UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ROBERT EARL HOWARD, DAMON PETERSON, CARL TRACY BROWN, and WILLIE WATTS on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

MELINDA N. COONROD, Chairperson and Commissioner, Florida Commission on Offender Review, in her Official Capacity, RICHARD D. DAVISON, Vice Chairperson and Commissioner, Florida Commission on Offender Review, in his Official Capacity, and DAVID A. WYANT, Secretary and Commissioner, Florida Commission on Offender Review, in his Official Capacity,

Defendants.

Case No. 6:21-cv-62

DECLARATORY AND INJUNCTIVE RELIEF SOUGHT

CLASS ACTION COMPLAINT

Plaintiffs ROBERT EARL HOWARD, DAMON PETERSON, CARL TRACY BROWN, and WILLIE WATTS ("Named Plaintiffs" or "Plaintiffs") on behalf of themselves and a class of those similarly situated, by and through their attorneys, allege the following:

INTRODUCTION

1. This class action for declaratory and injunctive relief is brought by the Named Plaintiffs on behalf of themselves and, as of the date of this Complaint, over 100

individuals incarcerated in the state of Florida who were sentenced to life in prison *with* the possibility of parole for crimes they committed when they were children under the age of 18 ("Class Members"), but who are destined to die in prison because of the unconstitutional parole rules, policies and practices described herein. Because Florida has sentenced more children as adults than any other state in the country, Florida has one of the largest populations of individuals who are serving life sentences for crimes they committed when they were children ("juvenile lifers").

2. Despite being sentenced to life *with* parole ("LWP") decades ago, the Named Plaintiffs and Class Members remain in prison today, with bleak prospects for release under a Florida parole system that has routinely flouted the mandates of recent United States Supreme Court rulings that bar death in prison for any youth who has not been found to be permanently incorrigible and incapable of rehabilitation.

3. Specifically, in a series of landmark cases applying the cruel and unusual punishments clause of the Eighth Amendment, the U.S. Supreme Court has held that the developmental differences between children and adults are not only relevant in determining the constitutionality of certain criminal sentencing practices as applied to children, but that because of those differences, juvenile offenders – even those convicted of murder – may not be condemned to spend their entire lives in prison except in the rare instance where the sentencer determines that a particular child "exhibits such irretrievable depravity that rehabilitation is impossible." *Montgomery v. Louisiana*, 136 S. Ct. 718, 733 (2016) (*quoting Miller v. Alabama*, 567 U.S. 460, 479-80 (2012)); *Graham v. Florida*, 560 U.S. 48, 72 (2010). The Supreme Court has also held that this new substantive constitutional

rule is retroactive. *Montgomery*, 136 S. Ct. at 734.

4. Taken together, these decisions establish that the Eighth Amendment to the U.S. Constitution requires that states affirmatively provide juvenile lifers with a "meaningful opportunity to obtain release based upon demonstrated maturity and rehabilitation." *Graham,* 560 U.S. at 75.

5. While these landmark U.S. Supreme Court cases involved juveniles sentenced to life *without* parole ("LWOP"), many courts have held that the underlying principles apply equally to those juvenile lifers sentenced to life *with* parole where it is shown that parole policies, procedures, and practices fail to afford these individuals a realistic opportunity for release or a meaningful opportunity to demonstrate their maturity and rehabilitation. *See State v. Patrick*, Slip Opinion No. 2020-Ohio-6803 (Dec. 22, 2020); *Brown v. Precythe*, 2019 WL 3752973, *7 (W.D. Mo Aug. 8, 2019); *Greiman v. Hodges*, 79 F. Supp. 3d 933, 945 (S.D. Iowa 2015); *Hayden v. Keller*, 134 F. Supp. 3d 1000, 1009 (E.D.N.C. 2015) *appeal dismissed sub nom. Hayden v. Butler*, 2016 WL 4073275 (4th Cir. Aug. 1, 2016); *Wershe v. Combs*, 763 F.3d 500, 505-06 (6th Cir. 2014); *Maryland Restorative Justice Initiative v. Hogan*, 2017 WL 467731 (D. Md. Feb. 3, 2017).

6. In 2014, in response to the Supreme Court's decisions in *Miller* and *Graham,* Florida adopted new sentencing procedures for juvenile offenders serving – or facing – life in prison. *See* Chapter 2014–220, Laws of Florida ("2014 Juvenile Sentencing Statute"). The 2014 Juvenile Sentencing Statute requires that the trial court hold an individualized sentencing hearing to consider not only the offense committed but also the defendant's youth before imposing a life sentence. Fla. Stat. § 921.1401. It also provides

for a subsequent review of the sentence after 15 or 25 years depending on the severity and the circumstances of the offense, at which point the judge is specifically required to consider the defendant's maturation and rehabilitation to determine whether the sentence should be modified. Fla. Stat. § 921.1402. The juvenile offender is entitled to be represented by counsel, attend the sentencing and resentencing, hire experts, present evidence, cross-examine witnesses, and appeal the court's decision. The Florida Supreme Court has held that the 2014 Juvenile Sentencing Statute must be applied retroactively. *Falcon v. State,* 162 So. 3d 954 (Fla. 2015).

7. Florida does not, however, treat all juvenile lifers the same. While those receiving the harsher sentence of life *without* parole ("LWOP") receive the constitutionally required *meaningful opportunity for review* provided by the 2014 Juvenile Sentencing Statute, the statute is silent on whether it applies to juveniles sentenced to life *with* parole, and the State has refused to provide the substantive and procedural benefits of the 2014 law to the Named Plaintiffs and Class Members.

8. Instead, juvenile lifers sentenced to LWP may only be released from prison in accordance with the limited process set forth in Florida's parole statutes. That process, which is virtually identical for adult and juvenile offenders, is administered by the Florida Commission on Offender Review ("FCOR" or "Commission"). Unlike the 2014 Juvenile Sentencing Statute, which requires consideration of the individual's maturity and rehabilitation, the criteria for release under the parole statutes are "designed to give primary weight to the seriousness of the offender's present criminal offense and the offender's past criminal record." Fla. Stat. § 947.002(2). Moreover, the parole statute specifically states

that "[i]t is the intent of the Legislature that the decision to parole an inmate from the incarceration portion of the inmate's sentence is an *act of grace* of the state and *shall not be considered a right*." *Id*. at § 947.002(5) (emphasis added). Florida's parole system therefore directly contradicts the mandates of the U.S. Supreme Court cases that establish that juvenile lifers have a constitutional right to be released from prison upon demonstration of maturity and rehabilitation. That right is not dependent on an "act of grace" by the State.

9. The policies, procedures, and practices of the Commission do not give juvenile lifers serving LWP sentences a meaningful opportunity to prove their maturity and rehabilitation. Unlike individuals serving LWOP sentences who are now entitled to resentencing and sentencing reviews before a judge, juvenile offenders serving LWP are prohibited from attending meetings where the Commission determines if and when they may be released. The Parole Commissioners never speak to or even see them. Prosecutors and victim's families, however, are permitted to attend Commission meetings and address the Commissioners. Juvenile lifers have no opportunity to correct any factual inaccuracies presented to the Commission. Juvenile lifers are not entitled to counsel nor are they given the right to have experts make mental health and risk assessments and testify as to their rehabilitation.

10. The Commission routinely hears over 40 cases each day and allots an average of ten minutes to each one. In the vast majority of cases, the Commission rejects the recommendation of its own investigators – the only ones who actually meet with the juvenile lifer and prison officials. Instead, the Commission in most cases actually *increases*

the time which the juvenile lifer will serve. Focused on the facts of the original offense, the Commission rarely considers whether the individual has in the intervening decades demonstrated maturity and rehabilitation and is reasonably fit to reenter society. The Commission's actions are recorded on a 1-2 page preprinted form with no meaningful description of the basis for the Commission's decision and no discussion of what a juvenile lifer needs to do to earn parole going forward.

11. There is no justification for the stark difference in treatment between juvenile offenders who received LWOP sentences and those who received LWP sentences. There is generally no significant difference in the crimes committed. Both groups committed capital offenses punishable by life imprisonment. The main difference turns on *when* the crime was committed – before or after parole was abolished in Florida for these offenses on May 25, 1994. Juveniles convicted of a capital homicide committed before May 25, 1994 are serving LWP sentences and may only be released by the "grace" of the Commission. Juveniles convicted of a capital homicide after that date received LWOP sentences and are now entitled to extensive judicial review of their sentences and a panoply of due process rights. There is no substantive reason to treat the two groups differently, but the juvenile lifers serving LWP are not being afforded the right to meaningful opportunity for release now required by the Constitution.

12. The stark and unfair differences in treatment are not limited to those between individuals serving LWP and those serving LWOP. Due to contrary rulings just two years apart by the Florida Supreme Court, the same disparate treatment also exists among those who received identical sentences of LWP, some of whom received a judicial

resentencing under the 2014 Juvenile Sentencing Statute while others were denied that opportunity and relegated to the parole system. As set forth in detail below, this disparity arose when Florida's Supreme Court first extended the benefits of the 2014 Juvenile Sentencing Statute to juveniles serving LWP but then subsequently reversed itself and withdrew them two years later. Again, the difference in treatment turns on the calendar, not the offense or the offender.

13. A recent study by Florida International University College of Law (the "FIU Study") documented the disparate treatment between those juveniles serving LWP for homicide who received the benefits of a judicial proceeding pursuant to the 2014 Juvenile Sentencing Statute compared to those who were relegated to the parole system after the Florida Supreme Court reversed course. The FIU Study showed that **70% of the juvenile lifers (63 of 90) who were resentenced by a judge were ultimately released from prison**. FIU Study, Exhibit A at 7 ("Analysis of Florida Commission on Offender Review Juvenile Parole Eligible Inmate Files: Does Florida's Parole System Provide a Meaningful Opportunity for Release?", FIU Project, 2d ed. Sept. 2020"). By comparison, **for those juvenile lifers dependent on the parole process, only five (out of over 100) have been released from prison since 2016**, at least three of whom had the benefit of counsel. *Id.* Rather than imprison for life only the rare juvenile offender who is irreparably corrupt, the Commission does the opposite. It incarcerates for life almost all juvenile offenders convicted of capital offenses.

14. The FIU Study also found that, on average, individuals in the sample were 51 years old when they were released by the courts following resentencing or judicial

review. *Id.* at 29. However, for those relegated to the parole system, they can expect to serve another 44 years beyond that and will, on average, be 95 years of age – well beyond their life expectancy – at their most recently established Presumptive Parole Release Date ("PPRD"). *Id.* at 30.

15. The Named Plaintiffs and Class Members have not been afforded the resentencing hearings set forth in the 2014 Juvenile Sentencing Statute. Thus there has been no judicial determination that any one of them is the rare juvenile offenders whose crime reflects irreparable corruption for whom a life sentence may be appropriate. Therefore, they must be provided a meaningful opportunity to demonstrate their maturity and rehabilitation, and must be given a realistic opportunity for release.

16. The disparities created by Florida's dual-track system for juvenile lifers cannot stand. By affording juveniles sentenced to life without parole a re-sentencing hearing before a judge that meets the mandates of the U.S. Supreme Court, but leaving the release fate of hundreds of other individuals sentenced to life with parole in the hands of a parole process operating entirely outside the bounds of these constitutional requirements, Defendants have violated, and continue to violate, Plaintiffs' rights to equal protection and due process under the Fourteenth Amendment; their right to be free from cruel and unusual punishments under the Eighth Amendment; and their right to a judicial resentencing under the Sixth Amendment.

17. Accordingly, Plaintiffs seek declaratory and injunctive relief: (1) finding that Florida's sentencing and parole review statutes, and Defendants' procedures, policies, customs, and practices are unconstitutional as drafted and as applied to juveniles sentenced

to life with the possibility of parole; and (2) requiring Florida to provide Plaintiffs and Class Members a judicial resentencing in accordance with the current resentencing framework set forth in the 2014 Juvenile Sentencing Statute, or requiring Defendants to afford Plaintiffs, and those similarly situated, a meaningful opportunity to obtain release based on non-arbitrary criteria and with essential procedural protections that measure their degree of maturity and rehabilitation in accordance with U.S. Supreme Court mandates.

JURISDICTION AND VENUE

18. Plaintiffs bring this action pursuant to 42 U.S.C. § 1983, the Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States; and the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*

19. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202.

20. Venue lies in this district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to these claims occurred in this district.

PARTIES

21. Plaintiff Robert Earl Howard is a youthful offender, now 56 years of age, who is incarcerated at South Bay Correctional and Rehabilitation Facility in Palm Beach County, Florida. He was sentenced to LWP in 1982 for first-degree murder and burglary with an assault therein. He has been incarcerated for 39 years and has been denied parole four times. He has not received any disciplinary reports ("DR") in prison for the last 35 years. He will be 91 years of age at his current presumptive parole release date ("PPRD")

in 2073.

22. Plaintiff Damon Peterson is incarcerated at Tomoka Correctional Institute in Volusia County, Florida. He is serving a LWP sentence for a felony murder committed when he was 16 years old. He has been in custody for 27 years. Mr. Peterson was interviewed by a parole examiner who recommended a presumptive parole release date of April 2027. The Parole Commission, without seeing or interviewing Mr. Peterson, rejected that recommendation, added 33 years to the recommendation and set his PPRD date in 2060, when he will be 84 years of age.

23. Plaintiff Carl Tracy Brown is a juvenile offender who committed his crimes at age 16. He is currently serving an LWP sentence at Avon Park Correctional Institution in Highlands County, Florida. He has been incarcerated for 32 years and has a PPRD of 2032, when he will be 60 years of age. Mr. Brown has not had a single DR issued to him for his entire 32 years in prison.

24. Plaintiff Willie Watts is incarcerated at Tomoka Correctional Institution in Volusia County, Florida for non-homicide crimes committed when he was 17. He has been incarcerated for 40 years and his PPRD is set for 2064 when he will be 104 years old. A judge has already determined that Mr. Watts has demonstrated sufficient rehabilitation and maturity to be released from prison next year, but the Commission takes the position it is not required to follow or honor that judicial finding.

25. Plaintiffs bring this action individually and on behalf of a class consisting of all persons who: (i) were convicted of crimes committed when they were under the age of 18; (ii) were sentenced to life in prison or a term of years exceeding their life expectancy

(iii) are currently in the custody of the Florida Department of Corrections; and (iv) are or will become eligible for release to parole supervision.

26. Plaintiffs have no adequate remedy at law. Unless enjoined by this Court, Defendants will continue to violate Plaintiffs' constitutional rights.

27. Defendant Melinda N. Coonrod is the Chairman of the Commission. She is a former prosecutor. She is sued in her official capacity for the purpose of obtaining declaratory and injunctive relief.

28. Defendant Richard D. Davison is the Vice Chair of FCOR. He is a former prosecutor and former deputy Secretary of the Department of Corrections. He is sued in his official capacity for the purpose of obtaining declaratory and injunctive relief.

29. Defendant David A. Wyant is the Secretary of FCOR and a former deputy police chief. He is sued in his official capacity for the purpose of obtaining declaratory and injunctive relief.

30. Defendants Coonrod, Davison and Wyant, appointed by the Governor and Cabinet, are the three current members of the Commission. The Commission is required to "develop and implement objective parole guidelines which shall be the criteria upon which parole decisions are made." Fla. Stat. § 947.165 (1). The Commission is required to develop the objective guidelines based on an acceptable research method and review them annually. *Id.* The Defendants have the authority to implement the declaratory and injunctive relief sought herein.

FACTUAL ALLEGATIONS

U.S. Supreme Court Holds that Youth Matters for Purposes of Sentencing

31. Courts and legislatures have long recognized that children are psychologically and socially immature, are susceptible to persuasion and abuse, and are marked by judgmental inexperience such that it is appropriate to categorically limit their ability to vote, marry, serve on juries, drink alcohol, gamble, leave school and otherwise exercise full autonomy under the law. *J.D.B. v. North Carolina*, 564 U.S. 261, 272-77 (2011).

32. Over the last 15 years, the U.S. Supreme Court has issued a series of decisions holding that juvenile offenders are categorically and constitutionally different from adults for purposes of criminal sentencing and punishment.

33. In the first of these decisions, *Roper v. Simmons*, decided in 2005, the Court held that the Eighth and Fourteenth Amendments to the U.S. Constitution forbid the imposition of the death penalty on people who were under 18 years old at the time of their offenses. 543 U.S. 551 (2005).

34. In *Roper*, the Supreme Court relied on social science research, common sense, and international consensus to conclude that juveniles are "categorically less culpable than the average criminal." *Id.* at 552 (quoting *Atkins v. Virginia*, 536 U.S. 304, 316 (2002)). The Court identified three characteristics that make juveniles less culpable and more capable of rehabilitation than adults: (1) immaturity and an underdeveloped sense of responsibility; (2) vulnerability to negative influences such as peer pressure; and (3) a character that is not well formed, with personality traits that are more likely to be transitory

than fixed. *Id.* at 569-70.

35. Five years later, the Supreme Court ruled in *Graham v. Florida* that the Eighth Amendment prohibits the imposition of a life sentence without parole ("LWOP") on juveniles who commit a non-homicide offense. 560 U.S. 48, 82 (2010). At that time, the vast majority of youth sentenced to LWOP for non-homicide crimes had been sentenced in Florida. Out of the 124 children sentenced to die in prison for non-homicide crimes, 77 of them were in Florida. *Id.* at 48.

36. The *Graham* Court reiterated the differences between juveniles and adults identified in *Roper*, pointing out that "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds," including "the parts of the brain involved in behavior control" and juveniles' greater "capacity for change." *Id.* 68, 74. These differences, the Court found, make children "less deserving of the most severe punishments." *Id.* at 68.

37. The *Graham* Court recognized that "life without parole is 'the second most severe penalty permitted by law,'" rendering a "forfeiture that is irrevocable" and "deprives the convict of the most basic liberties without giving hope of restoration." *Id.* at 69-70 (quoting *Harmelin v. Michigan*, 501 U.S. 957, 960 (1991)). The Court explained that the irrevocable forfeiture of liberty occasioned by an LWOP sentence is an "especially harsh punishment for a juvenile," who "will on average serve more years and a greater percentage of his life in prison than an adult offender," meaning that a "16-year-old and a 75-year-old each sentenced to life without parole receive the same punishment in name only." *Id.* at 70.

38. Thus, the Court concluded that states must give juvenile non-homicide offenders "***some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation***," an opportunity that an LWOP sentence categorically forecloses. *Id.* at 75 (emphasis added).

39. In 2012, the Supreme Court built on the rationales set forth in *Roper* and *Graham*, holding in *Miller v. Alabama* that a mandatory LWOP sentence for persons under 18 at the time of their crimes—regardless of the nature of the crime (homicide or non-homicide)—constitutes cruel and unusual punishment under the Eighth Amendment. 567 U.S. 460, 489 (2012). The Court concluded that statutorily-mandated LWOP sentences, such as the one in Florida at the time, for juveniles who commit murder "pose[] too great a risk of disproportionate punishment" because of "the great difficulty" in distinguishing "the juvenile offender whose crime reflects unfortunate yet transient immaturity, ***and the rare juvenile offender whose crime reflects irreparable corruption***." *Id.* at 479-80 (emphasis added) (quoting *Roper*, 543 U.S. at 573).

40. Accordingly, the Court held that before imposing an LWOP sentence on a juvenile offender, a court must "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a life in prison." *Id.* at 480. The Court added that, after considering how children are different, LWOP sentences for juveniles should be "uncommon" because of "children's diminished culpability and heightened capacity for change." *Id.* at 479.

41. Lastly, in 2016, in *Montgomery v. Louisiana*, the Supreme Court held that *Miller*'s prohibition on mandatory LWOP for juveniles should be applied retroactively

because it established a new substantive constitutional rule. 136 S. Ct. 718, 736-37 (2016). The *Montgomery* Court explained that *Miller* created a substantive rule because it "determined that sentencing a child to life without parole is excessive for all but 'the rare juvenile offender whose crimes reflect irreparable corruption,'" making "life without parole an unconstitutional penalty for 'a class of defendants because of their status'—that is, juvenile offenders whose crimes reflect the transient immaturity of youth." *Id.* 734 (first quoting *Miller*, 567 U.S. at 479-80, then quoting *Penry v. Lynaugh*, 492 U.S. 302, 330 (1989)).

42. *Montgomery* acknowledged that *Miller* has a "procedural component," requiring a "hearing where 'youth and its attendant characteristics' are considered as sentencing factors is necessary to separate those juveniles who may be sentenced to life without parole from those who may not." *Id.* at 735 (quoting *Miller*, 567 U.S. at 465). The Court reasoned that this procedure "gives effect to *Miller*'s substantive holding that life without parole is an excessive sentence for children whose crimes reflect transient immaturity." *Id.* at 735.

43. The Court concluded by reiterating *Miller's* requirement that juveniles "must be given the opportunity to show that their crime did not reflect irreparable corruption; and, if it did not, their hope for some years of life outside prison walls must be restored." *Id.* at 736-37.

44. In a final paragraph, the *Montgomery* Court suggested in dicta that "a State may remedy a *Miller* violation by extending parole eligibility to juvenile offenders." *Id*. at 736. While the Supreme Court did not address how eligibility for parole could meet

Miller's mandate to provide a *meaningful opportunity* for release for juvenile lifers, a number of courts have upheld challenges to state parole systems that do not meet the constitutional requirements of *Miller*. *See State v. Patrick*, Slip Opinion No. 2020-Ohio-6803, at *12-13 (Dec. 22, 2020) (concluding that "the severity of a sentence of life in prison on a juvenile offender, even if parole eligibility is part of the life sentence, is analogous to a sentence of life in prison without the possibility of parole for the purposes of the Eighth Amendment"); *Brown v. Precythe*, 2019 WL 3752973, at *7 (W.D. Mo Aug. 8, 2019) (finding on summary judgment that defendants' policies, procedures, and customs for parole review for *Miller*-impacted individuals violate the constitutional requirement that those individuals be provided a meaningful and realistic opportunity for release based on demonstrated maturity and rehabilitation); *Hayden v. Keller*, 134 F. Supp. 3d 1000, 1009 (E.D.N.C. 2015) (finding that "[i]f a juvenile offender's life sentence, while ostensibly labeled as one 'with parole,' is the functional equivalent of a life sentence without parole, then the State has denied that offender the 'meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation' that the Eighth Amendment demands") *appeal dismissed sub nom. Hayden v. Butler*, 2016 WL 4073275 (4th Cir. Aug. 1, 2016); *Wershe v. Combs*, 763 F.3d 500, 505-06 (6th Cir. 2014) (reversing district court's opinion dismissing plaintiff's Eighth Amendment claim due to LWP sentence because district court failed to apply *Graham*); and *Maryland Restorative Justice Initiative v. Hogan*, 2017 WL 467731, at *27 (D. Md. Feb. 3, 2017) (finding Eighth Amendment claim sufficiently pled based on plaintiff's allegations that "Maryland's parole system operates as a system of executive clemency, in which opportunities for release are 'remote,' rather than a true

parole scheme in which opportunities for release are 'meaningful' and 'realistic,' as required by *Graham*").

45. Together, *Roper*, *Graham, Miller*, and *Montgomery* reflect the U.S. Supreme Court's clear and unwavering view that juveniles' diminished culpability and greater capacity for rehabilitation are inconsistent with the law's most severe punishments. In particular, sentencing courts must consider how children are different before imposing a sentence that forecloses a meaningful opportunity for release from prison during their lifetime. It ineluctably follows from this constitutional premise that a parole system must also treat juvenile offenders differently than adult offenders and provide them with a meaningful opportunity for release from prison.

46. Florida's parole system, for the reasons documented in this Complaint, is not operating in a constitutional manner as to the Named Plaintiffs and Class Members. It does not treat juvenile offenders differently from adult offenders. It does not offer juvenile offenders the "meaningful opportunity" to demonstrate rehabilitation and maturity as required by the U. S. Supreme Court nor a realistic opportunity for release and a chance to live some of their lives outside prison walls.

History of Florida's Parole System

47. In 1983, as part of a tough-on-crime trend, the State of Florida abolished parole for non-homicide offenses. Florida abolished parole for good in 1994 when it also eliminated it for homicide offenses.

48. The abolition of parole was not retroactive. Parole still applies to individuals who were sentenced before 1983 for non-homicide offenses and before 1994

for homicide offenses. This group of prisoners includes both juvenile and adult offenders. Plaintiffs and the Class Members therefore are those individuals who were sentenced to life with parole before 1983 (for non-homicide offenses) or 1994 (for homicide offenses). At a minimum, each Plaintiff and Class Member has been incarcerated for at least 26 years while some have been in prison for nearly 50 years.

49. One of FCOR's many responsibilities is the administration and enforcement of this pre-existing parole system which will ultimately be non-existent once those serving sentences that were imposed before parole was abolished are either released or die in prison.

History of Florida's Sentencing of Juveniles

50. Florida has long been at the forefront of transferring large numbers of children from the juvenile system and charging them as adults in the state's criminal justice system. According to a 2013 Human Rights Watch report, Florida transferred more children out of the juvenile system into adult court than any other state in the country. *See Human Rights Watch, Branded for Life: Florida's Prosecution of Children as Adults under its "Direct File" Statute* (2013) (available at https://www.hrw.org/report/2014/04/10/branded-life/floridas-prosecution-children-adults-under-its-direct-file-statute).

51. Since the establishment of its juvenile courts in 1951, Florida has required all children charged with a violation of Florida law punishable by death or life imprisonment to be charged and tried as adults once an indictment is returned. Fla. Stat. § 985.56 (2006); Fla. Stat. § 985.225 (1997); Fla. Stat. § 39.022 (1990); Fla. Stat. § 39.02(5)

(1951).

52. Prior to the abolition of parole in Florida, there were two possible penalties for capital murder: the death penalty and life with the possibility of parole after no fewer than 25 years. The Plaintiffs and the class they seek to represent were all sentenced under the sentencing statutes that were in existence prior to May 25, 1994 for capital offenses or prior to October 1, 1983 for non-homicide offenses.

53. Upon information and belief, today there are more than 100 individuals who were under 18 at the time of their crimes and who remain incarcerated in Florida's prisons serving sentences of life with the possibility of parole, as they were sentenced either for non-capital crimes prior to 1983 or for capital felonies prior to 1994.

Florida's Legislative Response to *Miller:* the 2014 Juvenile Sentencing Statute

54. As previously discussed, in 2012 the Supreme Court held in *Miller v. Alabama* that a mandatory LWOP sentence for persons under 18 at the time of their crimes—regardless of the nature of the crime (homicide or non-homicide)—constitutes cruel and unusual punishment under the Eighth Amendment.

55. Because Florida had mandatory LWOP sentences, the *Miller* decision effectively "opened a breach in Florida's sentencing statutes" as they applied to juveniles convicted of capital murder. *Hernandez v. State,* 117 So. 3d 778, 783 (Fla. 3d DCA 2013).

56. In 2014, the Florida Legislature stepped into the breach by enacting juvenile sentencing legislation to remedy the federal constitutional infirmities in Florida's juvenile sentencing laws. The legislative fix became Chapter 2014–220, Laws of Florida, and specifically sections one, two, and three of the legislation, which were codified in sections

775.082, 921.1401, and 921.1402 of the Florida Statutes, referred to herein as the 2014 Juvenile Sentencing Statute.

57. Section One, Fla. Stat. § 775.082, provides new statutory penalties for juvenile offenders convicted of capital felonies with eligibility for judicial review for most offenders after 15, 20, or 25 years, depending on the severity and circumstances of the offense.

58. In section Two of the 2014 Juvenile Sentencing Statute, codified at Fla. Stat. § 921.1401, the Florida Legislature set forth new procedures for the individualized sentencing hearing that is now required before a juvenile may be sentenced to life imprisonment. Before imposing a life sentence, the sentencing court is required to consider not only the crime and its impact on the victim's family but also mitigating factors related to the defendant's age, background, family and community environment, peer pressure, the possibility of rehabilitation, and the effect of "immaturity, impetuosity, or failure to appreciate risks and consequences on the defendant's participation in the offense." Fla. Stat. § 921.1401(2).

59. In section Three of the 2014 Juvenile Sentencing Statute, codified at Fla Stat. § 921.1402, the Legislature provided guidelines for the subsequent mandatory judicial review of a juvenile offender's sentence and possible sentence modification if he or she is deemed reasonably fit to reenter society. During this review, the statute requires the court to consider whether the juvenile lifer:

A. demonstrates maturity and rehabilitation

B. remains at the same level of risk to society

C. was a relatively minor participant in the criminal offense

D. has shown sincere remorse

E. was of an age, maturity and psychological development at the time of the offense that affected his or her behavior

F. has completed a GED or other technical, vocational or self-rehabilitation program

G. was a victim of sexual, physical or emotional abuse before committing the offense

H. provides the results of any mental health assessment, risk assessment or evaluation as to rehabilitation.

Fla Stat. § 921.1402. The juvenile lifer is entitled to counsel at this review hearing, has the right to hire experts to make mental health, rehabilitation and risk assessments, can attend the hearing, and has a right of appeal.

60. In 2015, the Florida Supreme Court held that the 2014 Juvenile Sentencing Statute would apply retroactively to any juvenile offender serving an LWOP sentence in Florida. *Falcon v. State,* 162 So. 3d 956 (Fla. 2015).

Florida Supreme Court Holds Parole Process Does not Provide a Meaningful Opportunity for Juveniles Sentenced to LWP (*Atwell*) but Reverses Course Two Years Later (*Franklin)*

61. In 2016, the Florida Supreme Court considered whether Florida's parole system gave individuals sentenced to LWP a meaningful opportunity for release as required by *Graham* and *Miller.* Angelo Atwell challenged his LWP sentence for a homicide committed when he was a juvenile as violating the Eighth Amendment; his PPRD

(presumptive parole release date) was set for 2130, one hundred forty years after the offense. The Florida Supreme Court held that a life with parole sentence violated *Miller* because Florida's parole system was not designed to consider the defendant's lessened culpability as a juvenile and did not provide him a meaningful opportunity for release during his lifetime. *Atwell v. State*, 197 So. 3d 1040, 1050 (Fla. 2016).

62. The *Atwell* court noted that because Florida's parole statute required the Commission to "give primary weight to the seriousness of the offender's present and past criminal offense and the offender's past criminal record," *id.* at 1047 (quoting Fla. Stat. § 947.002), all but 84 of the 1,686 months in Atwell's PPRD were attributable to "static factors, such as the crime he committed and his other crimes." *Id.* at 1044. The court emphasized that the Commission is not required to consider mitigating circumstances in setting the PPRD, and even if it did so, the mitigating circumstances enumerated in the Florida Administrative Code "do not have specific factors tailored to juveniles." *Id.* at 1048.

63. The Florida Supreme Court concluded that Atwell's sentence was unconstitutional under *Miller* because it "effectively resemble[d] a life without parole sentence, and he did not receive the type of individualized sentencing consideration *Miller* requires." *Id.* at 1050. The *Atwell* court noted that the Florida Legislature had chosen to pass the 2014 Juvenile Sentencing Statute with judicial proceedings instead of relying on the nearly extinct parole system to provide the meaningful review and realistic opportunity for release required by *Graham* and *Miller*.

64. Following the *Atwell* decision, all juvenile lifers – those serving either

LWOP or LWP sentences – were entitled to be resentenced in court pursuant to the 2014 Juvenile Sentencing Statute. Following *Atwell*, there were approximately 300 juvenile LWP lifers who were then entitled to receive a resentencing in a court of law under Florida's 2014 Juvenile Sentencing Statute. Ninety (90) of those juveniles serving LWP sentences actually received a resentencing. Sixty-three (63) of the 90 – or 70% of those who were resentenced – were released from prison and many are now leading productive lives. Exhibit A at 7.

65. Because of the backlog of resentencing cases and the need to develop witnesses and evidence of rehabilitation, not all juveniles serving LWP sentences had completed the resentencing process before the Florida Supreme Court reversed its *Atwell* holding two years later. In 2018, following a change in the composition of the court, the Florida Supreme Court receded from its *Atwell* decision in *State v. Michel*, 257 So. 3d 3 (Fla. 2018), and then directly reversed itself in *Franklin v. State*, 258 So. 3d 1239 (Fla. 2018) (per curiam).

66. *Franklin* considered the sentence of a non-homicide juvenile offender sentenced to concurrent 1,000-year sentences with the possibility of parole. The Commission had set Franklin's PPRD at year 2352 based on the existing parole guidelines. The trial court held that because Franklin had the possibility of parole – albeit more than three centuries from now – he was not entitled to a resentencing under the 2014 Florida Juvenile Sentencing Statute.

67. Despite acknowledging that the PPRD was "set far beyond Franklin's life expectancy" and was not likely to change, *Franklin,* 258 So. 3d at 1241, the Florida

Supreme Court concluded that it did not violate the U.S. Supreme Court mandates of *Graham* and *Miller*.

68. The majority opinion in *Franklin* undertook no analysis of Florida's parole system, nor did it address the holding in *Atwell* that individuals whose PPRDs far exceed their life expectancy—like Atwell and Franklin—have no meaningful opportunity for release during their lifetimes through Florida's parole process because of its primary reliance on the person's offense and failure to consider their youth at the time of the offense or subsequent demonstrated maturity and rehabilitation. Neither the *Atwell* nor *Franklin* decisions were based on an evidentiary record developed to show that the Commission's customs, policies and practices as applied resulted in the imposition of *de facto* life sentences to juvenile offenders such as Plaintiffs and the Class Members whose PPRDs exceed their life expectancies.

69. As a result of *Franklin/Michel*, the remaining juvenile lifers, including the Plaintiffs and Class Members here, who had not been among the first 90 who were resentenced pursuant to the 2014 Juvenile Sentencing Statute, now found the courthouse door slammed shut. Plaintiffs and most Class Members already had their resentencings scheduled or in some cases the resentencing hearing had already occurred, and they were simply awaiting the court's written decision. Plaintiffs and the Class Members are no different than the 90 who received resentencings in court and the 63 who were thereafter released, yet now they have only one avenue for proving their maturity and rehabilitation: the Florida parole system.

70. Since 2016, when FIU began keeping track of juveniles serving LWP

sentences for homicide offenses, ***only five people*** have been released on parole. Exhibit A at 7. In three instances, the individuals were represented by counsel, which is not guaranteed as of right in Florida. *Id.*

Florida's Deficient Parole System and Sentencing for Youth

71. The parole system is administered by FCOR pursuant to Chapters 947-949 of the Florida Statutes. FCOR is comprised of three commissioners who are appointed by the Governor and Cabinet. FCOR describes itself as a quasi-judicial decision-making body which administers parole, conditional medical release, control release, conditional release, and addiction release supervision. It also acts as the administrative and investigative arm of the Governor and Cabinet who sit as the Board of Executive Clemency. Clemency includes not only pardons but also restoration of an offender's rights, including the right to vote.

72. According to FCOR's most recent annual report, it spends over half of its time on clemency matters, 26% of its time on conditional/control release and only 12% of its workload by hours on parole and conditional medical release. FCOR 2019 Annual Report 7, *available at* https://www.fcor.state.fl.us/docs/reports/AnnualReport2019.pdf (accessed Oct. 14, 2020).

73. FCOR also hires and supervises a Victim Advocate who coordinates with, assists, and advocates for victims and their families during the parole process. The Victim Advocate's office is in the same building as the Commissioners and the Victim Advocate is permitted to have *ex parte* communications with the Commissioners. The Victim Advocate also coordinates with the state attorneys' offices. Upon information and belief, the Victim Advocate advises victims and families to request that the Commission impose the maximum amount of time between FCOR meetings (seven years) to determine parole eligibility.

74. As of June 30, 2019, there were 4,117 individuals in Florida – adult and juvenile offenders – who were eligible for parole. In fiscal year 2018-19, the Commission made 1,454 parole determinations and released on parole 27 individuals (adult and juvenile offenders), or 0.65% of those eligible for parole. *See* FCOR 2019 Annual Report at 6, 8.

75. While describing itself as "quasi-judicial," FCOR is not an independent, impartial body. FCOR in its 2019 Annual Report states that one of its "operation accomplishments" is the fact that it "[a]ssisted various State Attorney offices regarding juvenile resentencing." FCOR 2019 Annual Report at 10.

76. On information and belief, the Commissioners have no specialized experience or training in mental health, risk assessment, or other relevant disciplines that would enable them to make informed judgments about whether a juvenile is permanently incorrigible or has demonstrated sufficient maturity and rehabilitation to merit release. FCOR does not solicit or employ experts who could offer such assessments or opinions regarding juvenile lifers.

77. FCOR is responsible for developing objective parole guidelines upon which parole decisions are based. Fla. Stat. § 947.165(1). Those guidelines are supposed to be developed according to "an acceptable research method and shall be based on the seriousness of offense and the likelihood of a favorable parole outcome." *Id.* The guidelines do not identify any research method used. FCOR is required to annually review its guidelines and make revisions "considered necessary by virtue of statistical analysis of commission actions, which analysis uses acceptable research and methodology." *Id.* at § 947.165(2). The Commission does not make this statutorily required annual evaluation.

There have been no revisions to the parole guidelines since 2014.

78. Florida's parole statute directs that the "primary weight" to be given in developing the objective parole criteria is "the seriousness of the offender's present criminal offense and the offender's past criminal record." Fla. Stat. § 947.002(2). The parole statute further states that "[i]t is the intent of the Legislature that the decision to parole an individual from the incarceration portion of the individual's sentence is an act of grace of the state and shall not be considered a right." *Id.* at § 947.002(5).

79. Nowhere in the parole statute is the Commission required to consider any of the factors that a court is required to consider under U.S. Supreme Court case law and Florida's 2014 Juvenile Sentencing Statute, such as the defendant's age, maturity, mental and emotional health at the time of the offense, the defendant's home and community life, the effect of immaturity and impetuosity on the defendant's participation in the offense, or the maturity and rehabilitation of the defendant since the offense. To the contrary, since the parole process is driven by current offense and past criminal record, the parole statute specifically states that "[n]o person shall be placed on parole merely as a reward for good conduct or efficient performance of duties assigned in prison." Fla. Stat. § 947.18.

80. An individual becomes eligible for parole consideration between six and eighteen months before the expiration of his or her minimum mandatory sentence at which time the individual is interviewed by an FCOR examiner ("Investigator"). Fla. Admin. Code R. § 23-21.006. This interview, and any subsequent interview, is automatically terminated and rescheduled if an individual receives a disciplinary report (DR) in prison during the past 90 days, no matter how minor the infraction. During the initial interview,

the Investigator meets with the individuals and correctional officers at the prison to discuss the individual's institutional conduct.

81. After the interview, the Investigator recommends to the three FCOR Commissioners a PPRD. An individual's PPRD is based on a set matrix time range that can be increased by aggravating factors or decreased by mitigating factors. That matrix time range is determined by the intersection of a saliency factor score and offense severity score. Both of these scores are based primarily on the facts of the original offense – static factors that an individual can never change. After that matrix time range is determined, the Investigator may add aggravating or mitigating factors to extend or reduce the PPRD. The Investigator fills out a short 1-2 page preprinted form with the Investigator's recommendation and some explanation of the basis of the recommendation. The Investigator does not participate in the subsequent meeting of FCOR where the Commissioners determine the actual PPRD.

82. The FCOR Commissioners have no face-to-face, telephonic or video contact with the incarcerated individuals. After receiving the Investigator's report, the FCOR Commissioners have unfettered discretion to change the matrix time range or add additional aggravating or mitigating factors. The official PPRD is established by FCOR at one of its over 36 parole meetings held each year in Tallahassee and around the State. Incarcerated individuals are not allowed to appear at these hearings either in person, telephonically or by video. Visitors (either the victim or victim's family or the inmate's supporters) are given a total of ten minutes for each side to speak. The victim's family may also choose to have a letter read out loud, to send a representative, or to submit a

video. *See* Fla. Admin. Code R. 23-21.004 (5).

83. In fiscal year 2018-19, FCOR made 1,454 parole determinations at its 36 meetings. This equates to an average of 40 parole determinations at each meeting, or 5 every hour. This is consistent with the fact that most parole determinations are made at FCOR meetings in a process lasting an average of 10 minutes.

84. After hearing from the families and supporters of the victim and prisoner, the three Commissioners engage in a verbal scoring session where they compare their preliminary views on the time to assign to the various scoring factors. Most of their discussion is numbers-driven based on the severity of the crime. Upon information and belief, there is little to no discussion of whether the prisoner has shown remorse, demonstrated maturity and rehabilitation, or is prepared to lead a productive life outside prison.

85. After the hearing, the Commission issues an order setting the individual's PPRD. An inmate has 60 days to request a review from FCOR of its determination. Fla. Admin. Code R. 23-21.012(1). If a review is requested, the Commission holds a meeting and submits an order denying or affirming the request. The Commission is not required to submit a detailed response addressing the individual's concerns.

86. The next step in the parole process is the subsequent interview. Formerly, individuals were re-interviewed by an Investigator every two or five years. In 2010, however, the Florida Legislature expanded the interval to seven years for certain types of offenses, including first- and second-degree murder. *See* Fla. Stat. § 947.174(1)(b). With the assistance and, upon information and belief, the prompting of the Victim Advocate, a

Commission employee, the victims and their families almost always request the maximum of seven years. In the subsequent interview, the Commission reviews the individual's institutional conduct since the last interview and may choose to extend, reduce, or make no change to the PPRD. An inmate's PPRD may be extended upon the receipt of even a single disciplinary report, no matter how minor. *See* Fla. Admin. Code R. 23-21.015 (1).

87. Juvenile lifers continue to have subsequent interviews every seven years until 90 days before their PPRD, at which time they have an effective parole release date ("EPRD") interview with an Investigator. The EPRD (if granted) is the individual's actual release date (the PPRD is only "presumptive").

88. Three months before the EPRD interview, the Commission notifies the individual's original sentencing judge or, if this judge is unavailable, the chief judge of the sentencing court of the pending meeting to decide the actual release date. If the judge submits a judicial objection, the PPRD may be extended. *See* Fla Admin. Code R. 23-21.015 (1). Upon information and belief, the sentencing judge or chief judge are not provided information regarding the individual's maturation and rehabilitation. Their input, if any, is based solely on the facts of the original offense.

The FIU Study

89. The Florida Juvenile Resentencing and Review Project at the FIU College of Law ("FIU Project") was created in 2015 to provide consultation and training for attorneys who represent juveniles in the adult system, collect data in the wake of the Supreme Court's decisions in *Miller* and *Graham*, and advise on policy and legislation affecting juveniles in Florida who are prosecuted as adults.

90. In 2019, the FIU Project undertook an analysis comparing, on the one hand, the Florida parole process and outcomes for juveniles sentenced to LWP with, on the other hand, the process and outcomes experienced by juveniles sentenced to LWP who were resentenced in court and represented by counsel during the two years that *Atwell* was in effect. Ex. A. The FIU Project obtained from FCOR a random sampling of 80 parole files of juveniles who were sentenced to LWP for first-and second-degree murder. Of the 80 cases analyzed, the majority were black (68%) and male (99%). Ex. A at 12.

91. The resulting analysis demonstrates that parole in Florida is largely illusory because FCOR: does not consider an individual's youthfulness at the time of the offense; does not consider maturation or rehabilitation; routinely rejects its own investigators' recommendations; and consistently extends the individuals' PPRD dates. By comparison to those who received a judicial resentencing, juvenile lifers awaiting parole have and will remain incarcerated decades longer and likely for the remainder of their natural lives. *Id.* at 30.

92. Most individuals in the FIU Study (62 out of 80) had had an initial interview with an Investigator, who then submitted a PPRD recommendation. The FIU Project found that ***FCOR rejected its Investigators' recommendations in 90.1% of cases and extended the PPRD.*** On average, ***FCOR set an individual's PPRD 174 months (14.5 years) above its Investigator's recommendation.*** *Id.* at 13.

93. As discussed earlier, FCOR uses a matrix to determine an individual's baseline PPRD. Prior to July 2014, juvenile offenders were ***penalized*** for being under 18 at the time of their offense because they automatically received two saliency factor points

for being 17 or younger at the time of the crime. This means that they actually were given *extended* time (rather than less time) based on their youth at the time of their crimes. Forty cases (65%) in the FIU Study had two points added to their saliency factor due to youthfulness. These individuals have never had their PPRD retroactively recalculated although since 2014 the fact of being a juvenile at the time of offense is no longer used to increase the saliency score. *Id.* at 15-16.

94. After July 2014, the only change FCOR made to its rules to conform with the mandates of the Supreme Court was to remove the enhanced penalty (the additional two saliency factor points) for being a juvenile at the time of the crime and to create a youthful offender matrix for scoring juvenile offenders. The youthful offender matrix has ranges that are lower by between four and six years than the matrix for adults. Some, but not all, of the individuals in the FIU Study were scored on the youthful offender matrix, but the majority (61%) of individuals who have had an initial interview were not scored as youthful offenders and many had their PPRDs increased based on their youth. *Id*. at 16.

95. The dropping of the penalty for being a juvenile offender and providing a supposedly more lenient sentence scoring has not, however, resulted in treating youth differently than adult offenders. Any potential reduction in the PPRD based on using the youthful offender matrix is routinely cancelled out by the overwhelming use of aggravating factors by the Commission to impose PPRDs that are typically well beyond the life expectancies of juvenile lifers.

96. The FIU Study determined that of the 80 parole files it reviewed, ***FCOR applied aggravating factors in every single case***. A typical individual received 198.6

months (16.5 years) from the matrix time range and, *on top of that*, 552.6 months (46 years) of additional aggravation. *Id.* at 16-17.

97. Most of the aggravating factors in the 80 files in the FIU Study related to an individual's past record and do not change. These so-called "static aggravators" are related to the individual's juvenile years; the individual has no control over them post-incarceration and they have no bearing on the individual's maturation or rehabilitation. The FIU Study found that these static aggravators were applied in 88% of cases. *Id.*

98. While FCOR applied aggravating factors in every single one of the 80 cases to increase the time for a PPRD, there was ***not one single case in which FCOR applied a mitigating factor to reduce the time for a PPRD***. *Id*. at 19. To the contrary, factors that the 2014 Juvenile Sentencing Statute requires to be considered as mitigating factors such as mental health and substance abuse were actually used by the Commissioners as aggravating factors to increase an inmate's PPRD. *Id.*

99. The FIU Study also showed that individuals forced to seek release through parole served many more years and would be many years older than individuals who received judicial resentencings through the 2014 Juvenile Sentencing Statute. The FIU Study found that individuals who went through a resentencing in the court system after *Atwell* and before the process was shut down by *Franklin* were on average 51 years old when released by the courts. *Id.* at 29. However, juvenile offenders now relegated to the parole process will be 95 years old on average – assuming they are actually released – according to their most recent PPRD dates. *Id*. at 30. In other words, those juvenile lifers forced into the parole process for release are generally expected to serve almost twice as

long as those juvenile lifers who received a judicial resentencing.

100. The FIU Study confirmed that none of the juvenile offenders serving LWP sentences who were not resentenced in the brief two-year window opened by *Atwell* and closed by *Franklin* ever received a judicial resentencing. For Plaintiffs and the Class, there was no judicial finding at their original sentencing – nor at any subsequent proceeding (and they have had no judicial resentencing) – that they were among the rare juveniles who are so irreparably corrupt, incorrigible and incapable of rehabilitation such that they should be condemned to die in prison.

101. The FIU Study demonstrates, through the use of objective and verifiable statistics, that the average individual who was sentenced to life in prison with the possibility of parole for a crime committed as a juvenile will never live outside the prison walls. In short, there is no meaningful opportunity for release for the Plaintiffs or Class Members serving LWP sentences in the state of Florida. They are each serving unconstitutional *de facto* life without parole sentences.

102. The FIU Study also demonstrates and highlights the many differences between a judicial resentencing and the parole process in Florida, as demonstrated by the chart below:

	Judicial Resentencing	**Parole Process**
Sentencer	Judge	3 Parole Commissioners
Hearing	Multi-Day Court Hearing	10-Minute Meeting
Right to Attend?	Yes	No
Right to Counsel?	Yes	No

Right to Experts?	Yes	No
Right to Cross-Examine Witnesses?	Yes	No
Right to Present Witnesses/Evidence?	Yes	No
Required Consideration of *Miller* factors (youth, background, etc.?	Yes	No
Sentencing Determination of whether inmate is one of few juveniles who is irreparably corrupt?	Yes. Judge makes that finding at conclusion of resentencing after weighing evidence, including that of experts.	No. FCOR does not make this finding. Commissioners have no specialized mental health expertise and do not have input from mental health and risk assessment experts.
Consideration of rehabilitation and reform required?	Yes	No. Parole statute "designed to give primary weight to the seriousness of the offender's [criminal conduct]." FCOR primary focus is on offense.
Right to release upon sufficient showing of remorse, maturity and rehabilitation?	Yes. Constitutional right.	No. Parole is "act of grace."
Rate of Release	70% of Juvenile Lifers released after resentencing hearing	Less than 5% of Juvenile Lifers released by FCOR
Average Age at Release	51 years	95 years
Average Time Served in Prison	30-35 years	74-83 years

INDIVIDUAL PLAINTIFFS

Plaintiff Robert Earl Howard

103. In 1981, at 17 years old, Robert Earl Howard was in 11th grade and had no prior offenses. Under the influence of an older co-defendant, he became involved in a robbery. They entered the home of the victim and, during the course of the robbery, the victim was killed.

104. For the murder, Robert Howard was sentenced to life in prison with the possibility of parole after 25 years. There was nothing in Robert's background to suggest, nor was any finding made at the time of his sentencing, that his crime reflected that he was among the rarest of juveniles whose crime reflected permanent incorrigibility.

105. Mr. Howard became parole-eligible in 2007. He is now 56 and has been incarcerated for 39 years. He has come before the Commission on four occasions: in 2005, 2010, 2012, and 2017. His current PPRD is set for 2054 when Mr. Howard will be 91 years old – which is 30 years beyond the average life expectancy of a black man like Robert Howard who was born in 1963. *See* CDC Life Expectancy Tables (2017) (available at www.cdc.gov/nchs/data/hus/2017/015.pdf) (Ex. B). This is more than a de facto life sentence.

106. Each time the Commission has met on Mr. Howard's case it has focused almost exclusively on the facts of the crime and ignored the substantial and overwhelming evidence of Mr. Howard's demonstrated maturity and rehabilitation. Mr. Howard had no counsel to represent him at any of the Commission meetings, had no opportunity to attend, participate or listen to the proceedings before the Commission or review the information

submitted to the Commission. At each meeting, the Commission spent an average of 10 minutes considering Mr. Howard's parole eligibility.

107. While the Commission made no note of Mr. Howard's record of rehabilitation, by contrast, when Mr. Howard's case came before the Second District Court of Appeal of Florida, a concurring judge wrote extensively to describe why he believed that "Mr. Howard's story is extraordinary and is worth telling." *Howard v. State*, 180 So. 2d 1135 (Fla. 2d DCA 2015) (Altenbernd, J.). Judge Altenbernd acknowledged that "Mr. Howard committed some terrible crimes. But the story has a twist." *Id.* at 1136. The twist was that in the last 25 years, Mr. Howard had received not one single disciplinary report as a prisoner. As the judge stated, "[f]or those unfamiliar with prison discipline, that is an extraordinary feat. I confess that I probably could not achieve that record if imprisoned for twenty-five years." *Id*. It has now been 35 years during which Mr. Howard has not received a single disciplinary report.

108. Judge Altenbernd, unlike the Parole Commission, also took note of and detailed how Mr. Howard began turning his life around almost immediately upon his incarceration and earned his GED the same year he was incarcerated. Beginning in 1991, he was selected to work for PRIDE (Prison Rehabilitative Industries and Diversified Enterprises, Inc.)—a nonprofit enterprise which trains eligible individuals in vocational skills to prepare them for re-entry into communities as productive citizens. Being selected for the PRIDE program is a highly sought-after position and is only awarded to those who have earned the trust of correction officers who select the participants. As of 2020, he has earned over 18 certificates that would qualify him for jobs on the outside including

Electronics, Cabinet Shop, Gas Engines, Warehouseman, Power Industrial Trucks Operator, PC Computer Support Services, Commercial Foods & Culinary, Upholstery, Brick & Block Masonry, Turf Management, Environmental Services and Plumbing. For ten years, he operated and trained others on various machinery positions such that UPS drivers were asking when he would get out because they wanted to recommend him for a job.

109. In addition to completing numerous job-training courses to position him to live a productive life outside the walls of prison, Mr. Howard also completed numerous self-betterment courses in anger management, life skills, AA, AIDS awareness, yoga, and substance abuse.

110. At each of the four times the Commission considered parole for Mr. Howard, it rejected the recommendations of the Investigator—the person who actually met with Mr. Howard to assess his remorse, his remediation efforts and his ability to succeed outside prison—and instead imposed harsher conditions of either delaying his PPRD or increasing the time before the next Commission action. The Commission also ignored the recommendations of those who have the most knowledge of Mr. Howard's rehabilitative efforts, such as the correction officers who supervise him on a daily basis.

111. At his first in-person interview in 2005 with an Investigator, the Investigator noted that Mr. Howard had been free of any disciplinary reports for twenty years and recommended that his PPRD be set for 2015. The Parole Commission, examining the same set of facts, increased the aggravation from the recommended 166 months to 972 months, a nearly six-fold increase. The Commission rejected the recommended PPRD date of 2015,

instead adding 47 years for an initial PPRD of 2062. The two-page form recording the Commission's action listed only aggravating factors based on his original crime and made no mention of any mitigating factors. Ex. C. (PPRD Commission Action, Oct. 8, 2005)

112. At the first Commission meeting, the State Attorney whose district prosecuted Mr. Howard, Jerry Hill, spoke at length and focused solely on the facts of the crime. Mr. Hill misstated facts to the Commission but because Mr. Howard was not permitted to attend the hearing and he was not afforded counsel, there was no one there to correct Mr. Hill's misstatements to the Commission.

113. Mr. Hill also attended the second time the Commission considered Mr. Howard for parole in 2010. Focusing again only on the original offense, Mr. Hill stated: "There appears to be no internal braking mechanism on this human being." At that point, it had been 25 years since Mr. Howard had received one single disciplinary report. It is alleged, upon information and belief, that Mr. Hill, who is a frequent opponent of parole at the meetings of the Parole Commission, did not review Mr. Howard's rehabilitative efforts because the facts of the crime committed by a 17-year old Robert Howard was Mr. Hill's sole focus.

114. If Mr. Hill had reviewed the parole file, he would have seen the letter from Mr. Howard's classification officer who wrote:

> During my years as a classification officer, I have not seen many individuals as dedicated to rehabilitation as inmate Howard. He always carries himself in a positive manner, respects both officer and inmate alike, and he continuously betters himself by learning new trades and participating in self-betterment programs.

(Ex. D) (Letter from Classification Officer Smith dated March 10, 2010). Mr. Smith then

listed the over two dozen credits and accomplishments Mr. Howard had achieved, concluding "I believe he is rehabilitated and would be a very good candidate for parole." *Id.*

115. Despite the recommendation from its Investigator and the unusually strong recommendation from someone who had a deep knowledge of Mr. Howard and his efforts to reform himself, the Commission ignored them both. While the Investigator recommended reducing Mr. Howard's PPRD by six years, the Commission reduced it by only one year to 2056 (when Mr. Howard would be 93 years of age).

116. The third time Mr. Howard's release date was considered in 2012, the Investigator recommended that his PPRD be reduced by five years based upon the lack of disciplinary actions, program completion and again, positive remarks from his classification officer. Again, the Commission rejected its Investigator's recommendation and instead only reduced the PPRD by 2 years.

117. The fourth time the Commission considered Mr. Howard's PPRD was in 2017. Once again, his classification officer, Mr. Thurman Smith, submitted another strong letter of support – as he had seven years earlier – stating:

> Since I wrote the last letter of support for Mr. Howard in 2010, my opinion of him has not changed. He still maintains that positive attitude, for which he is so well known, and he is respectful to both inmates and staff members alike. I have absolutely no doubt that he has been rehabilitated and will do well once released. . . . It is time for Mr. Howard to move on and to start the next chapter of his life. He is, in my personal and professional opinion, deserving of a second chance.

(Ex. E) (Letter from Classification Officer Smith, dated Dec. 11, 2017).

118. On the fourth occasion when the Commission considered Mr. Howard's

PPRD, Prosecutor Jerry Hill once again personally appeared to emphasize the facts of the crime committed 36 years earlier. The Commission again ignored the opinion of the classification officer who had worked with Mr. Howard for over seven years. It ignored for the fourth time the recommendation of its Investigator. Despite the fact that a judge on the Second District Court of Appeal for Florida had several years earlier written extensively of Mr. Howard's extraordinary record of rehabilitation, there is no indication the Commission considered that record or Judge Altenbernd's opinion. The Commission refused to make any changes in Mr. Howard's PPRD, leaving it at 2054, when Mr. Howard would be 91 years of age, 30 years beyond his life expectancy.

119. In its two-page pre-printed form, attached as Ex. F, there was no mention by the Commission of Mr. Howard's demonstrated maturity and rehabilitation or consideration that he committed the offenses when he was a child. There was no explanation at all for why the Commission refused to follow the Investigator's recommendation to reduce the PPRD. The only written explanation in the entire two-page document were four reasons given for why the Commission set the next interview date at the maximum time of 7 years. Each reason related to the crime a 17 year-old first-time offender Robert Howard committed 39 years ago. There was no mention of Mr. Howard's "extraordinary feat" as Judge Altenbernd had previously noted of his extensive and successful efforts to rehabilitate himself during the past 39 years.

120. When Mr. Howard's sister inquired of a staff person with FCOR what would it take for Mr. Howard to be granted parole, the reply was "Your brother is never getting out because of the seriousness of his crime."

Plaintiff Damon Peterson

121. Damon Peterson had a very troubled and unstable home life. Throughout most of his childhood, his mother abused crack cocaine and had a series of abusive relationships with men. By the time he was nine, his mother's drug addiction led to her wandering the streets and sometimes not recognizing her own son. Damon Peterson began committing petty theft when he was 12 years old to provide himself with the basic necessities of life such as food and clothing. At age 13 and not living with any relatives, Damon asked to be placed into foster care, a cry for help that went unanswered. In multiple psychoeducational evaluations shared with the courts throughout his juvenile delinquency episodes, doctors specifically recommended that Damon be placed into a stable home environment but a dependency case was never opened.

122. When he was 16, Damon and two other 16-year-old boys committed the crimes for which he is serving a life sentence. While driving around, the three boys saw a rental car they believed was occupied by tourists and they decided to rob them and share the proceeds. They followed the car to a motel parking lot and watched the victims get out of the car. Damon Peterson approached the female victim, pointed the gun at her and demanded she hand over her purse. She refused, he went to grab it, and she yelled for help. Her husband joined in the struggle. Damon shot him once, ran back to the car and drove away. The husband died from the gunshot wound. Damon later confessed to the crime.

123. Damon Peterson was charged with first-degree felony murder, not premeditated murder. This was an armed robbery gone bad and Damon had not entered the situation with an intent to kill. Nonetheless, at that time in 1994, a 16-year-old boy

could be put to death by the State and the State filed a Notice of Intent to Seek the Death Penalty in his case. The primary goal of Mr. Peterson's public defenders was to save his life which led to a plea agreement for life in prison with the possibility of parole in 25 years.

124. As part of the plea negotiations, Damon expressed the hope that he could one day rejoin society and indicated that he was motivated to rehabilitate himself and intended to participate in whatever activity he could to better himself as well as others while serving his sentence. The State agreed to write a letter at the end of his minimum mandatory sentence of 25 years recommending that he be "strongly considered" for parole if he had no disciplinary report during that time period, completed his GED, participated in a religious activity and any public service group or program offered. The prosecutor suggested that Damon Peterson should continue his involvement in programs such as Scared Straight, speaking to younger people who visited jails.

125. During the 28 years he has been in prison, Mr. Peterson has been a model prisoner with only a few disciplinary reports, and none for violent behavior. His last disciplinary report was over 20 years ago. He has participated in every program available to him, including continuing to participate in the "Scared Straight" program. Mr. Peterson credits his Islamic faith for his rehabilitation along with the love and support he has found through his wife, Jacqueline Peterson, who he met through mutual friends and married in 2016. Mrs. Peterson is a nurse who has no criminal record. She has two children whom Mr. Peterson considers to be his family as well. He has job opportunities on the outside and a stable family environment.

126. After *Atwell* was decided, the State agreed that Mr. Peterson was entitled to a judicial resentencing. He was two weeks away from his resentencing hearing in the Circuit Court when *Franklin* was decided and the door to the courthouse slammed shut. The State takes the position that the Parole process is now Mr. Peterson's only route to have a meaningful opportunity for release based on demonstrated maturity and rehabilitation. That route, however, has insurmountable road blocks.

127. At his initial interview, the Investigator who met with and interviewed Mr. Peterson recommended a PPRD of April, 2027. The Parole Commission, which never saw Mr. Peterson, rejected its Investigator's recommendation and added another 33 years to the PPRD, setting it for 2060. The determination was based almost entirely on facts relating to the crime. While the several page form, attached as Ex. G, documenting the Commission's action has a preprinted notation that the "Commission considered mitigation," there is no explanation of what mitigation evidence was in fact considered and what impact it had on its determination.

128. The Commission's Investigator recommended that Mr. Peterson be re-interviewed in two years. The Commission also rejected that recommendation and set the next interview date at the maximum interval of 7 years. Like its determination to add 33 years to the PPRD, the Commission's action to delay the next interview date was also based almost exclusively on the unchanging facts of the original crime.

129. At his earliest prospect for release, Mr. Peterson would be 84 years of age and would have spent 67 years in prison. The average life expectancy for a black man like Mr. Peterson who was born in the 1970s is 62.4 years, *See* Ex. B, and incarceration shortens

life expectancy. *See* Ex. H, "*Michigan Life Expectancy Data for Youth Serving Life Sentences*" (available at http://www.lb7.uscourts.gov/documents/17-12441.pdf (discussing shortened life expectancy of prisoners)).

Plaintiff Carl Tracy Brown

130. On March 26, 1988, a 16-year-old Carl Tracy Brown was drinking with two friends (age 15 and 21) when they decided to steal a car. They parked their car near a four-way stop, pretending it was disabled. They flagged down the victim in his car and asked him to help them with their vehicle. Carl Brown approached the victim and shot him six times, killing him.

131. Following a jury trial, Carl Brown was convicted of first-degree murder, armed robbery and armed burglary. For the murder conviction, he was sentenced to life with parole.

132. In the 32 years he has been incarcerated, Mr. Brown has not had a single disciplinary report recorded in his record. He was issued one in late 2017 for having a piece of plastic in his window to divert air into his cell which had no air conditioning, but that charge was dismissed. In 1997, he was issued a disciplinary report because he had a case of protein drinks in his cell to supplement his attempts to work out and maintain his health, but that report was also dismissed.

133. Mr. Brown has held a variety of jobs while in prison including as an education aide and working in the library. He worked in the carpentry shop of PRIDE for over 19 years and he credits his job at PRIDE as keeping him out of trouble and free of any disciplinary reports during his years of incarceration. He worked on cabinet work for

SWAT vans, bookmobiles, mobile clinics and dental labs for the latter part of his teens, his twenties and most of his thirties.

134. Mr. Brown's brother, Steven Brown, works for United States Air Force in Colorado Springs, Colorado and has offered to provide a home for Mr. Brown upon his release.

135. At his initial interview for parole in 2016, the Investigator noted that Mr. Brown had received above average work ratings in all the work positions he held. He also noted that "[s]ince his arrival in prison Brown has never been issued a Disciplinary Report." He noted that Mr. Brown had completed the Faith and Character program and an Inmate Teaching Assistant Training Program. He also noted a classification officer's comment that Mr. Brown "is not a problem, as evidenced by his disciplinary record."

136. The Investigator recommended a PPRD of 2023. The Commission rejected this recommendation and focused solely on "aggravating factors" which all stemmed from the crime. While its one-page form "order" stated that "[d]uring the scoring of this case the Commission did consider mitigation," there is no explanation of what mitigation the Commission considered or what weight, if any, it gave it. Of the four aggravating factors it listed, all were based on the offense. The fourth aggravating factor (for which it added 5 years to the PPRD) was that the individual has a history of substance abuse and was under the influence of alcohol at the time he committed the offense when he was 16. *See* Ex. I (Order of Initial Interview dated Feb. 15, 2016). The Commission did not discuss the fact that Mr. Brown's record showed no instances of continuing substance or alcohol abuse and that he had received no disciplinary reports in the last 27 years. The Commission added

nine additional years to the PPRD recommended by the Parole Examiner with a date in 2032 when Mr. Brown will be 60 years of age, which is the average life expectancy of a man born in 1960 (who has not been incarcerated for most of his life). *See* Ex. B.

137. Mr. Brown was not permitted to attend or in any way participate in the Commission meeting at which his PPRD was set. He was not provided counsel or any experts to assess his maturity and rehabilitation. The Commission proceeding lasted about ten minutes. Mr. Brown was never even provided the Commission's Order setting his PPRD for 2032.

Plaintiff Willie Watts

138. At age 17, Willie Watts, with no prior arrests, came under the influence of an older half-brother and another older friend. Within a matter of weeks in July 1980, the trio had committed several armed robberies of convenience stores in Putnam and St. Johns counties. At one store, they kidnapped the clerk, whom a co-defendant (not Mr. Watts) raped outside of Mr. Watts's presence. The clerk was shot and survived.

139. It has been noted that juveniles are at a substantial disadvantage to assist in their own defense in criminal proceedings and they respond poorly to pressure and interrogation. *See In re Gault*, 387 U.S. 1, n. 65 (1967); Lindsay C. Malloy et al., *Interrogations, Confessions, And Guilty Pleas Among Serious Adolescent Offenders*, 38 L. & Hum. Behav. 2 (2014); Allison D. Redlich & Reveka V. Shteynberg, *To Plead or Not to Plead: A Comparison of Juvenile and Adult True and False Plea Decisions*, 40 L. & Hum. Behav. 611, 620 (2016); and Barry C. Feld, *Police Interrogation of Juveniles: An Empirical Study of Policy and Practice,* 97 J. Crim. L. & Criminology 219, 228-33 (2006). Mr.

Watts' case is a good example of that. He did not point to his co-defendants as the ring leaders (and later found out one of them made a false accusation against him). He and his mother, both unfamiliar with the criminal legal system, agreed to follow advice that Willie should plead guilty to all crimes with the expectation that though his crimes were serious, he did not rape or murder anyone and he believed he would get a lighter sentence if he pled guilty. He did not. For the armed robbery crimes in Putnam County, Willie Watts was sentenced to two consecutive 99-year sentences. For the armed robbery, kidnapping and attempted murder crimes in St. John's County, he was sentenced to 75 years to run consecutive (after) he served the 99-year sentences. Under Florida law, the aggregate sentences imposed violates *Graham*. *Henry v. State*, 175 So. 3d 675 (Fla. 2016); *Gridine v. State*, 175 So. 3d 672 (Fla. 2015).

140. After an initial period of adjustment to prison life at age 17, Willie Watts began to turn his life around. He began to see past his misplaced hatred. Instead of resenting his indefinite life sentence, he began to view that time as a tool to use to prepare himself to live a better life. He became religious and completed his GED. He completed multiple vocational courses and received a coveted spot working with Pride Industries to learn skills he could use to support himself in a life outside prison. He completed all the self-help and growth courses offered by the State.

141. Mr. Watts became active in the Horizon Communities in Prison program. Horizon holds individuals accountable to improve themselves in seven domains: Attitude, Family, Healthy Choices, Community Functioning, Mentoring, Re-Entry and Faith Formation/Core Belief. Mr. Watts became a "Grandfather" in the self-improvement

program, recognizing him as "the highest change agent and a solid rock of stability in a dorm of 79 bunks." He is now a canteen operator and still tries to help mentor other prisoners. Mr. Watts has not received a Disciplinary Report for the last 14 years.

142. After *Graham* and *Atwell*, Mr. Watts filed a motion for resentencing in Putnam County pursuant to the 2014 Juvenile Sentencing Statute for the robbery crimes in that county. The resentencing hearing lasted several days. Mr. Watts was represented by counsel. He attended the hearing and was able to assist his counsel throughout the hearing. Mr. Watts and his counsel were able to retain experts who testified on the substantial rehabilitation efforts Mr. Watts had made during his almost four decades in prison and that in their opinion Mr. Watts was rehabilitated and able to live a productive life outside the prison walls. Through this process, Mr. Watts was given the meaningful opportunity the *Graham* court outlined to obtain release based on demonstrated maturity and rehabilitation. In April 2018, the Judge in Putnam County found that Mr. Watts was not one of those juveniles who is irreparably corrupt and who should spend the rest of his life in prison. As a result, the court reduced his 99-year sentences to 40 years, which was set to expire in 2021 when Mr. Watts would be 59 years old.

143. After having his 99-year sentences reduced to 40 years, Mr. Watts filed for resentencing on his 75-year sentence in St. Johns County on the basis that *Graham* required the Court to give him a meaningful opportunity for release. However, by the time Mr. Watts went before the court on his motion for resentencing in St. Johns County, the Florida Supreme Court in *Franklin*/*Michel* had already done its about-face, declaring that parole review should be a sufficient process to satisfy the constitutional mandates of

Graham/Miller. As a result, the judge in the St. Johns County case refused to resentence Mr. Watts.

144. During the proceeding in St. Johns County, the court heard testimony from Laura Tully, the Director of Field Services for the Commission who had reviewed Mr. Watts' parole file before the hearing. She testified that the Commission first reviewed Mr. Watts' case on April 21, 1982 and had reviewed his case over 20 times since then. Ex. J (Hearing Tr. at p. 15). Mr. Watts was not given counsel to represent him at any of the meetings before the Parole Commission. He was not permitted to attend any of the Commission meetings. He could not hear much less confront or correct anything anyone else might have told the Commissioners at any of the 20 meetings. No Commissioner has ever spoken to Mr. Watts or even seen him. The Investigator who did speak with Mr. Watts does not personally appear before the Commission to answer questions or discuss his interview of Mr. Watts. Mr. Watts was not afforded an expert to testify as to his demonstrated maturity and rehabilitation. The entire process before the Commission took on average ten minutes on each occasion.

145. The last time the Commission reviewed his case was in March 2015 when it set his PPRD for January 2064. (Ex. K). Mr. Watts would be 104 years of age on that date, obviously well beyond the life expectancy of 61 years for a black man born in the 1960s.

146. Ms. Tully admitted that while the Commission may at its next meeting in 2021 consider the fact that the Putnam County judge found Mr. Watts to be rehabilitated and therefore reduced his sentence by more than half, the Commission will not be obligated

to follow the judge's findings. The Commission may or may not make any changes to Mr. Watt's PPRD.

147. Ms. Tully also admitted that the Commission did not make any changes in the way it considered the cases of juveniles following *Miller* and *Graham*. Nor did the Commission make any changes following the Florida Legislature's adoption of the 2014 Juvenile Sentencing Statute, Fla. Stat. § 921.1401-02 and the factors that should be taken into account in determining whether a juvenile should be released to rejoin society. Ms. Tully admitted that the Commission treats juvenile offenders in the same way it treats those who committed offenses while adults.

148. Ms. Tully testified that prior to 2008, the Commission could request a mental health status report from the Department of Corrections, "but they quit doing that, so we no longer have a mental health evaluation." She confirmed that the Commission made no formal risk assessment, no mental health assessment and no evaluation of the juvenile offender as to rehabilitation.

149. In the last four times FCOR has considered Mr. Watts for parole, the Investigator has recommended a reduction in his PPRD (set for 2064 when he would be 104 years old) ranging from two to five years based on Watt's above satisfactory institutional conduct and his successful completion of numerous programs. Each time the Commissioners have rejected the Investigator's recommendation and made no change in Watt's PPRD based solely on the facts of the crime he committed when he was a child. The Commissioners gave no weight to or discussion of the substantial evidence of Mr. Watt's maturity and rehabilitation or the length of time he has already served.

CLASS ACTION ALLEGATIONS

150. Plaintiffs bring this action on behalf of a class consisting of: All persons who (i) were convicted of a crime committed when they were under the age of eighteen; (ii) were sentenced to life in prison or a term of years exceeding their life expectancy; (iii) are currently in the custody of the Florida Department of Corrections; and (iv) are or will become eligible for release to parole supervision but only through the parole process. Excluded from the class are individuals meeting the class definitions, but who were paroled and were reincarcerated due to parole violations.

151. This action meets the requirements of Fed. R. Civ. P. 23(a) as follows:

A. The proposed class is so numerous that joinder of all of its members is impracticable. In Florida, there are over 100 persons currently serving life sentences with the possibility of parole for offenses committed between the ages of 13 and 17;

B. The questions of law and fact presented by the Plaintiffs are common to other members of the class. Such questions include, generally, whether, under federal law, Defendants have violated the class members' rights to due process, equal protection, to proportionate punishment and to be free from cruel and unusual punishment, and whether Defendants' rules, policies and practices deny Plaintiffs and Class Members a meaningful opportunity for release upon demonstrated rehabilitation and maturity. These common questions of law and fact include:

(1). Whether Florida's laws governing parole release violate Plaintiffs' and Class Members' Eighth Amendment rights to be free of disproportionate punishment;

(2). Whether Defendants' policies and practices for conducting parole review, which consider primarily the nature of the crime committed by the juvenile and the juvenile's criminal history, are contrary to the mandates of *Graham*, *Miller* and *Montgomery* and therefore violate Plaintiffs' and Class Members' Eighth Amendment and Due Process rights;

(3). Whether the practices and procedures of FCOR, including denying Plaintiffs and Class Members a right to counsel and a right to be present at FCOR meetings, and the right to see and confront evidence against them, and providing only cursory review of parole requests, precludes an opportunity for Plaintiffs and Class Members to be meaningfully heard in violation of the Due Process clause;

(4). Whether Plaintiffs and Class Members have been denied equal protection of the law when others similarly situated have received judicial resentencing hearings pursuant to the 2014 Juvenile Resentencing Statute instead of the parole process; and

(5). Whether Plaintiffs and Class Members have been denied their Sixth Amendment right to judicial reconsideration when Florida has selected judicial reconsideration as the means to assure juvenile offenders their rights under *Miller*

and *Graham*.

152. The violations alleged by the Named Plaintiffs are typical of those suffered by the Class and the entire Class will benefit from the relief sought.

153. Named Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs' counsel have experience in federal civil rights class-action litigation.

154. The prosecution of separate actions by Plaintiffs and individual Class Members would create a risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for the party opposing the class. Fed. R. Civ. P. 23(b)(2).

155. Defendants have acted or refused to act on grounds generally applicable to the Class, making appropriate declaratory and injunctive relief with respect to the class as a whole. Fed. R. Civ. P. 23(b)(2).

COUNT I

VIOLATION OF THE EIGHTH AMENDMENT'S PROHIBITION ON CRUEL AND UNUSUAL PUNISHMENT UNDER 42 U.S.C. § 1983 (ALL DEFENDANTS)

156. Plaintiffs repeat and reallege paragraphs 1-155 as if fully set forth herein.

157. Defendants, in their official capacities, have acted and are acting under color of state law.

158. The Eighth Amendment to the U.S. Constitution forbids a statutory scheme that mandates life imprisonment for juvenile offenders or permits the imposition of life sentences on juveniles who have not been determined to be irreparably corrupt or permanently incorrigible without providing them a meaningful opportunity for release

based upon demonstrated maturity and rehabilitation.

159. As set forth herein, Florida Statutes Ch. 947 and Florida Administrative Code §§ 23-21.006 to 23-21.0161 as well as Defendants' current policies, procedures, and customs with respect to the parole review process for Plaintiffs and plaintiff class members, fail to provide a realistic and meaningful opportunity for release upon demonstrated maturity and rehabilitation as well as failing to provide (1) a right to counsel and opportunity to be effectively represented by counsel, (2) a right to experts or investigators or psychological testing to show the individual has demonstrated sufficient maturation and rehabilitation, (3) sufficient time for a parole hearing, (4) opportunity for FCOR to consider factors of youth as well as maturation and rehabilitation commensurate with the statutory factors adopted by the Florida Legislature in Fla. Stat. §§ 921.1401 and 921.1402, (5) differentiated procedures for juvenile and adult offenders, (6) adequate explanation by FCOR of the basis of its determinations, (7) opportunity for reconsideration of FCOR decisions within a reasonable amount of time, and (8) opportunity for judicial or appellate review of whether Plaintiffs or those similarly situated have demonstrated maturity and rehabilitation.

160. This statutory framework as well as Defendants' policies, procedures, and customs lack legitimate penological justification, are arbitrary and capricious, and constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution.

161. Plaintiffs and plaintiff Class Members have been injured and will continue to be injured as a consequence of Defendants' parole policies and practices denying them

their rights to a meaningful opportunity for release from imprisonment based on a demonstration of maturity and rehabilitation, in violation of the Eighth Amendment to the U.S. Constitution.

COUNT II

VIOLATION OF THE FOURTEENTH AMENDMENT'S GUARANTEE OF DUE PROCESS UNDER 42 U.S.C. § 1983 (ALL DEFENDANTS)

162. Plaintiffs repeat and reallege paragraphs 1-155 in this Complaint as if fully set forth herein.

163. Defendants, in their official capacities, have acted and are acting under color of state law.

164. Under established U.S. Supreme Court case law, juvenile lifers have a liberty interest in "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation," that is protected by the Due Process clause. *Graham*, 560 U.S. at 75; *Miller*, 567 U.S. at 489.

165. Florida Statutes § 947 and Administrative Code §§ 23-21.006 to 23-21.0161 and Defendants' policies, procedures, and customs with respect to the parole review process for Plaintiffs and plaintiff class members, violate Plaintiffs' rights to due process by failing to provide Plaintiffs and plaintiff class members with (1) a meaningful opportunity for release upon demonstrating their maturation and rehabilitation, (2) a right to the effective representation of counsel, (3) a right to retain experts or investigators or psychological testing to show the individual has demonstrated sufficient maturation and rehabilitation, (4) sufficient time for Commissioners to review the record and conduct a

parole hearing, (5) procedures which distinguish between juvenile and adult offenders in accordance with U.S. Supreme Court case law, (6) adequate explanation by FCOR of the basis of its determinations, (7) opportunity for reconsideration of FCOR decisions within a reasonable amount of time, and (8) opportunity for judicial or appellate review of FCOR decisions, including whether Plaintiffs have demonstrated maturity and rehabilitation.

166. Plaintiffs and plaintiff Class Members have been injured and will continue to suffer injury as a result of Florida's statutory framework and Defendants' official policies and practices, which fail to adequately distinguish between persons serving life sentences for crimes committed as children and those committed as adults, and Defendants' failure to provide sufficient procedural protections necessary to secure the substantive right to release upon a showing of maturity and rehabilitation in violation of the Due Process Clause of the Fourteenth Amendment.

COUNT III

VIOLATION OF THE FOURTEENTH AMENDMENT'S GUARANTEE OF EQUAL PROTECTION UNDER 42 U.S.C. § 1983 (ALL DEFENDANTS)

167. Plaintiffs repeat and reallege paragraphs 1-155 in this Complaint as if fully set forth herein.

168. Defendants, in their official capacities, have acted and are acting under color of state law.

169. Defendants, by their policies, procedures, customs and practices have transformed Plaintiffs' and the other Class Members' LWP sentences into *de facto* LWOP sentences.

170. The 2014 Juvenile Sentencing Statute, Florida Statutes ch. 947, and Florida Administrative Code §§ 23-21.006 to 23-21.0161, on their face and as applied to Plaintiffs, and Defendants' policies, procedures, customs and practices violate the Equal Protection Clause of the Fourteenth Amendment by depriving Plaintiffs and the other Class Members of their equal rights to judicial reconsideration as provided to those juvenile offenders serving *de jure* LWOP sentences.

171. The 2014 Juvenile Sentencing Statute, Florida Statutes ch. 947, and Florida Administrative Code §§ 23-21.006 to 23-21.0161, on their face and as applied to Plaintiffs, and Defendants' policies, procedures, customs, and practices violate the Equal Protection Clause of the Fourteenth Amendment by depriving Plaintiffs and the other Class Members of their equal rights to judicial reconsideration as provided to those juvenile offenders serving life with parole who received judicial resentencing hearings after *Atwell* but before *Franklin*, between 2016 and 2018.

COUNT IV

VIOLATION OF SIXTH AMENDMENT UNDER 42 U.S.C. § 1983 (ALL DEFENDANTS)

172. Plaintiffs repeat and reallege paragraphs 1-155 in this Complaint as if fully set forth herein.

173. Defendants, in their official capacities, have acted and are acting under color of state law.

174. Defendants by their policies, procedures, customs and practices have transformed Plaintiffs' and the other Class Members' LWP sentences into *de facto* LWOP sentences. While juvenile lifers' constitutional rights to a meaningful opportunity for

release under *Graham* and *Miller* could be satisfied in any number of ways, the Florida legislature adopted a judicial resentencing scheme to implement the requirements of *Miller* pursuant to the 2014 Juvenile Sentencing Statute. Because judicial reconsideration pursuant to the statute is the chosen method to address these rights, Plaintiffs and the other Class Members are entitled to the same process to accommodate and enforce the very same constitutional rights.

COUNT V

DECLARATORY JUDGMENT
(ALL DEFENDANTS)

175. Plaintiffs repeat and reallege paragraphs 1-155 in this Complaint as if fully set forth herein.

176. For the reasons stated above, Plaintiffs seek a declaratory judgment from this Court that Florida Statute ch. 947 and Florida Administrative Code §§ 23-21.006 to 23-21.0161 are unconstitutional on their face and as applied to Plaintiffs and all those similarly situated.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the Class, request that this Court:

A. Certify a plaintiff class pursuant to Fed. R. Civ. P. 23(b)(1)(A) and (b)(2).

B. Provide Plaintiffs an evidentiary hearing to further prove that the parole system does not provide Plaintiffs and plaintiff class members a meaningful opportunity for them to demonstrate maturity and rehabilitation or a realistic opportunity

for release as required by the U.S. Supreme Court;

C. Declare that the actions and inactions of the Defendants are unlawful and unconstitutional for the reasons specified above;

D. Enjoin Defendants from continuing to violate the constitutional and statutory rights of the Plaintiffs;

E. Require that Plaintiffs and all class members receive the judicial resentencing protections provided and guaranteed by Florida Statutes §§ 921.1401 and 921.1402, or require Defendants to afford Plaintiffs, and all class members a meaningful opportunity to obtain release with requisite procedural protections and based upon relevant criteria that assess their degree of maturity and rehabilitation in accordance with U.S. Supreme Court mandates;

F. Award Plaintiffs their costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 and 42 U.S.C. § 12205; and

G. Award all other necessary and appropriate relief that this Court may deem appropriate.

Dated: January 8, 2021

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EXHIBIT A

Analysis of Florida Commission on Offender Review Juvenile Parole Eligible Inmate Files: Does Florida's Parole System Provide a Meaningful Opportunity for Release?

FLORIDA JUVENILE RESENTENCING AND REVIEW PROJECT

August 2020
Second Edition

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Analysis of Florida Commission on Offender Review Juvenile Parole Eligible Inmate Files: Does Florida's Parole System Provide a Meaningful Opportunity for Release?

FLORIDA JUVENILE RESENTENCING AND REVIEW PROJECT

I. History of Juvenile Eligibility for Early Release on Life Sentences

In response to increasing political pressure to keep offenders off the streets, Florida abolished parole for all crimes except capital murder in 1983. In 1994, Florida also abolished parole for capital first-degree murder cases allowing for only two possible sentences: *mandatory* life without parole or the death penalty. This tough on crime trend had an impact on juvenile offenders in Florida. In 2010, when the United States Supreme Court held in *Graham v. Florida*[1] that a life without parole sentence (LWOP) could not constitutionally be imposed on juveniles for non-homicide crimes, Florida had the vast majority of children who had been sentenced to LWOP as compared to any other state in the nation. At that time, out of 124 children sentenced to die in prison for *non-homicide* offenses, 77 of them were in Florida. [2] The Court held in *Graham* that a life sentence imposed on a juvenile without a meaningful opportunity for release violated the Eighth Amendment prohibition against cruel and unusual punishment.

In 2012, the Court extended that prohibition in holding that mandatory LWOP sentences imposed for first degree murder on all but "irreparably corrupt" juveniles are unconstitutional in *Miller v. Alabama*.[3] The Court reasoned that mandatory life without parole precluded consideration of a juvenile's chronological age and its "hallmark features" of "immaturity, impetuosity and failure to appreciate risks and consequences." The features that make children constitutionally different for the purposes of sentencing have been described as the five "*Miller* factors," (1) decisional, (2) dependency, (3) offense context, (4) legal competence, and (5) rehabilitation.[4]

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[1] 500 U.S. 48, 130 S. Ct. 2011, 176 L. Ed 2d 825 (2010).
[2] *Id.* at 48.
[3] __U.S. __, 132 S. Ct. 2455, 183 L.Ed 2d 407 (2012).
[4] *See* Grisso, T., and Kavanaugh, A., *Prospects for Developmental Evidence in Juvenile Sentencing Based on Miller v. Alabama,* Psychology, Public Policy, and Law, Vol. 22, No. 3, 235-249 (2016).

Instead of reinstating the parole system, the Florida Legislature chose to codify *Miller* and *Graham* into a new juvenile sentencing scheme for juveniles convicted of life, punishable by life, and capital felonies. Chap. 2014-220, Laws of Florida. Florida Statute § 921.1401 sets forth the factors a trial court must consider prior to sentencing a juvenile to life in prison in adult court. In lieu of parole, § 921.1402 sets forth factors Florida courts must consider when reviewing a child's sentence after fifteen, twenty, or twenty five years, depending on the crime and circumstances. [5] Juveniles are entitled to counsel at sentencing and on judicial review and have the right to appeal any adverse decision regarding the application of the sentencing scheme.

The 2014 juvenile sentencing scheme requires the trial court to consider factors relevant to the offense and the defendant's youth and attendant circumstances before a life sentence may be imposed pursuant to Florida Statute § 921.1401:

1. The nature and circumstances of the offense;
2. The effect of the crime on the victim's family and on the community;
3. The defendant's age, maturity, intellectual capacity, and mental and emotional health at the time of the offense;
4. The defendant's background (including his or her family, home, and community environment);
5. The effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the defendant's participation in the offense;
6. The extent of the defendant's participation in the offense;
7. The effect, if any, of familial pressure or peer pressure on the defendant's actions;
8. The nature and extent of the defendant's prior criminal history;
9. The effect, if any, of characteristics attributable to the defendant's youth on the defendant's judgment; and
10. The possibility of rehabilitating the defendant.

Section 921.1402, which provides for subsequent review and possible sentence modification, directs the trial court to consider whether the juvenile offender:

[5] The review date varies depending upon the nature of the offense for which the child is sentenced.

1. Demonstrates maturity and rehabilitation;
2. Whether the juvenile offender remains at the same level of risk to society;
3. Whether the juvenile offender was a relatively minor participant in the criminal offense or acted under; extreme duress or the domination of another person;
4. Whether the juvenile offender has shown sincere and sustained remorse for the criminal offense;
5. Whether the juvenile offender's age, maturity, and psychological development at the time of the offense affected his or her behavior;
6. Whether the juvenile offender has successfully obtained a high school equivalency diploma or completed another educational, technical, work, vocational, or self-rehabilitation program;
7. If such a program is available, whether the juvenile offender was a victim of sexual, physical, or emotional abuse before he or she committed the offense; and
8. The results of any mental health assessment, risk assessment, or evaluation of the juvenile offender as to rehabilitation.

In 2015, the Florida Supreme Court ultimately held the juvenile sentencing scheme would apply retroactively to any child serving LWOP in Florida.[6] The next year, in *Montgomery v. Louisiana,*[7] the U.S. Supreme Court held that *Miller* set forth a substantive prohibition against the imposition of life without parole imposed on a child and therefore, it must be retroactively applied. Juveniles *must* be given the opportunity to show their crime did not reflect irreparable corruption; and, if it did not, their hope for some years of life outside the prison walls must be restored. Interestingly, *Montgomery* held that a state could comport with *Miller* and *Graham* through a parole process if the process provided the opportunity to establish lack of irreparable corruption.[8] However, by that time, Florida's legislature had already decided that juveniles serving life would be entitled to a resentencing and review process before a circuit court judge.

[6] *Falcon v. State*, 162 So. 3d 956 (Fla.2015).
[7] 577 U.S. ___, 136 S. Ct. 718, 193, L. Ed 2d 599 (2016).
[8] 136 S.Ct. at 736-37. Florida's parole statute does not address "irreparable corruption."

In 2016, the Florida Supreme Court considered whether Florida's parole[9] system provided inmates sentenced to life *with* parole with a meaningful opportunity for release as required by *Graham* and *Miller*. In a 4-3 decision in *Atwell v. State,*[10] the Court held that even those juveniles who were serving life *with* parole were eligible for resentencing and review under Florida Statutes §§ 921.1401 and 921.1402. Justice Pariente explained the parole process and pointed out the failures thereof, including the fact that the parole statute mandated that "primary weight be given to the seriousness of the present offense and the offender's past criminal record."[11] The Court pointed out that unlike other states, Florida's parole statute requires no special exceptions for juveniles sentenced as adults, nor any consideration of the diminished capacity of youth.[12] The Court concluded:

> . . . Florida's existing parole system, as set forth by statute, does not provide for individualized consideration of Atwell's juvenile status at the time of the murder, as required by *Miller*, and that his sentence, which is virtually indistinguishable from a sentence of life without parole, is therefore unconstitutional.[13]

The majority also noted that the Florida legislature had chosen to set forth the statutory sentencing scheme rather than relying on the nearly extinct parole system.[14] Justice Ricky Lee Polston dissented, rejecting the claim that the parole Commission failed to provide individualized consideration.[15]

A month later, in *Landrum v. State*,[16] the Florida Supreme Court held that those juveniles who were serving a life sentence for second degree murder were entitled to resentencing as well. As a result of *Falcon*, *Atwell*, and *Landrum*, just over 300[17] juveniles who had been sentenced to life with parole were given the green light to seek resentencing pursuant to the new statute.

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[9] Again, parole for non-first-degree murder cases was abolished in 1983; parole for first-degree murder cases was abolished in 1994.
[10] 197 So. 3d 1040 (Fla. 2016).
[11] *Id.* at 1041.
[12] *Id.*at 1049.
[13] *Id.* at 1041.
[14] *Id.* at 1042.
[15] *Id.* at 1048.
[16] 192 So. 2d 459 (Fla. 2016).
[17] This number does not include juveniles serving life with parole on non-homicide cases or those serving lengthy "de facto" life with parole sentences.

As the *Atwell* juveniles sought relief, the State attempted to limit the scope of the decision through litigation. Florida courts[18] have declined to allow resentencing in cases where a juvenile was previously released on parole and subsequently violated parole, reasoning that they had already been afforded their opportunity for release. The State also sought to deny relief to those juveniles whose presumptive parole release date (PPRD) fell within their natural life span.

In 2018, the Florida Supreme Court accepted jurisdiction in an *Atwell* case to decide whether a juvenile whose presumptive parole release date (PPRD) falls *within* their natural lifespan is entitled to resentencing and review. [19] The parties briefed only that distinct and narrow issue before the Court; the request for oral argument was denied. In a surprise break from precedent and without the benefit of supplemental briefing on whether Florida's parole system is constitutional, the Court receded from *Atwell* and, in a plurality opinion, three justices opined that a life sentence *with* the possibility of parole imposed on a juvenile does *not* violate the Eighth Amendment. Justice Lewis, who had sided with the dissent in the *Atwell* case, concurred in the result.

Just a few months later, in *Franklin v. State,*[20] the Florida Supreme Court directly overruled *Atwell* in a non-homicide case where the juvenile had been sentenced to concurrent 1,000-year prison terms (*de facto* life) for separate offenses involving kidnapping, armed robbery and sexual battery. Arthur Franklin's sentences included the possibility of parole. Justice Polston essentially reiterated his *Atwell* dissent as the majority opinion, even though there had been no record to establish that anything about Florida's parole system had changed since *Atwell*. The decision to overturn precedent and ignore the principal of *stare decisis* after such a short time was widely criticized by defense lawyers.[21]

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[18] *Rooks v. State*, 224 So. 3d 272 (Fla. 3d DCA 2017); *Currie v State*, 2019 So. 3d 960 (Fla. 1st DCA 2017).
[19] *State v. Michel*, 257 So. 3d 3 (Fla. 2018), *reh'g denied,* No. SC16-2187, 2018 WL 6729935 (Fla. Oct. 24, 2018), and *cert. denied sub nom. Michel v. Fla.*, No. 18-8116, 2019 WL 936627 (U.S. Mar. 25, 2019).
[20] *Franklin v. State*, 258 So. 3d 1239 (Fla. 2018).
[21] See Ovalle, David, *Supreme Court's About-Face Means No New Sentence for Killer of German Tourist, Many Others,* THE MIAMI HERALD, December 7, 2018. ("In the wake of the *Atwell* decision, the Florida Supreme Court itself changed. One of the justices who supported the decision,

In the two years following *Atwell*, many juvenile offenders *who were serving a life sentence with parole*, were in fact *resentenced* and many are out of prison now leading productive lives. As of August 2020, 90 of the 300 *Miller/Atwell* juveniles (including first- and second-degree murder) have been resentenced pursuant to Florida Statute § 921.1401. Sixty-three of the 90 were released from prison following resentencing and only 13 juveniles were resentenced to life again.[22] The remaining 10 inmates received a term of years less than life and are expected to be released in the next few years based on the liberal gain time rules that were previously in effect. Two of the juveniles died before they could obtain relief.

Since *Atwell* was decided in 2016, it appears that only five juveniles serving life for murder have been released on parole: David Welch, Timothy Kane, Ricky Hixon, Reginald President, and Leroy Harden. It is noteworthy that at least three of these parolees had the benefit of counsel; a benefit that is not guaranteed as of right. One juvenile, Dean Mckee, was released after serving 30 years in prison after he won his motion for postconviction relief based on actual innocence. There are there are just over 200 individuals serving life with parole for homicide who have either been denied resentencing or are likely to be denied relief if their case is still pending.[23]

II. How the Parole System Works[24]

The Florida Commission on Offender Review is a quasi-judicial body responsible, *inter alia*, for determining whether parole-eligible inmates may be released after holding

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E.C. Perry, retired and was replaced by Alan Lawson — who proved to be a key vote on two opinions overturning the landmark decision.").

[22] One *Atwell* juvenile who was resentenced to life was Cleo LeCroy; he had originally been sentenced to death of the murder of two campers in 1981. His sentenced was subsequently reduced to life with parole as a result of *Roper v. Simmons*, 543 U.S. 551, 125 S. Ct. 1183 (2005). Although he was resentenced to life, that sentence was subsequently modified to time served followed by a period of probation following his judicial review hearing. He has been released from prison.

[23] A handful of juveniles who were convicted of both first-degree murder and non-homicide charges between 1983 and 1994 are entitled to resentencing hearings on the *Graham* counts only. The *Franklin* majority did not address this problem, *nor* the unfairness of the situation that similarly situated defendants are being treated differently. It also results in two proceedings: one before the circuit court on any count where the inmate is eligible for resentencing, and another before the Florida Commission on Offender Review.

[24] See Appendix A.

public hearings.[25] An inmate becomes eligible for parole consideration between six and eighteen months before the expiration of their minimum mandatory sentence.[26] At this point, the inmate will be interviewed by the Commission investigator. This interview, and any subsequent interview throughout the parole process, will be automatically terminated and rescheduled if an inmate has received a disciplinary report (DR) in the past 90 days – no matter how minor.

During the initial interview, the Commission investigator meets with the inmate to discuss the inmate's institutional conduct and to recommend a presumptive parole release date (PPRD). An inmate's PPRD is based on the matrix time range. Any number of months between the minimum and maximum in the inmate's range can be used as the basis of the inmate's PPRD. The appropriate matrix time range is determined by the intersection of the saliency factor score and severity of offensive behavior (see sample matrix range on the next page.

The assigned saliency factor will determine in which column the inmate is scored. Rule 23-21.007 of the Florida Administrative Code (implemented July 30, 2014) assigns saliency factor points based on:

1. The number of prior criminal convictions (1-2 points);
2. The number of prior incarcerations (1-2 points);
3. The total time imposed in years (related to those prior convictions) (1-2 points);
4. The number of probation, parole or mandatory conditional release revocations (1-2 points);
5. The number of prior escape or attempted escape convictions (1-2 points); and;
6. If burglary, breaking and entering or robbery were involved in the present offense of conviction (1 point).

[25] In 2014, the name of the Commission was changed from the Parole and Probation Commission to the Florida Commission on Offender Review. The Parole and Probation Commission was established in 1941.

[26] Inmates convicted of capital crimes will be interviewed by the Commission investigator between six and 18 months before the expiration of their twenty-five-year minimum mandatory. Fla. Admin. Code R. 23-21.006 (7)(a) and (8).

The inmate is also assigned an offense severity score which determines which row in the matrix the inmate will be categorized. The *Miller* inmates reviewed in this sample all fall into either row six (capital felony) or row five (first degree felony or life felony).

Adult Offender Matrix:

Severity of Offense Behavior	Salient Factor Score[2]				
	(0-1)	(2-4)	(5-7)	(8-11)	RCF
1. Misdemeanor (Cumulative Sentence of 1 or more Years)	8	8-12	12-16	16-22	24-32
2. Felony 3º (Statutory Sentence – Maximum of 5 Years)	12-20	20-26	26-32	32-48	48-64
3. Felony 2º (Statutory Sentence – Maximum of 15 Years)	20-26	26-32	32-48	48-64	90-120
4. Felony 1º (Statutory Sentence – Maximum of 30 Years)	30-70	70-90	90-120	120-180	180-300
5. Felony 1º and Life Felony (Statutory Sentence – Maximum Life)	80-100	100-120	120-140	140-180	300-400
6. Capital Felony (Statutory Sentence – Life)	120-180	180-240	240-300	300-9998	400-9998

On July 30, 2014, legislation was passed which held that inmates who were younger than 18 at the time of the crime be scored on the youthful offender matrix.[27] This matrix has the same structure as the adult matrix but has lower time ranges.

Youthful Offender Matrix:

SEVERITY OF OFFENSE BEHAVIOR[2]	SALIENT FACTOR SCORE[3]			
	(0-1)	(2-4)	(5-7)	(8-11)
1. Misdemeanor (Cumulative Sentence of 1 or More Years)	6	6-9	9-12	12-16
2. Felony 3º (Statutory Sentence – Maximum of 5 Years)	9-15	15-19	19-24	24-36
3. Felony 2º (Statutory Sentence – Maximum of 15 Years)	15-19	19-24	24-36	36-48

[27] https://www.flrules.org/gateway/ruleNo.asp?id=23-21.009

4. Felony 1º (Statutory Sentence – Maximum of 30 Years)	22-52	52-67	67-90	90-135
5. Felony 1º and Life Felony (Statutory Sent. – Max. Life)	60-75	75-90	90-105	105-135
6. Capital Felony	90-135	135-180	180-225	225-9998

Upon setting the appropriate matrix time range, aggravating or mitigating factors may be added to extend or reduce the PPRD.

The investigator's recommendation is sent to the FCOR Commissioners, who have no face-to-face contact with inmates and who may change the matrix time range or add additional aggravating or mitigating factors. The official PPRD is established by the Commission at the inmate's parole meeting. Inmates are not allowed to be present at these meetings. Visitors (either those from the victims or inmate's family) are given ten minutes to speak. The victim's family may also choose to have a letter read out loud, to send a representative, or to submit a video. Fla. Admin. Code R. 23-21.004 (5).

After they receive the Commission order form, inmates have 60 days to request a review of their initial review. This is the inmate's only opportunity to formally challenge the PPRD. They may ask the Commission to review one of three factors: the saliency factor scoring, the severity of offensive behavior, or any aggravating/mitigating factors. Fla. Admin. Code R. 23-21.012 (1). The Commission must then hold a meeting and submit an order denying or affirming the request. The Commission is not required to submit a detailed response which specifically addresses the inmate's concerns.

The next step in the parole process is the subsequent interview. Formerly, inmates were interviewed every two or five years. In 2010, the legislature increased the interval to seven years for certain types of offenses, including first- and second-degree murder. Section 947.174(1)(b), Fla. Stat. (2010). In the subsequent interview, the Commission will review the inmate's institutional conduct since the last interview and may choose to extend, reduce, or make no change to the PPRD. This includes a review of the inmate's disciplinary record and program participation since the last interview. An inmate's PPRD may be extended upon the receipt of even one disciplinary report (DR). Fla. Admin. Code R. 23-21.015 (1).

Inmates will continue to have subsequent interviews until 90 days prior to the expiration of their PPRD at which point they will have an effective parole release date (EPRD) interview. The EPRD (if granted) is the inmates actual release date, the PPRD is only "presumptive." Ninety days prior to the interview, the Commission sends out a

judicial notice to the sentencing judge or (if this judge is unavailable) the chief judge. Judges have 30 days to respond. If the judge submits a judicial objection, the PPRD may be extended. Fla Admin. Code 23-21.015 (1).

During the EPRD interview inmates present their parole release plan to the Commission investigator, who forwards the inmates plan to the Commission. Fla. Admin. Code R. 23-21.015(2). Thirty days after the receipt of the inmate's parole release plan, the Commission will decide whether to authorize the inmates EPRD, to extend their PPRD, or to suspend the PPRD.

In the first stage of the EPRD process, the Commission will review any new information which would require modification of the PPRD—including the inmates disciplinary record and any judicial objections. If the Commission determines that a modification is needed, the inmate's PPRD will then be extended and they will be scheduled for another EPRD interview or another subsequent interview (depending on the number of months added).

Upon determination that no modification is needed to the PPRD, the Commission will move onto the second phase of the EPRD process. The Commission will determine if the inmate meets the criteria for release under Florida Statute § 947.18. This can result in the authorization of the inmate's EPRD and release on parole, or, if the Commission determines that the inmate does not meet these criteria, in the suspension of their PPRD. Inmates with suspended PPRD's will be scheduled for extraordinary reviews in a two to five-year cycle. Fla. Admin. Code R. 23-21.015 (9-10). They will remain in suspended status until the Commission determines that they meet the conditions for parole.

III. Methodology

In 2016, the Florida Department of Corrections (DOC) provided the Florida Juvenile Resentencing and Review Project (FJRRP)[28] with a spreadsheet containing information on every inmate who was a juvenile homicide offender who was incarcerated at the time. This spreadsheet from DOC did not include those juveniles who had been released on parole. The FJRRP extracted those juveniles who were serving life and life without parole for first degree murder and created a new spreadsheet. FJRRP has kept track of outcome for juveniles who have either been resentenced or denied relief.

[28] Under the supervision of Attorney Roseanne Eckert at Florida International University College of Law.

In 2019, a random sampling of 80 out of 255 parole files juveniles who had been sentenced to life with parole for first-degree murder or second-degree murder (*Miller/Atwell; Miller/Laundrum*) was obtained from the Florida Commission on Offender Review in order to provide a statistical analysis of the way the parole system works for the average inmate. The information contained in the 80 files was analyzed and compared to the DOC spreadsheet. The report is based on data collected through the end of 2019.

IV. Demographics of Parole Eligible Inmates Sentenced as Juveniles

1. Race, Age, and Gender

Of the 80 *Miller* cases analyzed, the majority were black (68%) and male (99%).

Race of Inmate	#	%
Black	54	68%
White	25	31%
Hispanic	1	1%
Total	80	100%
Gender of Inmate	**#**	**%**
Male	79	99%
Female	1	1%
Total	80	100%

Most inmates were either 17 (48%) or 16 (31%) at the time of the offense.

Age at Time of Offense		%
Average	16	
14	5	6%
15	12	15%
16	25	31%
17	38	48%
Total	80	100%

The matrix time range has gone through several iterations. Below is a breakdown of cases based on which matrix time range was relied upon for their initial interview.

Matrix Time Range Amendments	# Cases
7/30/2014	22
4/11/1983	34
Prior to 4/11/1983	6

Total	62

2. Previous Parole Revocation

Out of the 80 inmates included in this study, ten (13%) have been previously paroled and have had their parole revoked. These inmates were not eligible for resentencing under *Atwell* pursuant to *Currie/Rooks*.[29] Once these inmates re-entered DOC custody they were re-interviewed for their *initial interview*. All prior steps in the parole process were voided. For the purposes of our analysis, only steps in the parole process that occurred after their revocation were included in this analysis. In this section it is also worth noting that among cases reviewed, one inmate is a current fugitive.

V. Analysis of the Parole Process

The following section contains statistics as to each stage of the parole process. We begin with an analysis of the initial interview followed by an analysis of the subsequent interview, request for review, effective parole interview and extraordinary review.

1. Initial Interview (II)

Most inmates (62 out of 80 or 77.5%) in our sample have had a complete initial interview. The establishment of the PPRD is an important step in the parole process because it sets the baseline for future interviews. An inmate's initial PPRD is based on the matrix time range and on any aggravation or mitigation added by the Commission.

a. Comparison Between Investigator's Recommendation and Commission Action

After meeting with the inmate, the Commission investigator submits a PPRD recommendation to the Commission. The Commission, which never meets directly with inmates, may change the matrix time range, saliency factor scoring or add additional aggravation and mitigation. *The Commission rejects the investigator recommendation in 90.1% of cases.* In the majority of those cases (80.3%), the Commission added additional aggravation. On average, the Commission sets an inmate's PPRD 174 months (14.5 years) above the investigator's recommendation.

[29] The most recent date that parole was granted in this sample was in 2006 (inmate Rodelfo Albelo), followed by 1997 (Richard Day).

Comparison of Investigative Report and Commission Action	# Cases	%
The PPRD was greater than the recommendation	49	80.3%
The PPRD was the same as recommended	6	9.8%
The PPRD was below recommendation	6	9.8%
Total	**61**[30]	**100.0%**

b. Matrix Time Range

All inmates are assigned a baseline number of months based on their matrix time range. An inmate's matrix time range is based on the intersection between the saliency factor score (which determines the column the inmate is scored in on the matrix) and the severity of offensive behavior (which determines the row the inmate is scored in). Most inmates in our sample (78%) were given an offense severity of six, the designation for a capital felony, putting them at the lowest row of the matrix time range. A full list of offense severities is attached as Appendix B. The average saliency factor in our sample was three (in bold). In the majority (65%) of cases, inmates were assigned a factor between one and three.

Saliency Factor	# Cases	% Cases	Column
0	2	3%	1
1	7	11%	
2	15	25%	2
3	**16**	**26%**	
4	7	11%	
5	3	5%	3
6	4	7%	
7	3	5%	
8	2	3%	4
9	0	0%	
10	0	0%	
11	0	0%	
6 and 2[31]	2	3%	Multiple
Total	**61**	**100%**	

[30] The Commission action and investigator report on Edward Wesby could not be found, hence why we have information on 61 and not 62 individuals. Information concerning the date of his initial interview and initial PPRD were available through other documents.

[31] Two inmates who had committed subsequent offenses while out on parole or escape were given two separate matrix time ranges (which were added together).

According to the Florida Administrative Code, saliency factor scoring is meant to be "predictive in regard to parole outcome." Fla. Admin. Code 23-21.002 (44). The Commission may choose any number of months within the range but, in practice, the Commission makes no differentiation between saliency factor scores within the same matrix time range. Inmates with saliency factors between zero and one, two and four, five and seven, and eight and eleven are all scored within the same range (e.g. between 100-120 months). Inmates that have lower saliency factor scores (two) are given the same baseline number of months (120 months) as inmates with higher scores (four). The Commission scores inmates at the top of their assigned range in 96.8% of cases. The one exception is an inmate who was given a score of 800 months, well over halfway in the assigned 300-988-month range.

Matrix Time Range	#	%
Inmates set at top of matrix time range	60	96.8%
Inmates not at top of matrix time range	1	1.6%
Total	**61**	**98.4%**

c. Youthfulness added to Youthful Offender Matrix

The matrix time range has gone through several iterations over the years. On July 30, 2014, the saliency factor score sheet was amended to bar "age at first offense" as a scoring factor.[32] Prior to this date, juvenile offenders automatically received two saliency factor points for being 17 or younger at the time of the crime. The lowest saliency factor score that juvenile offenders could receive was two, putting them in the second column of the matrix time range. Forty cases (65%) in our sample had two points added to their saliency factor due to youthfulness.

Cases Where Youthfulness was Used to Increase the Salient Factor by 2 Points	#	%
Cases in which youthfulness was an aggravating factor	40	65%
Cases in which youthfulness was not an aggravating factor	22	35%
Total	**62**	**100%**

The Commission does not retroactively apply these new saliency factor rules to cases that have had an initial interview. In one instance (Alan R. Grant), the Commission

[32] https://www.flrules.org/gateway/ruleNo.asp?id=23-21.007

has outright refused to recalculate the PPRD even upon request. The Commission has only decided to retroactively change the PPRD in one case (Kevin Nelms).[33]

d. Youthful Offender Matrix

The Florida Administrative Code was amended on July 30, 2014. After this date, inmates who were less than 18 years old at the time of the crime were to be scored on the youthful offender (Y.O.) matrix.[34] The Y.O. matrix has monthly ranges that are lower by between four and six years (depending on the column). Some, but not all, inmates were scored on the Y.O. matrix before 2014, but the majority (61%) of inmates who have had an initial interview were not scored as youthful offenders. **The Commission does not retroactively apply this matrix to cases that have had an initial interview.**

Youthful Offender Matrix	#	%
Scored as Youthful Offenders	24.00	39%
Not Scored as Youthful Offenders	37.00	61%
Total	**61.00**	**100%**

e. Aggravation and Mitigation

After Commissioners set the inmate's baseline months from the matrix time range, they may add aggravating or mitigating factors at their discretion. Section 23-21.010 of the Florida Administrative Code directs the application of aggravating and mitigating factors.

Aggravating Factors

Aggravating factors were applied in every initial interview in our sample and consistently comprise the majority (64.7%) of the PPRD. A typical inmate receives 198.6 months (16.5 years) from the matrix time range and, *on top of that*, 552.6 months (46 years) of additional aggravation.

Most aggravation is related to an inmate's past record and do not change. "Static aggravators" will hereto be defined as aggravators relating to either specific facts of the original crime (e.g. fleeing the scene of the offense), consecutive convictions related to the original crime (e.g. a separate count of burglary), or to the inmate's previous juvenile

[33] This inmate benefited from legal representation, who submitted an extensive parole presentation requesting the re-evaluation of his saliency factor score to the Commission.
[34] https://www.flrules.org/gateway/ruleNo.asp?id=23-21.009

record. These factors are related to the inmate's juvenile years; the inmate has no control over them post incarceration.

In general, static aggravators are applied in 88% of all eighty cases and are applied almost twice as often (per case) compared to non-static aggravators.

Type of Aggravator	# Cases	% of Total	# Times Applied (per case)
Static Factors	53	88%	3.13
Non-Static Aggravator	49	82%	1.73

The amount of static aggravation that the Commission applies depends on the inmate's history after the original offense. In our sample, 21 inmates have either violated parole and/or have received new convictions after their juvenile years (four inmates have violated parole but have received no additional charges; 17 inmates have received new convictions while on parole or while incarcerated). Within this group, static factors are responsible for 488.3 months (44.4 years) of aggravation. The average amount of months added due to the matrix time range was 214.8. Comparatively, inmates with no parole violations/convictions are aggravated an average of 547.9 months (45.6 years) due to static factors alone and had an ae of 162.8 months due to the matrix time range.

Total Aggravation Related to Prior Record (Static Aggravation)	Matrix Time Range (Months)	Average Total Aggravation (Months)	Average Static Aggravation (Months)	% Static Factor Aggregation[35]
Inmates not convicted of crime post juvenile years	39.0	488.3	355.3	72.8%
Inmates with parole violations/convicted of a new crime post juvenile years	21.0[36]	547.9	235.3	42.9%
Total	**60.0**			

The table below addresses specific aggravators used by the Commission. The aggravator "related to factors of the original crime" was created as a category to encompass aggravation due to specific features of the original crime. Typical examples of

[35] As a percentage of total aggravation.
[36] One case (Billy Mansfield) was not included in this analysis – it was impossible to tell which of his convictions occurred in his juvenile years and thus static factor values could not be calculated. The other individual omitted is Edward Wesby (see footnote 30), this brings the population with a full report to 60.

this aggravator are pecuniary gain, fleeing the crime scene, attempting to hide evidence, and attempting to conceal their identity.[37]

The most commonly applied aggravators were use of a weapon in the original offense (68%), unsatisfactory institutional conduct (63%), and multiple separate offenses (58%, explained in more detail below). Unsatisfactory institutional conduct is based on either an inmate's disciplinary record or program participation.[38]

Aggravator	# Cases	% of Total Cases	Average # Times Applied	Average Months (Per Case)
Static Aggravators				
Use of weapon	41	68%	1.0	59.7
Multiple separate offenses (related to original crime or prior offenses)	36	60%	2.6	331.9
Related to factors of original crime	15	25%	1.6	158.8
Heinous, atrocious and cruel[39]	12	20%	1.2	163.3
Non-Static Aggravators				
Unsatisfactory institutional conduct	38	63%	1.0	174.5
Charges incurred as an adult	18	30%	2.3	212.9
Parole revocations	3	5%	1.7	162.0
Unknown				
Substance abuse	11	18%	1.0	58.5
Mental health	1	2%	1.0	120.0

Aggravation disproportionately affects inmates with multiple counts on their original offense. This type of aggravation is the only one codified in the Florida Administrative Code, which specifies that the Commission "shall" aggravate for "all existing consecutive sentences." Fla. Admin. Code. R. 23-21.010 (3). The Commission uses the term "multiple separate offenses" (MSO)[40] to denominate aggravation related to consecutive sentences or to any prior juvenile convictions. MSO is the third most frequently used aggravator, but it is applied the most intensely. On a case by case basis,

[37] See Appendix C for the full list of aggravators.
[38] Of the inmates in this sample at least three inmates had three or less DRs (Tommy Holmes, Shawn Jackson, Richard Shepherd).
[39] Aggravators that referred to the victim as "vulnerable" were also designated as heinous, atrocious and cruel.
[40] On rare occasions "multiple separate offenses" was used to refer to a conviction received after an inmate's juvenile years. In these cases, this was not counted as "MSO" but rather as a "new conviction."

inmates are aggravated by 331.9 months due *only* to MSO. On average, the Commission assigns *134.1 months (11.2 years) each individual time* MSO is used.

Mitigating Factors

Mitigation has never been applied in any case that has had an initial interview. Analysis shows the number of times section 921.1401 sentencing considerations have been officially applied by the Commission:

- The nature and circumstances of the offense committed by the defendant – *0 times*
- The defendant's age, maturity, intellectual capacity, and mental and emotional health at the time of the offense – *0 times*
- The defendant's background, including his or her family, home, and community environment – *0 times*
- The effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the defendant's participation in the offense – *0 times*
- The extent of the defendant's participation in the offense – *0 times*
- The effect, if any, of familial pressure or peer pressure on the defendant's actions – *0 times*
- The effect, if any, of characteristics attributable to the defendant's youth on the defendant's judgment – *0 times*
- The possibility of rehabilitating the defendant – *0 times*

In addition, capital statutory mitigators have been used by the Commission in order to aggravate an inmate's PPRD. "Ongoing mental health issues" was used one time, for a total of 120 months (10 years) added (Roger Yates). A history of substance abuse was applied a total of 11 times. In four of those cases, the substance abuse was only referred to as occurring during or prior to the original offense.

Statutory Mitigators Used as Aggravators	#	Average Months
Mental Health	1.0	120.0
History of Substance abuse	4.0	32.7

2. Request for Review

After the initial interview, inmates are entitled to request a review of saliency factor scoring, the severity of offensive behavior, or any mitigation/aggravation applied by the

Commission. Fla. Admin. R. 23.21-012(2). This is an important step in the parole process because it is the inmate's only official opportunity to challenge their PPRD. A total of 22 inmates in the sample requested a review of their PPRD. Most submitted only one request, however four attempted to submit additional requests. The majority, 16 (76%), of inmates submitted the request on their own behalf.

# Times Submitted	# Cases
1	18.00
2	2.00
3	2.00
Total	**22.00**

Out of 28 total individual requests, two have resulted in a new PPRD. In one case (Desmond Brown) the Commission had applied 60-months to the PPRD for being on community control at the time of the crime. The aggravator was dropped once the inmate furnished proof that his community control had ended prior to the offense. In the other case (Wilbert Meeks), the inmates PPRD was adjusted once the inmate furnished proof of a recent Court decision concerning the amount of jail time awarded in his case.

Request for Review	#	%
# Cases Denied	26.00	93%
# Cases Granted	2.00	7%
Total	**28.00**	**100%**

3. Subsequent Interview (SI)

The next step in the parole process is the subsequent interview. Inmates meet with the Commission investigator on a seven-year rotating schedule.[41] Subsequent interviews are based on "new information" in the inmate's file. Fla. Admin. Code. R. 23-21.013 (2). The Commission may extend, reduce, or make no change to the inmates PPRD. As much

[41] In 2010, the legislature passed a bill which extended the time interval between subsequent interviews to 7 years for certain types of crime (including first-degree and second-degree murder). Three years later, another bill was passed, expanding the list of crimes for which subsequent interview dates could be set at 7 years (applicable crimes now include kidnapping, burglary/robbery, etc). See: https://www.fcor.state.fl.us/ media.shtml. Fla. Stat. § 947.174 (1)(b).

as one DR can result in an extension. Again, the Commission has no direct contact with the inmate.

Thirty-seven out of 80 inmates (46%) in our sample have had a subsequent interview; most have had more than one (the average is 3.7 subsequent interviews per inmate). Of 138 individual subsequent interviews conducted on this inmate population, the Commission only reduced the PPRD in 14 cases (10%). The majority (90%) were either extended (72 – 52%) or unchanged (45 – 37%).

Decision	#	% of all Cases
Reduce	14.00	10%
Extend	72.00	52%
No Change	52.00	38%
Total:	**138.00**	**100%**

The table below summarizes the Commission investigator's recommendation compared to the Commission action in all subsequent interviews. Items in green indicate that the PPRD decided by the Commission is the same as the investigator's recommendation.

Investigator Recommendation	Commission Action	#	%	Effect
No Change	**No change**	19.0	14%	Same
Extend	**Extend**	32.0	23%	Same
Reduce	**Reduce**	5.0	4%	Same
No Change	**Extend**	14.0	10%	Higher
	Reduce	1.0	1%	Lower
Extend	**Extend (by more)**	23.0	17%	Higher
	Extend (by less)	1.0	1%	Lower
	Reduce	0.0	0%	Lower
	No Change	1.0	1%	Lower
Reduce	**Reduce (by more)**	1.0	1%	Lower
	Reduce (by less)	7.0	5%	Higher
	Extend	2.0	1%	Higher
	No Change	32.0	23%	Higher
Total:		**138**	**100%**	

In the 138 review decisions, the Commission accepted the investigator's recommendation 41% of the time. Of these cases, the majority (91%) of the acceptances are when the investigator recommended an extension (57%) or no change (34%). The Commission accepts recommended reductions only 9% of the time.

	#	%
Agrees with Recommendation	**56.0**	**41%**
Extend	32.0	57%
No Change	19.0	34%
Reduce	5.0	9%
Disagrees with Recommendation	**82.0**	**59%**
Total:	**138.0**	**100%**

When the Commission rejects an investigator's recommendation, there are a variety of options. For example, if an investigator recommends an extension by 60 months the Commission may decide to extend the PPRD by more, extend the PPRD by less, to make no change, or to reduce the PPRD. Any of those decisions are considered a "rejection" (as per the Commission's own language),[42] but some of those decisions result in a PPRD that is lower than the investigators recommendation. To simplify, these scenarios were quantified into three categories: is the PPRD higher, lower or the same compared to the investigator's recommendation (see column five in the table above).

Out of 138 cases, the PPRD established by the Commission was lower than recommended in only four (3%) cases. In the majority of cases (57%) the PPRD was higher than recommended.

Comparison of Recommendation and Action	#	%
Commission Action Resulted in a Lower PPRD	4	3%
Commission Action Resulted in Same PPRD	56	41%
Commission Action Resulted in a Higher PPRD	78	57%
Total	**138**	**100%**

[42]Commission form orders have boxes to be checked "accept" or "reject."

4. Effective Parole Release Date

Inmates continue to have subsequent interviews until 90 days before the expiration of their PPRD, at which point they will have an effective release date interview. Fla. Admin. Code 23-21.015 (1). A total of ten inmates in our sample (12.5% of all 80 cases) have reached the effective interview.

Ninety days prior to the effective interview, the Commission sends out a judicial notice to the sentencing judge or (if he/she is not available) to the Chief Judge who may choose to delegate the responsibility to any circuit judge. Fla Admin. Code 23-21.015 (1). A judicial notice typically includes a cover letter, a case summary (typically 1 page), and may have additional documents (such as the PSI) attached. If a Judge chooses to submit a judicial objection this is considered "good cause and exceptional circumstances" under Florida Statute § 947.173 and can be used to extend the PPRD. The inmate will then be scheduled for a subsequent interview or for another effective interview (depending on how many months are added). An inmate does not generally know the basis or content of the judicial objection and is unable to respond to or rebut the objection.

a. Effective Parole Review Date – Part I

The effective interview is a two-part process. First, the Commission reviews new information which may require the modification (extension) of the PPRD. Fla. Admin. Code 23-21.015 (9). Typically, cases are extended due to an unsatisfactory release plan, unsatisfactory institutional conduct, and/or a judicial objection(s).

Out of ten cases in our sample that reached the effective parole date review stage, three (30%) had their PPRD extended and did not move onto the second stage of the process. On average, PPRD's were extended by 48 months. Two of the three cases received judicial objections. In one case, the judicial objection was listed as the sole reason for extending the PPRD (Edward Knight). This inmate's PPRD has been extended twice, by a total of 60 months *each time*, due to judicial objections, despite the investigator's recommendation of release on both occasions.

Effective Interview	**#**	**%**
Suspended	7	70%
Extended	3	30%
Total	**10**	**100%**

Of the three inmates who had their PPRD modified, one inmate had only one effective review and went on to have a subsequent interview,[43] another had one additional effective interview and subsequent interview before being released on resentencing,[44] and the third (Mr. Knight) has had three additional effective interviews resulting in extensions. This inmate was scheduled for a fourth effective interview in June of 2019.[45]

# Total Effective Reviews (Inmates With Modified PPRDs)	# Cases	%
1	1	33%
2	1	33%
3	0	0%
4	1	33%
Total	**3**	**100%**

b. Effective Parole Review Date – Part II

If no new information is found which would warrant the extension of the PPRD, the Commission moves on to the second phase of the effective interview. The Commissioners determine whether the inmate meets the criteria for parole release under Florida Statute § 947.18. This statute states that no person be placed on parole "merely as a reward for good conduct" and that it is the responsibility of the Commission to determine that upon release inmates do not threaten the welfare of themselves or society. To that end, the Commission reviews the inmate's entire official record.

If the inmate is found to meet the criteria for release their EPRD will be authorized. If the inmate does not, their PPRD will be "suspended" and they will be remanded for extraordinary review until the Commission is able to authorize their EPRD. Fla. Admin. Code 23-21.015 (10). Out of ten inmates who had effective parole release date interviews, the majority (7 – 70%) had no unsatisfactory conduct or judicial objections constituting an extension but went on to have their PPRD suspended. These inmates all currently remain in "suspended" status.

[43] This inmate was extended by 120 months and was then referred for subsequent interviews
[44] 24 months and then extended by 36 months in a later effective interview process
[45] Mr. Knight's EPRD was extended in three subsequent effective interviews (60 months of judicial objection, 24 months and then 24 months again for lack of program participation). Information concerning his June 2019 effective interview was not available at the time his parole file was received for inclusion in this study.

5. Extraordinary Review

If the Commission decides during the effective interview to suspend an inmate's PPRD, the inmate will be scheduled for an extraordinary review and will remain suspended until the Commission determines that the inmate meets the criteria for release under F.S. 947.18. Seven out of 80 cases (8.75%) in our sample are on extraordinary review status. The term "extraordinary review status" refers to those who have entered extraordinary review proceedings until they are either released by the Commission or by the Courts.

So far, inmates have been kept an average of 15.4 years on suspended status and have had 3.4 reviews. The statistics in the table below do not include two cases which were released on resentencing before their next extraordinary review date.

Extraordinary Review	Average
Years on Suspended Status	15.3
Number of Reviews	3.4

a. Judicial Objections

Judicial notices are often sent prior to extraordinary review interviews. An objection may be listed as a reason to keep the inmate in suspended status or to extend the PPRD. Fla. Admin. Code 23-21.015 (1). Out of ten inmates who reached the extraordinary review stage, six inmates had at least one judicial objection. A total of 36 judicial notices were recorded in our study and 14 objections.

As mentioned previously, 2 inmates have had judicial objections which contributed to the extension of their PPRD in one or several occasions. Out of the 7 inmates on suspended status, 4 inmates have had at least one judicial objection. Two inmates had judicial objections listed in one review order as a reason for keeping the inmate on suspended status and two inmates had objections listed in three separate reviews.

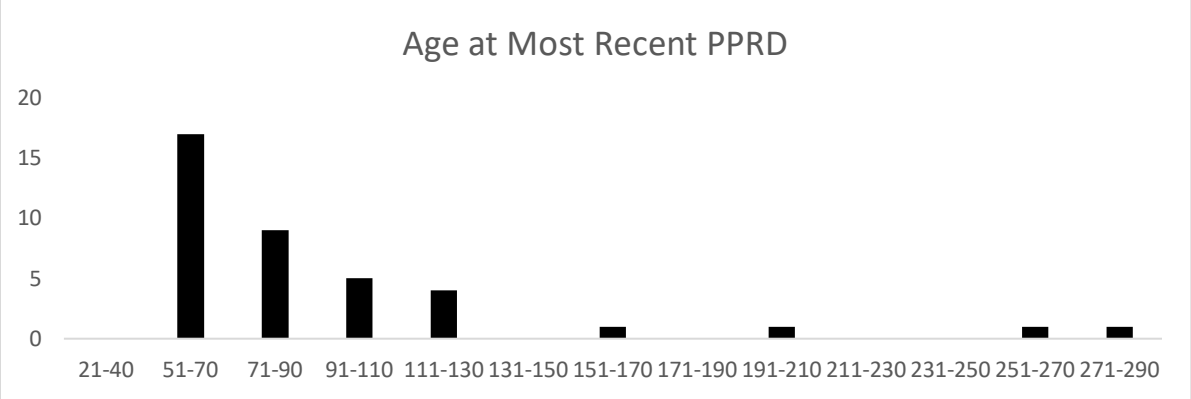
Number of Judicial Objections	# Cases	%
0	3	43%
1	2	29%
2	0	0%
3	2	29%
4	0	0%
Total	7	**100%**

VI. Statistical Review of Stages in the Entire Parole Process

On average, inmates in our sample are 51.7 years old. If the inmates in our sample were to be released based on their most recently established PPRD, they would be released at an average of 95.1 years old.[46] *The average inmate in this sample will have spent life in prison if released on this date.*

The following two charts look at a population of 39 inmates who have active PPRDs (they are currently going through the parole process and their PPRD is subject to change). Individuals released from prison or those with suspended PPRDs are not included.

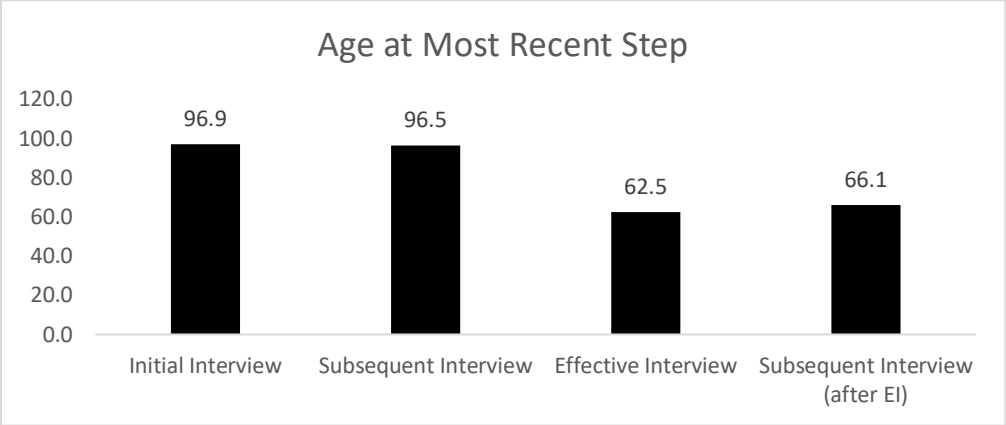
Age at Most Recent PPRD	# Cases	%
21-40	0	0%
51-70	17	44%
71-90	9	23%
91-110	5	13%
111-130	4	10%
131-150	0	0%
151-170	1	3%
171-190	0	0%
191-210	1	3%
211-230	0	0%
231-250	0	0%
251-270	1	3%
271-290	1	3%
Total	**39**	**100%**



[46] Not including inmates released by the Courts on resentencing, inmates released through appeal, or inmates with suspended PPRD's. Minimum age: 57.0; Maximum age: 286.0.

The majority of individuals with active PPRDs have only reached the initial interview stage (20, 51%) or have had one more multiple subsequent interviews (17, 43%).

Latest Stage Reached	# Cases	Average Age at Most Recent PPRD
Initial Interview	20	96.9
Subsequent Interview	17	96.5
Effective Interview	1	62.5
Subsequent Interview (after EI)	1	66.1
Total	**39**	



The following table is a statistical overview of an inmate's overall progression through the parole process.[47] On average, if inmates were to be released at the PPRD established during their initial interview they would be 81 years old. Most will have their PPRD consistently aggravated through subsequent stages in the parole process.

Stage	#	%	Age at Time of Interview	Age at Most Recent Release Date
No II yet	14	18%	NA	NA
Initial Interview	62	78%	40	81
First Subsequent Interview	37	46%	41	74
More Than One Subsequent Interview	24	30%	51	81
Effective Interview	10	13%	44	NA
Extraordinary Review	7	9%	56	Suspended

[47] Cases in which inmates have been released on resentencing or appeal were not included in the "age at most recent release date" and "age at time of interview" calculations in instances where their progression through that stage of parole was incomplete (i.e. they were released prior to their next interview).

VII. Resentencing by the Court

The following table is an overview of what is currently known about the resentencing status of the inmates in our sample. Of 80 inmates in our sample, 28 had been resentenced or were undergoing resentencing proceedings at the time of the study. Out of 80 total inmates, 20 (25%) have already been released through resentencing by the Courts.[48] The total number of cases currently undergoing resentencing proceedings is subject to change.

Court Resentencing Status	#	%
Released	20	71%
Denied[49]	1	4%
Pending Release	1	4%
To Be Set/In Court	3	11%
Resentenced to Life with Judicial Review After 25 Years	3	11%
Total	**28**	**100%**

1. Comparison of Cases Released on Resentencing by a Court to Still Incarcerated Juvenile Offenders

This section compares inmates who have already been released on resentencing to those who remain incarcerated in terms of their parole status and age.

a. Stage Reached in Parole

Most inmates that have been released upon resentencing had reached the early stages of parole prior to their release. The most commonly reached stages in the parole process were (in order): no initial interview yet, subsequent interview, and initial interview.

[48] Dean McKee obtained release on a motion for postconviction relief on actual innocence through the circuit courts. He was not included in this population of 28 resentenced individuals.
[49] Language and terminology based on information in inmate's parole file.

Released on Resentencing	#	%
No II yet	6	30%
Initial Interview	3	15%
Subsequent Interview	8	40%
Subsequent Interview (after Effective Interview)	1	5%
Effective Interview	0	0%
Extraordinary Review	2	10%
Total:	20	100%

On average, inmates who have already been released would have been 70.3 years old at their most recently established PPRD. It should be noted that only 2 inmates in this group had reached the extraordinary interview stage and that the majority had either no initial interview yet or subsequent interview(s).

Inmates Released Through Resentencing	Average
Age at Release	51.4
Age at Most Recent PPRD	70.3
Difference	**+19.1**

b. Age at Time of Release

On average, inmates were 51.4 years old[50] when they were released by the Courts. This is 29.2 years younger than an inmates age at their first estimated release date established at the initial interview which averaged 80.6 years, and 43.7 years younger than the average age at their most recently established PPRD which was 95.1 years.

Age	Average Age
Current (2019)	51.7
At Date of Release	51.4
Initial Interview PPRD (All)	80.6
Most Recent PPRD (All)	95.1

Finally, we look at the effect of age at the time of the offense on age at release. Currently incarcerated inmates who were 17 at the time of the offense can expect to be

[50] As of October 1, 2019.

108 years old if they are released at their most recent PPRD. This is 54 years above the average age of release on resentencing.

Age at Time of Offense	# Still Incarcerated	Average Age at Most Recent PPRD	# Released on Resentencing	Average Age at Release	Difference in Average Age Release and Most Recent PPRD	% Difference
14	2	84	2	48	+36	
15	7	84	1	41	+43	19%
16	11	81	6	50	+31	-28%
17	19	108	11	54	+55	75%
Total	**39**		**20**			

VIII. Conclusion

Out of a random sampling of 80 inmates, the majority of inmates who have had no parole revocations nor subsequent charges since their juvenile years had their initial PPRD based mostly on factors related to the original crime. An inmates' juvenile record factored into calculating their matrix time range (average 17.8 years) and the amount of added aggravation (average 40.1 years added due to static factors). Thus, an inmate who has committed no additional crimes while in prison will have an average of 57.9 years of their PPRD based solely on their juvenile record. Mitigating factors outlined in § 921.1401 were applied in zero cases.

Youthfulness at the time offense no longer results in higher saliency factor scoring. However, 65% of our 80 cases had youthfulness at time of the offense as an additive factor in scoring, resulting in a higher PPRD. These inmates have never had their PPRD retroactively recalculated.

Inmates are consistently aggravated beyond recommendation during multiple stages of the parole process (initial interview 65%, subsequent interview 57%). If inmates were to be released on their most recently established PPRD, an average inmate in our sample can expect release at 95.1 years old. This is significantly higher (43.7 years) compared to age at release on resentencing by the courts (51.4 years old). In fact, most inmates who have already been resentenced have only reached the early stages of the parole process (initial interview or subsequent interview).

Those inmates who were sentenced to life with parole and who were given the benefit of the 2014 juvenile sentencing legislation had a significantly better opportunity

for release in their natural lifetime as compared to those who are left to depend on the parole process. Florida's parole system does not provide juveniles serving life sentences with a meaningful opportunity for eventual release as required by *Graham v. Florida*.

APPENDIX A

Prior to 1983, the assigned offense severity could range from 1 to 9, with the designation of seven reserved for second degree murder. On 4/11/1983 the matrix was amended; the offense severity became between one and six for the adult matrix and between one and five on the youthful offender matrix. On 7/30/2014 the matrix was amended again to include Capital Felony (level six) as a designation on the youthful offender matrix.[51]

Offense Severity	# Cases	%
4	1	2%
5	7	11%
6	47	77%
7	4	7%
5 and 3[52]	2	3%
Total	**61**	**100%**

APPENDIX B

A List of Total Aggravators Used in Initial Interview:

- Use of Weapon (UOW)
- Unsatisfactory Institutional Conduct (UIC): based on program participation or disciplinary record
- Multiple Separate Offenses (MSO): only for crimes committed as a juvenile
- Heinous Atrocious or Cruel (HAC): this includes aggravators which were specifically described as "brutal" due to the victim being vulnerable/elderly
- Pecuniary gain
- Drug use/Substance Abuse History
- Multiple victims
- Additional charges
- Offense used use of common household item (bedsheet) to afflict death

[51] Changes to offense severity: https://www.flrules.org/gateway/ruleNo.asp?id=23-21.009.
[52] Two inmates who had committed subsequent offenses while out on parole or escape were given two separate matrix time ranges (which were added together).

- Vulnerable victim
- Attempted to avoid arrest/attempt to conceal evidence
- Mental health issues
- Previous parole violations
- Being on community control at the time of the crime
- Psychological trauma to victim
- New charge while incarcerated
- Convicted of robbery while on parole
- Escape

EXHIBIT B

Table 15. Life expectancy at birth, at age 65, and at age 75, by sex, race, and Hispanic origin: United States, selected years 1900–2016

Excel version (with more data years and standard errors when available): https://www.cdc.gov/nchs/hus/contents2017.htm#015 .

[Data are based on death certificates]

	All races			White[1]			Black or African American[1,2]		
Specified age and year	Both sexes	Male	Female	Both sexes	Male	Female	Both sexes	Male	Female
At birth				Life expectancy in years					
1900[3,4]	47.3	46.3	48.3	47.6	46.6	48.7	33.0	32.5	33.5
1950[4]	68.2	65.6	71.1	69.1	66.5	72.2	60.8	59.1	62.9
1960[4]	69.7	66.6	73.1	70.6	67.4	74.1	63.6	61.1	66.3
1970	70.8	67.1	74.7	71.7	68.0	75.6	64.1	60.0	68.3
1975	72.6	68.8	76.6	73.4	69.5	77.3	66.8	62.4	71.3
1980	73.7	70.0	77.4	74.4	70.7	78.1	68.1	63.8	72.5
1990	75.4	71.8	78.8	76.1	72.7	79.4	69.1	64.5	73.6
1995	75.8	72.5	78.9	76.5	73.4	79.6	69.6	65.2	73.9
2000	76.8	74.1	79.3	77.3	74.7	79.9	71.8	68.2	75.1
2001	77.0	74.3	79.5	77.5	74.9	80.0	72.0	68.5	75.3
2002	77.0	74.4	79.6	77.5	74.9	80.1	72.2	68.7	75.4
2003	77.2	74.5	79.7	77.7	75.1	80.2	72.4	68.9	75.7
2004	77.6	75.0	80.1	78.1	75.5	80.5	72.9	69.4	76.1
2005	77.6	75.0	80.1	78.0	75.5	80.5	73.0	69.5	76.2
2006	77.8	75.2	80.3	78.3	75.8	80.7	73.4	69.9	76.7
2007	78.1	75.5	80.6	78.5	76.0	80.9	73.8	70.3	77.0
2008	78.2	75.6	80.6	78.5	76.1	80.9	74.3	70.9	77.3
2009	78.5	76.0	80.9	78.8	76.4	81.2	74.7	71.4	77.7
2010	78.7	76.2	81.0	78.9	76.5	81.3	75.1	71.8	78.0
2012	78.8	76.4	81.2	79.1	76.7	81.4	75.5	72.3	78.4
2013	78.8	76.4	81.2	79.0	76.7	81.4	75.5	72.3	78.4
2014[5]	78.9	76.5	81.3	79.1	76.7	81.4	75.6	72.5	78.5
2015[5]	78.7	76.3	81.1	78.9	76.6	81.3	75.5	72.2	78.5
2016[5]	78.6	76.1	81.1	- - -	- - -	- - -	- - -	- - -	- - -
At 65 years									
1950[4]	13.9	12.8	15.0	14.1	12.8	15.1	13.9	12.9	14.9
1960[4]	14.3	12.8	15.8	14.4	12.9	15.9	13.9	12.7	15.1
1970	15.2	13.1	17.0	15.2	13.1	17.1	14.2	12.5	15.7
1975	16.1	13.8	18.1	16.1	13.8	18.2	15.0	13.1	16.7
1980	16.4	14.1	18.3	16.5	14.2	18.4	15.1	13.0	16.8
1990	17.2	15.1	18.9	17.3	15.2	19.1	15.4	13.2	17.2
1995	17.4	15.6	18.9	17.6	15.7	19.1	15.6	13.6	17.1
2000	17.6	16.0	19.0	17.7	16.1	19.1	16.1	14.1	17.5
2001	17.9	16.2	19.2	18.0	16.3	19.3	16.2	14.2	17.7
2002	17.9	16.3	19.2	18.0	16.4	19.3	16.3	14.4	17.8
2003	18.1	16.5	19.3	18.2	16.6	19.4	16.5	14.5	18.0
2004	18.4	16.9	19.6	18.5	17.0	19.7	16.8	14.9	18.3
2005	18.4	16.9	19.6	18.5	17.0	19.7	16.9	15.0	18.3
2006	18.7	17.2	19.9	18.7	17.3	19.9	17.2	15.2	18.6
2007	18.8	17.4	20.0	18.9	17.4	20.1	17.3	15.4	18.8
2008	18.8	17.4	20.0	18.9	17.5	20.0	17.5	15.5	18.9
2009	19.1	17.7	20.3	19.2	17.7	20.3	17.8	15.9	19.2
2010	19.1	17.7	20.3	19.2	17.8	20.3	17.8	15.9	19.3
2012	19.3	17.9	20.5	19.3	18.0	20.4	18.1	16.2	19.5
2013	19.3	17.9	20.5	19.3	18.0	20.5	18.1	16.2	19.5
2014[5]	19.4	18.0	20.6	19.4	18.0	20.6	18.2	16.4	19.7
2015[5]	19.3	18.0	20.5	19.3	18.0	20.5	18.2	16.4	19.6
2016[5]	19.4	18.0	20.6	- - -	- - -	- - -	- - -	- - -	- - -

Table 15. Life expectancy at birth, at age 65, and at age 75, by sex, race, and Hispanic origin: United States, selected years 1900–2016

Excel version (with more data years and standard errors when available): https://www.cdc.gov/nchs/hus/contents2017.htm#015 .

[Data are based on death certificates]

	All races			White[1]			Black or African American[1,2]		
Specified age and year	Both sexes	Male	Female	Both sexes	Male	Female	Both sexes	Male	Female
At 75 years				Life expectancy in years					
1980	10.4	8.8	11.5	10.4	8.8	11.5	9.7	8.3	10.7
1990	10.9	9.4	12.0	11.0	9.4	12.0	10.2	8.6	11.2
1995	11.0	9.7	11.9	11.1	9.7	12.0	10.2	8.8	11.1
2000	11.0	9.8	11.8	11.0	9.8	11.9	10.4	9.0	11.3
2001	11.2	9.9	12.0	11.2	10.0	12.1	10.5	9.0	11.5
2002	11.2	10.0	12.0	11.2	10.0	12.1	10.5	9.1	11.5
2003	11.3	10.1	12.1	11.3	10.2	12.1	10.7	9.2	11.6
2004	11.5	10.4	12.4	11.6	10.4	12.4	10.9	9.4	11.8
2005	11.5	10.4	12.3	11.5	10.4	12.3	10.9	9.4	11.7
2006	11.7	10.6	12.5	11.7	10.6	12.5	11.1	9.6	12.0
2007	11.9	10.7	12.6	11.9	10.8	12.6	11.2	9.8	12.1
2008	11.8	10.7	12.6	11.8	10.7	12.6	11.3	9.8	12.2
2009	12.1	11.0	12.9	12.1	11.0	12.9	11.6	10.2	12.5
2010	12.1	11.0	12.9	12.1	11.0	12.8	11.6	10.2	12.5
2012	12.2	11.2	12.9	12.1	11.1	12.9	11.8	10.4	12.7
2013	12.2	11.2	12.9	12.1	11.1	12.9	11.8	10.4	12.7
2014[5]	12.3	11.2	13.1	12.2	11.2	13.0	11.9	10.6	12.8
2015[5]	12.2	11.2	13.0	12.1	11.2	12.9	11.9	10.6	12.7
2016[5]	12.2	11.3	13.0	- - -	- - -	- - -	- - -	- - -	- - -

	White, not Hispanic			Black, not Hispanic			Hispanic[6]		
Specified age and year	Both sexes	Male	Female	Both sexes	Male	Female	Both sexes	Male	Female
At birth				Life expectancy in years					
2006	78.2	75.7	80.6	73.1	69.5	76.4	80.3	77.5	82.9
2007	78.4	75.9	80.8	73.5	69.9	76.7	80.7	77.8	83.2
2008	78.4	76.0	80.7	73.9	70.5	77.0	80.8	78.0	83.3
2009	78.7	76.3	81.0	74.4	71.0	77.4	81.1	78.4	83.5
2010	78.8	76.4	81.1	74.7	71.5	77.7	81.7	78.8	84.3
2012	78.9	76.5	81.2	75.1	71.9	78.1	81.9	79.3	84.3
2013[7]	78.8	76.5	81.2	75.1	71.9	78.1	81.9	79.2	84.2
2014[5,7]	78.8	76.5	81.2	75.3	72.2	78.2	82.1	79.4	84.5
2015[5,7]	78.7	76.3	81.0	75.1	71.9	78.1	81.9	79.3	84.3
2016[5,7]	78.5	76.1	81.0	74.8	71.5	77.9	81.8	79.1	84.2
At 65 years									
2006	18.7	17.2	19.9	17.1	15.1	18.5	20.2	18.5	21.5
2007	18.8	17.4	20.0	17.2	15.3	18.7	20.5	18.7	21.7
2008	18.8	17.4	20.0	17.4	15.4	18.8	20.4	18.7	21.6
2009	19.1	17.7	20.3	17.7	15.8	19.1	20.7	19.0	21.9
2010	19.1	17.7	20.3	17.7	15.8	19.1	21.2	19.2	22.6
2012	19.3	17.9	20.4	18.0	16.1	19.4	21.0	19.5	22.1
2013[7]	19.3	17.9	20.4	18.0	16.1	19.4	21.3	19.5	22.5
2014[5,7]	19.3	18.0	20.5	18.1	16.3	19.5	21.5	19.7	22.8
2015[5,7]	19.3	18.0	20.4	18.1	16.2	19.5	21.4	19.7	22.6
2016[5,7]	19.3	18.0	20.5	18.0	16.2	19.5	21.4	19.7	22.7

Table 15. Life expectancy at birth, at age 65, and at age 75, by sex, race, and Hispanic origin: United States, selected years 1900–2016

Excel version (with more data years and standard errors when available): https://www.cdc.gov/nchs/hus/contents2017.htm#015 .

[Data are based on death certificates]

	White, not Hispanic			Black, not Hispanic			Hispanic[6]		
Specified age and year	Both sexes	Male	Female	Both sexes	Male	Female	Both sexes	Male	Female
At 75 years	Life expectancy in years								
2006	11.7	10.6	12.5	11.1	9.6	12.0	13.0	11.7	13.7
2007	11.8	10.7	12.6	11.2	9.7	12.1	13.1	11.8	13.8
2008	11.8	10.7	12.6	11.3	9.8	12.2	13.0	11.7	13.8
2009	12.0	11.0	12.8	11.6	10.1	12.4	13.3	12.0	14.1
2010	12.0	11.0	12.8	11.6	10.1	12.5	13.7	12.2	14.7
2012	12.1	11.1	12.9	11.7	10.4	12.6	13.5	12.3	14.2
2013[7]	12.1	11.1	12.9	11.7	10.3	12.6	13.7	12.4	14.5
2014[5,7]	12.2	11.2	13.0	11.8	10.5	12.7	13.9	12.6	14.8
2015[5,7]	12.1	11.2	12.9	11.8	10.5	12.7	13.9	12.6	14.6
2016[5,7]	12.1	11.2	12.9	11.8	10.5	12.7	13.9	12.6	14.6

- - - Data not available.

[1]Life expectancy estimates for 2016 and beyond are no longer available for white and black or African American race groups. Estimates for white, not Hispanic, and black, not Hispanic groups continue to be presented in this table.

[2]Data shown for 1900–1960 are for the nonwhite population. Data for 1970 onwards are for the black or African American population only.

[3]Death registration area only. The death registration area increased from 10 states and the District of Columbia (D.C.) in 1900 to the coterminous United States in 1933. See Appendix II, Registration area.

[4]Includes deaths of persons who were not residents of the 50 states and D.C.

[5]Life expectancy estimates for 2014 and 2015 were revised using updated Medicare data; therefore, these values may differ from previous editions of *Health, United States* . Life expectancy estimates for 2016 are based on preliminary Medicare data.

[6]Hispanic origin was added to the U.S. standard death certificate in 1989 and was adopted by every state in 1997. Life expectancies for the Hispanic population are adjusted for underreporting of Hispanic ethnicity on the death certificate, but they are not adjusted to account for the potential effects of return migration. To address the effects of age misstatement at the oldest ages, the probability of death for Hispanic persons older than 80 years is estimated as a function of non-Hispanic white mortality with the use of the Brass relational logit model. See Appendix II, Hispanic origin. See Appendix II, Race, for a discussion of sources of bias in death rates by race and Hispanic origin.

[7]Tables by Hispanic origin are adjusted for race and Hispanic-origin misclassification with classification ratios. Life expectancy estimates for 2010–2016 use the updated classification ratios. See NOTES section of this table.

NOTES: Populations for computing life expectancy for 1991–1999 are 1990-based postcensal estimates of the U.S. resident population. Starting with *Health, United States, 2012* , populations for computing life expectancy for 2001–2009 were based on revised intercensal population estimates of the U.S. resident population. Populations for computing life expectancy for 2010 were based on 2010 Census counts. Life expectancy for 2011 and beyond was computed using 2010-based postcensal estimates. See Appendix I, Population Census and Population Estimates. In 1997, life table methodology was revised to construct complete life tables by single years of age that extend to age 100 (available from: Anderson RN. Method for constructing complete annual U.S. life tables. National Center for Health Statistics. Vital Health Stat 2(129). 1999). Previously, abridged life tables were constructed for 5-year age groups ending with 85 years and over. In 2000, the life table methodology was revised. The revised methodology is similar to that developed for the 1999–2001 decennial life tables. In 2008, the life table methodology was further refined. Estimates for 2001 and onwards were revised based on the methodology used in the 2008 life table report. Life expectancy for 2001–2016, except as noted in footnote 5, was calculated using data from Medicare to supplement vital statistics and census data. Starting with *Health, United States, 2016* , life expectancy for 2010–2016 was revised to take into account updated race and Hispanic-origin classification ratios. See: Arias E, Heron M, Hakes JK. The validity of race and Hispanic-origin reporting on death certificates in the United States: An update. National Center for Health Statistics. Vital Health Stat 2(172). 2016. Available from: https://www.cdc.gov/nchs/data/series/sr_02/sr02_172.pdf. See Appendix II, Life expectancy. Starting with 2003 data, some states allowed the reporting of more than one race on the death certificate. The multiple-race data for these states were bridged to the single-race categories of the 1977 Office of Management and Budget standards, for comparability with other states. The race groups white and black include persons of Hispanic and non-Hispanic origin. Persons of Hispanic origin may be of any race. See Appendix II, Race. Data for additional years are available. See the Excel spreadsheet on the *Health, United States* website at: https://www.cdc.gov/nchs/hus.htm. Some data were revised and differ from previous editions of *Health, United States* .

SOURCE: NCHS, National Vital Statistics System, public-use Mortality Files; Grove RD, Hetzel AM. Vital statistics rates in the United States, 1940–1960. 1968; Arias E. United States life tables by Hispanic origin. National Center for Health Statistics. Vital Health Stat 2(152). 2010; United States life tables, 2001–2009 (using revised intercensal population estimates and a new methodology implemented with the final 2008 life tables), United States life tables, 2010–2016 (based on a new methodology implemented with the final 2008 life tables and updated race and Hispanic-origin classification ratios). Life table reports available from: https://www.cdc.gov/nchs/products/life_tables.htm; Murphy SL, Xu JQ, Kochanek KD, Curtin SC, Arias E. Deaths: Final data for 2015. National Vital Statistics Reports; vol 66 no 6. Hyattsville, MD: National Center for Health Statistics. 2017. Available from: https://www.cdc.gov/nchs/data/nvsr/nvsr66/nvsr66_06.pdf; unpublished 2015 life expectancy estimates for white and black persons at birth, at age 65, and at age 75; Xu JQ, Murphy SL, Kochanek KD, Bastian B, Arias E. Deaths: Final data for 2016. National Vital Statistics Reports; vol 67. Hyattsville, MD: National Center for Health Statistics. 2018. Available from: https://www.cdc.gov/nchs/products/nvsr.htm. See Appendix I, National Vital Statistics System (NVSS).

EXHIBIT C

FLORIDA PAROLE COMMISSION

PRESUMPTIVE PAROLE RELEASE DATE COMMISSION ACTION

Inmate Name: **Howard, Robert Earl** DC #: **082581** Date of Interview: **9/21/2005**

Institution: **South Bay C.F.**

I. HEARING EXAMINER'S RECOMMENDATIONS:

A. Eligible for parole consideration: NO☐ If no, state reason(s):

IF YES☒, THEN:

B. Salient Factor Score: 1=0, 2=0, 3=0, 4=2, 5=0, 6=0, 7=1, TOTAL = **3** or RCF_____.

C. Offense Severity: Level 6 Degree Capital Felony Offense: **First Degree Murder (I)**, Case No. **81-2362 Polk Co.**

D. Matrix Time Range: **180 to 240 months (top of range)**

E. **Aggravating**/Mitigating Factors *(Explain each with source.*

A1h: Multiple sentences, to wit:
Count III of #81-2362, Robbery, 15 years. + 90 months
Count I of #81-2503, Burglary, Life. + 32 months
Count II of #81-2503, Battery, 1 year. + 12 months.
#81-2504, Burglary, 15 years. + 32 months.

Total of **166 months** in aggravation.

F. Time Begins: **7/6/1981** G. Months Recommended: **406** H. Recommended Presumptive Parole Release Date: **5/6/2015**

II. COMMISSION ACTION:

A. The Commission AFFIRMS the hearing examiner's recommendation that you are NOT eligible for consideration for parole. You will be scheduled for an initial interview _____.

B. The Commission does NOT affirm the hearing examiner's recommendation that you are not eligible for parole consideration and remands the case back to the field for an immediate presumptive parole release date interview and recommendation.

C. The Commission AFFIRMS, without change, the hearing examiner's recommended presumptive parole release date and thereby affirms any aggravating or mitigating factors found above in I.E.

D. The Commission does NOT affirm the hearing examiner's presumptive parole release date and restructures the case as follows:

1. Salient Factor Score: 1=**0**,2=**0**,3=**0**,4=**2**,5=**0**,6=**0**,7=**1**, TOTAL **3** or RCF_____.
2. Offense Severity: Level 6 Degree Capital Felony Offense First Degree Murder Case No. 81-2362A2, Count 1.
3. Matrix Time Range: **180-240**.
4. Aggravating/Mitigating Factors *(Explain each with source):*

Set at the top 240 mos.

AGGRAVATIONS:

1. Multiple separate offenses, in case #81-2362, Count III, Robbery, 15 yrs C/C	+180 mos.
2. Multiple separate offenses, in case #81-2503, Count I, Burglary, Life C/C	+180 mos.
3. Multiple separate offenses, in case #81-2503, Count II, Battery, 1 yr County Jail (misdemeanor)	+ 12 mos.
4. Multiple separate offenses, in case # 81-2504, Burglary, 15 yrs C/C	+120 mos.
5. The offense in case #2362 was committed against a victim known to be particularly vulnerable: to wit, a 69 year old woman.	+180 mos.
6. The offense involved the use of weapons: to wit, a chain and a pillow used to suffocate the victim.	+ 60 mos.
	972 mos.

Time Begins Date
3-10-1982 – Date of Sentence
- 198 – County Jail Time
8-24-1981 – Time Begins Date

PCG-4 (Revised 10/96) 1 copy to inmate; 1 copy to institution file; original to Central Office file.

FLORIDA PAROLE COMMISSION

Mand. Min.

PPRD COMMISSION ACTION
Continued from Page 1
HOWARD, Robert, DC# 082581

5. Time Begins: **8-24-1981** **6.** Months for Incarceration: **972**.

At the Commission meeting held 11-2-2005 your Presumptive Parole Release Date was ESTABLISHED to be 8-24-2062. You will be re-interviewed for your subsequent interview during the month of July, 2010.

The Commission finds that your next interview date shall be within 5 years, rather than within 2 years from your last interview based on your conviction/sentence for First Degree Murder and the Commission's finding that it is not reasonable to expect that you will be granted parole during the following years. The basis for this finding is as follows:

1. **Heinous nature of the offense.**
2. **Vulnerability of the victim.**
3. **Escalating pattern of criminal conduct.**

Certified by _____, *Commission Clerk, this 8th day of October, 2005.*

Copy to visitors notified (4)

Nunc Pro Tunc

cf

PCG-4 (Revised 10/96)

1 copy to inmate; 1 copy to institution file; original to Central Office file.

ITEM 1: NUMBER OF ALL PRIOR CONVICTIONS	
• Four or more prior felony convictions at least two or which resulted in incarceration.	= Recidivist Criminal Factor
• Three or more prior convictions.	= 2 Points
• One or Two prior convictions.	= 1 Point
• No prior convictions.	= 0 Points
ITEM 2: NUMBER OF PRIOR INCARCERATIONS	
• Two or more prior incarcerations	= 2 Points
• One prior incarceration	= 1 Point
• No prior incarceration	= 0 Points
ITEM 3: TOTAL TIME SERVED IN YEARS	
• Two or more years served	= 2 Points
• Up to two years served	= 1 Point
• No time previously served	= 0 Points
ITEM 4: AGE AT OFFENSE WHICH LED TO THE FIRST INCARCERATION	
• 17 Years or younger	= 2 Points
• 18 - 25 Years	= 1 Point
• 26 Years or older	= 0 Points
ITEM 5: NUMBER OF PROBATION, PAROLE OR MCR REVOCATIONS	
• One or more revocations	= 1 Points
• No Revocations	= 0 Point
ITEM 6: NUMBER OF PRIOR ESCAPE CONVICTIONS	
• One or more prior escape conviction(s)	= 1 Point
• No prior escape conviction	= 0 Points
ITEM 7: BURGLARY OR BREAKING AND ENTERING AS THE PRESENT OFFENSE OF CONVICTION	
• Present offense of conviction involves burglary or breaking and entering	= 1 Point
• Otherwise	= 0 Points

23.21.009 **Matrix Time Ranges.** (1) Calculate and total the Salient Factor Score. (2) Determine the degree of felony or misdemeanor of the Present Offense of conviction. (3) Locate the Matrix Time Range where the Salient Factor Score total intersects with the Severity of Offense Behavior. (4) If the totality of the circumstances of the Present Offense of Conviction warrants a decision outside the Matrix Time Range, or if there are indicators relative to the likelihood of favorable parole outcome which warrant a decision outside the Matrix Time Range, the appropriate aggravation or Mitigation factors must be stated in writing with individual particularity

SEVERITY OF OFFENSE BEHAVIOR[1]	SALIENT FACTOR SCORE[2]				RECIDIVIST CRIMINAL FACTOR
	(0-1)	(2-4)	(5-7)	(8-11)	
1. Misdemeanor (Cumulative Sentence of one or more Years)	≤ 8	8-12	12-16	16-22	24-32
2. Felony 3rd (Statutory Sentence-Maximum of 5 Years)	12-20	20-26	26-32	32-48	48-64
3. Felony 2nd (Statutory Sentence-Maximum of 15 Years)	20-26	26-32	32-48	48-64	96-120
4. Felony 1st (Statutory Sentence-Maximum of 30 Years)	30-70	70-90	90-120	120-180	180-300
5 Felony 1st and Life Felony (Statutory Sentence-Maximum --Life)	80-100	100-120	120-140	140-180	300-400
6 Capital Felony (Statutory Sentence-Life)	120-180	180-240	240-300	300-9998	400-9998

[1]Length of sentence as well as salient factor score shall be considered when determining the presumptive parole release date
[2]Matrix Time Ranges are reported in months.

Specific Authority: ss. 120.53, 947.002(1),(2),(6); 947.071, F.S. Law Implemented: s. 947.165, F.S. History: New 9-10-81

EXHIBIT D

The GEO Group, Inc.
GLOBAL EXPERTISE IN OUTSOURCING

Mr. T. Smith, Classification Officer
South Bay Correctional Facility
Commercial Driver License Vocation
600 US Highway 27 South
South Bay, Florida 33493
Main TEL: 561-992-9505. EXT. 170
FAX: 561-992-9551
www.thegeogroupinc.com

DATE: 03-10-2010

TO: Florida Parole Board

FROM: T. Smith, Classification Officer

RE: Robert Howard, DC # 082581

CC: Inmate File

I am inmate Howard's classification officer at South Bay Correctional Institute. It is my understanding that he may be eligible for parole, and I therefore submit the following in support.

During my years as a classification officer, I have not seen many individuals dedicated to rehabilitation as inmate Howard. He always carries himself in a positive manner, respects both officers and inmates alike, and he continuously betters himself by learning new trades and participating in self-betterment programs. While working for Pride Industries, he gained on the job training as a certified forklift operator, forklift trainer, and shipping and receiving controller. Moreover, to his credit are multiple certificates and accomplishments, which include:

- ✓ Human Relations
- ✓ GED
- ✓ Cabinet Shop
- ✓ Electronics
- ✓ Residential/Industrial Electrical Wiring
- ✓ Two Cycle Engine
- ✓ Four Cycle Engine
- ✓ Engine Parts Identification
- ✓ Building Maintenance
- ✓ Powered Industrial Trucks
- ✓ PRIDE: Certificate of Achievement in the Ware-house
- ✓ Yoga
- ✓ Life Skills
- ✓ HIV/AIDES
- ✓ Diversified Career Technology
- ✓ KARIOS
- ✓ PC Support Services
- ✓ Aids Awareness
- ✓ Alcoholics Anonymous
- ✓ Warehouseman (Twice)

Since his last parole hearing in 2005, inmate Howard has received certificates in:

- ✓ Alcoholics Anonymous
- ✓ Stress and Anger Management Course One
- ✓ Gasoline Engine Service Technology
- ✓ Commercial Foods and Culinary Arts
- ✓ Masonry
- ✓ Upholstery

Inmate Howard came into the Department of Correction, as a 17 year old juvenile in 1981, he has been Disciplinary Report free for the last 25 years (1985), is a first-time offender, and is now 47 years old. Inmate Howard has the traits, job skills and a sense of responsibility that will serve him well in society. I believe he is rehabilitated and would be a very good candidate for parole.

I hope this information is useful in inmate Howard's parole consideration. If you have any questions pleas contact me at the above listed phone number.

Cordially,

T Smith

Mr. T. Smith, Classification Officer

EXHIBIT E

The GEO Group, Inc.
South Bay Correctional Facility
600 US Highway 27 South
South Bay, Florida 33493

Tel: 561 992 9505
Fax: 561 992 9551
www.geogroup.com

December 11, 2017

To: Howardene Garrett

Re: Robert Howard's resentencing

My name is Thurman Smith and I am a Classification Officer at South Bay Correctional Facility. I am currently assigned to Robert Howard and have been for some time. I actually wrote a letter of support for Mr. Howard back in 2010 for purposes of his parole hearing. However, despite my best efforts to assure the parole commission that Mr. Howard was a good candidate for parole in light of his significant institutional achievements, along with his near flawless disciplinary record, the commission denied his request for parole. So when Mr. Howard informed me that he may have another chance at early release through the new juvenile sentencing laws and he asked me to write a new letter of support for purposes of his resentencing hearing, I readily agreed.

At the time I wrote the previous letter, Mr. Howard was the TV Chairman, which is, in my opinion, one of the most difficult jobs an inmate can have. It requires not only competent communication skills, but also commitment, patience, and tolerance. It is impossible to make everyone happy when it comes to TV programs, so the complaints are inevitable and at times inappropriate. Nonetheless, Mr. Howard always handled himself with dignity and circumspection; he handled himself better, in fact, than any other TV Chairman I have seen during my time at South Bay Correctional Facility.

Mr. Howard now works for the Assistant Warden over programs, Mr. Lawrence. He works in the Programs Office where he assists both the Therapeutic Community (TC) Department and the Office of Release.

He has been working in that department for 2 to 3 years now, and I know his work ethic is very much appreciated by every person who works in those departments.

Since I wrote the last letter of support for Mr. Howard in 2010, my opinion of him has not changed. He still maintains that positive attitude, for which he is so well known, and he is still respectful to both inmates and staff members alike. I have absolutely no doubt that he has been rehabilitated and will do well once released. With the skills and trades he has learned and developed over the years, along with his determination to always do the next right thing, I strongly believe he will do very well in society. It is time for Mr. Howard to move on and to start the next chapter of his life. He is, in my personal and professional opinion, deserving of a second chance.

Thank you for allowing me this opportunity to voice my opinion regarding Mr. Howard's resentencing hearing. I hope he is afforded a second chance at life. He has certainly earned it.

Mr. T. Smith, Classification Officer

EXHIBIT F

FLORIDA COMMISSION ON OFFENDER REVIEW

SUBSEQUENT COMMISSION ACTION

Inmate Name: Howard, Robert DC #: 082581 Date of Interview: 5/31/2017

Institution South Bay CF

ESTABLISHED Presumptive Parole Release Date: 8/24/2054

COMMISSION INVESTIGATOR'S RECOMMENDATION:

☐ A. NO CHANGE in Presumptive Parole Release Date.
☒ B. CHANGE in Presumptive Parole Release Date as follows:

☒ 1. **Reduce** Presumptive Parole Release Date.
Per Section 947.16(5) and 947.174, F.S., and Rules 23-21.002(29) and 23-21.013, F.A.C. Since Howard's last interview of 05/30/2012 and Commission Action of 08/22/2012, he has remained free of any disciplinary actions and completed one program, Pipe Trade Systems on 02/14/2014. Further, he has received positive comments from Classification.

☐ 2. **Extend** Presumptive Parole Release Date.

COMMISSION ACTION:

☐ A. The Commission AFFIRMS the Commission Investigator's Recommendation based on the same reasons provided by the Commission Investigator.
☒ B. The Commission does NOT affirm the Commission Investigator's Recommendation and determines the case as follows:

☒ 1. NO CHANGE in Presumptive Parole Release Date based upon the serious nature of the offense.

☐ 2. CHANGE in Presumptive Parole Release Date as follows:
☐ (a) **Reduce** Presumptive Parole Release Date by ____ months.

☐ (b) **Extend** Presumptive Parole Release Date by ____ months.

At the Commission meeting held 7/19/2017, your Presumptive Parole Release Date was established to be 8/24/2054.
You will be re-interviewed for your subsequent interview during the month of March, 2024.

The Commission finds that your next interview date shall be within 7 years, rather than within 2 years from your last interview based on your conviction/sentence for First Degree Murder, and the Commission's finding that it is not reasonable to expect you will be granted parole during the following years. The basis for the finding is as follows.

1. **Vulnerable victim**
2. **Brutal and heinous behavior**
3. **Escalating pattern of criminal conduct**
4. **Multiple separate offenses**

Certified by Gary Davis *Commission Clerk, this 19th day of July, 2017.* MH

(5) Number of Visitors

(Revised 7/2017)

1 copy to inmate; 1 copy to institution file; original to Central Office file.

EXHIBIT G

FLORIDA COMMISSION ON OFFENDER REVIEW

PRESUMPTIVE PAROLE RELEASE DATE COMMISSION ACTION

Inmate Name: **Peterson, Damon** DC #: **196657** Date of Interview: **10/16/2017**

Institution: **Tomoka CI**

I. **COMMISSION INVESTIGATOR'S RECOMMENDATIONS:**

A. Eligible for parole consideration: NO☐ If no, state reason(s):

IF YES☒, THEN:

B. Salient Factor Score: 1=0, 2=0, 3=0, 4=0, 5=0, 6=1, TOTAL 1 or RCF_____.

C. Offense Severity: 6 Case No. 93-10518: First Degree Murder.

D. Matrix Time Range: 90-135 YO (set at top of range).

E. Aggravating/Mitigating Factors *(Explain each with source)*:

1) Multiple Separate Offenses: Case # 93-10518, Count 2: Attempted Armed Robbery (2F) (+ 25 months)
2) Multiple Separate Offenses: Case # 93-10518, Count 3: Unlawful Possession of a Firearm While Engaged in a Criminal Offense (2F) (+ 24 months)
3) Multiple Separate Offenses: Case # 93-12155, Count 1: Burglary with Assault or Battery Therein While Armed (LIFE) (+ 100 months)
4) Multiple Separate Offenses: Case # 93-12155, Count 3: Shooting or Throwing Deadly Missile (2F) (+ 24 months)
5) Multiple Separate Offenses: Case # 93-12155, Count 4: Aggravated Assault with a Firearm (3F) (+ 20 months)
6) Multiple Separate Offenses: Case # 93-12155, Count 5: Possession of Burglary Tools (3F) (+ 20 months)
7) The offense involved the use of a firearm, a .38 caliber semi-automatic pistol, source: Post Sentence Investigation (+ 60 months)

F. Time Begins: 4/13/1993 G. Months Recommended: 408 H. Recommended Presumptive Parole Release Date: 4/13/2027.

II. **COMMISSION ACTION:**

A. The Commission AFFIRMS the commission investigator's recommendation that you are NOT Eligible for consideration for parole. You will be scheduled for an initial interview _____.

B. The Commission does NOT affirm the commission investigator's recommendation that you are not eligible for parole consideration and remands the case back to the field for an immediate presumptive parole release date interview and recommendation.

C. The Commission AFFIRMS, without change, the commission investigator's recommended presumptive parole release date and thereby affirms any aggravating or mitigating factors found above in I.E.

D. The Commission does NOT affirm the commission investigator's recommended presumptive parole release date and restructures the case as follows:

1. Salient Factor Score: 1=0, 2=0, 3=0, 4=0, 5=0, 6=1, TOTAL 1 or RCF_____.
2. Offense Severity: Level 6 Degree: Capital Felony Offense: Ct. 1 First Degree Murder Case No. 93-10518.
3. Matrix Time Range: 90-135 (Youthful Offender). Set at: 135 months
4. Aggravating/Mitigating Factors *(Explain each with source)*:
   1. Multiple separate offense Case #93-10518 Ct. 2 Attempted Armed Robbery. 120 months
   2. Multiple separate offense Case #93-10518 Ct. 3 Unlawful Possession of a Firearm While Engaged in a Criminal Offense. 72 months
   3. Multiple separate offense Case #93-12155 Ct. 2 Armed Robbery. 180 months
   4. Multiple separate offense Case #93-12155 Ct. 3 Shooting or Throwing a Deadly Missile. 120 months
   5. Multiple separate offense Case #93-12155 Ct. 4 Aggravated Assault with a Firearm. 60 months
   6. Multiple separate offence Case #93-12155 Ct. 5 Possession of Burglary Tools. 60 months
   7. Unsatisfactory institutional conduct as evidenced by his processed disciplinary record. 60 months

Certified by Sandy M. Davis *Commission Clerk, and mailed on this 20th day of January, 2018.*

Number (2) of visitors

1 copy to inmate; 1 copy to institution file; original to Central Office file.

MH

FLORIDA COMMISSION ON OFFENDER REVIEW

5. Time Begins: 4/13/1993

6. Months for Incarceration: 807 months.

At the Commission meeting held on 12/20/2017 your Presumptive Parole Release Date was ESTABLISHED to be 7/13/2060. You will be reinterviewed for your subsequent interview during the month of August, 2024.

The Commission finds that your next interview date shall be within 7 years rather than within 2 years, from your last interview based on your conviction/sentence for **First Degree Murder** and the Commission's finding that it is not reasonable to expect you will be granted parole during the following years. The basis for the finding is as follows.

1. Unsatisfactory institutional conduct
2. Use of a firearm
3. Unreasonable risk to others
4. Multiple separate offenses

*The Commission considered mitigation

MH

ITEM 1: NUMBER OF ALL PRIOR CONVICTIONS	= Recidivist Criminal Factor
• Four or more prior felony convictions at least two or which resulted in incarceration.	= 2 Points
• Three or more prior convictions.	= 1 Point
• One or Two prior convictions.	= 0 Points
• No prior convictions.	
ITEM 2: NUMBER OF PRIOR INCARCERATIONS	
• Two or more prior incarcerations	= 2 Points
• One prior incarceration	= 1 Point
• No prior incarceration	= 0 Points
ITEM 3: TOTAL TIME IMPOSED IN YEARS	
• Two or more years imposed	= 2 Points
• Up to two years imposed	= 1 Point
• No time previously imposed	= 0 Points
ITEM 4: NUMBER OF PROBATION, PAROLE OR MCR REVOCATIONS	
• Two or more revocations	= 2 Points
• One revocation	= 1 Points
• No Revocations	= 0 Point
ITEM 5: NUMBER OF PRIOR ESCAPE OR ATTEMPTED ESCAPE CONVICTIONS	
• Two or more prior escape or attempted escape convictions	= 2 Points
• One prior escape or attempted escape conviction	= 1 Point
• No prior escape conviction	= 0 Points
ITEM 6: BURGLARY, BREAKING AND ENTERING OR ROBBERY AS THE PRESENT OFFENSE OF CONVICTION	
• Present offense of conviction involves burglary or breaking and entering or robbery	= 1 Point
• Otherwise	= 0 Points

23.21.09 **Matrix Time Ranges.** (1) Calculate and total the Salient Factor Score. (2) Determine the degree of felony or misdemeanor of the Present Offense of conviction. (3) Locate the Matrix Time Range where the Salient Factor Score total intersects with the Severity of Offense Behavior. (4) If the totality of the circumstances of the Present Offense of Conviction warrants a decision outside the Matrix Time Range, or if there are indicators relative to the likelihood of favorable parole outcome which warrant a decision outside the Matrix Time Range, the appropriate aggravation or Mitigation factors must be stated in writing with individual particularity.

SEVERITY OF OFFENSE BEHAVIOR[1]	SALIENT FACTOR SCORE [2]				RECIDIVIST CRIMINAL FACTOR
	(0-1)	(2-4)	(5-7)	(8-11)	
1. Misdemeanor (Cumulative Sentence of one or more Years)	≦8	8-12	12-16	16-22	24-32
2. Felony 3° (Statutory Sentence-Maximum of 5 Years)	12-20	20-26	26-32	32-48	48-64
3. Felony 2° (Statutory Sentence-Maximum of 15 Years)	20-26	26-32	32-48	48-64	90-120
4. Felony 1° (Statutory Sentence-Maximum of 30 Years)	30-70	70-90	90-120	120-180	180-300
5. Felony 1° and Life Felony (Statutory Sentence-Maximum --Life)[3]	80-100	100-120	120-140	140-180	300-400
6. Capital Felony (Statutory Sentence-Life)	120-180	180-240	240-300	300-9998	400-9998

*Youthful Offender Matrix

SEVERITY OF OFFENSE BEHAVIOR[1]	SALIENT FACTOR SCORE [2]				RECIDIVIST CRIMINAL FACTOR
	(0-1)	(2-4)	(5-7)	(8-11)	
1. Misdemeanor (Cumulative Sentence of one or more Years)	≦6	6-9	9-12	12-16	24-32
2. Felony 3° (Statutory Sentence-Maximum of 5 Years)	9-15	15-19	19-24	24-36	48-64
3. Felony 2° (Statutory Sentence-Maximum of 15 Years)	15-19	19-24	24-36	36-48	90-120
4. Felony 1° (Statutory Sentence-Maximum of 30 Years)	22-52	52-67	67-90	90-135	180-300
5. Felony 1° and Life Felony (Statutory Sentence-Maximum --Life)[3]	60-75	75-90	90-105	90-135	300-400
6. Capital Felony (Statutory Sentence-Life)	90-135	135-180	180-225	225-9998	400-9998

[1]Length of sentence as well as salient factor score shall be considered when determining the presumptive parole release date.
[2]Matrix Time Ranges are reported in months.
[3]Murder II = 0 salient factor points, see 23-19.05 (VII) (1.)
Specific Authority: ss. 120.53, 947.165, 947.071, F.S. Law Implemented: s. 947.165, F.S. History: New 7-22-81

EXHIBIT H

MICHIGAN LIFE EXPECTANCY DATA FOR YOUTH SERVING NATURAL LIFE SENTENCES

Miller and Graham stand for the proposition that punishment of youth should not result in natural life sentences, except in the case of a rare youth whose crimes reflect "irreparable corruption." The Supreme Court was clear that due to their lesser culpability and unique capacity for rehabilitation, "children are constitutionally different from adults for sentencing purposes" and must be given a meaningful and realistic opportunity for release. *Miller v Alabama*, 132 S Ct 2455, 2464 (2012). Despite these rulings and their logic, some legislative bodies have proposed post-*Miller* sentencing schemes for youth, with high minimums, creating de facto life sentences without realistic opportunity for release. This note is intended to address the impact and conflict with the Supreme Court's recent holdings, resulting from such schemes.

Life Expectancy for Incarcerated Individuals

It is not disputed that life expectancy for incarcerated individuals lag behind the general population. While the average life expectancy for children born today is 77.8 years, it is lower for men, minorities, and significantly lower for prison inmates. www.efmoody.com/estate/lifeexpectancy.html.

It is generally accepted that life in prison, with its stressors, violence and disease in and of itself significantly shortens one's life expectancy. *See United States v. Taveras*, 436 F. Supp. 2d 493, 500 (E.D.N.Y. 2006) (Life expectancy within federal prison is considerably shortened) II EOR 72, Feld, Symposium on Youth and the Law, 22 ND J L Ethic Pub Pol 9, 63, fn. 231 (2008). See also, Elizabeth Arias, Ctr. for Disease Control, U.S. Life Tables, 2003, Nat'l Vital Statistics Rep., April 19, 2006, at 3, available at: http://www.cdc.gov/nchs/data/nvsr/nvsr54/nvsr54_14.pdf.

The actual extent of the diminished life expectancy resulting from imprisonment was addressed by the United States Sentencing Commission which defines a life sentence as 470 months (or just over 39 years). This is based on average life expectancy and median age of individuals at time of sentencing. Based on the median age at sentencing (25 years) the life expectancy for a person in general prison population is 64 years of age. U.S. Sentencing Commission Preliminary Quarterly Data Report (through June 30, 2012) at A-8, *available at* http://www.ussc.gov/Data and Statistics/Federal_Sentencing_Statistics/Quarterly_Sentencing_Updates/USSC_2012_3rd_Quarter_Report.pdf.

Life Expectancy for Those Serving Natural Life

Based on our review of Michigan data, there appears to be a strong correlation between the number of years spent in prison and life expectancy resulting in further diminished life

expectancy for those serving a natural life sentence. While the Sentencing Commission posits an average life expectancy, for all prisoners, at 64 years, adjusting for length of sentence and race, results in a significant diminishment of life expectancy. *See* also *U.S. v. Nelson*, 491 F 3d 344, 349-50 (7th Cir 2012) (acknowledging the decreased life expectancy for incarcerated individuals based on United States Sentencing Commission data).

When we looked at life expectancy for Michigan adults incarcerated for natural life sentences in Michigan, the average life expectancy decreased to 58.1 years.[1] When adjusted for race, the average life expectancy for African-American adults, sentenced to natural life, is 56.0 years, and for whites, 60.1 years.[2]

The life expectancy averages drop even lower for those who began their natural life sentences as children, therefore, serving longer years in prison then adults with the same sentence.[3] Looking at Michigan youth who were punished with a natural life sentence, the average life expectancy is 50.6 years. The number of the cohort is too small to establish an average based on race, although 72% of youth serving natural life sentences in Michigan, are children of color.

This one state data analysis demonstrates that high minimum sentences, as a remedy to *Miller* and *Graham's* findings of constitutional infirmity for natural life sentences, are non-compliant with *Miller* and *Graham* dictates. Minimum terms of thirty-five years or longer will not provide a meaningful opportunity for release for these youth who have an average life expectancy of 50 years.

For questions, please contact Deborah LaBelle, Project Director, ACLU of Michigan Juvenile Life Without Parole Initiative, deblabelle@aol.com.

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[1] This is based on analysis of all individuals 18 and older sentenced to natural life in Michigan who have died in prison, in excess of 400 individuals.

[2] The average life expectancy for an African-American male born today is 71.1 years.

[3] In addition to pure number of years in prison, there is data that youth in prison are 5 times more likely to be victims of sexual and physical assaults. This abuse is a recognized contributing factor to the significant decreased life expectancy due to incarceration. *See* Gibbons & Katzenbach, Confronting Confinement, 11 (June 2006).

EXHIBIT I

FLORIDA COMMISSION ON OFFENDER REVIEW

ORDER ON INITIAL INTERVIEW

This case came before the Florida Commission on Offender Review on **02/10/2016** for consideration of setting the initial presumptive parole release date for inmate **Brown, Carl T., DC# 187363** at **Martin C.I.**

The investigator recommended a presumptive parole release date of **05/19/2023**.

Having considered the Department of Corrections' and the Florida Commission on Offender Review's records, the Commission Investigator's recommendation, at the **02/10/2016** public meeting, the Commission hereby:

Sets the presumptive parole release date at **02/19/2032** based on the following objective parole guideline computations:

Offense Severity: **Level 6** Degree: **Capital Felony** Offense: **Ct. I, First Degree Murder** Case #: **88-16208**
Salient Factor Score: 1=**0**, 2=**0**, 3=**0**, 4=**0** 5=**0**, 6=**1**, TOTAL **1** or RCF ☐.

Matrix Time Range: **90-135** (Youthful Offender) **Set at: 135 months**

Aggravating/Mitigating Factors *(Explain each with source):*

1. Multiple separate offense Case#88-16208, Count II, Robbery With A Firearm — **135 months**
2. Use of a weapon; to-wit: a handgun, 25 caliber pistol, per the pre-sentence Investigation — **60 months**
3. Brutal and heinous behavior in that the victim was shot six (6) times, per the pre-sentence investigation. — **135 months**
4. Inmate has a history of substance abuse and was under the influence of alcohol at the time he committed the instant offense, per the PSI and Admissions Summary. — **60 months**

5 Time Begins Date: **5/19/1988**

6. Total Months for Incarceration: **525**

The Commission sets the **subsequent** interview for **October, 2022** based on: **multiple separate offenses; the use of a weapon; to-wit: a handgun; any release would pose an unreasonable risk to others; and brutal and heinous behavior.**

During the scoring of this case the Commission did consider mitigation.

Certified and mailed by _____, Commission Clerk, this **15th** day of **February, 2016**.
Copy to visitors notified (3)

KEL

EXHIBIT J

IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, IN AND FOR ST. JOHNS COUNTY, FLORIDA

CASE NO.: 1980-564-CF

STATE OF FLORIDA,

vs.

WILLIE WATTS,

Defendant.

_____/

RESENTENCING HEARING
APPEAL TRANSCRIPT

* *

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE HOWARD M. MALTZ
CIRCUIT COURT JUDGE

* *

(STENOGRAPHICALLY TRANSCRIBED VIA DIGITAL RECORDING)

DATE TAKEN:	JANUARY 18, 2019
TIME:	COMMENCED AT 11:19 A.M. CONCLUDED AT 11:56 A.M.
PLACE:	RICHARD O. WATSON JUDICIAL CENTER 4010 LEWIS SPEEDWAY ST. AUGUSTINE, FLORIDA
STENOGRAPHICALLY TRANSCRIBED BY:	SUSAN GARDNER COURT REPORTER AND NOTARY PUBLIC

* *

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ATTORNEY FOR THE DEFENDANT

C O N T E N T S

(Audio begins at 11:19 a.m.)

PROCEEDINGS

THE COURT: Okay. Let's take up the Watts matter. Mr. Watts, come on up. Good morning.

Just to review, this is case 80-564. We're here on the defendant's motion for resentencing. This was up the other day but we passed it to today for the State to get ahold of some witnesses.

The issue before the Court right now, Mr. Watts was sentenced to a 75-year prison sentence in 1981, and he was a juvenile at the time. The question before the Court is whether Mr. Watts is entitled to resentencing under the Graham and Miller and it's progeny cases, or whether the fact that Mr. Watts is eligible for parole suffices for the United States Supreme Court's directives that he be entitled to meaningful review during the course of his lifetime when sentenced as a juvenile. So that's where we stand.

Mr. Barrett is here on behalf of the defendant. Mr. Lewis here on behalf of the State. Mr. Lewis, did you end up getting ahold of some witnesses?

MR. LEWIS: I did, Judge.

THE COURT: I see some people on the screen, so --

MR. LEWIS: I just want to make sure we can hear them. Can both of you talk to make sure we can hear you.

MR. BARRETT: That's a no.

MR. LEWIS: All right. So we're not hearing you guys. Is any of yours on mute?

THE COURT: Do you want to -- you can communicate with them over the phone or we can use my phone and we can see them on the video.

MR. BARRETT: Yeah, that could work.

THE COURT: You were sure that you knew how to use this video conference.

MR. LEWIS: Yeah, we tested it twice, Judge. Let me -- I'm going to exit and come back in. Ladies, just stay there in there, okay. Maybe it's just on our end.

THE COURT: He's intent on getting it to work. Is this the same program that would be used for the video for first appearances?

MR. LEWIS: It would. It works good all the time, Judge.

THE COURT: In Flagler County. Not so much in St. Johns, I guess. Putnam County uses something entirely different. I see Mr. Janesk over there from Putnam County. I didn't know they allowed you to go east of the St. Johns during business hours.

MR. LEWIS: Can I get one of you to speak again. Okay. I'll just -- I'm going to give one of you guys a call on the phone, okay, and you just stay on the video,

if that's okay.

THE COURT: You can use this phone if you want or you can use your cell phone. Whatever you --

MR. LEWIS: We can use the big phone. I like it better, Judge. If we can call (850) 717-3097.

THE COURT: I don't see anybody reaching for the phone.

MR. LEWIS: So, ma'am, can you mute yours. Can you mute the zoom for me. There you go. Can you hear us now on your phone.

MS. PALMER: Yes, I can.

MR. LEWIS: Okay. Great.

THE COURT: Do we have a notary on that end to administer the oath?

MR. LEWIS: I'm just going to have Madam Clerk swear them in. The case law allows Madam Clerk to swear in the witnesses over video.

THE COURT: I can do it as well.

MR. LEWIS: Yes, sir.

THE COURT: If you can raise your right hand, please. A slight delay in the video. Do you solemnly swear or affirm that any testimony you give today will be the truth, the whole truth and nothing but the truth so help you God?

MS. PALMER: I do.

THE COURT: Okay. Who are you going to call first, Mr. Lewis?

DIRECT EXAMINATION

BY MR. LEWIS:

Q. Ms. Palmer, how are you today, ma'am?

A. (Via telephone) Good. How are you?

Q. Good. Could you please introduce yourself to the judge, spell your last name.

A. Sure. My name is Michelle Palmer, P-A-L-M-E-R.

Q. Can you tell us where you work, ma'am, and what your job is there?

A. Yes. I work for the Florida Department of Corrections. I'm the Assistant Bureau Chief over (indiscernible).

Q. What is your responsibility in that division? What's the division's responsibilities, ma'am?

A. (Indiscernible) is our responsibility is to insure that we have lawfully (indiscernible) the inmate (indiscernible) based on sentencing orders and any relevant statutes.

Q. And let's move forward to Mr. Willie Watts. Have you had an opportunity to review his record and his file, ma'am?

A. Correct, yes.

Q. Can you basically tell us based on your review what

his anticipated release date is from the Department of Corrections?

A. Yes. So currently the tentative release is May 4, 2036. However, he is eligible to earn gain time rewards, so his release date will continue reduce monthly. I can give you a projected release date, which is not set in stone but it is a release date that if he earns a certain amount of gain time, I can tell you when he is likely to get out.

Q. Yes, ma'am. Before you tell us that, if you could just explain, so the farthest date he would get out is 2036, provided he behaves and doesn't misbehave in the prison system; is that correct?

A. Well, he has gain time that he has already earned, and that is subject to forfeiture, so the maximum amount of time that he could serve would be until February 2073.

Q. Right. But right now his release date is 2036.

A. Correct.

Q. If he's on his best behavior, he's an angel, he behaves like a priest, doesn't do anything wrong, then he should at the latest date get out in 2036, correct?

A. If he does not get any other DRs, correct.

Q. Yes, ma'am.

But the understanding is that his, I guess, initial release date or temporary release will actually move forward, meaning it will increase in time where he can get out sooner

if he continues to get all his gain time and accrues additional work time; is that correct?

A. Yes.

Q. Can you tell us what his potential or what your projected -- I know we won't hold you to it because I know there's changing variables, what would that be, ma'am?

A. If I estimate that he earned approximately 20 days a month, he could get out as earlier as July of 2029. He does have the potential to get out even earlier, but based on his earnings that he is currently receiving, he would get out around 2029.

Q. And I know this is probably -- I'm not sure if this is something, but I'm sure from the records you can tell, is based on his sentencing date, which would be in, I believe, in 1981, is he one of the inmates that is eligible for parole and parole review?

A. Well, for parole eligibility I'd have to refer that question to Laura Tully with the Commission.

Q. Yes, ma'am. Okay.

Those are all the questions I have, ma'am. Thank you.

THE COURT: Okay. Mr. Barrett, any questions?

MR. BARRETT: Briefly, Judge.

CROSS-EXAMINATION

BY MR. BARRETT:

Q. Good morning.
A. Good morning.
Q. Okay. The bottom line is, without this gain time, his release date you said is 2073?
A. The maximum that he could stay incarcerated would be February 2073.
Q. And when you say the maximum, that is if you don't do this gain time which could be flexible, correct?
A. Well, he has earned over 13,000 days of gain time, and that is only -- he'd really have to serve the max if he were to lose all of that. That would take something like escape or something major.
Q. But that could happen. So the bottom line is, if you take away the gain time, whether he's already earned it or can earn it in the future, the release date is 2073?
A. His maximum release date, yes.
Q. Okay. All right.
A. That is not your current tentative release date.
Q. Right. And again you use the word tentative because obviously it's not a fixed release date, correct?
A. It is a release that will keep reducing as long as he behaves and earns gain time.
Q. Well, as long as he meets whatever DOC standards is of his behavior. As long as he doesn't get DRs under your system, correct?

A. Yes.

Q. Okay. And again that's tentative, which means it's not fixed, it could go up, it could go down, correct?

A. Correct.

MR. BARRETT: All right. I don't have any other questions, Judge.

THE COURT: Any follow up, Mr. Lewis?

MR. LEWIS: No follow up, Judge.

THE COURT: Thank you, Ms. Palmer. We appreciate you cooperating with us this morning.

THE WITNESS: Yes, sir. Thank you.

THE COURT: Who is the next witness, Mr. Lewis?

MR. LEWIS: Ms. Tully, I'm going to give you a call on the phone, if that's okay?

THE COURT: She can't hear you.

MR. LEWIS: Just give me a thumbs up if you --

THE COURT: Take that as a no.

MR. LEWIS: Ms. Tully, I'm going to call you on your phone, is that cool? Okay. I'll give you a call in a minute.

THE COURT: All right. So it's a different number, obviously?

MR. LEWIS: Yes. Yes, sir.

THE COURT: All right.

MR. LEWIS: It's (850) 228-4189.

MR. BARRETT: I can let her know she's released or are you keeping her for some reason?

MR. LEWIS: I'll let her know. Ms. Palmer, if you want you can log out or you can stay in and listen if you want to. It's your choice.

MS. TULLY: Do you want this on a speakerphone?

MR. LEWIS: Yes, ma'am, if you don't mind. If that's okay.

THE COURT: Is this Ms. Tully?

MS. TULLY: Yes.

THE COURT: Okay. I'm going to have you raise your right hand, please. Do you solemnly swear or affirm that any testimony you give today will be the truth, the whole truth, nothing but the truth so help you God?

MS. TULLY: Yes, I do.

THE COURT: Okay. Mr. Lewis, you can proceed.

DIRECT EXAMINATION

BY MR. LEWIS:

Q. Good morning, ma'am. How are you today? Do you mind, ma'am, can you mute your zoom for us. Did you see there's a little mute button on there? Oh, there you go.

THE COURT: It's a great system. It's like a 1950 Sci-fi movie.

MR. LEWIS: Ma'am, can you hear me okay?

THE WITNESS: I can now.

THE COURT: There we go.

MR. LEWIS: Excellent. Okay. Thank you.

BY MR. LEWIS:

Q. Ma'am, can you introduce yourself to the judge, spell your last name, please.

A. Yes. Laura Tully, and I work for the Florida Commission on offender reviews, that's formally the Florida Parole Commission. I'm the director of the Field Services for the Commission.

Q. How long have you worked there, ma'am?

A. I've been here a little over 18 years.

Q. What are your responsibilities with the offender review?

A. I directly supervise the administrators who are over are field officers, and their staff are responsible for conducting parole interviews, reputation hearings and clemency investigations.

Q. Have you had an opportunity to review the file for Willie Watts?

A. Yes, I have.

Q. And have you previously -- I guess, before this hearing, have you testified previously in another hearing on this yet or no?

A. Yes, I have.

Q. Okay. So if we can just talk a little bit about, do

you know what year Mr. Watts was sentenced in, ma'am?

A. I'm sorry?

Q. Do you know what -- was Mr. Watts sentenced in 1981?

A. Yes.

Q. Okay. And when he was sentenced in 1981, was his crimes, were they eligible for parole review?

A. Yes, they were.

Q. Okay. So do you know when his initial parole review hearing was, just the first one?

A. Yes. The Commission first reviewed his case on April 21st of 1982 to establish his presumptive parole release date.

Q. Can you explain to the Court what PPRD -- as you guys commonly refer to it, what that is, ma'am?

A. Yes. The Commission is required to set a presumptive parole release date on inmates that are eligible for parole consideration. PPRD is established at what we refer to as their initial interview, meaning the first time the Commission reviews their case. After that, they receive subsequent interviews periodically for the Commission to review the status of their case, and at that time their PPRD can be changed, it can be reduced, it could be extended or it can remain the same.

Q. Now, when they do a parole review or they have a hearing on that, what do they generally review or what are

they looking for when they do the parole review in generalities? We don't need any specifics, but what are they generally looking for in reference to that, ma'am?

A. Well, after their PPRD is established and the Commission is reviewing their case, after that has happened there, they're being seeing what happened since the last time they reviewed them. If there's any new information to be considered such as program participation or if the inmate has received any disciplinary reports.

Q. Yes, ma'am.

Let me ask you, subsequent to his initial parole review, has he had any other parole review since then, and about how many, if you can estimate, ma'am?

A. Since 1982, the Commission has reviewed his case over 20 times. I think around 22 times, I believe.

Q. And he previously -- was it reviewed in maybe 2014, 2015?

A. Yeah. The last time the Commission reviewed his case was March 25th of 2015.

Q. Does he have another review date scheduled in the next several years?

A. He does, in December of 2021.

Q. Now, can you tell us what his PPRD date is as we sit here right now, ma'am?

A. Yes. Currently his PPRD is January the 18th of

2064.

Q. Now, that PPRD date, though, that was based on his original sentence of 99 years, concurrent to 99 years with a -- I'm sorry, consecutive, and then the 75 years consecutive, his original sentence; is that correct, before he got resentenced?

A. When the Commission established his PPRD, it was based on -- it's just not on their -- their current sentence, but they also take into consideration when they arrive at that date their prior criminal history, if he had multiple life sentences, which he did in this case, and then also, you know, aggravating factors dealing with the circumstances of the case. And we also take into consideration, you know, his behavior, you know, disciplinary reports.

Q. Yes, ma'am. I guess what I was trying to get at it is, when he had his review in 2014 -- I'm sorry, 15, and they set his PPRD date, that was prior to his resentencing in Putnam County in 2018; is that correct?

A. Yes, it was. They have not reviewed his case since he's been resentenced.

Q. So in your experience, and I'm not asking you to say for sure, but based on your experience, what you've seen over that time, if his sentence has changed from a 99 year consecutive sentences in Putnam County, to 40 year concurrent sentences in Putnam County, do you believe that will affect

his PPRD date with the Commission?

A. They will consider that as new information. They could. I can't speak for what the commissioners will do. It will be presented to them as new information, and they could make a change if they so desire based on that.

Q. Yes, ma'am. Thank you. I don't have any other questions.

THE COURT: Mr. Barrett?

MR. BARRETT: Thank you, Judge.

CROSS-EXAMINATION

BY MR. BARRETT:

Q. Good morning, ma'am.

A. Good morning.

Q. Okay. If I understand you correctly, you're saying that at his next review the Commission can essentially ignore the fact that he's already been sentenced on the other two cases and that sentence was changed, correct?

A. Not ignore. They can consider it and --

Q. Well, if you're saying they can --

THE COURT: Let her finish.

MR. BARRETT: I'm sorry. I'm sorry.

BY MR. BARRETT:

Q. If you're saying they can consider it, the implications are that they can also choose not to consider it, correct?

A. They will consider it, but whether or not they make a change to his presumptive parole release date, yeah, I can't say if they will or they won't, but that information will be presented to them.

Q. Is there a SOP, a standard operation for these commissioners when they do the parole hearings? Do you understand what I'm asking?

A. I'm not sure what you mean as far as how they review a case?

Q. Right. Is there something in writing that establishes for each of these commissioner that these are the things you must consider?

A. Well, it's in our rules that they consider any new information between the last time they reviewed the case and when they are reviewing it now or when they would in 2021.

Q. I appreciate your answer but that's not what I'm asking you. Is there actually something in writing that says these are the things you need to consider?

A. In the rules it will say -- but I don't have them in front of me, but they'll consider any new information and it gives examples such as, you know, information that they didn't have when they reviewed his case back in 2015.

Q. Are you aware of the -- what we refer to hear in the system as the Miller case and the Graham case, are you aware of those two cases related to juveniles?

A. I'm aware of them, yes, sir.

Q. Okay. Is that something that the patrol board has incorporated in the way they proceed with these hearings?

A. For Miller, Miller cases?

Q. Now, has the patrol board made any changes that would be consistent with the changes in the case law?

A. Oh, okay, I'm sorry. No. Not that I'm aware of, no.

Q. Okay. Has the patrol board made any changes that would be consistent with the Florida Statutes, in particular for the record, 921.1402 that lists the certain things that you should consider in determining a sentence for juveniles? Have they made any changes?

A. No, not that I'm aware of.

Q. So essentially the patrol board has been operating presently the way they probably operated when they were actually considered the patrol board, correct?

A. I would say so.

Q. Okay. And this release date that you gave us of January the 18th, 2064 --

A. Yes.

Q. -- there's no --

A. That's the current presumptive parole release, yes.

Q. Right. There is no way you're telling -- you're telling whether or not that date would even change, correct?

A. I'm sorry, I couldn't hear.
Q. There's no way you can tell us today that that date would change, correct?
A. Yeah, I can't say if it would change or not.
Q. And it is possible that they could also go up?
A. It could go up but that would only be if he received any disciplinary reports.
Q. And since --
A. Prior --
Q. I'm sorry.
A. Prior to that (indiscernible) date.
Q. Okay. And if I heard correctly, you are the director of field services?
A. Yes, sir.
Q. What does that mean?
A. I supervise the administrators directly who are over our field staff. Our investigators, basically. And those investigators are the ones responsible for conducting the parole interview with inmates, all revocation hearings, and then they're also responsible for conducting clemency investigations.
Q. So essentially you only deal with the administrators, right? You don't deal with the actual individuals who do the parole hearings, correct?
A. You mean with the commissioners?

Q. Right.

A. I do interact with the commissioners.

Q. Well, you really just -- well, let me -- have you actually pulled any notes from any of the parole hearings of Mr. Watts?

A. Yes, I have. Prior to my position as director of field services, I was an analyst for two different commissioners, so I have personally reviewed his case while working for those commissioners, and as an analyst you work with the commissioners, you gather information for them and make recommendations, or anything else they ask you to find out about the case.

Q. So you've actually pulled the parole notes for Mr. Watts' parole hearings?

A. Yes, I have. And when I previously testified I have testified as to every Commission action that the Commission had taken since his first interview.

Q. And would that notes include the things that they actually considered in determining whether or not he should be -- his release date should be reduced?

A. Well, the Commission action form that we use had the recommendation from the investigator and if they had, you know, program participation, disciplinary reports, et cetera, that's on the form itself. And then the Commission decides if they are going to agree or disagree with the recommendation

made by the investigator. But prior to the Commission voting a case, they review the inmate's file and records.

MR. BARRETT: I don't have any other questions, Judge.

THE COURT: Okay. Let me ask you some questions, Ms. Tully, real quick so I can understand this. When somebody comes up for parole review, there's an investigator that goes out and meets with the inmate prior to the review?

THE WITNESS: Yes.

THE COURT: Okay.

THE WITNESS: That's correct.

THE COURT: And then the inmate does a -- or, excuse me, the investigator does a report to the Commission?

THE WITNESS: Yes, and that investigator writes up a report recommendation and then sends it to Tallahassee, and when it's time for the case to be what we call docketed, you know, those reports are provided to commissioners for their review.

THE COURT: And does the inmate actually go to the Commission meeting or is it just the investigator's reports that the Commission has before it?

THE WITNESS: No, the inmate does not attend the hearing, but the hearing can be attended by inmate's (indiscernible) and also by opposition and victims or the

State Attorney's Office and law enforcement.

THE COURT: Okay. You said you were an analyst before. Is that the same as an investigator, would you actually be the one that goes out and talks to the inmates?

THE WITNESS: No. As an analysis, I work for a commissioner, and I would get the recommendation and reports and review them and write like a summary for the commissioners what the inmate has done since their last review. And depending on the commissioner, I mean, sometimes a commissioner, particular commissioner, will review a case, you know, several times and they'll have previous notes on the case. That's what I did as an analysis.

THE COURT: So you're familiar, though, with the reports and you know what's contained in the reports and what the investigators do?

THE WITNESS: Yes.

THE COURT: All right. Is something that the investigators look at or can look at is whether the offender has demonstrated maturity and rehabilitation?

THE WITNESS: They can. They get input from the inmate's classification officer. And, you know, that's one of the ways. And then, you know, just based seeing what they've done, you know, since the last review. What

their behavior has been. Have they taken initiative to get involved in programs. Have they remained disciplinary free.

THE COURT: Okay.

THE WITNESS: Some of the things they look at.

THE COURT: All right. Do they also look at whether the inmate still poses a risk to society?

THE WITNESS: That's up to the commissioners to determine that.

THE COURT: So the commissioners look at that based upon the report?

THE WITNESS: Yes.

THE COURT: Okay. Do they, meaning the investigators or the commissioners, look at whether the inmate has shown remorse for their actions?

THE WITNESS: That's one of the things they take into consideration, yes.

THE COURT: Okay. Do they take into consideration the offender's age at the time of the incident, their age at the time of parole review and whether there has been development, maturity, psychological development, et cetera, between the time of the initial incarceration until the time they're reviewed?

THE WITNESS: Yes. That's one of the things they consider.

THE COURT: Okay. Is one of the things they consider is whether they've taken courses, received a high school diploma, college education, work skills, things like that?

THE WITNESS: That, and they also consider the circumstance of the offenses.

THE COURT: That was going to be one of my as well.

THE WITNESS: What the inmate is incarcerated for.

THE COURT: Okay. That was going to be one of my questions as well.

Do they also consider the health of the inmate?

THE WITNESS: They do.

THE COURT: Okay. All right. I don't have anything further.

Do you want to follow up on that, Mr. Lewis?

MR. LEWIS: I don't have any follow up, Judge.

MR. BARRETT: I do have a follow up, Judge.

THE COURT: Go ahead, Mr. Barrett.

RECROSS-EXAMINATION

BY MR. BARRETT:

Q. Do you actually have a doctor, a psychologist, psychiatrist do some kind of a risk assessment before they decide?

A. Do the commissioners?

Q. Yeah, before any decision is made, either before the

hearing or when investigated, does the Commission have a psychologist or a psychiatrist or mental help individual do a risk assessment?

A. Not now, no, but prior to. I think around 2008 and before that the Commission could request a mental health status report from the Department of Corrections, but they quit doing that, so we no longer have a mental health evaluation.

Q. So if I understand you correctly, there is no mental health assessment, nor risk assessment or evaluation of the juvenile offender as to rehabilitation that's done as part of the process, correct?

A. I'm sorry, could you repeat that?

Q. Okay. If I understand what you're saying correctly, with the changes, and you gave us a year when they stopped doing that, if I understand you correctly, there are no mental health assessment that's used, correct?

A. That's correct, sir, no, sir.

Q. There's no risk assessment that's also used, correct?

A. No.

Q. There's no evaluation of the juvenile offender as to rehabilitation that's done either, correct?

A. That's correct.

MR. BARRETT: All right. I don't have any other

yes, Judge.

THE WITNESS: The commissioners can conduct their own risk assessment individually.

BY MR. BARRETT:

Q. Are they mental health experts, the commissioners?

A. Not that I'm aware of.

MR. BARRETT: Okay. I don't have any other questions.

THE COURT: Anything further, Mr. Lewis?

MR. LEWIS: No further questions, Judge.

THE COURT: Thank you, Ms. Tully. We appreciate you talking with us this morning.

THE WITNESS: You're welcome.

THE COURT: Have a good day.

THE WITNESS: Thank you. You too.

MR. LEWIS: Thank you, ma'am.

THE COURT: Any further evidence or witnesses by the State?

MR. LEWIS: No, sir.

THE COURT: Okay. Any witnesses by the Defense to the legal issue?

MR. BARRETT: No, Judge.

THE COURT: Okay. I'll entertain previous argument from the parties with regards to whether the defendant is entitled to resentencing or whether the Florida parole

system is adequate, meaningful review for purposes of juvenile that was sentenced to a lengthy prison sentence.

Mr. Lewis.

MR. LEWIS: Yes, sir. Judge, obviously under Franklin that just came out in November and also under Honor, which came out I guess January 4, 2019, and also the subsequent case, Michel, that came out I believe it was over the summer last year, 2018, all of those cases stand for the proposition that the parole review process is the equivalent of the review that would be necessitated by Graham and Miller from the Florida -- from the United States Supreme Court, which subsequently the Florida Supreme Court took into consideration.

Judge, it's abundantly clear in this case, if you look at the Franklin case, he wasn't going to get out of custody until 2000 and -- I think 2300 somewhere, along those lines, and they found that he had parole review and that was sufficient and it would be acceptable and he would have an opportunity to get out during his lifetime.

Well, what's interesting about Mr. Watts is his release date is 2036, if he continues to behave himself, and I know Mr. Barrett brings out that it's all if he behaves himself, but it's on him for that behavior issue. If he behaves himself, he may get out by 2029. His release date will be way before his presumptive parole

release date even would be, so there's a possibility in the next eight to 10 years he would get out.

But the mere fact of it is, Judge, the process we have right now in place, the Florida Supreme Court has determined that that's appropriate. That's the process they're looking for, and there's nothing different about Mr. Watts's process then there is about Mr. Franklin's. In fact, we went to such great length to talk about it, and his date for release is going to be soon, Judge. So we'd ask that the Court deny resentencing on him.

THE COURT: Okay. Mr. Barrett, how do we get passed these new decisions that came out from the Florida Supreme Court and very recently from the 5th DCA that seemed to support what the State is arguing?

MR. BARRETT: I'm not sure how the Court can -- just as an officer of the Court --

THE COURT: I understand you're trying to make your record.

MR. BARRETT: But my argument, consistent with the motion that was filed, is that it's not consistent with Miller and Graham. I understand this is Florida Supreme Court, and this Court is bound by their decision. And, of course, since the cases that brought us here in the first place are U.S. Supreme Court cases, our argument has to go to that, and to argue that essentially the Florida Supreme

Court is wrong. I understand they've overruled themselves, but to say that it's not consistent with what the courts anticipated in Graham and Miller, and that was the reason for the questions I asked also the questions I saw the Court ask of the witnesses in terms of what is -- what is done in terms of consideration for release.

And so I understand the Court's hands are bound by Florida Supreme Court decision and so to preserve the issue I filed that memorandum.

THE COURT: We'll stop court so she can deal with her cell phone. Thank you, Deputy Harris.

When Graham and Miller first came out several years ago by the United States Supreme Court, there was an assumption that those who were eligible for parole, that that would be sufficient review. And then some of the DCAs started coming out saying that it was not, which, frankly, I thought was crazy at the time and I guess my thoughts that it was crazy, the Supreme Court somehow agreed with me, although they didn't ask my opinion on it.

The Florida Supreme Court subsequently came out with the Michel opinion and the Franklin opinions in the '18, 2018 and 2019. Michel dealt with a homicide case. Someone was sentenced to life with eligibility for parole. And then Franklin was a very, very lengthy prison sentence. I think it was a thousand years for a non-

homicide offense or offenses. And in both cases the Florida Supreme Court said that parole review is sufficient to satisfy the constitutional mandates in Graham and Miller.

And then the Florida 5th DCA came out with an opinion just a couple of weeks ago, on July -- or January 4 in the Honor case, that basically stated the same thing that the Florida Supreme Court stated in the Michel case, that parole is sufficient.

And just for record purposes, because I assume this will be typed up at some time, at some point, the Franklin decision is Franklin v. State. I don't have a So. 3d citation to it because it's such new case, decided by the Florida Supreme Court on November eight of 2018.

I do have a West Law citation of 2018 West Law 5839174, and the Supreme Court docket number is SC14-1442. The Michel decision, that's M-I-C-H-E-L, State v. Michel does have a Surgeon Reporter citation. It is 257 So. 3d, page 3 citation, decided by the Florida Supreme Court on July 12 of 2018.

Honor, which is so new, just is 14 days old, as a matter of fact, was decided by the 5th DCA on January 4. That has a 5th DCA citation or case number of 5D 18-3304.

So based upon that finding precedent, I am going to deny the defendant's motion for resentencing. It is

abundantly clear from the record that the defendant is eligible for parole and will have review by the Florida Parole Commission. He's already had review 22 times, apparently, but will have another review in 2021. And I wish him the best of luck with the Florida Parole Commission. So I will deny resentencing in this matter.

THE CLERK: Returned to DOC?

THE COURT: He shall be returned to DOC, correct.

MR. LEWIS: May I be excused, sir?

THE COURT: Yes, thank you.

MR. LEWIS: Thank you, Judge. Have a good day.

THE COURT: You too.

MR. LEWIS: And the program does work most times. It was working all yesterday and the day before when I tested it with them.

THE COURT: It always doesn't work when you want it to work.

MR. LEWIS: Yes, sir.

(Audio ends at 11:56 a.m.)

REPORTER'S CERTIFICATE

STATE OF FLORIDA)
COUNTY OF VOLUSIA)

I, SUSAN GARDNER, Court Reporter, do hereby certify that the foregoing pages constitute a true and complete transcript of the proceedings transcribed stenographically via digital recording by me to the best of my ability in the aforementioned cause.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

Dated this 10th day of February 2019.

/s/ SUSAN GARDNER, COURT REPORTER
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Telephone: (386)255-2150

/s/ PAULITA KUNDID
Reviewed and Certified by:
Paulita E. Kundid, RPR, FAPR, FPR
Registered Professional Reporter

EXHIBIT K

FLORIDA COMMISSION ON OFFENDER REVIEW

ORDER ON SUBSEQUENT INTERVIEW

This case came before the Florida Commission on Offender Review on **03/25/2015** for consideration of the **subsequent** interview for **Watts, Willie**, DC # **077538** held at **Tomoka C.I.** The current presumptive parole release date is: **1/18/2064**.

The Commission Investigator recommended **a reduction** of the presumptive parole release date.

Having considered the Department of Corrections' and the Florida Commission on Offender Review's records, the investigator's recommendation and review, as well as statements made in support or in opposition, the Commission hereby:

DOES NOT AFFIRM the investigator's recommendation, making **no change** to the presumptive parole release date. The Presumptive Parole Release date remains at: **1/18/2064**.

The **subsequent** interview is set for **December, 2021** based on: **The offense involved the use of deadly weapons; to-wit: a firearm and a knife; physical and psychological trauma to the victim, and any release would pose an unreasonable risk to others**.

Certified by K Duggar, *Commission Clerk, this 27th day of March, 2015.*

Copy to visitors notified (8)

MH