENILE COURTS AND DISTRICT COURTS SUPPORT A TRANSFER OF JURISDICTION TO THE JUVENILE COURT?

V. HAS THE JUVENILE BEEN PREVIOUSLY COMMITTED TO THE DEPARTMENT OF HUMAN SERVICES FOLLOWING AN ADJUDICATION FOR A DELINQUENT ACT THAT CONSTITUTES A FELONY TO SUPPORT A TRANSFER OF JURISDICTION TO THE JUVENILE COURT?

STATEMENT OF THE CASE

A. Nature of the Case.

This case is before the Court as a criminal proceeding to determine whether jurisdiction should be transferred to the juvenile court.

B. Course of the Proceedings.

This case is before the Court from the Plaintiff's Information filed on November 19, 2012. A Preliminary Hearing/Reverse-Transfer Hearing (hereinafter "hearing") commenced on April 4, 2013. The hearing continued on the following dates: April 4, 2013, May 17, 2013, May 24, 2013, June 21, 2013, and October 4, 2013.

C. Statement of the Facts Relevant for Analysis.

The juvenile is a 17 year old male currently residing at the Gilliam Youth Detention Center. From the evidence adduced at the hearing, the juvenile has been subjected to profound abuse and neglect since his early childhood. The juvenile's childhood experiences had a devastating effect on his cognitive and emotional growth. He has been exposed to sexual abuse, homelessness, medical neglect, and substance abuse involving family members and outside individuals. He has also consistently experienced episodes of domestic violence.

On one occasion, the juvenile was taken to the hospital due to an extreme anxiety reaction from witnessing his mother in an altercation with a significant other. It was indicated at the hearing that the juvenile's mother was intoxicated at the time when she brought the juvenile to the hospital. The juvenile did not walk or talk until age two and a half, and did not speak in full sentences until he was four

years old. Despite these delays, the juvenile was not provided with adequate medical attention which could have altered the trajectory of his development. The juvenile began having difficulty at school around the first grade. He struggled with his social interactions and was provided with an individualized education program to receive special education services for an emotional disability. He spent extensive time attending day treatment facilities so that his academic scheduling could be provided with additional professional support.

The cumulative effect of these life experiences brought devastating consequences to The juvenile's well-being. The juvenile scored in the "severe concern" range when he was evaluated for trauma resulting from sexual victimization. Since the juvenile was taken into custody, he was diagnosed with a medical condition which can contribute to speech, language, social, emotional, and learning difficulties.

SUMMARY OF THE ARGUMENT

Based on the totality of circumstances presented at the hearing, this Court should transfer jurisdiction to the juvenile court. This result would not only serve the juvenile's best interests but would protect the safety and best interests of the community. The juvenile is capable of being successfully rehabilitated due to dynamic neurological development at his young age along with his amenability to treatment. Under the supervision of the Division of Youth Corrections, the juvenile will be able to start his rehabilitation quickly within a secure setting. In the Colorado Department of Corrections, the juvenile would not receive timely treatment. In fact, he might not obtain any treatment whatsoever. Additionally, the juvenile faces the grave risk to be further abused within the confines of a brutal adult environment. It is respectfully submitted that the five factors discussed in this Reverse Transfer Brief under 19-2-517 (3)(b) C.R.S. are the most significant for this

honorable Court to consider in making a reverse transfer determination. For these reasons, the option which serves the best interests of the juvenile and the community will be optimally achieved through a transfer of jurisdiction to the juvenile court.

ARGUMENT

I. THE AGE OF THE JUVENILE AND THE MATURITY OF THE JUVENILE AS DETERMINED BY CONSIDERATIONS OF THE JUVENILE'S HOME, ENVIRONMENT, EMOTIONAL ATTITUDE, AND PATTERN ON LIVING SUPPORT A TRANSFER OF JURISDICTION TO THE JUVENILE COURT.

A. Age

A recurrent theme at the hearing was how the juvenile's mind (at 17 years old) is still developing. A strong supporter of this principle was (name of witness). Mr. _____ was qualified as an expert in the area of juvenile delinquent treatment and offense-specific treatment and rehabilitation as it pertains to sex offenders (V. II, p. 44, ll. 6-10). He was employed for ___ years at the Colorado Division of Youth Corrections. His last title was _____ (V. II, p 39, pp 7-8). It was indicated by Mr. _____ that a youth's neurological status is "a dynamic process". Consequently, according to Mr. _____, "there's more possibility of change than there's going to be with adults" (V. II, p.59, ll. 20-22). The prefrontal cortex, the thinking part of the brain is not fully developed until the mid-20s (V. II, p. 60, ll. 2-4). The prefrontal cortex is related to "self regulation and managing emotions, impulsivity, future orientation, being able to think ahead, being able to think about the consequences of one's actions" (V. II, p. 60, ll. 16-19). Essentially, it includes all things that are important from the standpoint of decision-making and mature judgment (V. II, p. 60, ll. 20-21).

According to Mr. _____, the potential to alter how a youth's brain is wired comes from it's "plasticity" (V. II, p. 61, ll. 3-12).With regard to offense-specific situations, Mr. _____ further indicated that the rate for juveniles to sexually reoffend is 5-15% (V. II, p. 81, l. 23- p. 82, l. 3). According to Mr. _____, this rate is quite low in comparison to adults who sexually offend (V. II, p. 82, l. 22- p. 83, l.2). Dr. _____ also testified about this issue. He was qualified as an expert in psychology of adolescents and adults in forensic psychology, psychological and neuropsychological assessment, adolescent behavior and physical and emotional development, trauma and its effects, and treatment of adults and juvenile for psychological issues (V. III, p. 22, ll.6-12). Dr. _____ further indicated that the human brain fully matures "at age 25 or 26" (V. III, p. 24, ll. 24-25).

The testimony from these esteemed witnesses is fully supported by the learned treatises in this area. In *Adolescence, Brain Development, and Juvenile Culpability* by Adam Ortiz, it is indicated that new technologies make these neurological discoveries possible. According to the Brief for American Psychological Association, American Psychiatric Association and National Association of Social Workers as Amicus Curiae, *Miller v. Alabama* (hereinafter "*Miller* Brief"), the relevant research in developmental psychology and neuroscience documents that juveniles have greater immaturity, vulnerability, and changeability. Juveniles are less capable of mature judgment than adults. As a result, they are more likely to engage in risky behaviors. (See also *Roper v. Simmons*, 543 U.S. 551, 569 (2005). Juveniles are also more vulnerable to negative external influences. The positive aspect of these scientific facts is that juveniles have a greater capacity for change and reform. "The character of a juvenile is not as well formed as that of an adult" and the personality traits of juveniles are more transitory, less fixed" (See *Roper*, 543 U.S. at 570).

B. Maturity

The juvenile was sixteen years old at the time of the alleged acts which comprise this case. However, according to Dr. _____, based on his maturity, the juvenile, at that time, was at an "emotional age of 11-12 years old" (V. III, p. 51, ll. 17-20). The disparity between the juvenile's chronological age and emotional age is best understood when analyzing his home life and outside environment.

1. Home

a. Homelessness

The juvenile's mother testified that out of the juvenile's 17 years of life, they (the juvenile and his mother) were without their own home for nine years (V. I, p. 69, 11-16 and 17-19). This included homelessness up to two years at a time (V. I, p. 62, ll. 5-10). and necessitated "multiple moves" (V. I, p. 62, l.11-p. 63, l. 25).

b. Medical Neglect

The juvenile's mother further testified that the juvenile did not walk until he was about two years of age (V. I, p. 54, ll. 7-8). At the hearing, this issue was assessed by Dr. _____. Dr. _____ was qualified as an expert in the areas including but not limited to the following: psychological, psychosexual, neuropsychological and addiction assessment in adolescent behavior; trauma and effect; and treatment of adults and juveniles with respect to psychological issues, trauma, sex offending, addiction, and family issues (V. IV, p. 9, ll.11-18). It was pointed out by Dr. _____ that "doctors get a little scared when it's about 14 months and kids are not walking at that point (V. II, p. 24, 15-16). The juvenile's mother further testified that the juvenile did not talk until he was about two (V. I, p. 54, ll. 6-8). The juvenile's mother never talked to a doctor about these medical issues (V. I, p. 55, ll. 3-5). Her stated explanation was that "she figured he would walk and talk when he was ready" (V. I, p. 55, ll.1-2).

A review of medical records did not reveal any evidence of any well-child visits (V. II, p. 14, ll. 13-17). According to Dr. _____, "It (the juvenile's medical care) was all on an emergency basis" (V. III, p. 48, ll. 11-18). It was testified by the juvenile's mother that the juvenile was tested for leukemia at age "five, six maybe" because he would bleed profusely at times. However, a review of relevant medical records by the investigator for the Office of the Public Defender on this issue did not reveal a single visit (V. II, p. 13, ll.11-15). The juvenile also had ongoing asthma. In a medical record at age nine, it was discovered that this asthmatic condition was exacerbated by the juvenile's mother's cigarette smoking in the house. It was also worsened by anxiety and exposure to conflict in the home (V. III, p. 43, ll. 6-12). The juvenile's mother also testified that the juvenile was placed on a medication for anxiety and depression at around 12 or 13 years of age. A reason he stopped taking the medication was due to its cost (V. I, p. 57, l. 3- p. 58, l.7).

c. The Parent-Child Relationship

Due to parenting inadequacies, Dr. _____ testified that the juvenile turned into a "surrogate emotional husband". The juvenile was there to comfort his mother and take care of her. Dr. _____ went on to testify that "... he was there to listen to her to pat her on the back when she cried. When she did parent, she was very inconsistent. So inconsistent that she would tell him one thing and then he was expected to do another or he had two opposing goals, both of which were mutually exclusive, and no matter what he did, the consequences are going to be really serious. And that kind of double bind creates some substantial anxiety in a kid. Her parenting was probably **as inconsistent as any parent that we've seen** (emphasis added) because of her use of alcohol and probably drugs" (V. III, p.45, l. 13 - p. 46, l. 4). When conflict ensued between

the juvenile and his mother, the juvenile's mother testified that the juvenile would get angry, slam doors, and hit walls. He would also leave for two to three days (V. I, p. 61, ll. 10-20). The juvenile's mother would not call the police when he would leave even though she did not know his whereabouts (V. I, p. 61, 22 - p. 62 l.1).

2. ENVIRONMENT

a. Adult Relationships

The male adult who was romantically involved with the juvenile's mother at the time of the juvenile's birth was _____. However, according to the juvenile's mother, "...he abused alcohol and left after "a little while" (V. I, p. 50, ll.18-23). The one adult male who was involved in the juvenile's life for a lengthy period of time was _____. He was characterized as a "father figure for a period of years. According to the juvenile's mother, _____was "fired from the job for stealing or something" (V. I, p. 51, l. 24-25). Despite an extensive criminal record and being "in and out of jail" (V. I, p. 52, ll. 1-6), _____ would exercise caretaking responsibilities of the juvenile and, in the process, seriously jeopardize his safety and well-being. _____ would take the juvenile in the car to sell crack on numerous occasions (V. II, p. 20, l. 25 - p. 21, l. 4). The juvenile accompanied _____ on drug-related transactions until the juvenile's mother decided that she would not involve him (_____) in their lives any longer (V. I, p. 50, l. 24 - p. 51, l. 16).

With respect to the juvenile's encounters with the juvenile's mother's significant others, the juvenile was a consistent witness and victim of domestic violence. There was a constant history of physical and verbal altercations taking place in the living environment which were exacerbated by frequent alcohol consumption. According to _____ interview with _____ on March 11, 2013, there was "fighting going on all the time in the household" (V. IV p. 17, l. 10). On one occasion,

the juvenile indicated to _____, that he was transported to Rose Medical Center by ambulance for a panic (anxiety) attack which was brought on by fighting between his mother and a boyfriend while the juvenile's mother's alcohol level was high (V. II, p. 15, ll. 2-14). The juvenile additionally indicated that he had been sexually abused by someone that his mother had brought into the home (V. III, p. 48, l. 2-3). He reported to Dr. _____ that the sex abuse happened when he was six years old and that he had not reported it (V. IV. p. 36, ll. 15-17).

b. School

The juvenile's school experience was disrupted on a continuous basis. The juvenile's mother stated that it was "hard for (the juvenile) to sit in a classroom full of students" (V. I, p. 58, l. 22 - p. 60, l. 8). He also had truancy issues (V. I, p. 60, ll. 22-25). Dr. _____ testified that the juvenile "had a school record full of accounts where he was taunted, bullied, didn't know how to interact with these kids" (V. III, p. 50, ll, 6-7). Although the juvenile was provided with an Individualized Education Plan (IEP), the juvenile's mother was unaware that he had been diagnosed with a disability (V. I, p. 58, ll. 20- 21). The juvenile's mother indicated that the juvenile attended many schools including day treatment programs where he had been provided with more individualized attention. Despite the specialized nature of these curriculums, the serious concerns continued with respect to his inability to appropriately function within the school environment.

C. Emotional Attitude

In light of the extreme abuse and neglect issues descried above, it is no surprise that when The juvenile was arrested, he indicated that he did not have a family (V. IV, p. 40, ll. 3-4). On that basis, it is also easy to understand that he might seek out a surrogate family. Dr. _____ indicated that the juvenile was "very susceptible to the gang influence. If they would accept him, he'd

do whatever it is they wanted" (V. III, p. 54, ll, 13-15). Dr. _____ indicated that the juvenile has a "very low, very poor self image" (V. IV, p. 29, ll. 19-20). Perhaps the most telling indication of the juvenile's emotional attitude was when Dr. _____ asked him to tell her what his happiest memory was. He responded by stating: "I don't have one" (V. IV, p. 30, l. 18).

D. Pattern of Living

Dr. _____ took the opportunity to summarize the juvenile's "pattern of living" when he testified that "It's my belief that his experience was very chaotic, very traumatic, and he witnessed a significant amount of domestic violence in the home" (V. III, p. 46, ll. 15-17). He further explained that when a person is exposed to a significant degree of animosity and violence while being deprived of nurturing, they become preoccupied with what's going on in their environment. On that basis, these individuals cannot do what is necessary to develop at a normal rate (V. III, p. 27, ll. 10-15). The child that grows up in a very acrimonious, hostile, punishing environment is going to learn how to be acrimonious, hostile and punishing..." (V. III, p. 35, ll. 11-13). This is the unmistakable pattern of living that the juvenile has experienced throughout his lifetime.

II. THE RECORD AND PREVIOUS HISTORY OF THE JUVENILE IN PRIOR-COURT RELATED MATTERS SUPPORTS A TRANSFER OF JURISDICTION TO THE JUVENILE COURT.

Based on the record, the juvenile's previous court-related history is extremely minimal. He has no state-level adjudications in delinquency court and no convictions in adult court. In municipal courts cases, he has, as a juvenile, successfully completed a deferred judgment (Case Number: _____) resulting in it's dismissal, and received a curfew violation (Case Number_____).

III. THE CURRENT AND PAST MENTAL HEALTH STATUS OF THE JUVENILE AS EVIDENCED BY RELEVANT MENTAL HEALTH OR PSYCHOLOGICAL ASSESSMENT OR SCREENING THAT WERE MADE AVAILABLE TO BOTH THE DISTRICT ATTORNEY AND DEFENSE COUNSEL SUPPORT A TRANSFER OF JURISDICTION TO THE JUVENILE COURT.

A. Mental Health Diagnosis:

The hearing involved two mental health professionals who assessed the juvenile to formulate a mental health diagnosis:

1. Dr. _____:

After evaluating the juvenile, Dr. _____ formulated the following mental health diagnoses: Axis 1: Dysthmic Disorder; Adjustment Disorder, Anxiety Disorder, Physical Abuse or neglect of a child. Axis 2 R/O: Borderline Personality Disorder (V. III, p. 61, l. 17).

2. Dr. _____:

After evaluating the juvenile on March 11, 2013, Dr. _____ indicated that the juvenile has mental health symptoms including "ADHD (Attention Deficit Hyperactivity Disorder), bipolar disorder, probably post traumatic stress disorder and substance abuse problems that are really being caused by some of these traumatic things that have happened in his life..." (V. IV, p. 52, ll. 21-25).

Dr. _____ also administered a trauma evaluation on the juvenile. She concluded that he had a severe rating on the Trauma Intrusive Thought, Trauma Symptomology, and Trauma Potentiator Scales. She further disclosed: "I don't know that I ever had a juvenile client that's had severe on all three of those scales..."(V. IV, p. 37, ll. 19-21). It is very significant that Dr _____ testified that the courts, Department of Corrections, Division of Youth Corrections, and the entire community relies on the recommendations from these testing procedures (V. IV. p. 89, ll 2-5).

With respect to the trauma issue, Dr. _____ testimony is well-supported. Mr. _____ added that with chronic trauma, "the brain is essentially wiring itself to survive in a world that the brain is perceiving as threatening or malevolent". Therefore, "it really becomes all about day to day survival" (V. II, p. 66, ll. 10-16). In *The Report of the Attorney General's National Task Force on Children Exposed to Violence* (U.S. Dept. Of Justice Office of Juvenile Justice and Delinquency Prevention, December 12, 2012), physically abused children are particularly likely to develop beliefs that adopt violence as a form of self protection and control of other people. It's characterized as "reactive aggression" (at p. 32). This paper also states: "Many youth in the system appear angry, defiant, or indifferent, but actually they are fearful, depressed, and lonely. They hurt emotionally and feel powerless, abandoned, and subject to double standards by adults in their lives... (at p. 172). In the context of the juvenile's life experiences, Dr. _____ added that "the child that grows up in a very acrimonious, hostile, punishing environment is going to learn how to be acrimonious, hostile and punishing..." (V. III, p. 35, ll. 11-13).

There was also testimony about the medical condition from Dr. _____ . He was qualified as an expert in medical genetics, in pediatrics, in clinical genetics, and metabolism as well as diagnosis and treatment of genetic disorders (V. V, p. 28, ll.16-19). When Dr. _____ met the juvenile, he gave him a clinical diagnosis of _____ which is a _____disorder (V. V, p. 28, 6-14 and p.34, ll. 21-22). Dr. _____ explained that when an individual is diagnosed with this disorder, their moods and reaction are altered. "The swing is bigger so everything gets pushed out so they feel things more intensely. (V. V, p. 38, ll. 12-14). Some of the characteristics attributed to _____ are lack of concentration, impulsiveness, attention, hyperactivity, and depression (V. V p. 39, ll. 22 - p. 40, l. 1).

Fortunately, individuals afflicted with this disorder often do better after receiving _____ treatment. Dr. _____ testified that the potential for _____ to reduce

pendulum swings is good and would help rehabilitation in other areas, including psychiatric issues making someone more amenable to that type of treatment (V. V, p. 54, l. 17 - p. 55, l. 2). He believed that the juvenile is a candidate for this type of therapy (V. V, p. 42, l. 12 and p. 45, ll. 9-10). The testimony by Dr. _____ also included a discussion of _____. In her experience, she has seen individuals afflicted with the disorder experience a lack of self-esteem and have problems interacting with peers. Consequently, she stated that "there is that vulnerability that comes from it, that, again, results in sometimes that sexual acting out" (V. IV, p. 58, ll. 12-14 and ll. 21-24). She also cited to a 2012 study which demonstrated an increased risk for individuals with _____ committing sexual offenses (V. IV, p. 59, ll. 2-4).

3. Combined Findings:

Despite the juvenile's current and past mental health status, both Dr. _____and Dr. _____ believe that the juvenile can be rehabilitated. Dr. _____ testified that the juvenile has that "intangible willingness to change" which makes someone amenable to treatment (V. III, p. 103, ll. 9-12). Similarly, Dr. _____ testified that the juvenile has a good motivation level and amenability to treatment (V. IV. p. 42, ll. 6-8). One example of his motivation to help himself was when Dr. _____ noticed how the juvenile was "really interested" when they met to discuss his _____ diagnosis (V. V, p. 70, l. 9). According to Dr. _____, "he (the juvenile) has a lot of positive characteristics in terms of having goals, wanting to do something in life, acknowledging some responsibility that warrant him getting some treatment" (V. IV, p. 53, ll.11-14). Dr. _____ expressed that "... in spite of everything, he was still saying I want to go to college. I really want to have a career" (V. IV. p. 24, ll. 16-18). In fact, Dr. _____ was so encouraged by the juvenile's treatment prospects that she believes through treatment, he could be safe in the community by his

21st birthday (V. IV, p. 82, ll. 14-17). In Dr. _____ experience, most juveniles she meets say that they don't need help (V. IV, p. 53, ll.17-18). However, in the juvenile's case, from the testing procedures, she poignantly stated that "he was sort of crying for help" (V. IV, p. 42, l.11). This help can be best provided through the resources provided through the juvenile justice system as discussed below.

IV. THE LIKELIHOOD OF THE JUVENILE'S REHABILITATION BY USE OF THE SENTENCING OPTIONS AVAILABLE IN THE JUVENILE COURTS AND DISTRICT COURTS SUPPORTS A TRANSFER OF JURISDICTION TO THE JUVENILE COURT.

A. Constitutional Implications: Roper and Graham

The United States Supreme Court has concluded that "marked and well understood" developmental differences between juveniles and adults both diminish a juvenile's blameworthiness for their criminal acts and enhance their prospects of change and reform *Roper v. Simmons*, 543 U.S. 551 at 572 (2005). In *Graham v. Florida*, 130 S. Ct. 2011 (2010), it was noted that adolescents lack an adult's capacity for mature judgment; are more vulnerable to negative external influences; and that their characters are not yet fully formed (130 S. Ct. at 2026-2027) (See also *Roper* 543 U.S. at 569-570, 573). The logical deduction reached in both *Roper and Graham* is that these differences do not absolve juveniles of responsibility for their crimes, but that do reduce their culpability and undermine any justification for definitively ending their free lives (see *Roper* 543 U.S. at 569-570 and *Graham* 130 S. Ct. at 2026) (see also *Brain Development, and Juvenile Culpability*, American Bar Association Juvenile Justice Center, Jan. 2004 A.B.A. Sec. Crim. Just. As the *Miller* Brief ultimately asserts: sentencing juveniles to lifelong imprisonment with no opportunity to demonstrate reform is a constitutionally disproportionate punishment (at p. 5).

B. Additional Perspectives

At the hearing, Mr. _____ testified that Laurence Steinberg is "one of the foremost experts and researchers in regard to juvenile justice issues" (V. II, p 54, l. 24 - p. 55, l. 1). In his treatise, *Adolescent Development and Juvenile Justice*, 5 Annu. Rev. Clin. Psychol. 47 (2009), Mr. Steinberg makes it abundantly clear that sanctioning adolescents as adults is counterproductive" (at p. 66). Mr. Steinberg's technique utilizes developmental research to guide decision-making. This chosen strategy provides a solid framework for policies and practices that will enhance public safety in the long run by promoting healthy adolescent development (at p. 69-70). According to Mr. Steinberg, this research on adolescent brain, cognitive, and psycho-social development supports the view that adolescents are fundamentally different from adults in ways that warrant differential treatment in the justice system (at p. 70). This approach is consistent with the *Report of the Attorney General's National Task Force on Children Exposed to Violence* (supra) which states: Juvenile Justice programs have historically had three primary goals: increasing safety in juvenile justice facilities and in the community, bringing about justice for crimes committed, and rehabilitation of the youth in the care of these programs. With the growing recognition that many youth in these programs have significant exposure to violence and mental health problems, a fourth goal has emerged: addressing youths' mental health needs to enable juvenile justice programs and facilities to successfully achieve their original goals of safety, justice, and rehabilitation (at pages 177-178). In the final analysis, Mr. Steinberg and Ron Haskins state in *Keeping Adolescents Out of Prison, 18 The Future of Children 2*, Princeton-Brookings (Fall 2008) that a core principle of the American justice system is "penal proportionality". This foundational doctrine holds that fair criminal punishment is based not only on the harm caused by the crime but also on the blameworthiness of the perpetrator" (at p. 3).

The dual objectives of helping a juvenile while remaining mindful of community safety is

vividly encapsulated in the Legislative Declaration of Colorado's Children Code. In relevant part, it states the purposes of this title are: To secure for each child subject to these provisions such care and guidance... as will best serve his welfare **and** (emphasis added) the interests of society (19-1-102 (1)(a) C.R.S. This section elaborates further by emphasizing that the role of the justice system is to "secure for any child removed from the custody of his parents the necessary care, guidance, and discipline to assist him in becoming a responsible and productive member of society" (19-1-102(1)(d) C.R.S. (See also *In re People in Interest of B.M.C.*, 506 P.2d 409 (1973).

C. Evidence in the Context of Offense-Specific Circumstances

1. Division of Youth Corrections

a. Introduction

Consistent with the findings indicated immediately above, a new approach to treating offense-specific situations is warranted. A fresh outlook is reflected in the position paper: "*No-Cure Policy" with Juveniles Who Have Committed Sexual Offenses* published by the Sex Offender Management Board (adopted February 18, 2011). It indicates that the response to juveniles who have committed sexual offenses has evolved from a narrow and specialized model to a more holistic model that is consistent with the diverse developmental and dynamic factors associated with juvenile sexual offending and prosocial living. The model takes into account issues such as community safety, adolescent development, the juvenile justice system, and recidivism research (at p. 5). Mr. _____ testified that he supports the SOMB position in that juveniles should be treated differently than adults (V. II, p. 67, ll. 21-23). He elaborated that this approach is "more of a holistic model for treating juveniles who commit sexual offense" balancing risk reduction, risk management with health promotion (V. II, p. 69, ll. 8-10). In his experience working with these types of offenses at DYC for numerous decades, offenders engaged in their treatment programing and initial adjustment to parole was good" (V. II, 58, ll. 14-23).

b. Effective Treatment

Dr. _____ testified that the Division of Youth Corrections "has dedicated people that choose to work with this population and they're well-trained."(V. II, p.103, ll. 14-20). Mr. _____ similarly explained that the Division of Youth Corrections has available treatment that is very skill-based (V. II, p. 79, l. 4). He further stated that they "utilize aggression replacement training. They also have a skill curriculum called *Skill Treatment in Adolescents*. Therefore, each youth would have very individualized skills that relate to their areas of deficits. These deficits could be related to anger management, self-regulation, problem-solving skills, decision-making skills, or social skills" (V. II, p. 79, l. 4-12).

Mr. _____ stressed additional advantages to a Division of Youth Corrections commitment. He specified that a client manager is assigned to a juvenile. These client managers thereafter follow the case all the way to the end of jurisdiction. At that point, they become the parole officer. While the juvenile is in the custody of the Division of Youth Corrections, monthly staffings are held to help develop the "discrete case plan" which "drives the treatment plan". The case manager is going to know the individual specific risk factors as they move into the community. They are going to know the type of supervision the juvenile is going to need. They will know the types of outpatient treatment the person is going to need. The Division of Youth Corrections also welcomes family involvement to rehabilitate and strengthen dynamics within the home environment. This involvement could include but is not necessarily limited to family therapy. (V. II, p.147, l. 7 - p. 149, l. 5). In the final analysis, the juvenile's potential for rehabilitation is maximized.

c. Preservation of Community Safety

Mr. _____ believes **very strongly** (emphasis added) that the Division of Youth Corrections does a much better job of protecting the community based on their treatment than the Department of Corrections (V. II, p. 86, l. 21- 25). In fact, he stated the consensus is (and the body of research supports) that the Division of Youth Corrections is better for community safety (V. II, p. 86, l. 25 - V, p. 87, l. 1 and V. II, p. 88, ll. 1-6). Mr. _____ testified that if the juvenile is committed to the Division of Youth Corrections, he would very likely end up at Lookout Mountain because of its security (V. II, p. 71, l. 24-p. 72, l. 5). He further testified that Lookout Mountain is "very structured with a controlled setting and safe" (V. II, p. 72, ll. 20-22). Lookout also provides "a high level of accountability" (V. II, p.128, 24-25). If a juvenile does well, there are opportunities to perform "restorative community justice". The philosophy behind this is that "part of the treatment involves doing something to repair the harm of what you've done" (V. II, p. 127, ll. 1-6). It is obvious that this type of program carries the potential of promoting community safety through active participation to redress past behaviors. On this issue, Dr. _____ also was hugely supportive by declaring that treatment through the Division of Youth Corrections will "absolutely" be beneficial for the community (V. IV, p. 55, ll. 7-9).

2. Colorado Department of Corrections

a. Introduction

The paper, *A Program Evaluation of In-Prison Components of The Colorado Department of Corrections Sex Offender Treatment and Monitoring Program* (January 20, 2013), evaluates the operation of the Colorado Department of Corrections Sex Offender Treatment and Management Program (SOTMP). It assesses SOTMP against best practice standards based on the empirically-derived Risk, Need, Responsibility model for correctional programming.

The Risk Need Responsibility (RNR) model indicates that the comprehensiveiveness, intensity, and duration of treatment provided to individual offenders should be proportionate to the degree of risk that they present (the Risk principle); that treatment should be appropriately targeted at participant characteristics which contribute to their risk (the Need principle); and that treatment should be delivered in a way that facilitates meaningful participation and learning (the Responsibility principle) (at p. 2).

b. Inadequate Treatment

The results emanating from the evaluation conclude that SOTMP does not adequately conform to the Risk principle of the model and only partially conforms to the Need and Responsibility principles. It is noted that the problems complying with the responsibility principle present a serious barrier to effective treatment (at p. 4). Mr. _____ testimony supported this positions of this paper when he clearly indicated that the Sex Offender Management Board standards are not being met by the Department of Corrections (V. II, p. 51, l. 12-15). Mr. _____ further explained that inmates are on long waiting lists to receive services at the Department of Corrections because of the lack of resources and "too much of a one size fits-all treatment" Therefore risk is not being adequately differentiated (V. II, p.84, 1-4).

c. Endangerment of Community Safety

Dr. _____ testimony strongly supported these conclusions when she testified that if a juvenile who commits a sexually violent offense goes to the Department of Corrections, they are not likely to get the treatment they need (V. II, p. 85, ll.20-22). For Dr. _____, this extreme deficit in the treatment programing ultimately relates to jeopardizing community safety. As she explained: "Then they are released. And then their risk for reoffense is typically higher than when they go in. So community safety is my absolute concern" (V. IV, p. 85, ll. 22-25).

3. Application to the Juvenile

Taking into account the above-indicated benefits of the Division of Youth Corrections versus the detriments relating to the Colorado Department of Corrections, **every professional witness testifying on this issue at the hearing preferred the Division of Youth Corrections for the juvenile** (emphasis added). According to Dr. _____, "(the juvenile) is going to be positively impacted by a sentence to the Division of Youth Corrections" (V. III, p.106, ll. 13-14). He brought attention to the fact that the recommended form of therapy for the juvenile is Dialectical Behavior Therapy (DBT). Dr. _____ indicated that this form of therapy "was developed specifically for people with the kind of personality structure that he (the juvenile) has". It "not only teaches skills in terms of self soothing, self observation, but it also teaches the capacity to just observe without reacting" (V. III, p. 68, l. 22 - p. 69 l. 2). At Lookout, DBT is available at Lookout now (emphasis added) (V. III, p 69, 22 - p. 70, l.1). Once he arrives, the juvenile will encounter a reduced therapist to youth ratio. Dr. _____ explained the Division of Youth Corrections is downsizing the number of juveniles, but to some degree, keeping the same numbers of staff. He believes they are going to have a 6-to-1 ratio of therapists to youth..." (V. II, p. 70, ll.1-5). Dr. _____ testified "that's a good ratio" (V. II, p. 70, l. 6).

Dr. _____ is also recommending the Division of Youth Corrections for the juvenile (V. IV, p.54, l.5). Mr. _____, testified that he was acquainted with the details of the alleged offense (V. II, p. 58, ll. 8-20) and that the Division of Youth Corrections could be potentially successful at treating _____. (V. II, p. 59, ll. 7-10). Ultimately, Mr. _____ professional opinion is that this case should be handled by the juvenile court (V. II, p. 88, ll. 15-20). This position is consistent with the *Report of the Attorney General's National Task Force on Children Exposed to Violence* (supra) when it recommends: "Whenever possible, prosecute young offenders in the juvenile justice system instead of transferring their cases to adult courts (Recommendation 6.9 at p.189).

Based on the record, the Colorado Department of Corrections is a horrendous option for both the juvenile and the community. In addition to the Department of Corrections providing inadequate treatment, the professionals testified that the inevitable delays in treatment hold colossal negative consequences for the juvenile. Dr. _____ declared that it is "critical" to get him into therapy soon or immediately (V. III p. 69, ll. 9-11). He explained that a delay in therapy means "the longer he persists in reinforcing, maintaining, continuing with his current ways of thinking and acting, the more ingrained it's going to be and the more difficult it's going to be to change" (V. III, p. 70, ll. 23-5). Mr. _____ agreed. He made it clear that if the juvenile has to wait for treatment, it affects his ability to be successful in that treatment (V. II, p. 84, ll. 18-23). Similarly, Dr. _____ testified that her fear is that if he doesn't have those services, he'll be released into the community at higher risk than when he even goes into the system (V. IV, p. 55, ll. 3-6).

What would happen to the juvenile in the Department of Corrections while he waits for inadequate treatment with the possibility of never receiving it? The general statistics cited by Mr. _____ concerning juveniles in adult facilities are highly alarming. He indicated that these juveniles are approximately five times more likely to commit suicide and they are more likely to be raped in prison (V. II, p. 86, 2-4). His understanding of the research is that these juveniles are 34 percent more likely to reoffend (V. II, p. 86, 13-15). He asserts that "its not developmentally appropriate but you're also getting poor outcomes from the standpoint of future criminal behavior" (V. II, p. 86, ll. 17-20). Ultimately Mr. _____ asserts that DOC is "certainly not an environment that's going to support healthy adolescent development in **any way**" (Emphasis added) (V. II, p. 85, ll. 8-10).

The witnesses stressed how vulnerable the juvenile will be in such a harsh punitive environment. Dr. _____ was brutally candid when he expressed that "(the juvenile) would be marked, marked the moment he walked in the door." He would be "a prime target for the

predatory people in DOC" (V. III, p. 70, ll.12-20). He's going to be brutalized in the Department of Corrections. He is going to be abused, he's going to be manipulated, he's going to be exploited, he's going to be sodomized (V. III, p. 91, ll.16-19). He went on to say that "I don't think the Department of Corrections is going to do this young man any good at all. It's going to harm him, in my opinion (V. III, p.106, ll. 18-19). Dr. _____ expounded on this concept by adding that sometimes when incarcerated, symptoms can be exacerbated by being abused in that setting (V. IV. p. 93, ll. 10-13). If he's exposed to additional trauma, he's more likely to shut down (V. III, p. 107, ll. 19-20). As Dr. _____ eloquently and succinctly stated: "punishment is a very poor change agent" (V. III, p. 89, l.10).

V. WHETHER THE JUVENILE WAS PREVIOUSLY COMMITTED TO THE DEPARTMENT OF HUMAN SERVICES FOLLOWING AN ADJUDICATION FOR A DELINQUENT ACT THAT CONSTITUTES A FELONY SUPPORTS A TRANSFER OF JURISDICTION TO THE JUVENILE COURT.

Based on the record, _____ has not been previously committed to the Department of Human Services for any delinquent acts.

CONCLUSION

For the above-stated reasons, this honorable Court should transfer the above-captioned case to the Juvenile Court.

Dated this 6th day of December, 2013.

Respectfully submitted,

_____
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