

Nos. 10-9646 & 10-9647

In The
Supreme Court of the United States

EVAN MILLER, *Petitioner*,
v.
STATE OF ALABAMA, *Respondent*.

KUNTRELL JACKSON, *Petitioner*,
v.
RAY HOBBS, *Respondent*.

**On Writs of Certiorari to the
Alabama Court of Criminal Appeals
and the Supreme Court of Arkansas**

**BRIEF OF THE AMERICAN PROBATION AND PAROLE
ASSOCIATION, THE CHILDREN'S DEFENSE FUND, THE
CHILD WELFARE LEAGUE OF AMERICA, THE COUNCIL
OF JUVENILE CORRECTIONAL ADMINISTRATORS, AND
THE NATIONAL PARTNERSHIP FOR JUVENILE SERVICES
AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS**

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INTEREST OF *AMICI CURIAE*

The organizations submitting this brief work with, and on behalf of, juveniles in a variety of settings, including inside and outside the criminal justice system. Based on this experience, *amici* know that the differences between juveniles and adults – including impulsiveness, susceptibility to negative influences, and the capacity for rehabilitation – are profound. While juvenile offenders must be accountable for their actions, they cannot be held to the same standards of blameworthiness and culpability as adults.¹

The American Probation and Parole Association (“APPA”) is an international organization, representing approximately 35,000 probation and parole professionals in juvenile and adult corrections. The APPA works to develop a system of probation and parole services that provides public safety by ensuring humane, effective and individualized sentences for offenders, and support and protection for victims.

The Children’s Defense Fund (“CDF”) is a non-profit child advocacy organization dedicated to ensuring a level playing field for all children and to championing policies and programs that lift children out of poverty, protect them from abuse and neglect, and ensure their access to health care, quality education, and a moral and spiritual foundation.

¹ Letters of consent by the parties to the filing of this brief have been lodged with the Clerk of this Court. No counsel for any party authored this brief in whole or in part, and no person or entity other than *amici* made any monetary contribution to the preparation or submission of this brief.

CDF advocates nationwide on behalf of children to ensure that children are always a priority.

The Child Welfare League of America (“CWLA”) is a coalition of hundreds of private and public agencies serving vulnerable children and families by advancing policies, best practices and collaborative strategies in support of every child growing up in a safe, loving, stable family. CWLA’s focus is on children and youth who may have experienced abuse, neglect, family disruption, or a range of other factors that jeopardize their safety, permanence, or well-being.

The Council of Juvenile Correctional Administrators (“CJCA”) represents the youth correctional CEOs in fifty states, Puerto Rico, Washington, D.C. and some major metropolitan counties. Through the collaborative efforts of its members, CJCA has developed expertise in designing and implementing the most effective practices for the treatment of juveniles within their care.

The National Partnership for Juvenile Services (“NPJS”) was formed in 2001 and is comprised of four partner organizations: the National Association of Juvenile Correction Agencies, the National Juvenile Detention Association, the Juvenile Justice Trainers Association, and the Council of Educators for At-Risk and Delinquent Youth. NPJS provides professional development and technical assistance in the field of juvenile justice and delinquency prevention – promoting best-practices and standards – to positively affect youth, families and communities

SUMMARY OF ARGUMENT

In *Graham v. Florida*, 130 S. Ct. 2011 (2010), this Court held that sentencing juvenile offenders who did not commit homicide to life-without-parole (“LWOP”) is disproportionate to the culpability of juvenile offenders and therefore constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments. In doing so, this Court affirmed the simple yet profound distinction that juveniles are different from adults. This insight remains fully applicable in the context of juvenile offenders who commit homicide. Juveniles – even those convicted of homicide – are different.

Amici agree with the legal arguments set forth in Petitioners’ brief. For the benefit of this Court, and based on *amici*’s own experience, *amici* present empirical data supporting three important points. First, juveniles have lessened ability to understand the consequences of their conduct, diminishing their culpability and competence. Second, juveniles are vulnerable to outside influences and pressure, and ill equipped to control their immediate surroundings or escape negative influences. Third, far from being irretrievably depraved and lost to society, juveniles possess significant capacity for development and rehabilitation.

In addition, in each section, *amici* include facts about individual juveniles involved in homicide or attempted homicide illustrating these distinctive characteristics. With regard to each of these individuals, a system of life-without-parole for juveniles would have prevented the development of dedicated, committed, productive citizens, and foreclosed the possibility of genuine rehabilitation.

Juveniles who commit homicide are different from adults in the same fundamental ways that this Court has recognized in other contexts. As the Court held in *Roper v. Simmons*, 543 U.S. 551 (2005), and *Graham v. Florida*, punishment must be proportionate to juvenile offenders' culpability. Accordingly, in light of the distinctive characteristics of juveniles, sentences of life without the possibility of parole for juveniles violate the prohibition on cruel and unusual punishment in the Eighth and Fourteenth Amendments.

ARGUMENT

The differences between adolescents and adults are stark. These differences, long recognized by this Court, are confirmed and detailed in an extensive body of research. First, juveniles' lack of maturity and development burdens them with an underdeveloped sense of responsibility – affecting both their own culpability and their ability to assist in their defense. Second, juveniles are vulnerable to negative influences and societal pressures; at the same time, while more vulnerable, juveniles cannot control their own environments or escape from these negative influences and pressures. Third, because juveniles are still maturing, their identities are not fully formed, and they have a remarkable capacity for change and rehabilitation.

I. JUVENILES' LACK OF MATURITY AND UNDERDEVELOPED SENSE OF RESPONSIBILITY DIMINISH THEIR CULPABILITY AND COMPETENCE

Juveniles lack maturity. This lack of maturity results in an underdeveloped sense of responsibility, affecting impulse control and predictive abilities.² These traits undermine juveniles' culpability for their criminal offenses and their ability to assist with issues related to their legal representation.

A. Juveniles Lack Maturity and Have an Underdeveloped Sense of Responsibility

Marked differences between adults and adolescents, including their capacities to exercise self-control and anticipate long-term impacts of their actions, prevent juveniles from effectively measuring the "cost-benefit analysis that attaches any weight to the possibility of" a LWOP sentence.³ In fact,

² See Charles Geier & Beatriz Luna, *The Maturation of Incentive Processing and Cognitive Control*, 93 *Pharmacology, Biochemistry & Behav.* 212, 216 (2009) (noting adolescence is commonly characterized as the developmental period between childhood and adulthood from ages twelve to seventeen); see also B.J. Casey, Sara Getz & Adriana Galvan, *The Adolescent Brain*, 28 *Dev. Rev.* 62, 72 (2008) (defining adolescence as a transitional time marked by puberty).

³ See *Thompson v. Oklahoma*, 487 U.S. 815, 837 (1988) (plurality) (suggesting offenders under age 16 do not consider effect of juvenile death sentences); see also Dustin Albert & Laurence Steinberg, *Judgment and Decision Making in Adolescence*, 21 *J. Res. Adolescence* 211, 215 (2011); Johanna Cooper Jennings, *Juvenile Justice, Sullivan, and Graham: How The Supreme Court's Decision Will Change The Neuroscience Debate*, 2010 *Duke L. & Tech. Rev.* 006, 7 (2010) (discussing youthful offenders, who often act impulsively without
(cont'd)

characteristics such as risk-taking, sensation-seeking, and impulsiveness are common in adolescent behavior.⁴ Behaviors that seem likely to increase positive emotions tend to become more desirable, even if they carry risk.⁵ These characteristics come together in a lack of maturity that leaves juveniles unable to consider fully the future impact of their actions.⁶

Adolescents have difficulty planning ahead and anticipating future consequences.⁷ Indeed, because of juveniles' "lack of maturity and an underdeveloped sense of responsibility," they are

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considering the long-term consequences, being denied opportunity for societal reentry when they are sentenced to life without parole).

⁴ Sara B. Johnson et al., *Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy*, 45 *J. Adolescent Health* 216, 218 (2009); see also Samantha Schad, *Adolescent Decision Making: Reduced Culpability in the Criminal Justice System and Recognition of Capability in Other Legal Contexts*, 14 *J. Health Care L. & Pol'y* 375, 382 (2011) (noting impulsivity and sensation seeking are psychosocial factors that can affect risk-taking); Laurence Steinberg et al., *Age Differences in Sensation Seeking and Impulsivity as Indexed by Behavior and Self-Report: Evidence for a Dual Systems Model*, 44 *Developmental Psychol.* 1764, 1764 (2008).

⁵ See Albert & Steinberg, 21 *J. Res. Adolescence* at 217.

⁶ Elizabeth Locker, *Grow Up Georgia . . . It's Time to Treat Our Children as Children*, 4 *J. Marshall L.J.* 85, 96 (2011) (citing *Johnson v. Texas*, 509 U.S. 350, 367 (1993)).

⁷ Laurence Steinberg et al., *Age Differences in Future Orientation and Delay Discounting*, 80 *Child Dev.* 28, 36-37 (2009).

susceptible to “impetuous and ill-considered actions and decisions.”⁸ Unable to understand the likely outcome of events arising from their actions, sentences of life without parole offer little to deter juveniles from their actions.⁹

B. Juveniles’ Distinctive Characteristics Diminish Their Criminal Culpability

Juveniles’ distinctive characteristics diminish their criminal culpability. Juveniles are predisposed to hasty, high-risk behavior often resulting in terrible consequences.¹⁰ These characteristics leave juveniles “less responsible, more myopic, and less temperate than the average adult,” shunning broader perspectives on their individual actions.¹¹ Juveniles are statistically overrepresented in nearly all calculations of risky behavior.¹² This overrepresentation includes serious crimes, with

⁸ *Johnson*, 509 U.S. at 367.

⁹ *Thompson*, 487 U.S. at 836-38.

¹⁰ See Locker, 4 J. Marshall L.J. at 95-96; see also Deanna Kuhn, *Do Cognitive Changes Accompany Developments in the Adolescent Brain?*, 1 Persp. on Psychol. Sci. 59 (2006) (exploring psychological implications of developments in adolescent brain).

¹¹ Elizabeth Cauffman & Laurence Steinberg, *(Im)maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults*, 18 Behav. Sci. & L. 741, 745, 757 (2000).

¹² Jeffrey Jensen Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 Developmental Rev. 339, 339 (1992), <http://jeffreymarshall.com/articles/arnett1992recklessbehaviorinadolence.pdf>.

approximately thirty percent of American males committing a violent offense by the age of 18.¹³

For many, adolescence signals a period of harmful behavior that includes alcohol abuse, substance abuse, and reckless driving.¹⁴ This behavior is accompanied by the adolescent belief in one's own invincibility – “the worst” being a result possible only for others.¹⁵

This type of juvenile anti-social behavior reaches its apex in the teenage years.¹⁶ Juveniles' intellectual, social, and emotional maturity is “not as well-formed as that of an adult.”¹⁷ Recent research establishes that impulsiveness wanes steadily after

¹³ See U.S. Dep't of Health and Human Servs., *Youth Violence: A Report of the Surgeon General* (2001), <http://www.surgeongeneral.gov/library/youthviolence/chapter2/sec12.html#prevalance>.

¹⁴ Valeria F. Reyna & Frank Farley, *Risk and Rationality in Adolescent Decision Making: Implications for Theory, Practice, and Public Policy*, 7 *Psychol. Sci. Pub. Int.* 1, 8 (2006); see also Michael Windle & Rebecca C. Windle, *Alcohol and Other Substance Use and Abuse*, in *Blackwell Handbook of Adolescence* 450-463 (2003) (reporting empirical studies on initiation and escalation of adolescent substance use).

¹⁵ Kathleen M. Thies & John F. Travers, *Handbook of Human Development for Healthcare Professionals* 195 (2006).

¹⁶ See Jeffrey Jensen Arnett, *Emerging Adulthood: A Theory of Development from the Late Teens Through the Twenties*, 55 *No. 5 Am. Psychologist* 469, 474-75 (2000), http://jeffreymarnett.com/articles/ARNETT_Emerging_Adulthood_theory.pdf.

¹⁷ *Roper*, 543 U.S. at 570 (quoting *Thompson*, 487 U.S. at 835); see also *Graham*, 130 S. Ct. at 2026.

its apex, with appreciable decline into the mid-twenties.¹⁸

For juveniles, this lack of maturity, both in their behavior and their lack of foresight, can be exacerbated by circumstances requiring decisions “in the heat of passion, in the presence of peers, on the spur of the moment, in unfamiliar situations . . . [and] when behavioral inhibition is required for good outcomes.”¹⁹ Scientists have determined that adolescents, as a result of “hard wiring,” experience an elevated impact of stress that creates a correspondingly intense drop in judgment during emotion or stressful events.²⁰ To the extent that juveniles are making decisions in emotionally charged or pressured situations, those decisions are affected by an inability to control risk-seeking impulses.²¹ Even when cognizant of risks, juveniles discount them in favor of immediate perceived benefits and gratification.²²

¹⁸ Laurence Steinberg, *A Dual Systems Model of Adolescent Risk-Taking*, 52 *Developmental Psychobiology* 216 (2010).

¹⁹ Vivian E. Hamilton, *Immature Citizens and the State*, 2010 B.Y.U. L. Rev. 1055, 1110 (2010) (quoting Margo Gardner & Laurence Steinberg, *Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental Study*, 41 *Dev. Psych.* 625, 625 (2005)).

²⁰ Casey et al., 28 *Dev. Rev.* at 64.

²¹ Hamilton, 2010 B.Y.U. L. Rev. at 1110.

²² Reyna & Farley, 7 *Psychol. Sci. Pub. Int.* at 1.

C. Juveniles' Distinctive Characteristics Present Severe Challenges for Their Own Legal Representation

The distinctive characteristics of juveniles also present difficulties for defendants and counsel in the representation of juveniles. The same features that differentiate juveniles from adults – a lack of maturity, an unformed sense of responsibility, and impetuosity – also affect juveniles in criminal proceedings.²³

To be tried in criminal court, individuals must have the capacity to understand the proceedings, comprehend their own legal rights, and consult with and assist their counsel in their own defense.²⁴ With juveniles, at least one-third of fifteen and sixteen-year-olds do not have an accurate understanding of a “right.”²⁵ Adolescents have more difficulty grasping the roles of different actors in the adversarial system, undermining their understanding of their proceedings and their ability to assist counsel.²⁶ To make informed decisions in support of their defense, adolescent defendants must be able to understand how abstract concepts in criminal proceedings will

²³ *Graham*, 130 S. Ct. at 2032; see also Tamar R. Birkhead, *Culture Clash: The Challenge of Lawyering Across Difference in Juvenile Court*, 62 Rutgers L. Rev. 959 (2010) (presenting challenges counsel face in representing juveniles).

²⁴ *Godinez v. Moran*, 509 U.S. 389 (1993); *Dusky v. United States*, 362 U.S. 402 (1980).

²⁵ Laurence Steinberg & Elizabeth Cauffman, *A Developmental Perspective on Jurisdictional Boundary*, in *The Changing Borders of Juvenile Justice* 379 (2000).

²⁶ *Id.*

affect them individually.²⁷ Juveniles' distinctive inability to assist in their own defense can lead to wrongful convictions and subsequent sentencings.²⁸

In 1979, this Court explained that “[m]ost children, even in adolescence, simply are not able to make sound judgments concerning many decisions.”²⁹ As one juvenile sentenced to life-without-parole stated:

“When I seen [my attorney] before the sentence it was in the bullpen behind the court room and he told me there that I’d be getting natural life, I asked him how long that was and he told me, I couldn’t understand the whole thing and kept asking him when I’d be going home, but another inmate explained it all to me. . . . I didn’t know anything about the law or that he was supposed to come and see me during trial.”³⁰

²⁷ *Id.*

²⁸ Samuel Gross et al., *Exonerations in the United States 1989 through 2003*, Gideon Project, OSI 2004, <http://www.mindfully.org/Reform/2004/Prison-Exonerations-Gross19apr04.htm> (study discussing finding that cases involving juvenile defendants were over-represented among cases ultimately overturned as a wrongful conviction).

²⁹ *Parnham v. J.R.*, 442 U.S. 584, 603 (1979).

³⁰ Deborah Labelle et al., *Second Chances: Life Without Parole in Michigan Prisons*, ACLU of Michigan, at 16 (2004) [hereinafter “Labelle et al., *Second Chances*”]; see also Elizabeth S. Scott & Thomas Grisso, *Developmental Incompetence, Due Process, and Juvenile Justice Policy*, 83 N.C. L. Rev. 793, 828-31 (2005) (discussing how immaturity-based
(cont’d)

In *Graham*, this Court emphasized the difficulty that defendants' youth causes in the attorney-client relationship.³¹ Juvenile defendants are unable to assist their counsel as capably as adult defendants due to their suspicion and distrust of authority as well as their unfamiliarity with the criminal justice system.³²

The defining characteristics of juveniles – such as impetuosity and an inability to grasp future consequences – thus affect not only a juvenile's commission of the crime, but also that juvenile's participation in the judicial system.

D. The Lives of Scott Filippi and Roger Needham Illustrate Juveniles' Tragic Impulsiveness and the Possibility of Rehabilitation

Scott Filippi and Roger Needham both committed homicide as minors in impulsive reactions to situational pressures. Both have been successfully rehabilitated, and their lives as productive adults would be impossible in an inflexible system of life-

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impairments can affect juvenile offenders' ability to understand their charges and the nature of the proceedings, as well as assist their attorneys).

³¹ *Graham*, 130 S. Ct. at 2032.

³² *Id.*; see also Kristin Henning, *Loyalty, Paternalism, and Rights: Client Counseling Theory and the Role of Child's Counsel in Delinquency Cases*, 81 Notre Dame L. Rev. 245, 272-73 (2005) (minors work less effectively than adults with counsel due to developing cognitive skills, focus on immediate consequences, and lack of understanding of the attorney-client relationship).

without-parole for juvenile offenders who commit a homicide.

Scott Filippi -- As a sixteen-year-old, Scott Filippi fatally shot his mother – a woman who had not only allowed, but participated in, the physical and psychological abuse of her children for years.³³ Court records describe the children’s abuse as so severe that Filippi’s sister lost her hearing and sight.³⁴ Filippi himself “remember[ed] a lot of dark rooms . . . a lot of hitting . . . and a lot of crying. No lights, just smack! and locked into a dark room.”³⁵ He was left beaten by his stepfather “bloody from my head to my knees,” followed by his mother’s glancing instruction to “take a shower and get cleaned up.”³⁶

In October 1986, after years of being beaten with two-by-fours and belts, and being punched, kicked, and thrown down stairs, Filippi reacted in the heat of passion to his mother’s abuse:

“All of a sudden, she just started going off on me, telling me she hated me and she didn’t love me. . . . Just going off. I ran upstairs, I grabbed a 22. One of Bruce’s. . . . I just wanted her to

³³ The Children’s Court Centennial Communications Project, *Second Chances - 100 Years of the Children’s Court: Giving Kids a Chance to Make a Better Choice*, at 73-78, <http://www.cjcj.org/files/secondchances.pdf>.

³⁴ *Id.*

³⁵ *Id.* at 73.

³⁶ *Id.* at 74.

listen, just to stop yelling at me and listen.”³⁷

Filippi shot and killed his mother.

Filippi was sentenced to a long-term residential treatment facility where he received psychological treatment.³⁸ Despite his horrific crime, involving the commission of a homicide as a minor, Filippi has succeeded in rehabilitating himself.

Following his release, Filippi joined the United States Army.³⁹ He flourished, and eventually earned a position in the Presidential Honor Guard of President George H.W. Bush.⁴⁰ Currently a sales director at a southern California Mercedes-Benz dealership, Filippi is engaged to be married and plans to write a book about his experiences to benefit others.⁴¹

Filippi explains:

“I, and others like me, [am] living proof that prevention and rehabilitation programs are the best tools for deterring crime. I know that after reading this, people may view me differently. But when I was 16 and facing a life sentence in adult prison, I swore that if I could help others to get the same consideration I had, I would

³⁷ *Id.* at 76.

³⁸ *Id.* at 77.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 78.

do it. I am grateful for the chance I was given to make a new start, and hope other young offenders get the same chance.”⁴²

Roger Needham -- Like Filippi, Roger Needham acted impulsively and committed homicide as a juvenile.

At the age of 15, Needham brought a gun to his high school.⁴³ Provoked by repeated name-calling, Needham killed one student and wounded another while being heard to say, “I’m tired of being pushed around. Now I’m even.”⁴⁴

Needham was released from a juvenile facility after years of rehabilitative programming and treatment.⁴⁵ Following his release, Needham went on to graduate from the University of Michigan with highest distinction and an eventual Ph.D. in mathematics.⁴⁶ He later secured employment teaching at St. Louis University and at the City University of New York.⁴⁷

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⁴² *Id.*

⁴³ Labelle et al., *Second Chances* at 23.

⁴⁴ Susan Taylor Martin, *Murder at Locker 02-069*, St. Petersburg Times Online (Feb. 11, 2001) http://www.sptimes.com/News/021101/Floridian/Murder_at_Locker_02_0.shtml.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

The events that led to the incarceration of Scott Filippi and Roger Needham were abhorrent. More generally, the violent acts committed by some juveniles are unquestionably brutal and deeply disturbing. At the same time, such acts are inextricably linked to juveniles' inability to exercise self-control and to anticipate the long-term impacts of their actions. These acts often are rooted in juveniles' propensity for risk-taking and impulsiveness. They reflect juveniles' distinctive susceptibility to impetuous and ill-considered actions and decisions. The lives of Scott Filippi and Roger Needham illustrate that even minors who commit the most egregious crimes – homicide – can be rehabilitated when they enter adulthood.

II. JUVENILES ARE MORE SUSCEPTIBLE TO NEGATIVE INFLUENCES AND OUTSIDE PRESSURES THAN ADULTS

A. Research Shows That Juveniles Are More Vulnerable and Susceptible to Negative Influences and Pressures

Juveniles face far greater vulnerability and susceptibility to negative influences and outside pressures than adults.⁴⁸ These influences and pressures include peers, substances, and environment. Scientists have identified

⁴⁸ See Jeffrey Fagan, *The Contradictions of Juvenile Crime & Punishment*, J. of the Am. Acad. of Arts and Scis. at 44 (Summer 2010); see also Laurence Steinberg & Elizabeth Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psychologist 1009, 1101 (2003) (“adolescents are less culpable than are adults because adolescent criminal conduct is driven by transitory influences”).

psychological and neurological differences between children and adults that confirm the heightened vulnerability and susceptibility of minors.⁴⁹

Adolescent vulnerability is well documented. First, adolescents exhibit less robust levels of independent functioning than adults, primarily manifested in weak self-reliance and self-concept.⁵⁰ These lower levels of independent functioning increase adolescent vulnerabilities to peer pressure and outside factors.⁵¹

Second, research indicates that adolescents are disposed to succumb to the negative influence of their peers.⁵² Peer influence affects adolescent

⁴⁹ See, e.g., Cauffman & Steinberg, 18 *Behav. Sci. & L.* at 742-43; Elizabeth R. Sowell et al., *Mapping Continued Brain Growth and Gray Matter Density Reduction in Dorsal Frontal Cortex: Inverse Relationships During Postadolescent Brain Maturation*, 21(22) *J. Neuroscience* 8819, 8819 (2001); Steinberg & Scott, 58 *Am. Psychologist* at 1013; B.J. Casey et al., 28 *Developmental Rev.* at 62; B.J. Casey et al., *Structural and Functional Brain Development and Its Relation to Cognitive Development*, 54 *Biological Psychol.* 241 (2000); Eveline A. Crone et al., *Neurocognitive Development of Relational Reasoning*, 12 *Developmental Sci.* 55 (2009); Jay N. Giedd et al., *Anatomical Brain Magnetic Resonance Imaging Typically Developing Children and Adolescents*, 48 *J. Am. Acad. Child & Adolescent Psychiatry* 465 (2009); Jay N. Giedd et al., *Brain Development During Childhood and Adolescence: A Longitudinal MRI Study*, 2 *Nature Neuroscience* 861 (1999).

⁵⁰ Kathleen Kemp et al., *Characteristics of Developmental Immaturity: A Cross-Disciplinary Survey of Psychologists* (under review).

⁵¹ See Steinberg & Scott, 58 *Am. Psychologist* at 1012.

⁵² See Laurence Steinberg & Kathryn C. Monahan, *Age Differences in Resistance to Peer Influence*, 43 *Developmental Psychol.* 1531 (2007) (“[T]here is little doubt that peers actually
(cont’d)

judgment both directly and indirectly.⁵³ Juveniles may make choices in response to direct peer pressure, with additional indirect pressure present in the desire for peer approval and related fear of rejection.⁵⁴ Importantly, “susceptibility to peer pressure” is greatest when anti-social behavior and delinquency are involved.⁵⁵ Adolescents thus have a tendency to choose an antisocial activity suggested by their peers rather than a more positive choice of their own.⁵⁶ Even with criminal activity, juveniles tend to commit crimes in groups far more than adults.⁵⁷ This phenomenon remains present even in the absence of direct pressure.⁵⁸

This kind of pressure from the peer community can lead juveniles to join gangs and engage in violence. Data on juvenile delinquents are replete with references to gang peer groups and the

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influence each other and that the effects of peer influence are stronger during adolescence than in adulthood.”).

⁵³ Steinberg & Scott, 58 Am. Psychologist at 1012.

⁵⁴ *Id.*

⁵⁵ See Steinberg & Monahan, 43 Developmental Psychol. at 1532.

⁵⁶ T. Berndt, *Developmental Changes in Conformity to Peers and Parents*, 15 Developmental Psychol. 608, 614 (1979).

⁵⁷ Peter Ash, *Adolescents in Adult Court: Does the Punishment Fit the Criminal?*, 34 J. Am. Acad. Psychiatry L. 145, 147 (2006).

⁵⁸ Gardner & Steinberg, 41 Developmental Psychol. at 629-30 (noting adolescents took twice as many risks on a driving task when peers were present than when they were alone, running yellow lights at the risk of being hit by an unseen car).

attendant expectations for criminal activity. In many cases, however, while this peer influence was a primary cause of crime and delinquency in minors, the gang influence did not remain a lasting presence in juveniles' post-adolescent lives.

Adolescents face particular vulnerability to drug abuse and addiction due to the developing state of their brains.⁵⁹ According to the U.S. Department of Education, drug abuse is a particular risk for juveniles because “[t]he critical areas in the brain used for making judgments and comprehending complex concepts like safety and freedom are not fully developed at age 15” and do not reach full development until individuals are in their twenties.⁶⁰ As a result, issues regarding drug abuse “occur during a period of dramatic changes” in the adolescent brain.⁶¹

At the same time, juveniles are more limited by their environments than adults, with little or no ability to decide where they live or attend school.⁶² Many lack transportation, independent income, and

⁵⁹ Don Vereen, *Research Shows Consequences of Drug Abuse on the Teenage Brain*, *The Challenge* Vol. 14, No. 3 (U.S. Dep’t of Educ., Office of Safe and Drug Free Schools, 2007), http://thechallenge.org/14_3_research.html/.

⁶⁰ *Id.*

⁶¹ See *Interview with Nora Volkow, M.D., Director of the National Institute on Drug Abuse (NIDA)*, *The Challenge*, Vol. 14, No. 3 (U.S. Dep’t of Educ., Office of Safe and Drug-Free Schools, 2007), http://thechallenge.org/14_3_interview.html/.

⁶² See *Roper*, 543 U.S. at 553; see also *Locker*, 4 J. Marshall L.J. at 99.

a route of exit.⁶³ As the Court explained in *Roper*, juveniles’ “vulnerability and comparative lack of control over their immediate surroundings mean [they] have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment.”⁶⁴

The greater the number of risk factors faced by children in their environments – including living in dilapidated and violent neighborhoods; attending failing and deteriorating schools; or suffering violence and neglect at home – the greater the risk that children will be deprived of healthy adolescent development and cognitive growth.⁶⁵ Poverty alone is an important factor in an adolescent’s development that is “harmful to the physical, socioemotional, and cognitive well-being of children.”⁶⁶ Evidence suggests that the damage to

⁶³ *See id.*

⁶⁴ *Roper*, 543 U.S. at 570; *see also* Gary W. Evans, *The Environment of Childhood Poverty*, 59 *Am. Psychologist* 77, 88 (2004) (noting children from low-income environments and other risk factors, are “more likely to rely on peers than adults” and are particularly vulnerable to aggressive peers).

⁶⁵ *See* Evans, 59 *Am. Psychologist* at 88; Brian J. Bigelow, *There’s an Elephant in the Room: The Impact of Early Poverty and Neglect on Intelligence and Common Learning Disorders in Children, Adolescents and Their Parents*, 23 *Developmental Disabilities Bull.* 177, 185 (2006); *see also* Arnold J. Sameroff et al., *Stability of Intelligence from Preschool to Adolescence: The Influence of Social and Family Risk Factors*, 64 *Child Dev.* 80, 80-97 (1993).

⁶⁶ Evans, 59 *Am. Psychologist* at 88; Bigelow, 23 *Developmental Disabilities Bull.* at 202 (“The deleterious effects of stressful levels of poverty on early child development are no longer subject to serious debate.”).

brain growth and development from these toxic environmental factors begins at birth and “is often the most important variable in understanding children’s learning disorders.”⁶⁷

B. The Life of Lawrence Wu Illustrates Juveniles’ Vulnerability to Negative Influences and Pressures

Lawrence Wu was arrested for attempted murder as a juvenile as an outgrowth of the influence of his peers and environment. Wu emerged from this time in his life changed and ready to participate in, and contribute to, society. Sentences of life without the possibility of parole eliminate not only the hope that juveniles have for their futures, but also the contributions that juvenile offenders like Wu may some day make to their communities and society at large.

Lawrence Wu – Living in a single-parent home that Lawrence Wu describes as “lower middle class” and always “teetering on bankruptcy,” Wu joined one of a half-dozen gangs at his high school.⁶⁸ According to Wu, doing so was considered a fast track to “coolness.”⁶⁹ He explained: “They were universally feared by everyone, and I thought, this is wild and fun, and I started hanging out with these kids.”⁷⁰

⁶⁷ Bigelow, 23 *Developmental Disabilities Bull.* at 177-78.

⁶⁸ *Second Chances - 100 Years of the Children’s Court: Giving Kids a Chance to Make a Better Choice* at 14-18.

⁶⁹ *Id.* at 15.

⁷⁰ *Id.*

With continued delinquency and falling grades, Wu was kicked out of his house and dropped out of school.⁷¹ He joined one of New York City's Asian gangs that ran gambling, prostitution, and enforcement syndicates from New York to Hong Kong.⁷² As a 15-year-old gang member, Wu had been tasked with walking down the street in New York City or waiting in a movie theater armed with a gun and instructed to shoot any members of a rival Chinatown gang he encountered.⁷³ The rival gang targets of these "killing missions" never arrived where Wu was waiting.⁷⁴

Wu eventually, however, was arrested as an accomplice in a brutal beating of an individual believed to be a rival gang member: "One of my friends had a lock, put his finger through the ring, and we walloped this guy with a 'fist of fury,' and basically bashed his head to a pulp."⁷⁵ Fortunately for Wu, this victim did not suffer long-term health consequences and the charges were dropped.⁷⁶

Finally taking his cue that "this gangster stuff is getting old," Wu went from a juvenile record of arrest for attempted murder, fighting and other crimes relating to his involvement with Asian gangs, to completing his GED and college education.⁷⁷ Wu's

⁷¹ *Id.*

⁷² *Id.* at 15-16.

⁷³ *Id.* at 16.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.* at 17.

⁷⁷ *Id.*

successful transition from juvenile offender to contributing member of society culminated with his matriculation to law school and selection as editor-in-chief of the Columbia Law Review.⁷⁸ Wu now provides a powerful example of the effects external influences can have on a juvenile's actions. Today, as an adult, Wu counts his blessings:

“I think it is definitely true that a system of second and third chances [is] very important. I know that from my own life. . . . I know a lot of people from that gang that I would want to see locked up. . . . They really are irredeemable. But it is hard to have a general rule of culpability when there are so many individual circumstances.”⁷⁹

* * * * *

The vulnerability experienced by juveniles like Lawrence Wu, and his subsequent development into a valued, contributing member of society, refutes the notion that juveniles should be treated as society's worst offenders with no hope of rehabilitation.⁸⁰ Juveniles face greater vulnerability to negative influences and pressures than adults. The use of life-without-parole sentencing for juveniles is inconsistent with the fact that juveniles are different; it disregards the reality that juveniles' distinctive

⁷⁸ *Id.* at 18.

⁷⁹ *Id.*

⁸⁰ *See Roper*, 543 U.S. at 570.

characteristics prevent their acts from being as “morally reprehensible as [those] of an adult.”⁸¹

III. JUVENILES HAVE INCREASED LIKELIHOOD FOR REHABILITATION BECAUSE ADOLESCENT CHARACTER IS NOT WELL FORMED

A. Research Shows Juveniles Have Increased Likelihood for Rehabilitation

A sentence of life without the possibility of parole also removes opportunities for rehabilitation despite wide recognition that juveniles are candidates for rehabilitative success.⁸² Despite misconceptions that violent juvenile offenders are irredeemable, juveniles have demonstrated capacity for rehabilitation. One researcher estimated that “chronic” juvenile offenders (*i.e.*, those with five or more arrests) account for merely six percent of the entire juvenile offender population.⁸³ More recently, a study followed more than 1,000 serious male adolescent offenders (*i.e.*, felony offenses with the exception of less serious property crimes, and misdemeanor weapons or sexual assault offenses) over the course of three years and revealed that only 8.7 percent of participants were found to be “persisters” such that

⁸¹ *Graham*, 130 S. Ct. at 2026 (quoting *Thompson*, 487 U.S. at 835).

⁸² See *Workman v. Commonwealth*, 429 S.W.2d 374, 378 (Ky. 1968) (“it is impossible to make a judgment that a fourteen-year-old youth, no matter how bad, will remain incorrigible for the rest of his life”).

⁸³ Peter W. Greenwood, *Responding to Juvenile Crime: Lessons Learned*, 6 *Future of Child*. 75, 77 (1996).

their offending behavior was constant throughout the 36-month period.⁸⁴

Juvenile corrections programs also have demonstrated success in establishing that juveniles can be rehabilitated.⁸⁵ For example, the Missouri Department of Youth Services (“MDYS”) has reduced recidivism in juveniles through targeted programming, including regional small-scale secure correction centers and an arrangement of community-based non-residential programs and group homes.⁸⁶ In 2008, MDYS reported that their population included 13 percent of the youth committed for the most serious felonies and 41 percent for other felonies.⁸⁷ MDYS’ recidivism rate

⁸⁴ Edward P. Mulvey et al., *Trajectories of Desistance and Continuity in Antisocial Behavior Following Court Adjudication Among Serious Adolescent Offenders*, 22 *Dev. & Psychol.* 453, 462 (2010).

⁸⁵ See Counsel of Juvenile Correctional Administrators, Position Paper on Waiver and Transfer of Youths to Adult Systems (Oct. 2, 2009), <http://cjca.net/cjcaresources/20/CJCA-Waiver-Position-Paper.pdf>; see also Ronald D. Stephens & June Lane Arnette, *From the Courthouse to the Schoolhouse: Making Successful Transitions* at 4 (U.S. Dep’t of Justice, Office of Juvenile Justice & Delinquency Prevention, Feb. 2000), <http://ncjrs.gov/pdffiles1/ojjdp/178900.pdf> (finding participants in prison education programs are more likely to be employed and less likely to re-offend if and when released)

⁸⁶ Shelley Zavlek, *Planning Community-Based Facilities for Violent Juvenile Offenders as Part of a System of Graduated Sanctions*, *Juv. Just. Bull.* at 8 (Office of Juvenile Justice & Delinquency Prevention, Aug. 2005).

⁸⁷ Missouri Division of Youth Services, *Annual Report: Fiscal Year 2008* [hereinafter “MDYS Annual Report”], at vi (2009).

was ten percent for 2008 and had been between seven to nine percent for the four years prior to 2008.⁸⁸ Other examples of rehabilitative programs shown to be effective, even with violent and aggressive youth, include Functional Family Therapy (FFT), Multidimensional Therapeutic Foster Care (MTFC), and Multi-Systemic Therapy (MST).⁸⁹ All three have demonstrated significant results in reducing recidivism rates, even for serious violent offenders.⁹⁰

⁸⁸ *Id.* at 30 (recidivism rate based on the recommitment to MDYS after 24 months of release).

⁸⁹ See Greenwood, 6 *Future of Child*. at 75; see also Edward J. Loughran & Elizabeth Mengers, *CJCA Yearbook 2010: A National Perspective of Juvenile Corrections* (2010).

⁹⁰ See Charles M. Borduin et al., *Multisystemic Treatment of Serious Juvenile Offenders: Long-Term Prevention of Criminality and Violence*, 63 *J. Consulting & Clinical Psychol.* 569, 573 (1995) (describing the effectiveness of MST in reducing recidivism rates even for serious offenders with history of repeat felonies); Carol M. Schaeffer & Charles M. Borduin, *Long-term Follow-up to a Randomized Clinical Trial of Multisystemic Therapy with Serious and Violent Juvenile Offenders*, 73 *U. Consulting & Clinical Psychol.* 445, 449-452 (2005) (finding that the benefits of MST often extend into adulthood); W. Jeff Hinton et al., *Juvenile Justice: A System Divided*, 18 *Crim. Just. Pol'y Rev.* 466, 475 (2007) (describing FFT's success with drug-abusing youth, violent youth, and serious juvenile offenders); J. Mark Eddy et al., *The Prevention of Violent Behavior by Chronic and Serious Male Juvenile Offenders: A 2-Year Follow-up of a Randomized Clinical Trial*, 12 *J. Emotional & Behav. Disorders* 2, 2-7 (2004) (describing reduced recidivism rates for violent and chronically offending youth who participated in MTFC).

B. The Life of Brandon Carnell Illustrates Juveniles' Capacity for Rehabilitation

The success of rehabilitating even the most troubling of juvenile offenders is embodied in the life of Brandon Carnell. As a juvenile, Carnell shot and killed his family. As a rehabilitated adult, Carnell is an example of the potential that can exist in even the most troubled juvenile.⁹¹

Brandon Carnell – At the age of fourteen, Brandon Carnell murdered his parents and younger sister.⁹² Originally claiming that his family had been shot by two men, Carnell later confessed to the killings.⁹³ He complained that he felt picked on by other family members and objected to his family's discipline and "negative attitude" toward him.⁹⁴

Following his conviction, Carnell was incarcerated and given rehabilitative programming and treatment. He eventually was released at age 19.⁹⁵ Fourteen years later, Carnell directs several children's outreach programs and volunteers at his

⁹¹ See generally *Graham*, 130 S. Ct. at 2032 ("Maturity can lead to that considered reflection which is the foundation for remorse, renewal, and rehabilitation."); *Roper*, 543 U.S. at 1195-96 ("it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed").

⁹² *Killer at 14 is Model Citizen 15 Years Later*, Ann Arbor News, State Section, June 23, 2003, at B6; see also *Boy Charged in Murders Felt Picked on by Parents*, The Argus-Press, June 24, 1988, at 8.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Labelle et al., *Second Chances*, at 23.

church.⁹⁶ He has completed his education, married, started his own family, and is now a valued member of his community.⁹⁷

Juvenile life-without-parole rejects all possibility of rehabilitation. As Carnell's life story demonstrates, even one convicted of first degree murder as a juvenile and sentenced to a juvenile facility is not necessarily irrevocably destined to a life of violence and crime.⁹⁸ Like the death penalty, the practical effect of a life-without-parole sentence is to extinguish any possibility for juvenile offenders to "attain a mature understanding of [their] own humanity."⁹⁹

As Brandon Carnell's life illustrates, juveniles have a unique capacity for rehabilitation.

CONCLUSION

Life without parole represents an irrevocable forfeiture of a juvenile offender's life – a permanent loss to society. As one court observed in overturning

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*; see also Terrie E. Moffitt, *Adolescence-Limited and Life-Course-Persistent Antisocial Behavior: A Developmental Taxonomy*, 100 *Psychol. Rev.* 674, 675 (1993).

⁹⁹ See *Roper*, 543 U.S. at 574; see also *Graham*, 130 S. Ct. at 2033 ("he will die in prison without any meaningful opportunity to obtain release, no matter what he might do to demonstrate that the bad acts he committed as a teenager are not representative of his true character, even if he spends the next half century attempting to atone for his crimes"); *Hampton v. Kentucky*, 666 S.W.2d 737, 741 (Ky. 1984) (LWOP, "like death, is a sentence different in quality and character from a sentence to a term of years subject to parole").

a juvenile life-without-parole sentence, this sentence “means denial of hope; it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of [the convict], he will remain in prison for the rest of his days.”¹⁰⁰

The massive amount of research – as well as individual examples of juveniles involved in homicide or attempted homicide who undergo dramatic changes – illustrate that youthful mistakes, even the most grievous and deplorable, are not necessarily markers of character so permanently flawed that an irrevocable sentence to die in prison may be constitutionally imposed.¹⁰¹

As this Court decided in *Roper* and *Graham*, punishment must be proportionate to the culpability of a juvenile offender. With the understanding of the fundamental differences between juveniles and adults, inflexibly sentencing juveniles to life in prison with no possibility of parole for criminal offenses – including homicides – is cruel and unusual.¹⁰²

For the foregoing reasons, *amici* respectfully submit that sentences of life without the possibility of parole for juveniles are in violation of the Eighth and Fourteenth Amendments to the United States Constitution.

¹⁰⁰ *Naovarath v. State*, 779 P.2d 944, 944 (1989).

¹⁰¹ *See Locker*, 4 J. Marshall L.J. at 96.

¹⁰² *See Graham*, 130 S. Ct. at 2033; *Roper*, 543 U.S. at 561.

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