No. 08-7412

In The Supreme Court of the United States

TERRANCE JAMAR GRAHAM,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Writ Of Certiorari To The District Court Of Appeal, First District, State Of Florida

BRIEF FOR PETITIONER

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QUESTION PRESENTED

Whether the Eighth Amendment's ban on cruel and unusual punishments prohibits the imprisonment of a juvenile for life without the possibility of parole as punishment for the juvenile's commission of a non-homicide (armed burglary).

PARTIES TO THE PROCEEDING

All the parties to the proceeding are listed on the cover of the brief.

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OPINIONS BELOW

The opinion and judgment of the First District Court of Appeal of Florida (J.A. 406-431) is reported at 982 So. 2d 43 (Fla. Dist. Ct. App. 2008). The First District Court of Appeal's order (J.A. 432) denying rehearing, clarification, and certification is unreported. The Supreme Court of Florida's order declining to accept jurisdiction (J.A. 433-434) is unreported.

JURISDICTION

The opinion and judgment of the First District Court of Appeal of Florida was entered on April 10, 2008. J.A. 406. The First District Court of Appeal denied petitioner's timely motion for rehearing, clarification, and certification on May 16, 2008. J.A. 432; Pet. App. 95-103. The Supreme Court of Florida denied petitioner's timely petition for review on August 22, 2008. J.A. 433; Pet. App. 105. Petitioner timely filed his petition for *certiorari* on November 20, 2008. This Court granted the petition on May 4, 2009. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Eighth Amendment to the U.S. Constitution provides that, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII.

INTRODUCTION

At age 16, petitioner Terrance Graham committed the only offenses for which he has ever been convicted. He was an accomplice to an armed burglary and attempted armed robbery of a restaurant. Petitioner pled guilty to these offenses stemming from this single incident, and, as part of a subsequent probation violation he committed as a juvenile, he was sentenced to the statutory maximum penalty—life imprisonment without the possibility of parole—for the crime he committed as a 16-year-old.

This sentence, based upon the acts petitioner engaged in as a juvenile, cannot be reconciled with this Court's precedents under the Eighth Amendment. As this Court recognized in *Roper v. Simmons*, 543 U.S. 551 (2005), the characteristics of juvenile offenders, in particular their diminished culpability, make them categorically different from adult defendants who have committed the same crimes. And because of these differences between juveniles and adults, the severity of the criminal sanction, which is unquestionably harsher for a 16-year-old assigned to an adult prison population in perpetuity than it is for an adult, cannot be considered proportional to any non-homicide offenses committed.

Not surprisingly, almost every United States jurisdiction implicitly has recognized that the imposition of a life-without-parole sentence on a juvenile, non-homicide offender cannot be reconciled

with basic understandings of decency which undergird the Eighth Amendment. Florida stands nearly alone in its punishment of juveniles, such as petitioner, who have not taken or attempted to take a life, as it is one of just six States known to be incarcerating such offenders in perpetuity. And of the just 106 known juvenile non-homicide offenders serving a life-without-parole sentence in the United States, 77 of them are in Florida.[1] Moreover, only Florida and South Carolina permit a first-time juvenile offender such as petitioner to be sentenced to life imprisonment for the crime of armed burglary, and only Florida does so in practice.

STATEMENT OF THE CASE

A. Florida's Statutory Scheme For Prosecuting, Convicting, And Sentencing Juveniles In Adult Courts

1. Prosecution of juveniles in adult courts

Florida law has a general rule that precludes a juvenile from being prosecuted in adult court. Over the years, however, that rule has become so riddled with exceptions that, at the discretion of a prosecutor,

[1] As used in this brief, a "non-homicide offender" is one whose offenses neither resulted in a death nor involved an intent to kill. Therefore, offenders convicted of attempted murder and felony murder would not be considered "non-homicide" offenders.

virtually any juvenile over the age of 14 can be prosecuted in adult court.

The general rule is that "if it is shown that the person was a child at the time the offense was committed," any prosecution must be initiated in juvenile court, and the offender must be subject to sentences specifically established for juvenile offenders. Fla. Stat. §§ 985.201(2), 985.219(8) (2003)[2] *re-codified at* Fla. Stat. § 985.0301(2), (3) (2008). Florida criminal law defines a "child," "juvenile," or "youth" as "any married or unmarried person who is charged with a violation of law occurring prior to the time that person reached the age of 18 years." Fla. Stat. § 985.03(6) (2003). An "adult" is "any natural person other than a child." *Id.* § 985.03(3).

Notwithstanding the general legislative prohibition on prosecuting a juvenile as an adult, a prosecutor may, and sometimes must, transfer a juvenile 14 years or older to adult court by directly filing an information. Fla. Stat. § 985.227 (2003), *re-codified at* Fla. Stat. § 985.557 (2008).[3] The "direct-file" statute

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[2] This brief cites the 2003 version of the Florida Statutes, as that version was in effect when Graham committed the offenses of which he was convicted.

[3] A Florida prosecutor may also transfer a juvenile to adult court by seeking either an indictment from a grand jury against a juvenile of any age or a judicial waiver for a juvenile 14 years or older. Fla. Stat. §§ 985.225(1), 985.226(2), (3) (2003), *re-codified at* Fla. Stat. §§ 985.56(1), 985.556(2), (3) (2008). According to a study, ninety-nine percent of the juveniles prosecuted in Florida's adult courts in 1998 were charged by the

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mandates prosecution of a juvenile as an adult if certain criteria are satisfied; for example, 16- and 17-year-old juvenile offenders must be prosecuted as adults if they actually possessed a firearm or destructive device while committing certain offenses. Fla. Stat. § 985.227(2) (2003). None of the mandatory direct-file provisions applied in this case.

Florida's direct-file statute, however, vests the prosecutor with broad, often unreviewable, discretion to prosecute a juvenile 14 years or older in adult court when it does not otherwise mandate such a prosecution. A prosecutor may charge any juvenile who was 16 or 17 years old in adult court if, in the "judgment and discretion" of the prosecutor, "the public interest requires that adult sanctions be considered or imposed." *Id.* § 985.227(1)(b). And if the offense is a felony, the prosecutor's exercise of this discretion is unreviewable. *Ibid.* For any juvenile who was 14 or 15 years old at the time of the offense, the prosecutor's unreviewable "judgment and discretion" may be exercised for 19 enumerated felonies, including armed burglary and robbery. *Id.* § 985.227(1)(a).

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direct-file method discussed in the text. Charles E. Frazier et al., *Get-Tough Juvenile Justice Reforms: The Florida Experience*, 564 Annals Am. Acad. Pol. & Soc. Sci. 167, 178 (1999) (citing 1998 report of Florida Department of Juvenile Justice).

2. Sentencing of juveniles in adult courts

a. Juveniles who are prosecuted and convicted in a Florida adult court may nonetheless be eligible for a sentence as a "juvenile" or as "youthful offender," rather than as an adult. Fla. Stat. § 985.233(4)(a) (2003), *re-codified at* Fla. Stat. § 985.565(4)(a) (2008); *see also Beatty v. State*, 983 So. 2d 701, 702-703 (Fla. Dist. Ct. App. 2008) (reviewing adult court's decision to sentence juvenile as an adult for an abuse of discretion).

In order for an adult court to impose juvenile sanctions in lieu of adult penalties, the court must consider several enumerated factors relating to the seriousness of the crime and the individual's prior criminal history and potential for rehabilitation. Fla. Stat. § 985.233(1)(b) (2003).[4] Any confinement under

[4] These include: (i) the seriousness of the offense to the community and whether the community would be protected best by juvenile or adult sanctions; (ii) whether the offense was committed in an aggressive, violent, premeditated, or willful manner; (iii) whether the offense was against persons or property; (iv) the offender's sophistication and maturity; (v) the offender's record and previous history; (vi) the prospects for adequate protection of the public and the likelihood of deterrence and reasonable rehabilitation of the offender if sentenced to juvenile sanctions; (vii) whether the department responsible for administering juvenile sanctions (the Department of Juvenile Justice) has appropriate programs, facilities, and services immediately available; and (viii) whether adult sanctions would provide more appropriate punishment and deterrence to further violations of law than the imposition of juvenile sanctions. *Ibid.* If a child later proves to be "not suitable" for juvenile sanctions, the court may revoke the

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a juvenile sanction generally ceases when an offender turns 19 years of age and, under no circumstances, does it extend beyond the offender's 22nd birthday. Fla. Stat. § 985.201(4) (2003), *re-codified at* Fla. Stat. § 985.0301(5) (2008).

Florida also allows lesser "youthful offender" penalties for a juvenile defendant in adult court who committed his offense when he was under 21 years of age and satisfies certain other criteria. Fla. Stat. § 958.04(1) (2003). Such penalties generally do not exceed a term of six years, *id.* § 958.04(2), and include supervision on probation or in a community control program, incarceration at various types of facilities (including those with youthful offender programs), or a combination of supervision and incarceration. *Ibid.* If a Florida adult court exercises its discretion to classify a defendant as a youthful offender, the court is not constrained by any mandatory minimum sentence. *Ruth v. State*, 949 So. 2d 288, 290 (Fla. Dist. Ct. App. 2007). Unlike the decision on whether to impose juvenile sanctions, no legislative criteria guide the adult court's discretion in deciding whether to impose youthful offender penalties in lieu of adult penalties. Fla. Stat. § 958.04 (2003). An adult court may impose youthful offender penalties if it "believes" that they are "appropriate." *Holmes v. State*, 638 So. 2d 986, 987 (Fla. Dist. Ct. App. 1994); *see also*

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juvenile sanctions and impose either youthful offender or adult penalties. *Id.* § 985.233(4)(c).

Postell v. State, 971 So. 2d 986, 989 & n.6 (Fla. Dist. Ct. App. 2008).

b. Any juvenile defendant who is not sentenced as a juvenile or youthful offender in adult court is sentenced as an adult.

Although Florida has statutory mandatory minimum sentences, *see, e.g.*, Fla. Stat. § 775.082(9) (2003) (establishing mandatory minimum sentences for repeat offenders); Fla. Stat. § 775.087(2)(a) (2003) (establishing mandatory minimum sentences for certain crimes involving a firearm), none of them were applicable in this case. Florida courts are otherwise granted substantial discretion in deciding what sentences to impose pursuant to Florida law. Fla. Stat. §§ 775.082(8)(d), 921.002(1)(g) (2003).

From 1983 until 1998, maximum criminal sentences were subject to mandatory sentencing guidelines. *See* 16 William H. Burgess, *Florida Sentencing* §§ 2:1, 3:1, 4:1, 5:1 (2008-2009 ed.). In 1998, however, Florida repealed the sentencing guidelines and enacted in their place the Criminal Punishment Code. *Id.* § 5:1. The Code significantly increased the maximum sentence for many defendants (including juveniles prosecuted as adults) because, barring an upward departure, the prior guidelines set a maximum sentence that was usually substantially below the statutory maximum. *See generally id.* §§ 3:35, 4:41, 5:5. Accordingly, for offenses committed after 1998, a Florida court's discretion at the upper end of the sentencing range is constrained only by the

statutory maximum, which for over 50 different offenses is life imprisonment without parole, irrespective of the offender's criminal history or lack of criminal history.[5]

In the absence of guidelines for establishing the maximum sentence, the Florida Legislature has set forth "principles" to be considered in sentencing, including:

> (b) The primary purpose of sentencing is to punish the offender. Rehabilitation is a desired goal of the criminal justice system but is subordinate to the goal of punishment.
>
> (c) The penalty imposed is commensurate with the severity of the primary offense and

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[5] *See, e.g.*, Fla. Stat. §§ 775.0823, 782.04, 782.051(1) (2003) (various degrees of murder and attempted murder); *id.* §§ 775.0823(8), 787.01, 787.02 (kidnapping and false imprisonment); *id.* § 775.087 (various offenses for possessing or discharging a firearm or destructive device); *id.* § 775.0875(2) (taking an officer's firearm during first degree felony); *id.* § 775.31(1)(e) (facilitating terrorism); *id.* § 790.16(1) (discharging machine gun in public with intent to do harm); *id.* § 790.161 (destructive device causing death); *id.* § 790.166(2) (making or using available weapon of mass destruction); *id.* § 794.011, 794.023 (various offenses of sexual battery); *id.* § 810.02(2) (armed burglary); *id.* § 812.13(2)(a) (robbery with dangerous weapon); *id.* § 812.133(2)(a) (carjacking with deadly weapon); *id.* § 843.167(3)(e) (interception of police communication to aid escape); *id.* § 874.04(2)(c) (criminal street gang activity); *id.* § 876.38 (intentional interference with defense or prosecution of war); *id.* § 893.135 (various offenses for trafficking, importing, or manufacturing illegal drugs).

> the circumstances surrounding the primary offense.
>
> (d) The severity of the sentence increases with the length and nature of the offender's prior record.
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> * * *
>
> (g) The trial court judge may impose a sentence up to and including the statutory maximum for any offense, including an offense that is before the court due to a violation of probation or community control.
>
> * * *
>
> (i) Use of incarcerative sanctions is prioritized toward offenders convicted of serious offenses and certain offenders who have long prior records * * * .

Fla. Stat. § 921.002(1) (2003). None of these principles discuss or mention children or youth. *Ibid.*

With respect to minimum sentences, Florida continues to use guidelines that address the severity of the offense, criminal record, and injury to the victim. Burgess, *supra*, § 5:5; *see also* Fla. Stat. §§ 921.0022-921.00265 (2003). The only mention of youth in the Code is found in a provision governing minimum sentences. That provision identifies the mitigating circumstances upon which a court may find a downward departure and thus sentence the defendant below the minimum sentence imposed by the Code's point-scoring method. Fla. Stat. § 921.0026 (2003). A court can consider the youth of the offender

and whether the offender was too young to appreciate the consequences of the offense. Fla. Stat. § 921.0026(2)(k), (l) (2003).

c. Florida law limits the ability of prisoners to receive early release. The Criminal Punishment Code explicitly prohibits parole for all offenses committed after 1998. Fla. Stat. § 921.002(1)(e) (2003). The Code's predecessor, the guidelines, prohibited parole for almost all crimes committed between 1983 and 1998. *Burrell v. State*, 483 So. 2d 479, 480 (Fla. Dist. Ct. App. 1986); Burgess, *supra*, § 1:57.

B. Factual Background And Procedural History

1. Graham's conviction and original guilty plea

a. Graham was born on January 6, 1987. J.A. 50. His parents were addicted to crack cocaine. J.A. 446. Graham "most likely suffered a form of cocaine addiction at birth." J.A. 448. His mother stopped smoking crack by the time Graham turned 11, but his father still smoked crack cocaine in the home when Graham turned 16. J.A. 446. Graham had a "long term depression," which he "most likely had since early on" because of his parents' crack addiction. J.A. 446, 448.

While in elementary school, Graham was diagnosed as suffering from ADHD, but his mother told him not to take the prescribed medication, Ritalin. J.A. 447. Graham wanted to move out of his

home as soon as possible so as not to be around his father, who was unemployed. *Ibid.* Graham's father and siblings have had various problems with the law, including time in prison and juvenile detention facilities. J.A. 442, 447.

b. On July 18, 2003, Graham, age 16, with school-age accomplices, burglarized and attempted to rob a restaurant. J.A. 14-16, 407, 437-439.

A description of Graham's crimes is located in the State's pre-trial discovery and a presentence investigation report prepared by the Florida Department of Corrections. J.A. 437-439. This report was not presented at Graham's 2003 plea hearing, but rather was prepared for later sentencing hearings that took place in 2006, after Graham's probation was revoked. J.A. 201-202, 439. Graham has never admitted that the facts in the report or the pre-trial discovery are accurate, nor does he do so now.

According to the report and pre-trial discovery, one accomplice worked at the restaurant where his father was a manager. This first accomplice left the restaurant unlocked so that Graham and a second accomplice could enter the restaurant just after closing. During the burglary and attempted robbery, Graham and the second accomplice, Brandon J. Johnson, wore masks. J.A. 14-16, 437-438. The second accomplice twice hit a restaurant manager on the head with a steel bar or bat, which resulted in

several stitches.[6] J.A. 9, 14-16, 35, 205, 437-438. Graham and the second accomplice ran out of the back of the restaurant without any money and fled in a car driven by a third accomplice. J.A. 14-16, 437-438. A couple months later, the police apprehended Graham at his mother's house, where he was hiding under his bed. J.A. 438-439.

The prosecutor exercised her unreviewable discretion to directly file charges against Graham and two of his accomplices in adult court, while charging the first accomplice (who left the restaurant door open) in juvenile court. J.A. 6-7, 10, 28. The prosecutor's information accused Graham of two crimes: (i) armed burglary with assault or battery, a first-degree felony with a maximum penalty of life imprisonment without parole, Fla. Stat. § 810.02(1)(b), (2)(a), (b) (2003), and (ii) attempted armed robbery, a second degree felony with a maximum penalty of 15 years in prison, Fla. Stat. §§ 812.13(2)(b), 777.04(1), (4)(a) (2003). J.A. 6-7, 9, 407.

Graham pled guilty to these crimes in December 2003. J.A. 17-27, 31-38, 407. He did not allocute or stipulate to the facts underlying the crimes to which he pled guilty. J.A. 31-38. During the plea colloquy, the adult court mistakenly informed Graham that, if he violated his probation, the crimes to which he was

[6] The restaurant manager hit on the head was not the father of the first accomplice who left the door open.

pleading guilty would be "punishable by up to 30 years in prison." J.A. 34. In fact, the armed burglary charge was punishable by life imprisonment without parole, Fla. Stat. § 810.02(2) (2003). Before pleading guilty, Graham told the court in writing that he had "decided to turn [his] life around" and that if he got a second chance, he would do "whatever it takes to get to the NFL." J.A. 380.

Under Graham's guilty plea, adjudication of guilt was withheld, and he was sentenced to three years of probation. J.A. 17-27, 42-48. He was required to spend 12 months of the probationary period in a pre-trial detention facility with 101 days credit for time served. *Ibid.* Graham also waived his right to be sentenced as a juvenile or youthful offender as well as all other rights and alternatives accorded to juveniles under Fla. Stat. § 985.233 (2003). J.A. 22. For example, Graham waived his right to a pre-sentence investigation report that would have assessed whether he was more suitable for juvenile or adult sanctions. J.A. 22-23. The plea agreement stated that Graham had knowingly, freely, and voluntarily waived these rights because "to be sentenced as an adult * * * [was] the best thing for [him] to do." J.A. 22. Graham was also certified by the court as an adult for any future violations of Florida law. J.A. 28.

The plea agreement and order of probation imposed multiple conditions, including those that required Graham to: (i) attend educational and personal self-improvement programs both within the jail and outside of jail under the supervision of his

probation officer; (ii) advance his studies and education; (iii) refrain from violating the law or the school code; (iv) obey his parents; (v) abide by a 10:00 p.m. curfew; and (vi) refrain from possessing firearms or associating with persons engaged in criminal activity. J.A. 18-21, 42-48.

2. Revocation of Graham's probation

a. On December 6, 2004, Graham's probation officer filed an affidavit alleging that Graham had violated his probation four days earlier. J.A. 53-55, 407. The alleged violations included: (i) possession of a firearm; (ii) violations of the law (home invasion robbery and fleeing and attempting to elude a law enforcement officer); and (iii) association with persons engaged in criminal activity. J.A. 53-55.

A year later, in December 2005 and January 2006, the adult court held hearings on the alleged violations. J.A. 67-204. Graham had no right to a jury trial in a violation-of-probation proceeding, and the court was required to find only that the violations were committed by a preponderance of the evidence. *See, e.g.*, *Michael v. State*, 992 So. 2d 367, 369 (Fla. Dist. Ct. App. 2008); *Cuciak v. State*, 394 So. 2d 500, 502 (Fla. Dist. Ct. App. 1981), *aff'd*, 410 So. 2d 916 (Fla. 1982). The judge presiding over the probation revocation hearing was different from the judge who had accepted Graham's plea. J.A. 30, 67.

At the hearing, Graham admitted that he violated his probation by fleeing and attempting to

elude a law enforcement officer. J.A. 64-66, 81-82, 198-199. The court advised Graham that this admission, by itself, would expose him to a sentence of life imprisonment. J.A. 98-102. Graham nonetheless continued to admit to this conduct, but refused to admit to the home invasion robbery and other violations. *Ibid.*

At the evidentiary hearing, the State asserted that Graham and two accomplices—both of whom were 20-years old[7]—knocked on the door and then entered the home of Carlos Rodriguez. J.A. 112-114; State's Answer Br. 5-7. The State asserted that Graham and his accomplices put a pistol to Mr. Rodriguez's stomach, demanded money, and then robbed a gold chain from Mr. Rodriguez's friend who was at the residence. J.A. 113-115. Later that evening, Graham was apprehended after a car chase and questioned by the police. J.A. 89, 157-160. In response to the question "[a]side from the two robberies tonight how many more were you involved in," Graham responded, "[t]wo or three before tonight." J.A. 160. However, the home invasion robbery at Mr. Rodriguez's residence was the only robbery alleged by the State, and found by the court, to be a violation of Graham's probation. J.A. 53-55, 198-200.

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[7] See note 10, *infra*, for the Florida Department of Corrections online offender profiles where the birthdates of the two probation violation accomplices may be located.

The court found, by a preponderance of the evidence, that Graham violated his probation not only by committing a home invasion robbery but also by possessing a firearm and associating with persons engaged in criminal activity. J.A. 198-200. The court reiterated that Graham had admitted a violation by fleeing and attempting to elude a law enforcement officer. J.A. 199. Because Graham did not understand the court's findings, the court had to repeat them to him, and then the court refused to repeat them again when Graham said he still did not understand. J.A. 199-200, 202-203.

b. After finding that Graham violated his probation, the court held a sentencing hearing interspersed over several days in 2006. During this hearing, no expert testimony regarding Graham's future dangerousness was offered.

At the sentencing hearing, the court was made aware of the more lenient sentence it had previously given Brandon J. Johnson, one of Graham's accomplices for the underlying armed burglary charges arising from the incident at the restaurant in July 2003. J.A. 252-260. Johnson (not Graham) was the one who used a steel pipe or bat to twice hit the head of the restaurant manager. J.A. 14-15, 437-439. Like Graham, Johnson also was subsequently incarcerated on account of a probation violation (for armed robbery of a gas station). Johnson, however, received only a three-year sentence for the underlying

restaurant burglary.[8] J.A. 254, 259. Johnson—who is just six months younger than Graham—is no longer incarcerated, having been released from prison in 2007. *See* note 8, *supra*.

At the sentencing hearing, the police officer who apprehended Graham testified about the charge of fleeing and eluding an officer. J.A. 246-250. The prosecutor also presented letters from the victim of the original charge to which Graham pled guilty (the restaurant manager) and from the victim of the home invasion robbery that was the basis for the alleged probation violations (Mr. Rodriguez). J.A. 205-207, 227-230. The victim of the home invasion, Mr. Rodriguez, also testified that he believed Graham was the leader of the robbery and that Graham had pointed a cocked gun at his head. J.A. 318-319. Mr. Rodriguez explained that he and his family were "very scared" after the robbery, and they were attempting to save "some money to be able to move somewhere else and to try to forget this." J.A. 320.

The court heard testimony from Graham's mother, father, and other family members, beseeching the court to give Graham a lenient sentence in part due to his youth. J.A. 214-225, 270-274. After hearing the mother's testimony, the court told her, "It sounds

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[8] *See* http://www.dc.state.fl.us/AppCommon/ (last visited on July 12, 2009). At this Florida Department of Corrections webpage, one can locate Brandon J. Johnson's offender profile by typing his DC number (J25712).

like you have done your job." J.A. 220. And, it also told her, "[D]on't walk out of here thinking that you somehow created all of this because you haven't." J.A. 221. Furthermore, the court chastised Graham for abandoning his family and for "hang[ing] around" his "group" of "so-called friends" and "buddies." J.A. 268.

Graham also testified at sentencing. J.A. 261-281, 372-385, 390-391. When Graham fled from the police, it was shortly after 9:00 p.m. J.A. 58. In response to questions from the court as to why he had fled from the police, Graham responded, "Because I have a 10:00 curfew, which I did make, which I was making every night, and either way it goes, if I would have missed my curfew I still would have been violated." J.A. 263-264. In apparent disbelief, the court warned Graham to be candid, to "give it to [him] * * * straight," and for there to be "no more smoke." J.A. 266. The court explained that Graham's truthfulness probably would be the "most important" consideration in deciding Graham's sentence. J.A. 281. Graham said that he was willing to "man[ ] up" to the fleeing and eluding charge. J.A. 263-264. And he admitted that his actions showed that he "wasn't thinking," that he had let his family down, and that he had not kept the promises he had made to Judge Dearing (the judge who placed him on probation). J.A. 269, 275, 380-381. Graham, however, would not admit that he did the home invasion robbery, a charge that, he believed, "they [were] trying to pin against" him. J.A. 275-276, 376-377, 380-381. Graham also denied that he had confessed to the police. J.A. 276, 381.

Graham also asserted to the court that he had been "compliant" on his probation. J.A. 390-391. Apparently astonished, the court told Graham that his assertion did not "really make sense." J.A. 391. Committing a crime, the court said, was the "biggest no no" while on probation. *Ibid.*

Under the Criminal Punishment Code scoresheet, 60 months was the lowest sentence that Graham could receive absent a downward departure, and life imprisonment was the maximum sentence. J.A. 289-290. The State asserted that Graham was "incapable of rehabilitation" and recommended 30 years for the armed burglary and 15 years for the attempted armed robbery. J.A. 388. Graham's counsel recommended the minimum sentence of 60 months. J.A. 389. In its pre-sentence investigation report, the Department of Corrections recommended that Graham receive 48 months of prison or alternatively 24 months of prison followed by 24 months of community control.[9] J.A. 444. The Department noted that Graham had the "usual teenage problems," but none that were excessive or resulted in suspensions from school. *Ibid.* The Department further noted that, prior to his arrest, Graham had been compliant with the terms of his probation, reported as required, never missed a curfew, and performed the required community service at his high school. *Ibid.*

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[9] The Department presumably arrived at the 48-month number by deducting from the 60-month minimum the 12 months that Graham already had served on his original charge.

The court rejected all the recommended sentences. It imposed a sentence of life imprisonment for the armed burglary and 15 years for the attempted armed robbery. J.A. 291, 299, 301, 395. The court explained that Graham was incapable of being rehabilitated or deterred from future crimes and that protecting the community by incapacitating Graham was the court's only option:

> Mr. Graham, as I look back on your case, yours is really candidly a sad situation. You had, as far as I can tell, you have quite a family structure. You had a lot of people who wanted to try and help you get your life turned around including the court system, and you had a judge who took the step to try and give you direction through his probation order to give you a chance to get back onto track. And at the time you seemed through your letters that that is exactly what you wanted to do. And I don't know why it is that you threw your life away. I don't know why.
>
> But you did, and that is what is so sad about this today is that you have actually been given a chance to get through this, the original charge, which were very serious charges to begin with. The burglary with assault charge is an extremely serious charge. The attempted robbery with a weapon was a very serious charge.
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> * * *
>
> [I]n a very short period of time you were back before the Court on a violation of this

probation, and then here you are two years later standing before me, literally * * * facing a life sentence * * * as to count 1 and up to 15 years as to count 2.

And I don't understand why you would be given such a great opportunity to do something with your life and why you would throw it away. The only thing that I can rationalize is that you decided that this is how you were going to lead your life and there is nothing that we can do for you. And as the state pointed out, that this is an escalating pattern of criminal conduct on your part and that we can't help you any further. We can't do anything to deter you. This is the way you are going to lead your life, and I don't know why you are going to. You've made that decision. I have no idea [why]. But, evidently, that is what you decided to do.

So then it becomes a focus, if I can't do anything to help you, if I can't do anything to get you back on the right path, then I have to start focusing on the community and trying to protect the community from your actions. And unfortunately, that is where we are today is I don't see where I can do anything to help you any further. You've evidently decided this is the direction you're going to take in life, and it's unfortunate that you made that choice.

I have reviewed the statute. I don't see where any further juvenile sanctions would

> be appropriate. I don't see where any youthful offender sanctions would be appropriate. Given your escalating pattern of criminal conduct, it is apparent to the Court that you have decided that this is the way you are going to live your life and that the only thing I can do now is to try to protect the community from your actions.

J.A. 392-394.

The two other accomplices alleged to have been involved in the home invasion robbery were both 20 years old at the time of the robbery, and they each received lesser sentences (11 and 35 years).[10]

3. Post-sentencing motion and appeal

After sentencing, Graham timely filed in the state trial court a post-sentencing motion and supporting memorandum of law challenging the legality of his sentence under the Eighth Amendment. Pet. App. 24-56. This motion was deemed denied by operation of law because the state trial court did not rule on it within 60 days. *See* Fla. R. Crim. P. 3.800(b)(2)(B). On appeal, the First District Court of Appeal rejected Graham's Eighth Amendment argument based in part on the rationale that "death

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[10] *See* http://www.dc.state.fl.us/AppCommon/ (last visited on July 12, 2009). At this Florida Department of Corrections webpage, one can locate Kirkland G. Lawrence's and Meigo A. Bailey's offender profiles by typing their respective DC numbers (J24134 and J33262).

is different." J.A. 406-431. The Supreme Court of Florida denied discretionary review. J.A. 433-434. This Court granted a writ of *certiorari* on May 4, 2009. J.A. 435.

SUMMARY OF ARGUMENT

I.

In *Roper v. Simmons*, 543 U.S. 551 (2005), this Court held that the characteristics of juvenile offenders, in particular their diminished culpability and capacity for change, rendered the death penalty unconstitutional as applied to offenders who committed their offenses before the age of 18 years old, even though the death penalty is otherwise constitutional when applied to adult offenders. These same considerations require that a life-without-parole sentence imposed on a juvenile offender for a non-homicide is unconstitutional.

The Eighth Amendment prohibits grossly disproportionate sentences of imprisonment. Under its well-settled precedent, this Court considers the sentence's underlying penological purposes and legislative judgments; the harshness of the sentence compared to the gravity of the offense; and a comparison of the sentencing laws and practices of the States and the international community. No single factor is dispositive.

The argument that "death is different" does not alter this analysis or cabin *Roper* to capital cases. In

both capital and non-capital cases, the Court also has examined the offender's characteristics to determine whether a sentence is grossly disproportionate. In *Rummel v. Estelle*, 445 U.S. 263, 276 (1980), and *Ewing v. California*, 538 U.S. 11 (2003), the Court explained that an otherwise grossly disproportionate sentence can nonetheless be constitutionally permissible under the Eighth Amendment if the offender is a recidivist.

Like the death penalty, a life-without-parole sentence rejects rehabilitation and is an irrevocable sentence with regard to the many years lost while incarcerated. And for a non-homicide, juvenile offense, life without parole is a severe punishment. Granted, the Court has cited "death is different" as a basis to mandate more stringent procedures for death-penalty sentencing, including an examination of the offender's potentially mitigating characteristics on a case-by-case basis. But those requirements are unrelated to the Court's proportionality analysis. Petitioner does not claim any constitutional right to a similar, individualized sentencing procedure. Indeed, *Roper* rejected the notion that a juvenile offender's future characteristics as an adult could be accurately determined on a contemporaneous, individualized basis at sentencing.

II.

A. Graham's sentence is grossly disproportionate when viewed through the prism of

his status as a juvenile offender. *Roper* concluded that juveniles are less culpable than adults for their criminal conduct, primarily because of three basic differences between juveniles and adults. First, juveniles possess less maturity and an underdeveloped sense of responsibility, which often results in impetuous and ill-considered actions and decisions. Second, juveniles are more vulnerable and susceptible to negative influences and outside pressures, including peer pressure. Third, the personality and character traits of juveniles are less well-formed and more transitory. These uncontestable common-sense distinctions between juveniles and adults have been confirmed by the undisputed scientific evidence and ratified in the laws of the several States by the numerous age-based legislative classifications for voting, marriage, and other adult activities. *Roper* and the scientific data confirm that the irresponsible conduct of juveniles is morally less reprehensible than the same conduct by adults.

B. The underdeveloped personality characteristics of juveniles relied upon in *Roper* render imprisoning juvenile offenders for life without parole for non-homicide offenses unjustifiable. The lesser culpability of juveniles undermines the State's goal of retribution in imposing a sentence of life without parole. And the State's goal of deterrence is not accomplished by imprisoning juveniles to a life sentence without the possibility of parole because, as the Court in *Roper* acknowledged and scientific research has proven, the threat of adult punishment

does not deter misconduct by juveniles. Finally, life without parole rejects rehabilitation and embraces incapacitation. As the *Roper* Court noted, juveniles are more malleable and capable of reform than adults; it is cruel to simply "give up" on them.

C. This case confirms the inherent difficulties in sentencing a juvenile to life without parole, and the judgment of the court below at sentencing directly contradicts *Roper*'s rationale. The court concluded that Graham—who at age 16 committed the only crimes for which he has ever been convicted—was incapable of *ever* being rehabilitated or deterred from committing more offenses. But this Court in *Roper* explicitly concluded that a sentencer could not reliably predict a juvenile's potential for rehabilitation and deterrence. Not even "expert psychologists [can] differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." *Roper*, 543 U.S. at 573.

Nor is Graham's life-without-parole sentence the result of any legislative judgment. In *Solem v. Helm*, 463 U.S. 277 (1983), this Court invalidated a life-without-parole sentence in part because the legislature there did not *mandate* such a sentence but rather merely *permitted* it. Subsequently, in upholding a life-without-parole sentence *mandated* by the legislature, Justice Kennedy distinguished *Solem* by explaining that it repudiated the "judgment of a single jurist," not the judgment of a legislature. *Harmelin v. Michigan*, 501 U.S. 957, 1006 (1991)

(Kennedy, J., concurring in part and concurring in judgment). In this case, the Florida Legislature has not mandated that a juvenile be sentenced to life without parole for committing an armed burglary.

D. The unconstitutionality of Graham's sentence is confirmed by the fact that he is one of a handful of juveniles, in *any* State, who has been sentenced to life without parole for a non-homicide offense such as armed burglary. A comparative analysis is required because, as a threshold matter, Graham's sentence is the same as the harshest sentence that a juvenile could receive for murder, and thus is disproportionate in light of the less serious nature of Graham's offense, an armed burglary which did not involve the taking of a life or an attempt to take life. Indeed, the harshest adult punishment (death) would not be constitutional for any similar offense committed by an adult offender. *Enmund v. Florida*, 458 U.S. 782, 787, 801 (1982); *Kennedy v. Louisiana*, 128 S. Ct. 2641, 2645-2648, 2660 (2008).

Graham's sentence is significantly greater than the average sentences for *all* offenders (adult and juvenile) convicted in Florida of violent crimes (8.5 times greater) or armed burglaries (7.1 times greater). Though Graham's armed burglary conviction is comparable to the offenses of thousands of juvenile offenders, Florida has sentenced only 77 juvenile offenders to life without parole for a mere non-homicide offense.

More significantly, compared to the rest of the Nation, Florida stands virtually alone. Florida leads the Nation in imprisoning juveniles for non-homicide offenses. Outside of Florida, there is *no* juvenile, non-homicide offender serving a life-without-parole sentence for a burglary offense, and only one other State even permits such a sentence for a first-time armed burglary offender such as Graham. Looking at all non-homicides, there are only 29 juvenile, non-homicide offenders serving life without parole outside of Florida, and they are concentrated in five other States. This means that Florida incarcerates approximately 70% of the Nation's juvenile, non-homicide offenders. Finally, the international community has overwhelmingly rejected and condemned the practice of imprisoning juveniles for life without parole.

ARGUMENT

I. THE EIGHTH AMENDMENT'S PROPORTIONALITY PRINCIPLE INCLUDES CONSIDERATION OF THE CHARACTERISTICS AND DIMINISHED CULPABILITY OF JUVENILE OFFENDERS, ALONG WITH OTHER FACTORS

The Eighth Amendment's protection against cruel and unusual punishment "flows from the basic precept of justice that punishment for crime should be graduated and proportioned to the offense." *Roper v. Simmons*, 543 U.S. 551, 560 (2005) (citation omitted) (internal quotation marks omitted).

This proportionality principle is not limited to capital sentences. It is settled that a "grossly" disproportionate sentence, such as the life sentence imposed on Graham for an armed burglary committed at the age of 16 (his first conviction), can run afoul of the Eighth Amendment. *See Solem v. Helm*, 463 U.S. 277, 288-290 (1983) (holding that a "criminal sentence must be proportionate to the crime for which the defendant has been convicted" and rejecting the argument that the proportionality principle applied only to capital cases); *Lockyer v. Andrade*, 538 U.S. 63, 72 (2003) (holding that it was clearly established that the proportionality principle applied to sentences for terms of years); *Ewing v. California*, 538 U.S. 11 (2003).[11]

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[11] In *Ewing*, seven Justices agreed that the proportionality principle applied to non-capital sentences; three Justices opined that the principle should be narrow for non-capital punishments, whereas four Justices opined that it should be broad. *Compare* 538 U.S. at 20 (plurality opinion) ("The Eighth Amendment * * * contains a narrow proportionality principle that applies to noncapital sentences." (citation omitted) (internal quotation marks omitted)), *with id.* at 35 (Stevens, J., dissenting) ("I think it clear that the Eighth Amendment's prohibition of 'cruel and unusual punishments' expresses a broad and basic proportionality principle that takes into account all of the justifications for penal sanctions."). Although the four dissenters in *Ewing* advocated for a "broad" principle, they also applied the narrow proportionality analysis set forth in Justice Kennedy's concurring opinion in *Harmelin*. *See Ewing*, 538 U.S. at 23-24 (plurality opinion); *id*. at 35-36 (Breyer, J., dissenting). Although two Members of the Court would have rejected as an initial matter the proposition that the Eighth Amendment includes any proportionality principle, *see id*. at 31-32 (Scalia, J.,

(Continued on following page)

a. The Court considers several factors (none of which is dispositive) in determining whether a sentence is sufficiently disproportionate to violate the Eighth Amendment. *Harmelin v. Michigan*, 501 U.S. 957, 1004 (1991) (Kennedy J., concurring in part and concurring in judgment); *Solem*, 463 U.S. at 290 n.17. These factors include: (i) whether the particular sentence would serve a legitimate penological purpose, with due deference for legislative judgments; (ii) a comparison of the gravity of the offense with the harshness of the punishment imposed; and (iii) a comparison of the sentence imposed to evolving standards of decency as reflected in the laws and practices of the States and the international community. *See, e.g., Kennedy v. Louisiana*, 128 S. Ct. 2641, 2651-2658 (2008); *Roper,* 543 U.S. at 561, 564-567, 575-578; *Harmelin*, 501 U.S. at 1005 (Kennedy J., concurring in part and concurring in judgment); *Ewing*, 538 U.S. at 23-24 (plurality opinion) (adopting Justice Kennedy's *Harmelin* concurrence); *Solem*, 463 U.S. at 290-291 (citing *Enmund v. Florida*, 458 U.S. 782, 797-799 (1982); *Coker v. Georgia*, 433 U.S. 584, 592 (1977) (plurality opinion)). Ultimately, however, this Court must bring to bear its own judgment to determine whether a sentence violates the Eighth Amendment. *See, e.g., Kennedy,* 128 S. Ct. at 2658.

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concurring in judgment); *id*. at 32 (Thomas, J., concurring in judgment), those Justices joined the Court's opinion in *Lockyer* that held it was clearly established that a gross disproportionality principle applied to sentences for terms of years. *Lockyer*, 538 U.S. at 72.

b. In examining whether a sentence is grossly disproportionate, the Court also focuses on the characteristics of the offender as they relate to the offense committed and the sentence that has been imposed.

Under these principles, recidivists can be subject to harsher penalties under the Eighth Amendment. A defendant's prior criminal history can ameliorate concerns that a sentence is grossly disproportionate to the offense committed. The Court has explained that a State is justified "in dealing in a harsher manner with those who by repeated criminal acts have shown that they are simply incapable of conforming to the norms of society." *Rummel v. Estelle*, 445 U.S. 263, 276 (1980). Accordingly, this Court in examining concededly "long" sentences has been guided by the fact that the defendant's prior offenses "were serious felonies" so that the sentence "reflects a rational legislative judgment, entitled to deference, that offenders who have committed serious or violent felonies and who continue to commit felonies must be incapacitated." *Ewing*, 538 U.S. at 30 (plurality opinion).

Likewise, juvenile defendants as a class possess certain characteristics, in particular diminished culpability and capacity for change, that render unconstitutional their sentences, even though such sentences would be constitutional if applied to adult defendants. *See Roper*, 543 U.S. at 569-575; *see also Atkins v. Virginia*, 536 U.S. 304, 317-321 (2002) (applying same rationale to protect mentally retarded

defendants). Juveniles thus "cannot with reliability be classified among the worst offenders." *Roper*, 543 U.S. at 569. The *Roper* Court recognized that the inherent characteristics of juvenile defendants affected the efficacy of the penological purposes, such as retribution and deterrence, served by imposing a severe punishment (the death penalty) on juvenile offenders. *Id.* at 571-572.

As applied to the instant case, these precedents demonstrate that petitioner's sentence—imposed for a first offense (armed burglary) committed when he was 16 years old—must be examined in light of the characteristics of juveniles.

c. The court below was wrong that "death is different" to find the holding of *Roper* inapplicable to this case. J.A. 412. There is no principled reason to limit consideration of the juvenile status of an offender to only death penalty cases. *See Solem*, 463 U.S. at 289 ("When we have applied the proportionality principle in capital cases, we have drawn no distinction with cases of imprisonment."); *see also Trop v. Dulles*, 356 U.S. 86, 101 (1958) (plurality opinion) (establishing, in a non-death penalty case, that the Eighth Amendment must draw its meaning from the "evolving standards of decency that mark the progress of a maturing society"). Such a rule would be inconsistent with the rulings of this Court in *Rummel*, *Ewing*, and *Lockyer*, each of which also relied upon the status of the defendant as a recidivist when examining whether the particular

sentence imposed was grossly disproportionate to the offense committed.

It is no answer that the death penalty is different from ordinary punishment because of its severity, *see, e.g., Tison v. Arizona*, 481 U.S. 137, 149 (1987); *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976) (plurality opinion), as that is nothing more than a restatement of the basic principle that the Eighth Amendment forbids "only *extreme* sentences that are 'grossly disproportionate' to the crime." *Harmelin*, 501 U.S. at 100 (Kennedy, J., concurring in part and concurring in judgment) (emphasis added) (quoting *Solem,* 463 U.S. at 288). Moreover, as this case demonstrates, life without parole is extreme, harsh, and, at the very least, comparable to a death penalty in its cruelness when applied to a juvenile offender convicted of a non-homicide.

The notion that death can be different from other punishments because the death penalty is "unique in its rejection of rehabilitation of the convict as a basic purpose of criminal justice," *Furman v. Georgia*, 408 U.S. 238, 306 (1972) (Stewart, J., concurring), also has no application to this case. Since *Furman* was decided in 1972, rehabilitation has been frequently rejected as a goal of imprisonment. Parole is often no longer possible in numerous jurisdictions. Rachel E. Barkow, *The Court of Life and Death: The Two Tracks of Constitutional Sentencing Law and the Case for Uniformity*, 107 Mich. L. Rev. 1145, 1173 (2009); *see also Harmelin*, 501 U.S. at 1028 (Stevens, J., dissenting) (noting that a sentence of life

imprisonment without the possibility of parole "does share one important characteristic of a death sentence" in that it "does not even purport to serve a rehabilitative function"); Eva S. Nilsen, *Decency, Dignity, and Desert: Restoring Ideals of Humane Punishment to Constitutional Disclosure*, 41 U.C. Davis L. Rev. 111, 162 (2007) (noting that a life-without-parole sentence "deprives children of both any hope for return to society and any opportunity for rehabilitation"). Indeed, Florida long ago abolished parole, and its Criminal Punishment Code expressly subordinates the goal of rehabilitation to secondary status. *See* pages 7-8, *supra*.

Moreover, the finality of a sentence of death also should not preclude application of *Roper*'s principles to this case. The fact that a death sentence is final does not diminish the fact that a sentence of life imprisonment, too, is irreversible once it has been served, as those years cannot be brought back and end only with death. The sentence in this case is the final judicial word on whether petitioner will ever be let out of prison. This analysis is not altered by the remote possibility of executive clemency, something that, in theory, is available for both death penalty and non-capital sentences.

More significantly, however, any distinctions in this Court's case law between the death penalty and other punishments have been focused on the *procedures* used in sentencing, not in applying the principle that sentences must be proportional. The finality of a sentence of death imposes "a

corresponding difference in the need for reliability in the determination that death is the appropriate punishment *in a specific case*." *Woodson*, 428 U.S. at 305 (plurality opinion) (emphasis added). Accordingly, even if a sentence of death is constitutionally proportionate to a particular type of offense or category of offender, it still may run afoul of the Eighth Amendment "if it is imposed without an individualized determination that that is 'appropriate.'" *Harmelin*, 501 U.S. at 995-996. That line of cases is irrelevant to this case because no contemporaneous sentencing procedure, even those related to Graham's individual characteristics, could make the sentence imposed constitutional. Indeed, any consideration of a juvenile offender's current individual characteristics would contradict the rationale of *Roper*, which rejected the possibility that sentencing juries, even with the guidance of experts, could make accurate predictions of a juvenile's future character. 543 U.S. at 572-573.

II. SENTENCING A JUVENILE CONVICTED OF A NON-HOMICIDE OFFENSE TO LIFE WITHOUT PAROLE VIOLATES THE EIGHTH AMENDMENT'S PROPORTIONALITY PRINCIPLE

A. Juvenile Offenders Under 18 Years Of Age As A Class Are Different From Adult Offenders With Regard To Culpability, Susceptibility To Deterrence, And Potential For Rehabilitation

For more than two decades, this Court has recognized the obvious and fundamental differences

between juveniles and adults when assessing culpability and proportional punishment. *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988) (plurality opinion) ("[L]ess culpability should attach to a crime committed by a juvenile than to a comparable crime committed by an adult. The basis for this conclusion is too obvious to require extended explanation."); *see also Carey v. Population Servs. Int'l*, 431 U.S. 678, 693 n.15 (1977) (stating the "law has generally regarded minors as having a lesser capability for making important decisions"). More recently, the Court in *Roper* recognized that the "culpability or blameworthiness" of a juvenile offender under 18 years of age "is diminished, to a substantial degree, by reason of youth and immaturity." 543 U.S. at 571. The Court explained that a juvenile's "'irresponsible conduct is not as morally reprehensible as that of an adult.'" *Id.* at 570 (quoting *Thompson*, 487 U.S. at 835).

The Court's conclusions in *Roper* were undergirded by three broad, categorical differences between adults and juveniles: (1) an absence of maturity, (2) an increased susceptibility to external pressures, and (3) a less fixed and more transitory personality. *Id.* at 569-570. The Court concluded that these uncontestable categorical differences are supported by undisputed scientific evidence, the laws of the States, the Court's own jurisprudence, and basic common sense. *Ibid.* Each difference is relevant to the instant case.

1. Compared to adults, juveniles possess less maturity and an underdeveloped sense of responsibility, which often results in impetuous and ill-considered actions and decisions. *Id*. at 569 (citing *Johnson v. Texas*, 509 U.S. 350, 367 (1993)). As the *Roper* Court noted, "adolescents are overrepresented statistically in virtually every category of reckless behavior." *Ibid*. (quoting Jeffrey J. Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 Developmental Rev. 339 (1992)).

Behavioral studies of juveniles have verified this psychosocial immaturity. They show that, compared to adults, adolescents are less likely to consider alternative courses of action, understand the perspective of others, or restrain impulses. *See, e.g.*, Elizabeth Cauffman & Laurence Steinberg, *(Im)maturity and Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults*, 18 Behav. Sci. & L. 741, 756-57 (2000) (finding adolescents less responsible, more myopic, and less able than adults to limit impulsivity and evaluate situations before acting); Bonnie L. Halpern-Felsher & Elizabeth Cauffman, *Costs and Benefits of a Decision: Decision-Making Competence in Adolescents and Adults*, 22 J. Applied Developmental Psychol. 257, 268 (2001) (finding that adolescents performed more poorly than adults in study of decision-making competence).

As a group, adolescents value impulsivity, fun-seeking, and peer approval more than adults. *See* Laurence Steinberg, *Adolescence* 88 (6th ed. 2002). It

is statistically normative for adolescents to engage in some form of illegal activity. *See* Terrie E. Moffitt, *Natural Histories of Delinquency in* CROSS-NATIONAL LONGITUDINAL RESEARCH ON HUMAN DEVELOPMENT AND CRIMINAL BEHAVIOR 3, 29 (Elmar G.M. Weitekamp & Hans-Jurgen Kerner eds., 1994). "[I]n laboratory experiments and studies across a wide range of adolescent populations, developmental psychologists [have shown] that adolescents are risk takers who inflate the benefits of crime and sharply discount its consequences, even when they know the law." Jeffrey Fagan, *Why Science and Development Matter in Juvenile Justice*, The American Prospect, Aug. 14, 2005, at 2.

Adolescents are prone to increased risk-taking, in part, because they are not yet competent at the kind of thinking that requires looking into the future to see the result of actions. Mary Beckman, *Crime, Culpability, and the Adolescent Brain*, 305 Science 596 (2004). Levels of planning and thinking about the future increase as adolescents grow older. *See* Jari-Erik Nurmi, *How Do Adolescents See Their Future? A Review of the Development of Future Orientation & Planning*, 11 Developmental. Rev. 1, 29 (1991); Margo Gardner & Laurence Steinberg, *Peer Influence on Risk Taking, Risk Preference and Risky Decision Making in Adolescence and Adulthood: An Experimental Study*, 41 Developmental Psychol. 625, 632 (2005).

Given the "comparative immaturity and irresponsibility of juveniles," this Court noted in

Roper that "almost every State prohibits those under 18 years of age from voting, serving on juries, or marrying without parental consent." 543 U.S. at 569; *see also New Jersey v. T.L.O.*, 469 U.S. 325, 350 n.2 (1985) (Powell, J., concurring) (stating that the law "recognizes a host of distinctions between the rights and duties of children and those of adults"). These prohibitions still exist today.[12] These age-based, legislative classifications are consistent with the conclusion that juvenile offenders under the age of 18 should be deemed less culpable as a class than their adult counterparts for purposes of Eighth Amendment proportionality analysis. "The age of 18 is the point where society draws the line for many purposes between childhood and adulthood." *Roper*, 543 U.S. at 574.

2. Juveniles also are more vulnerable and susceptible than adults to negative influences and outside pressures, including peer pressure. *Id.* at 569.

Peer behaviors are a very important aspect of delinquent involvement by juveniles. *See* Dana L. Haynie, *Friendship Networks and Delinquency: The*

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[12] As the respondent in *Roper* established, every State but one has established the "age of majority" as 18 or older for unmarried persons. Brief for Respondent, App. A, *Roper v. Simmons*, 543 U.S. 551 (2005) (No. 03-633). No state has a voting age younger than 18, *Roper*, 543 U.S. at 579-587, App. B, or permits a person under 18 to serve on a jury, *id.* at App. C. All states but two require a person to be at least 18 in order to marry without parental consent. *Id*. at App. D.

Relative Nature of Peer Delinquency, 18 J. Quantitative Criminology 99, 123 (2002). Indeed, in this case, the sentencing court chastised Graham for subjecting himself to peer influence by his two 20-year-old accomplices in the probation violation. J.A. 268. Juveniles, like Graham, are less responsible than adults for their actions because of the role of peer influence. Research shows that the likelihood of being influenced by peers decreases as one grows older and reaches adulthood. *See* Gardner & Steinberg, *supra*, at 632; Peggy C. Giordano et al., *Changes in Friendship Relations Over the Life Course: Implications for Desistance from Crime*, 41 Criminology 293, 319 (2003). Because of their vulnerability to and lack of control over negative influences in their environment, this Court held in *Roper* that "juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment." 543 U.S. at 570.

3. Finally, compared to adults, the character of juveniles is less well-formed and their personality traits are "more transitory, less fixed." *Id*. at 570 (citing Erik H. Erikson, *Identity: Youth and Crisis* (1968)). The Court in *Roper* thus concluded that "it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character." *Ibid*.

The irresponsible and transitory conduct of juveniles has a biological basis and thus is not as morally reprehensible as the same conduct by adults.

Recent studies employing brain imaging technology show that adolescents' heightened propensity for risk-taking and poor decision-making correlates with immature cortical brain function. *See*, *e.g.*, James Bjork et al., *Developmental Differences in Posterior Mesofrontal Cortex Recruitment By Risky Rewards*, 27 J. of Neurosci. 4839 (2007) (comparing differences in brain activity between 12-17-year olds and 23-33-year olds and finding that brain functions associated with decision-making increase from adolescence to adulthood); Neir Eshel et al., *Neural Substrates of Choice Selection in Adults and Adolescents: Development of the Ventrolateral, Prefrontal and Anterior Cingulate Cortices*, 45 Neuropsychologia 1270, 1278 (2007) (when making choices involving risk, adolescents do not engage the prefrontal regulatory brain structures associated with higher thinking and decision-making as much as adults do).

Although the precise neurobiological mechanisms are the subject of continuing research, it now cannot be contested that important aspects of brain maturation, particularly those involved in the brain's executive functions, remain incomplete even in late adolescence. As one commentator has concluded based on review of the current research on adolescent brain development:

> [T]here are clear neurological explanations for the difficulties adolescents have in cognitive functioning, in exercising mature judgment, in controlling impulses, in weighing the consequences of actions, in

> resisting the influence of peers, and in generally becoming more responsible.

Robert Shepherd, *The Relevance of Brain Research to Juvenile Justice,* 19 Crim. Just. 51, 52 (2005).

This biological basis for differences in juvenile conduct provides further support for the conclusion that less culpability should attach to juvenile conduct than to similar conduct by adults. *Cf. Atkins*, 536 U.S. at 318 ("diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others" diminishes the personal culpability of the mentally retarded).

B. Life Without Parole For A Juvenile, Non-Homicide Offense Is Not Justified By Any Legitimate Penological Purpose

The standard policies for criminal sentencing are retribution, rehabilitation, incapacitation, and deterrence. *Harmelin*, 501 U.S. at 999 (Kennedy, J., concurring in part and concurring in judgment). The Florida Legislature has selected "punishment," *i.e.*, retribution, as its primary sentencing policy, and rehabilitation as a secondary, subordinate sentencing policy. Fla. Stat. § 921.002(1)(b) (2003). Life without parole for a juvenile for a non-homicide is not constitutionally justified under the policies expressly articulated by the Florida Legislature (retribution and rehabilitation) or under the other sentencing

policies not expressed by the Florida Legislature (incapacitation and deterrence).

1. Retribution

The penological goal of retribution does not justify a life-without-parole sentence for juveniles who commit non-homicides. This Court has explained that "[w]hether viewed as an attempt to express the community's moral outrage or as an attempt to right the balance for the wrong to the victim, the case for retribution is not as strong with a minor as with an adult." *Roper*, 543 U.S. at 571. Imposition of "the law's most severe penalty" cannot be proportional when it "is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity." *Ibid.* In *Roper*, this Court concluded that a juvenile who committed a homicide was not sufficiently responsible to get death, the ultimate punishment for a homicide. A juvenile who commits a non-homicide likewise lacks the responsibility to get the ultimate punishment for a non-homicide, life without parole. *See* Barkow, *supra*, at 1179-1180. The lesser responsibility of a juvenile offender undermines any goal of retribution that involves imposing the ultimate punishment for the particular offense committed by him.

2. Rehabilitation and Incapacitation

A life-without-parole sentence, by its nature, rejects any goal of rehabilitating the juvenile offender

and instead embraces the goal of incapacitating the juvenile offender until he dies in prison. As the Eighth Circuit observed in its *Solem* decision later affirmed by this Court:

> A life sentence without parole differs qualitatively from a sentence for a term of years or a life sentence with the prospect of parole. As with the death penalty, the State totally rejects rehabilitation as a basic goal of our criminal justice system by imposing a life sentence without parole.

Helm v. Solem, 684 F.2d 582, 585 (8th Cir. 1982), *aff'd*, 463 U.S. 277 (1983); *see also* Nilsen, *supra*, at 162; Barkow, *supra*, at 1173; *cf. Solem v. Helm,* 463 U.S. 277, 300 (1983) (noting that the purpose of parole is rehabilitative).

A sentence that rejects rehabilitation of a juvenile convicted of a non-homicide offense is both grossly excessive in relation to the crime committed and ignores the uncontestable fact that children are far more malleable and capable of rehabilitation than their adult counterparts. *Roper*, 543 U.S. at 570. An average juvenile's potential for rehabilitation is profoundly greater than that of an adult who has committed a comparable offense. This is so because juvenile criminal conduct is likely to result from "normative experimentation with risky behavior and not from deep-seated moral deficiency reflective of 'bad' character." As a result, "the vast majority of adolescents who engage in criminal or delinquent behavior desist from crime as they mature into

adulthood." Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psychologist 1009, 1011-1012 (2003); *see also* Robert J. Sampson & John H. Laub, *Crime in the Making: Pathways and Turning Points Through Life*, 39 Crime & Delinquency 396 (1993).

3. Deterrence

Because of juveniles' lesser capacities for future orientation and proper consideration of the consequences of their actions, the risk of a life sentence without possibility of parole is unlikely to deter their criminal conduct. As this Court recognized in *Roper*, "the same characteristics that render juveniles less culpable than adults suggest as well that juveniles will be less susceptible to deterrence." 543 U.S. at 571.

This reasoning from *Roper* also applies to this case. Life-without-parole sentences do not deter juveniles from committing additional crimes because juveniles are not equipped like adults when it comes to assessing risks. Indeed, researchers have found that the threat or reality of adult criminal punishment through waiver or transfer into the adult criminal justice system has no deterrent effect on misconduct by teen offenders. *See* Dep't of Health & Human Servs., Center for Disease Control Task Force on Community Preventive Services, *Effects on*

Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System, Morbidity & Mortality Weekly Report (Nov. 30, 2007) (reviewing research on effects of transferring juveniles to adult justice system and finding no evidence of general deterrence), *available at* http://www.cdc.gov/mmwr/PDF/rr/rr5609.pdf; Simon I. Singer & David McDowall, *Criminalizing Delinquency: The Deterrent Effects of the New York Juvenile Offender Law*, 22 L. & Soc'y Rev. 521, 529-532 (1988) (measuring New York arrest rates before and after change to require prosecution of some juveniles in criminal court and finding no significant effect); Eric L. Jensen & Linda K. Metsger, *A Test of the Deterrent Effect of Legislative Waiver on Violent Juvenile Crime*, 40 Crime & Delinq. 96, 100-102 (1994) (finding no deterrent effect of Idaho statute mandating criminal processing as adults of juveniles charged with serious offenses); *see generally* Richard E. Redding, U.S. Dep't of Justice, Office of Juvenile Justice & Delinquency Prevention, *Juvenile Transfer Law: An Effective Deterrent to Delinquency?* (2008) (summarizing and discussing multiple empirical studies).[13]

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[13] *Available at* http//www.ncjrs.gov/pdffiles1/ojjdp/220595.pdf. Studies comparing recidivism rates between comparable groups of adolescents processed by either the criminal or juvenile justice systems have shown no significant specific deterrent effect from exposure to the adult criminal justice system. *See* Jeffrey Fagan, *The Comparative Impacts of Juvenile and Criminal Court Sanctions on Adolescent Felony Offenders*, 1 Law & Policy 18,

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C. Graham's Life-Without-Parole Sentence Rests On Judicial Reasoning That Contradicts *Roper*'s Rationale And Does Not Reflect A Legislative Judgment

1. Courts lack the expertise, as a matter of judicial discretion, to distinguish between those juveniles who are capable of rehabilitation and being deterred and those who are not

In exercising its discretion, the sentencing court relied on Graham's juvenile misconduct to find that Graham was incapable of either rehabilitation or deterrence. Thus, the court further found, the only penological goal that could be served was to protect the community by incapacitating Graham. *See* J.A. 392-396. These judicial findings cannot be reconciled with *Roper*.

77-119 (1996); *see also* Jeffrey Fagan et al., *Be Careful What You Wish for: Legal Sanctions and Public Safety Among Adolescent Offenders in Juvenile and Criminal Court*, Columbia Law School, Pub. Law Research Paper No. 03-61 (July 2007) (indicating recidivism rates were not generally lower for adolescents in the criminal justice system as opposed to those treated by the juvenile justice system, in a cross-jurisdictional study), *available at* http://ssrn.com/abstract=91202 (click "Download" and select "SSRN"); L. Winner et al., *The Transfer of Juveniles to Criminal Court: Reexamining Recidivism Over the Long Term*, 43 Crime & Delinq. 548, 551-562 (1997) (comparing recidivism rates of comparable adolescent offenders in Florida).

In *Roper*, this Court held that it is impossible to distinguish in a reliable way between the few adolescent offenders who may not be amenable to rehabilitation and the many who will spontaneously desist or respond to sanctions or intervention. 543 U.S. at 572-573. Unlike with adults, a sentencer cannot conclude with any reasonable degree of certainty that "even a heinous crime committed by a juvenile is evidence of irretrievably depraved character," *id*. at 570, or that the juvenile will pose a danger to the community in future years, especially decades after the sentence is imposed. *Id*. at 571-572. The mere passage of time and increasing maturity often reform a juvenile's character deficiencies, as "the signature qualities of youth are transient; as individuals mature, the impetuousness and recklessness that may dominate in younger years can subside." *Id*. at 570 (quoting *Johnson*, 509 U.S. at 368). "[A]ny conclusion that a juvenile falls among the worst offenders" is "suspect." *Ibid*.

In fact, even expert psychologists cannot reliably "differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." *Id.* at 573 (citing Steinberg & Scott, *supra*, 1014-1016). This is because the observable behavior of different adolescents can be identical in adolescents who will persist as criminal offenders through adulthood and those who will not. *See* John F. Edens et al., *Assessment of "Juvenile Psychopathy" and Its Association with Violence: A*

Critical Review, 19 Behav. Sci. L. 53, 59 (2001) (measures of psychopathy may tap "relatively *normative* and *temporary* characteristics of adolescence rather than deviant and stable personality features").

Because not even trained psychologists or psychiatrists can determine whether the individual character traits of juveniles were signs of "transient immaturity" or "irreparable corruption," 543 U.S. at 572-573, this Court in *Roper* categorically rejected the proposition that the Eighth Amendment permits sentencing juries to determine, on a case-by-case basis, when a sanction as severe as the death penalty is appropriate for a juvenile offender who commits a homicide. Likewise, here, this Court should categorically reject the proposition that the Eighth Amendment permits a sentencing judge to determine, on a case-by-case basis, when a life-without-parole sentence is appropriate for a juvenile offender who commits a non-homicide.

2. Petitioner's life-without-parole sentence is not the result of any legislative judgment that such a sanction should be imposed on a juvenile

There is no support for the proposition that petitioner's sentence in this case reflects the judgment of the Florida Legislature (or that of any state legislature).

a. This Court generally gives greater deference to a legislative judgment to impose a mandatory term for a prison sentence than it does for one that vests substantial discretion to the sentencing judge.

In *Solem*, the Court held that a legislatively *authorized* but discretionary sentence of life imprisonment without parole was subject to significant scrutiny and invalid under the Eighth Amendment. 463 U.S. at 281-282 & n.6, 299 n.26, 303. In *Harmelin*, by contrast, this Court sustained the constitutionality of a legislatively *mandated* sentence of life without parole. In his concurring opinion in *Harmelin*, Justice Kennedy emphasized that, in *Solem*, the Court merely was repudiating the "judgment of a single jurist," not the judgment of a legislature. *Harmelin*, 501 U.S. at 1006 (Kennedy, J., concurring in part and concurring in judgment). "Because a 'lesser sentence . . . could have been entirely consistent with both the statute and the Eighth Amendment,' the Court's decision [in *Solem*] 'd[id] not question the legislature's judgment,' but rather found unconstitutional the sentencing court's selection of a penalty at the top of the authorized sentencing range." *Id.* at 1006-1007 (Kennedy, J., concurring in part and concurring in judgment) (quoting *Solem*, 463 U.S. at 299 n.26).

b. The instant case is more akin to *Solem* than *Harmelin*. By declaring unconstitutional Graham's life-without-parole sentence, the Court will not be repudiating the judgment of the Florida Legislature or any legislature. Instead, it will be repudiating the

judgment of a jurist whose reasoning contradicts this Court's rationale in *Roper*. Although the Florida Legislature authorized the sentencing court to impose the maximum sentence, Fla. Stat. § 921.002(1)(g) (2003), it made rehabilitation a secondary sentencing goal, *id.* § 921.002(1)(b), and instructed that the sentence's severity should be commensurate with the severity of the primary offense (armed burglary in this case) and the offender's prior criminal convictions (none in this case), *id.* § 921.002(1)(c), (d). In addition, the Legislature gave the sentencing court the option of imposing less harsh juvenile and youthful offender sanctions that would have limited Graham's incarceration to no more than six years. *See* pages 6-8, *supra* (Statement A.2.a).

In light of these legislative goals, the Florida Legislature unmistakably chose not to mandate that an offender like Graham be sentenced to life imprisonment without parole for committing an armed burglary. Fla. Stat. § 810.02(1)(b), (2)(a), (b) (2003). Indeed, no state legislature mandates a life-without-parole sentence when a juvenile offender such as Graham commits, as his first offense, an armed burglary. App. A, *infra*.

Rather than being the result of a legislative judgment that the offense he committed requires the severe sanction he received, Graham's sentence is largely the result of an interlocking series of discretionary executive and judicial decisions. In this case, the prosecutor exercised unreviewable discretion to directly file charges against Graham in

adult court, subjecting Graham to the possibility of a life-without-parole sentence, even though she exercised that same discretion to charge one of Graham's accomplices in juvenile court, where life without parole was not an available sentence. J.A. 6-7, 10, 28. Then, the prosecutor, by way of a plea bargain, and the sentencing court, by way of its discretion, eliminated the possibility that Graham would receive the lesser juvenile or youthful offender sanctions that the Florida Legislature permitted for juveniles found guilty in adult court. *See* pages 13-14, 22-23, *supra* (Part B.1.b & B.2.b). Finally, under the adult sentencing regime, the sentencing court exercised its discretion to reject lower sentences permitted by the Florida Legislature and recommended by Florida's executive agencies (48 months recommended by the Department of Corrections and 30 years recommended by the prosecutor's office), and instead chose to impose the maximum sentence, life imprisonment without parole. *See* pages 20-21, *supra* (Part B.2.b).

D. Imprisoning A Juvenile For Life Without Parole For Non-Homicide Offenses Like Armed Burglary Is Cruel When Compared To The Gravity Of The Offense And Unusual Because Most Jurisdictions Rarely, If Ever, Impose Such A Sentence

1. Petitioner's sentence of life without parole for armed burglary satisfies any Eighth Amendment threshold requirement that there be an inference of gross disproportionality

As a "threshold" matter, this Court compares a punishment's harshness with the gravity of the offense that is being punished. *See Harmelin*, 501 U.S. at 1005 (Kennedy, J., concurring in part and concurring in judgment). There can be little doubt Graham's sentence satisfies this threshold requirement. Both courts and researchers have recognized the common-sense conclusion that life imprisonment without parole is particularly cruel and harsh for a juvenile offender. *See In re Nunez*, 93 Cal. Rptr. 3d 242, 263 (Cal. Ct. App. 2009) ("[T]he harshness of [life imprisonment without parole] is particularly evident 'if the person on whom it is inflicted is a minor, who is condemned to live virtually his entire life in ignominious confinement, stripped of any opportunity or motive to redeem himself for an act attributable to the rash and immature judgment of youth.'") (quoting *People v. Davis*, 633 P.2d 186, 196 n.10 (Cal. 1981) (en banc));

see generally Human Rights Watch/Amnesty Int'l, *The Rest of their Lives: Life Without Parole for Child Offenders in the United States* 52-85 (2005) (*available at* http://www.hrw.org/en/reports/2005/10/11/rest-their-lives-0).

The harshness of such a sentence on a juvenile is particularly difficult to justify with respect to non-homicide offenses, such as the armed burglary in this case, which the Court has recognized are clearly morally less reprehensible than homicide offenses. *See Kennedy*, 128 S. Ct. at 2660 (noting there is a "fundamental, moral distinction between a 'murderer' and a 'robber'" because "while 'robbery is a serious crime deserving serious punishment,' it is not like death in its 'severity and irrevocability'") (quoting *Enmund*, 458 U.S. at 797). The harshest adult punishment (the death penalty) is disproportionate when it is imposed on an adult offender who did not take life, attempt to take life, or intend to take life. *Enmund*, 458 U.S. at 787, 801; *Kennedy*, 128 S. Ct. at 2645-2648, 2660. It logically follows then that the harshest juvenile punishment (life without parole) is disproportionate when it is imposed on a juvenile offender, like Graham, who did not take life, attempt to take life, or intend to take life.[14]

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[14] Indeed, the threshold inference of gross disproportionality is confirmed by the fact that Graham's punishment under the Federal Sentencing Guidelines would have been 6 to 12 months. U.S. Sentencing Guidelines Manual § 2B2.1 (2008); *see Ewing*, 538 U.S. at 43 (Breyer, J., dissenting) (relying on Guidelines to

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Because the threshold comparison between the punishment and the offense "leads to an inference of gross disproportionality," *Harmelin*, 501 U.S. at 1005 (Kennedy, J., concurring in part and concurring in judgment), this Court compares Graham's sentence with punishments imposed within the same jurisdiction and in other American jurisdictions. *See Solem*, 463 U.S. at 291 (noting that it may be "helpful" and "useful" to compare the sentence at issue with (i) "sentences imposed on other criminals in the same jurisdiction" and (ii) "sentences imposed for commission of the same crime in other jurisdictions"); *Ewing*, 538 U.S. at 43 (Breyer, J., dissenting). In addition, this Court has looked to the laws and practices of the international community. *See Roper*, 543 U.S. at 575-576; *Trop*, 356 U.S. at 102-103 (plurality opinion).

2. Graham's sentence is unusual in Florida and far exceeds the average sentences imposed on other Florida offenders for more serious or similar offenses

Graham's sentence of life without parole for his armed burglary conviction is unusual in Florida. It far exceeds the average sentences imposed on other

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determine that "threshold" test of gross disproportionality had been satisfied); *United States v. Bajakajian*, 524 U.S. 321, 338-339 (1998) (relying on Guidelines to determine that fine was grossly disproportionate under Eighth Amendment's Excessive Fines clause).

Florida offenders for more serious or similar offenses. "If more serious crimes are subject to the same penalty, or to less serious penalties, that is some indication that the punishment at issue may be excessive." *Solem*, 463 U.S. at 291; *see also Ewing*, 538 U.S. at 43 (Breyer, J., dissenting) (reviewing average sentences served as part of comparative analysis).

Florida's Department of Corrections reports the following average prison times to be served by Florida offenders—both adult and juvenile—admitted in fiscal year 2003-2004:[15]

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[15] Fla. Dep't of Corrs., Bureau of Research and Data Analysis, *Time Served by Criminals Sentenced to Florida's Prisons: The Impact of Punishment Policies from 1979 to 2004*, § 2, Charts 6, 9, 10, 11, 17, 25 (Aug. 2004) (*available at* http://www.dc.state.fl.us/pub/timeserv/annual/index.html). For its August 2004 report, the Department relied on natural life expectancy tables to calculate the average prison times to be actually served. *See* Fla. Dep't of Corrs., Bureau of Research and Data Analysis, *supra*, Methodology Section n.5 (*available at* http://www.dc.state.fl.us/pub/timeserv/annual/index.html) (click on "Methodology"). Based on natural life expectancy tables, Graham will spend approximately 60 years in prison. *See* U.S. Census Bureau, 2009 Statistical Abstract, Table 103 (*available at* www.census.gov/compendia/statab/cats/births_deaths_marriages_divorces/life_expectancy.html). Because a more recent 2007-08 annual report does not show the average prison time for armed burglary (Graham's offense), petitioner relies on the data from the 2003-2004 fiscal year that appears in the August 2004 report.

Offense	**Average Prison Time to Be Served by All Offenders (Adult and Juvenile) Admitted in Fiscal Year 2003-04**
All Violent Crimes	7.1 years
Murder	26.9 years
Second Degree Murder	21.6 years
Murder/Manslaughter	20.5 years
Armed Robbery	10.1 years
Armed Burglary	8.4 years

Thus, compared to other Florida offenders (adult and juvenile combined), Graham's sentence for his armed burglary conviction is: (i) 8.5 times greater than the average sentence for all violent offenders; (ii) 7.1 times greater than the average sentence for offenders convicted of armed burglary; (iii) 5.9 times greater than the average sentence for offenders convicted of armed robbery; and (iv) 2.2 times greater than the average sentence for offenders convicted of a murder.

Graham's sentence is also unusual when compared solely with Florida juvenile offenders. Florida's Department of Corrections reports the following sentences for juvenile offenders admitted the same fiscal year as Graham (FY 2005-2006).[16]

[16] Fla. Dep't of Corrs., *2005-2006 Annual Report: The Online Guidebook to the Florida Prison System* 24 (*available at* http://www.dc.state.fl.us/pub/annual/0506/stats/ia_youthful.html) (last

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Offense	Number of Juvenile Offenders	Average Sentence Length in Years	Average Age at Offense
Murder, Manslaughter	95	19.8	16.5
Robbery	275	7.4	16.8
Violent Personal Offenses	219	5.2	16.8
Burglary	299	5.0	16.9

Therefore, looking only at juvenile offenders within Florida, Graham's sentence for his armed burglary conviction is: (i) 9.6 times greater than the average sentence for burglary; (ii) 6.8 times greater than the average sentence for robbery and violent personal offenses; and (iii) 2.5 times greater than the average sentence for homicides.

And Graham is one of only 77 juvenile, non-homicide offenders in Florida currently serving a life-without-parole sentence. Paolo G. Annino, David W. Rasmussen, and Chelsea B. Rice, *Juvenile Life without Parole for Non-Homicide Offenses:*

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visited June 30, 2009). For purposes of calculating the average sentences, the Department used 50 years for any sentence of death, life, and terms of imprisonment of 50 years or longer. We use the same measurement when comparing Graham's sentence to other juvenile offenders.

Florida Compared to the Nation 2, Table A (2009) (*available at* http://www.law.fsu.edu/faculty/profiles/annino/Report_JuvenileLifeSentence.pdf.) These 77 juvenile, non-homicide offenders—who have been admitted to Florida's adult prison system over the last quarter century—are a miniscule portion of the juvenile offenders in Florida's adult prisons. By comparison, in just the five most recently reported years, Florida has admitted over 6,800 juvenile offenders into its adult prison system, and over 5000 of these juvenile offenders have committed crimes comparable to or more serious than Graham's armed burglary charge.[17] In addition, Florida's Department of Juvenile Justice reports that burglary is the felony offense committed most often by juveniles, as there were 24,495 juvenile burglary referrals to the Department during the two most recent fiscal years. *See* http://www.djj.state.fl.us/Research/Trends.html (last visited July 15, 2009).

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[17] Every fiscal year, the Florida Department of Corrections issues an annual report, called The Online Guidebook to the Florida Prison System. These reports are available at http://www.dc.state.fl.us/pub/index.html (last visited July 2, 2009). The information on juvenile inmate admissions can be found in each report under the "Inmate Admissions" tab. The reports reveal that, in the last five reported fiscal years (2003-2008), 6830 juvenile offenders have been admitted to Florida's adult prisons, and 5021 of these offenders committed burglary, robbery, violent personal offenses, homicides, sexual offenses, or crimes involving weapons.

Florida permits life-without-parole sentences for offenses far more serious than armed burglary, such as pre-mediated murder, facilitating terrorism, and the unlawful manufacturing, sale, or delivery of weapons of mass destruction. *See* Fla. Stat. §§ 775.31(1)(e), 782.04(1)(a)(1), (b), 790.166(2) (2003); note 5, *supra*. Furthermore, a life-without-parole sentence is not authorized for other offenses that are at least just as serious as armed burglary. *See, e.g.*, *id.* §§ 784.045(1)(a)(2), 775.082(3)(c) (15-year maximum for aggravated battery while using a deadly weapon); *id.* § 782.07(2), (3), 775.082(3)(b) (30-year maximum for aggravated manslaughter of a juvenile or elderly person); *id.* § 794.011(4)(e), 775.082(3)(b) (30-year maximum for sexual battery on a mentally defective victim who is 12 years old or older).

3. Comparison of Graham's sentence to the sentences for juvenile offenders in other American jurisdictions demonstrates that his sentence is unusual both in theory and practice

Graham's offense conduct—an armed burglary with an assault or battery and without any prior convictions—would subject him to a life-without-parole sentence in only two States: Florida and South Carolina. App. A, *infra*. However, for this offense conduct, South Carolina has not actually imprisoned any juvenile offender; only Florida has done so. Annino, *supra,* at 8, Chart C. Thus, Graham's case is

analogous to *Solem*. There, only two States permitted a life-without-parole sentence for the offense conduct at issue, and only one State actually had imposed such a sentence for the offense conduct. 463 U.S. at 299-300; *cf. Enmund*, 458 U.S. at 793-794 (looking to conduct of sentencing juries, as well as legislative enactments, in determining whether sentence was proportional).

In an additional 15 jurisdictions, Graham's offense conduct would subject him to a life-without-parole sentence *if* he had a prior conviction, and in 14 of these 15 jurisdictions, at least two prior convictions would be required. App. B, *infra*. Graham had no convictions prior to his armed burglary offense, and thus, in none of these 15 jurisdictions would his offense conduct subject him to a life-without-parole sentence.

Significantly, there are no known juvenile offenders, outside of Florida, serving a life-without-parole sentence for any type of burglary offense (Graham's offense), or for any type of robbery, carjacking, or battery offense. Annino, *supra*, at 8, Chart C; *see* note 18, *infra*. Indeed, there are only 106 juvenile, non-homicide offenders in the Nation serving a life-without-parole sentence. Annino, *supra*, at 2, Table A; *see* note 18, *infra*. Seventy-seven of these 106 juvenile offenders (approximately 70%) are imprisoned in Florida. Annino, *supra*, at 2-3. The 29 offenders outside of Florida were imprisoned for either sexual battery or kidnapping offenses; by comparison, the 77 Florida

offenders were imprisoned for a wide variety of offenses. *See id*. at 8, Chart C.

Moreover, very few States have actually imposed life-without-parole sentences on juvenile, non-homicide offenders. All the known juvenile, non-homicide offenders in the Nation are concentrated in only five States besides Florida. *Id.* at 2, Table A. These five states have imprisoned far fewer juvenile, non-homicide offenders compared to the 77 such offenders imprisoned in Florida: Louisiana—17; Iowa—6; California—4; Nebraska—1; South Carolina—1. *Id.* at 5-6, Table A.[18] The authors of a recent study have confirmed that 36 States do not impose life-without-parole sentences on any juvenile non-homicide offenders. *Id.* at 2, 5-6, Table A. For seven other States, the authors have requested data, and their requests have been denied or are outstanding; the authors will update their study upon receipt of additional data. *Id.* at 3-4 & n.7, App. II. Therefore, while in theory a number of jurisdictions in the Nation permit life-without-parole sentences for a juvenile's non-homicide offense,[19] only a handful of

[18] The study lists Mississippi as a State that currently imprisons 5 persons sentenced to life without parole for juvenile non-homicide offenses. Inclusion of Mississippi in this list is misplaced because Mississippi also allows inmates convicted of non-homicides to be eligible for "early" release once they have reached age 65 and have served fifteen years of their sentence. *See* Miss. Code Ann. § 47-5-139(1)(a).

[19] Thirty-six States, along with the federal government and the District of Columbia, appear to legally permit

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jurisdictions, in practice, actually impose such a sentence on juvenile offenders for non-homicide offenses, and Florida does so far more often. *Id.* at 5-6, Table A.

Most States generally reserve the severe punishment of life without parole for juvenile offenders who commit the most serious offenses—that is, homicides. Compared to other States that actually sentence juvenile offenders for life without parole, Florida imposes this sentence on non-homicide offenders, rather than homicide offenders, at significantly higher rates than other States do. *Id.* at 6-7, Table B. According to a more dated 2005 study, almost 93% of the juvenile offenders sentenced to life without parole in the nation were convicted of a homicide. Human Rights Watch/Amnesty Int'l, *supra*, at 27.

4. Graham's sentence is unusual in that it would not be imposed anywhere else in the world

According to a 2008 survey, only ten nations, besides the United States, permit juveniles to be imprisoned for life without parole, and none of these ten nations do so in practice. Connie de la Vega & Michelle Leighton, *Sentencing Our Children to Die in*

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life-without-parole sentences for some types of juvenile, non-homicide offenses. App. C, *infra*. *See* note 18, *supra*, for explanation as to why Mississippi is not included in Appendix C.

Prison: Global Law and Practice, 42 U.S.F. L. Rev. 983, 989-990 & nn.18 & 20 (Aug. 2008).[20]

International treaties prohibit imprisoning juveniles for life without parole. Article 24(1) of the International Covenant on Civil and Political Rights, which was signed and ratified by the United States, requires that every child have "the right to such measures of protection as are required by his status as a minor." G.A. Res. 2200A, Art. 24(1), U.N. GAOR, 16th Sess., Supp. No. 16, U.N. Doc. A/6316 (1966) (entered into force Mar. 23, 1976). The United Nations Human Rights Committee has held "that sentencing children to life sentence without parole is of itself not in compliance with article 24(1) of the Covenant." U.N. Human Rights Comm., *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant*, ¶ 34, U.N. Doc. CCPR/C/USA/CO/3 (Sept. 15, 2006). Moreover, 185 nations in the United Nations General Assembly voted in favor of resolutions calling for nations to abolish the practice of imprisoning juveniles for life without parole; only the United States voted in

[20] The ten nations are Antigua, Barbuda, Argentina, Australia, Belize, Brunei, Cuba, Dominica, Saint Vincent and Grenadines, the Solomon Islands, and Sri Lanka. The 2008 study cited in the text updates the information and research from the 2005 study cited in the petition for *certiorari*, which indicated that 14 nations allowed juveniles to be imprisoned for life without parole.

opposition. De la Vega & Leighton, *supra*, at 989 & n.19.

Imprisoning juveniles for life without parole is also contrary to the standards of a widely-accepted international treaty relied upon by this Court in *Roper*. 543 U.S. at 576; *see id*. at 543 U.S. at 623 (Scalia, J., dissenting). Article 37(a) of the United Nations Convention on the Rights of the Child ("CRC") prohibits not only sentencing juveniles to death, but also sentencing juveniles to "life imprisonment without the possibility of release." United Nations Convention on Rights of the Child, Art. 37(a), U.N. Doc. A/44/736, 28 I.L.M. 1456, 1470 (Nov. 20, 1989). The CRC has been ratified by 192 nations; only the United States and Somalia have not ratified it. Human Rights Watch/Amnesty Int'l, *supra*, at 99 & nn.291-293.

CONCLUSION

For the reasons set forth above, this Court should reverse the judgment of the Florida First District Court of Appeal with instructions to vacate petitioner's life-without-parole sentence, and remand the case for further proceedings.

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APPENDIX A

JURISDICTIONS PERMITTING A LIFE-WITHOUT-PAROLE SENTENCE FOR A BURGLARY CONVICTION BY A JUVENILE OFFENDER WITHOUT ANY PRIOR CONVICTIONS

	State	Statute(s)
1.	Florida	Fla. Stat. §§ 985.56(1) (child of any age subject to life without parole); 810.02 (burglary subject to life sentence); 921.001(10) (life sentences ineligible for parole).
2.	South Carolina	S.C. Code §§ 63-19-1210(5) (juvenile 14 or older may be tried as adult for serious felonies); 16-11-311(B) (first degree burglary carries sentence of life without parole).

APPENDIX B

JURISDICTIONS PERMITTING A LIFE-WITHOUT-PAROLE SENTENCE FOR A BURGLARY CONVICTION BY A JUVENILE OFFENDER WITH PRIOR CONVICTIONS

	State	Offense Number	Statute(s)
1.	Alabama	4	Ala. Code §§ 13A-3-3 (must be older than 14 for criminal responsibility); 13A-5-9(c)(3), (4) (certain recidivist offenders subject to life without parole); 13A-7-5(b) (first degree burglary subject to recidivist statute).
2.	California	4	Cal. Penal Code §§ 26 (under 14 not criminally responsible unless clear proof that juvenile knew of wrongfulness); 667.7(a), (a)(2) (life-without-parole sentence for recidivist offenders if fourth felony uses force likely to result in great bodily injury).
3.	Delaware	3	Del. Code tit. 10, § 1010(a) (child may be treated as adult in some circumstances); Del. Code tit. 11, § 4214(b) (life without parole if third

			felony conviction is for burglary in the first or second degree).
4.	District of Columbia	3	D.C. Code §§ 16-2307 (possible referral to district court if juvenile has committed act that would be felony if committed by adult); 22-1804a(a)(2) (subject to life-without-parole sentence under recidivist statute for, *inter alia*, burglary).
5.	Florida	1	Fla. Stat. §§ 985.56(1) (child of any age subject to life without parole); 810.02(2) (burglary subject to life sentence); 921.001(10)(b) (life sentences ineligible for parole).
6.	Indiana	3	Ind. Code Ann. §§ 31-30-3-6(2) (juvenile court must refer to district court if recidivist offender); 35-50-2-8.5(a) (life-without-parole sentence for recidivist offenders for certain crimes, including burglary with a dangerous weapon or resulting in serious bodily injury).

7.	Louisiana	3	La. Child Code art. 857(A) (child charged with certain crimes may be transferred to district court); La. Rev. Stat. § 15:529.1(A) (life-without-parole sentence for third felony if crime of violence, which includes burglary with a dangerous weapon).
8.	Maryland	4	Md. Code Ann., Cts. & Jud. Proc. § 3-8A-03(d)(1) (juvenile court has no jurisdiction over case where offense by juvenile 14 or older would be punishable by death or life imprisonment if committed by adult); Md. Code Ann., Crim. Law §§ 14-101(c)(1) (life-without-parole sentence for conviction for fourth crime of violence); 14-101(a)(14) (crime of violence includes commission of any felony with the use of handgun).
9.	North Carolina	3	N.C. Gen. Stat. §§ 7B-2200 (juvenile 13 or older may be tried as adult); 14-7.7 (third violent felony conviction results in violent habitual felon

			status; violent felonies are class A-E felonies); 14-7.12 (violent habitual felons sentenced to life without parole); 14-52 (burglary in first degree is a class D felony).
10.	Pennsylvania	3	42 Pa. Cons. Stat. §§ 6355(a) (transfer to district court if juvenile was 14 or older at time of act and the act would have been a felony if committed by an adult); 9714(a)(2), (g) (life-without-parole sentence for third violent felony conviction; violent felony includes certain type of burglary).
11.	Rhode Island	3	R.I. Gen. Laws §§ 14-1-7(c) (anyone under 18 can be charged as adult for committing felony punishable by life in prison); 11-47-3.2 (possible life without parole for third conviction for using a firearm to commit a crime of violence); 11-47-2(2) (burglary is a crime of violence).
12.	South Carolina	1	S.C. Code §§ 63-19-1210(5) (juvenile 14 or older may

			be tried as an adult for serious felonies); 16-11-311(B) (first degree burglary carries life-without-parole sentence).
13.	South Dakota	4	S.D. Codified Laws §§ 22-3-1(1) (children younger than 10 are incapable of committing crime); 26-11-3.1 (child 16 or older charged with Class A, B, or C felony must be tried as an adult); 22-6-1(3) (Class C felony can carry life sentence); 24-15-4 (life sentences are ineligible for parole); 22-7-8, (fourth felony conviction can result in life sentence).
14.	Tennessee	2	Tenn. Code Ann. §§ 37-1-134 (juvenile court may transfer case to district court if child 16 or under committed enumerated felonies); 40-35-120(g) (repeat violent offenders, which includes offense of especially aggravated burglary, are subject to life-without-parole sentence).

15.	Utah	3	Utah Code Ann. §§ 76-2-301 (juveniles not criminally responsible if younger than 14); 78A-6-703(7) (juvenile court has discretion to transfer case to district court); 76-3-203.5 (habitual violent offenders sentenced to life without parole; burglary is an enumerated violent felony).
16.	Washington	3	Wash. Rev. Code §§ 9A.04.050 (juveniles under 8 are not criminally responsible); 13.40.110 (juvenile court may transfer case of juvenile 8 or older to district court); 9.94A.570 (recidivism for class A offenses results in life-without-parole sentence); 9A.52.020 (burglary is a Class A felony).
17.	Wisconsin	3	Wis. Stat. §§ 938.183(t) (district court has exclusive jurisdiction of juvenile that committed assault or battery on certain law enforcement officials); 939.62(2m)(b)(1), (c) (recidivism statute

results in life-without-parole sentence for third serious felony); 939.62(2m)(a)(2m)(b) (burglary is a serious felony).

APPENDIX C

JURISDICTIONS PERMITTING A LIFE-WITHOUT-PAROLE SENTENCE FOR JUVENILE OFFENDERS CONVICTED OF NON-HOMICIDE OFFENSES

	State	Statute(s)
1.	Alabama	Ala. Code §§ 13A-3-3 (must be older than 14 for criminal responsibility); 13A-5-9(c)(3)-(4) (Class A recidivist offenders subject to life without parole); 13A-6-43(c) (kidnapping subject to recidivist statute).
2.	Arkansas	Ark. Code Ann. §§ 9-27-318(b) (possible transfer to criminal court for rape offense if 14 or older); 5-4-501(c)(3) (life without parole if rape is second serious felony offense).
3.	California	Cal. Penal Code §§ 26 (under 14 not criminally responsible unless clear proof that juvenile knew of wrongfulness); 667.7(a)(2) (life-without-parole sentence for recidivist offenders for variety of offenses).
4.	Delaware	Del. Code tit. 10, § 1010(a) (child may be treated as adult in some circumstances); Del. Code tit. 11, § 773(c) (life without parole for first degree rape in some circumstances).

5.	District of Columbia	D.C. Code §§ 16-2307(a) (possible referral to district court if juvenile 15 or older has committed act that would be felony if committed by adult); 22-1804a(a)(2) (subject to life-without-parole sentence under recidivist statute for, *inter alia*, burglary).
6.	Florida	Fla. Stat. §§ 985.56(1) (child of any age subject to life without parole); 810.02(2) (burglary subject to life sentence); 921.001(10)(b) (life sentences ineligible for parole).
7.	Georgia	Ga. Code Ann. §§ 16-3-1 (younger than 13 not criminally responsible); 16-6-1(b) (may receive life-without-parole sentence for rape conviction).
8.	Idaho	Idaho Code §§ 20-508 (juvenile court may transfer case to district court for enumerated offenses); 18-6104 (rape conviction can carry life-without-parole sentence); 19-2513 (court has discretion to impose a determinate sentence of life, which means no parole).
9.	Illinois	705 Ill. Comp. Stat. Ann. § 405/5-130(4)(c)(ii) (juvenile may be sentenced under adult criminal code); 730 Ill. Comp. Stat. Ann. § 5/5-8-1(a)(2.5) (second conviction for aggravated criminal sexual assault results in

		determinate sentence for natural life).
10.	Indiana	Ind. Code Ann. §§ 31-30-3-6(2) (juvenile court must refer to district court if recidivist offender); 35-50-2-8.5(a) (life-without-parole sentence for recidivist offenders for certain crimes).
11.	Iowa	Iowa Code §§ 232.45(1), (6) (juvenile court may transfer case to district court for certain offenses committed by juvenile 14 or older); 710.2 (kidnapping in first degree is Class A felony); 902.1 (Class A felony carries life-without-parole sentence).
12.	Louisiana	La. Child. Code Ann. art. 857(A) (a child charged with certain crimes may be transferred to district court); La. Rev. Stat. § 14:44 (aggravated kidnapping carries sentence of life without parole).
13.	Maryland	Md. Code Ann., Cts. & Jud. Proc. § 3-8A-03(d)(1) (juvenile court has no jurisdiction over case where offense by juvenile 14 or older would be punishable by death or life imprisonment if committed by adult); Md. Code Ann., Crim. Law § 3-303(d)(2) (rape in first degree carries life-without-parole sentence).
14.	Michigan	Mich. Comp. Laws §§ 712A.2(a)(1) (family court lacks jurisdiction

		over case where juvenile 14 or older commits offense that would be felony if committed by adult); 333.7413(1) (recidivist controlled substances offenses subject to life without parole).
15.	Minnesota	Minn. Stat. §§ 260B.125(1) (juvenile court may transfer case to district court if juvenile is 14 or older and committed an offense that would be felony if committed by adult); 609.3455(2)(a) (life-without-parole sentence if criminal sexual conduct in the first or second degree is committed and two or more heinous elements exist).
16.	Missouri	Mo. Rev. Stat. §§ 211.071(1) (juvenile court may transfer case to district court if juvenile is 12 or older and committed an offense that would be felony if adult had committed it); 558.018(3) (life-without-parole sentence for recidivist sexual offenders).
17.	Montana	Mont. Code Ann. §§ 41-5-206(1)(a) (county attorney may refer 12-15 year old's juvenile case to district court for enumerated offenses); 46-18-219 (recidivist sexual offenses result in life-without-parole sentence).
18.	Nebraska	Neb. Rev. Stat. §§ 43-247 (criminal court has jurisdiction over juvenile

		that has committed felony); 28-313 (kidnapping is IA felony); 28-105 (IA felony carries life-without-parole sentence).
19.	Nevada	Nev. Rev. Stat. §§ 62B.330(d) (juvenile court does not have jurisdiction over juvenile that commits felony on school grounds resulting in substantial bodily harm); 194.010(1) (juvenile under age of 8 is not criminally responsible); 193.1685(3) (felony resulting in substantial bodily harm to victim committed with requisite intent may receive life-without-parole sentence).
20.	New Hampshire	N.H. Rev. Stat. Ann. §§ 628:1(I) (children 13 and older may be held criminally responsible); 169-B:24(II) (juveniles 13 or older may be tried as adults for certain felonies); 651:6 (recidivist statute imposes life without parole for some offenses).
21.	New Jersey	N.J. Stat. §§ 2A:4A-26 (juvenile court may transfer case to district court if juvenile is 14 or older and committed an enumerated felony); 2C:43-7.1(a) (life-without-parole sentence for third conviction of enumerated offenses under recidivist statute).

22.	New York	N.Y. Penal Code §§ 30.00(1)-(2) (juvenile under 16 cannot be criminally responsible for offenses with life-without-parole sentence); 490.25 (juvenile may be convicted of terrorism charges); 60.06 (terrorism charges can result in life-without-parole sentence).
23.	North Carolina	N.C. Gen. Stat. §§ 7B-2200 (juveniles 13 or older may be tried as adult); 15A-1340.16B(a) (life-without-parole sentence for second conviction of first degree rape).
24.	North Dakota	N.D. Cent. Code §§ 12.1-04-01 (juvenile may not be prosecuted as an adult if committed offense when younger than 14); 12.1-20-03 (offense of gross sexual imposition is a Class AA felony); 12.1-32-01(1) (Class AA felony subject to life-without-parole sentence).
25.	Ohio	Ohio Rev. Code §§ 2152.10(B) (discretionary transfer to district court if juvenile 14 or older committed what would be felony for adult); 2907.02(B) (particular circumstances surrounding offense of rape in the first degree can result in life-without-parole sentence).
26.	Oklahoma	Okla. Stat. tit. 10, §§ 7306-2.6 (may be designated a youthful offender if aged 15 and commit an enumerated offense); 7306-2.8

		(youthful offender may be sentenced as adult); Okla. Stat. tit. 21, § 1115 (rape in first degree may receive life-without-parole sentence).
27.	Pennsylvania	42 Pa. Cons. Stat. § 6355(a) (transfer to district court if juvenile was 14 or older at time of act and act would have been felony if committed by adult); 18 Pa. Cons. Stat. § 3121(e)(2) (possible life imprisonment for rape of child under 13 that results in serious bodily injury); 61 Pa. Cons. Stat. § 331.21(a) (parole not available to those serving life sentences).
28.	Rhode Island	R.I. Gen. Laws §§ 14-1-7(c) (anyone under 18 can be charged as an adult for committing felony punishable by life in prison); 11-47-3.2 (possible life without parole for third conviction for using a firearm to commit a crime of violence).
29.	South Carolina	S.C. Code §§ 63-19-1210(5) (juvenile 14 or older may be tried as adult for serious felonies); 16-11-311(B) (first degree burglary carries life-without-parole sentence).
30.	South Dakota	S.D. Codified Laws §§ 22-3-1(1) (children younger than 10 are incapable of committing crime); 26-11-3.1 (child 16 or older

	charged with Class A, B, or C felony must be tried as an adult); 22-19-1 (kidnapping is Class C felony); 22-6-1(3) (Class C felony can carry life-without-parole sentence); 24-15-4 (life sentences are ineligible for parole).
31. Tennessee	Tenn. Code Ann. §§ 37-1-134 (juvenile court may transfer case to district court if child 16 or older committed enumerated felonies); 40-35-120(g) (repeat violent offenders are subject to life-without-parole sentence).
32. Utah	Utah Code Ann. §§ 76-2-301 (juveniles not criminally responsible if younger than 14); 78A-6-703(7) (juvenile court has discretion to transfer case to district court); 76-5-302(3)(b)-(c) (aggravated kidnapping that causes serious bodily injury can result in life-without-parole sentence).
33. Virginia	Va. Code Ann. §§ 16.1-269.1(A) (juvenile court may transfer case to district court if offense by juvenile 14 or older would be felony if committed by adult); 53.1-151(B1) (recidivism for certain offenses results in life-without-parole sentence).
34. Washington	Wash. Rev. Code §§ 9A.04.050 (juveniles under 8 are not

		criminally responsible); 13.40.110 (juvenile court may transfer case of juvenile 8 or older to district court); 9.94A.570 (recidivism for class A offenses results in life-without-parole sentence).
35.	West Virginia	W. Va. Code §§ 49-5-10(e) (juvenile court has discretion to transfer juveniles 14 or younger to district court); 61-2-14a(a) (conviction for kidnapping carries life-without-parole sentence).
36.	Wisconsin	Wis. Stat. §§ 983.183(t) (district court has exclusive jurisdiction of juvenile that committed assault or battery on certain law enforcement officials); 939.62(2m)(c) (recidivism statute results in life-without-parole sentence).
37.	Wyoming	Wyo. Stat. §§ 14-6-237 (juvenile court has discretion to transfer case to district court if juvenile is 13 or older); 6-2-306(d) (recidivism for certain sexual offenses results in a sentence of life without parole).
38.	Federal	18 U.S.C. §§ 5032 (juvenile aged 13 can be transferred to district court and tried as an adult under certain circumstances); 3559(c)(1) (recidivism statute subjects one to life-without-parole sentence).