

Vera Institute of Justice

Criminal Justice Issues and Prisoners' Rights

<https://www.vera.org/blog/the-eighth-amendment-when-is-a-sentence-disproportionate>

Public Facing Advocacy Writing

There are (at least) two important pieces of [the Supreme Court's decision in *Graham v. Florida*](#) to categorically bar juvenile life sentences without the possibility of parole (JLWOP).

First, a cautionary note: the decision does not guarantee that any of the 129 persons presently incarcerated under life without parole sentences imposed for non-homicide crimes committed when they were under 18 will ever leave prison. (Louisiana where [Vera is working with the city of New Orleans](#) on rebuilding its criminal justice practices is one of the 10 states that have such prisoners.) This is because the Court did not rule that a life sentence for a person under 18 would necessarily violate the Eighth Amendment, but rather that an up-front juvenile sentencing decision conclusively barring the possibility of later release if the prisoner demonstrates "maturity and reform" violates the Eighth Amendment. It will be up to a parole board or similar body, perhaps decades in the future, to determine whether release is appropriate. Florida, where the case originates, has ended the use of discretionary parole release, and it is therefore unclear who will make that determination.

Second, the decision is perhaps most important for adding to the extraordinarily small body of Eighth Amendment jurisprudence that gives substantive meaning to the amendment's limitation on the severity of sentences, under the rubric of proportionality. At least three justices continue to follow an originalist theory that the amendment bars only barbaric forms of punishment such as torture, but would not bar an excessively severe (disproportional) sentence such as life without parole for marijuana possession. Hearteningly, Chief Justice Roberts, although not joining the majority because of his opposition to its categorical rule barring JLWOP sentences for non-homicide crimes, placed himself in the camp that gives life to the Eighth Amendment's concern for proportionality.

As those of us who work in the policy field know, there are virtually no political constraints on disproportionate sentences. That is all the more reason it is critical that the Constitution be understood to supply some check on how far legislatures and judges may go in depriving people of their liberty, especially when it is a lifelong deprivation. *Graham v. Florida* is a small step in the right direction.

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