

Legislative Analysis



LIFE WITHOUT PAROLE FOR JUVENILE OFFENDERS: REVISE

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House Bill 4808 (Substitute H-1)
Sponsor: Rep. Margaret E. O'Brien

Senate Bill 318 (Substitute S-1)
Senate Bill 319 (Substitute H-1)
Sponsor: Sen. Rick Jones

House Committee: Criminal Justice
Senate Committee: Judiciary (SB 318-319)

Complete to 12-10-13

A SUMMARY OF HOUSE BILL 4808 AND SENATE BILLS 318 AND 319 AS REPORTED BY HOUSE COMMITTEE 12-4-13

BRIEF SUMMARY: Briefly, the package would do the following:

- For crimes requiring a sentence of life without parole, eliminate the mandatory application of life without parole for a defendant who committed the crime when less than 18 years of age.
- Apply the mandatory sentence of life without parole for rape (when meeting certain conditions) to a defendant who was 18 years of age or older, rather than 17, at the time the crime was committed.
- Apply the elimination of mandatory life without parole *prospectively only* unless the state or U.S. Supreme court rules that *Miller v Alabama* applies retroactively.
- For *prospective* cases, establish a process by which a prosecutor could file a court motion seeking life imprisonment without parole for defendants convicted of those crimes committed before the age of 18. If life without parole is not imposed, require a term of imprisonment with a maximum of at least 60 years and a minimum of at least 25 years but less than 40 years.
- For *retroactive* cases, establish a procedure by which a prosecutor could file a court motion seeking life imprisonment without parole for defendants convicted of those crimes committed before the age of 18. If life without parole is not imposed, require a term of imprisonment with a maximum of at least 60 years and a minimum term of 25 years.
- In all cases, require a court to conduct a *Miller* hearing.
- In all cases, preserve victims' rights to appear before a court and make an oral impact statement at any sentencing or resentencing of the defendant.

CONTENT OF THE BILLS:

Briefly speaking, the U.S. Supreme Court ruled in *Miller v Alabama* in 2012 that sentencing offenders to life imprisonment without the possibility of parole for crimes committed when they were under the age of 18 is a violation of the Eighth Amendment (cruel and unusual punishment) and therefore unconstitutional. However, the court did not specifically address the issue of retroactivity. As a package, the bills establish a procedure going forward (meaning those cases still in the process of adjudication as of the *Miller* ruling or occurring after) by which a prosecuting attorney may seek a life sentence without parole for offenders who were 17 or younger at the time the crime was committed. If either the Michigan Supreme Court or the U.S. Supreme Court rules at a future time that *Miller* must be applied retroactively (meaning cases that had been decided and for which all appeals had been exhausted before the *Miller* decision), Senate Bill 319 would provide a process by which those sentenced to life imprisonment for crimes committed when they were 17 or younger would be resentenced.

House Bill 4808

The bill would amend the Michigan Penal Code (MCL 750.16 et al.) to specify that various crimes for which the maximum term of imprisonment is life without the possibility of parole (generally speaking, crimes involving the death of another person) would be subject to the provisions of Sections 32 and 33 of Chapter IX of the Code of Criminal Procedure (which would be added by Senate Bill 319 and House Bill 4806). Therefore, in conjunction with the proposed amendments to the Code of Criminal Procedure, the bill would eliminate the *mandatory* application of life without parole for defendants who were under 18 years of age at the time the offense had been committed.

In addition, currently a conviction of first degree criminal sexual conduct (CSC) committed by a person 17 years of age or older against an individual less than 13 years of age is punishable by a mandatory sentence of life imprisonment without the possibility of parole if the person had been previously convicted of 2nd, 3rd, or 4th degree CSC or assault with intent to commit 1st-3rd degree CSC. The bill would instead apply this provision to a defendant who is 18 years of age or older at the time of the violation.

The bill is tie-barred to House Bill 4806 and Senate Bill 319, meaning that it could not take effect unless both of those bills were also enacted.

(House Bill 4806, which would also add a proposed Section 33, would apply retroactively to prisoners under a mandatory sentence of life without parole for crimes committed when they were less than 18 years of age and who had exhausted the appeals process. The bill would provide a framework for which a prosecutor could motion for resentencing to life without parole and the prisoner could motion for a sentence of life with the possibility of parole or for any term of years.)

Senate Bill 319

Senate Bill 319 adds Sections 32 and 33 to the Code of Criminal Procedure. Section 32 applies *prospectively*, that is, to a criminal defendant who was less than 18 years of age at the time the defendant committed certain crimes if:

- The conviction occurred on or after the bill's effective date; or,
- The conviction was before the bill's effective date and either the case is still pending in the trial court or the applicable time periods for direct appellate review by state or federal courts has not expired or on June 25, 2012, (the date of the U.S. Supreme Court decision in *Miller v Alabama*, see **Background Information**), the case was pending in the trial court or the applicable time periods for direct appellate review by state or federal courts had not expired.

Under the bill, the prosecuting attorney may file a motion to sentence a juvenile defendant to imprisonment for life without the possibility of parole if the juvenile is or was convicted of first-degree murder, any violation of law involving the death of another person for which the parole eligibility is expressly denied under state law, or any of the following violations:

- Adulterating, misbranding, removing, or substituting a drug or device, or selling or manufacturing for sale an adulterated or misbranded drug, with intent to kill or cause serious impairment of two or more people.
- Knowingly or recklessly mixing a drug or medicine with an ingredient, or selling or manufacturing for sale such a drug, with intent to kill or cause serious impairment of two or more people.
- Willfully poisoning food, drink, or medicine.
- An act of terrorism.
- A violation of Chapter XXXIII of the Michigan Penal Code (Explosives and Bombs and Harmful Devices).

For a defendant convicted on or after the bill's effective date of any of the above offenses, a motion seeking life without the possibility of parole would have to be filed within 21 days after the conviction. For a defendant convicted before the bill's effective date and for whom the time periods for direct appellate review have not yet expired, the motion would have to be filed by the prosecutor within 90 days after the bill's effective date. The motion would have to specify the grounds on which the court is being requested to impose the sentence of life without parole.

If the prosecutor filed such a motion, the defendant would have to file a response within 14 days after receiving notice of the motion. In addition, the court would have to conduct a hearing on the motion at which MRE 1101 applies (Michigan Rules of Evidence). At the hearing, the trial court must consider the factors listed in *Miller v Alabama* and may consider any other criteria relevant to its decision, including the individual's record while incarcerated.

At the above hearing, the court must specify on the record the aggravating and mitigating circumstances it considered and its reasons supporting the sentence imposed. The court could consider evidence presented at trial together with any evidence presented at the sentencing hearing.

If the court decides not to sentence the individual to life imprisonment without parole, or if the prosecuting attorney does not file a motion seeking such a sentence within the applicable time periods, the court must sentence the individual to a term of imprisonment

for which the maximum term is at least 60 years and the minimum term is not less than 25 years or more than 40 years. An individual sentenced under Section 32 would be given credit for time served, but, unless sentenced to a term of years, would not receive any good time credits, special good time credits, disciplinary credits, or any other credits that reduce the defendant's minimum or maximum sentence.

Further, each victim would be afforded the right under Section 15 of the William Van Regenmorter Crime Victim's Rights Act to appear before the court and make an oral impact statement at any sentencing or resentencing of the defendant under the bill.

Section 33 – Retroactive application

Section 33 specifies that the provisions of Section 32, described above, do not apply to any case that is final for purposes of appeal on or before June 24, 2012. A case is final for purposes of appeal under Section 33 if any of the following apply:

- The time for filing an appeal in the state Court of Appeals has expired.
- The application for leave to appeal is filed in the state Supreme Court and is denied or a timely filed motion for rehearing is denied.
- If the state Supreme Court has granted leave to appeal, after the court renders its decision or after a timely filed motion for rehearing is denied.

If the state Supreme Court or the U.S. Supreme Court finds that the *Miller* decision applies retroactively to defendants who were under the age of 18 at the time of their crimes and that the decision is final for appellate purposes, including the time for filing a petition for certiorari in the U.S. Supreme Court regarding that decision, then – for a crime described in Section 32 that carries a life sentence without parole eligibility – the sentencing judge or his or her successor would have to impose a sentence of life imprisonment without parole eligibility or a term of years as described in Section 32 (a maximum term of 60 years and a minimum term of at least 25 years but not more than 40 years).

Within 30 days after the state or U.S. Supreme Court's decision on the issue of retroactivity, the prosecuting attorney would have to provide a list of names to the chief circuit judge of that county of all defendants for which that court has jurisdiction and who must be resentenced under that decision.

Within 90 days of the court decision, the prosecuting attorney would have to file motions for resentencing in all cases in which he or she would be requesting the court to impose a life sentence without parole. A *Miller* hearing would have to be conducted.

If the prosecuting attorney did not file a motion to resentence, the court would have to sentence the individual to a term of imprisonment for which the maximum term would be 60 years and the minimum term would be 25 years. Victims would retain the right to make an oral impact statement at any resentencing of the defendant per the William Van Regenmorter Crime Victim's Rights Act.

The bill would establish a priority regarding the order of defendants to be resentenced. Defendants who have served 20 or more years would have their cases held first, followed by cases in which the prosecuting attorney has filed a motion requesting a sentence of life without parole. Last would be the remaining cases – those cases in which the prosecutor did not seek life without parole.

A defendant resentenced under these provisions must be given credit for time served, but not for any good time credits, special good time credits, disciplinary credits, or any other credits that reduce the defendant's minimum or maximum sentence.

The bill is tie-barred to Senate Bill 318 and House Bill 4808. A tie-bar means that a bill cannot become law unless a bill it is tie-barred to is also enacted into law.

Senate Bill 318

The bill would amend the Corrections Code (MCL 791.234) to exclude a prisoner from a provision that denies eligibility for parole for certain violations, if the prisoner were under 18 years of age at the time of the violation.

Currently, a prisoner sentenced to life imprisonment for first-degree murder or another listed offense is not eligible for parole and is subject to Section 44 of the Code. (That section outlines the procedures for parole board interviews of prisoners sentenced to life imprisonment without parole, subject to the constitutional authority of the governor to grant reprieves, commutations, and pardons.) Under the bill, that provision would apply except as provided in Section 32 of Chapter IX of the Code (which would be added by Senate Bill 319). The bill is tie-barred to Senate Bill 319.

BACKGROUND INFORMATION:

On June 25, 2012, the U.S. Supreme Court ruled in *Miller v Alabama* that sentencing offenders to life imprisonment without the possibility of parole for crimes committed when they were juveniles (less than 18 years of age) is a violation of the Eighth Amendment (cruel and unusual punishment) and therefore unconstitutional. However, the court did not specifically address the issue of retroactivity. Therefore, there has been disagreement over whether *Miller* pertains to juvenile lifers sentenced before *Miller*, or only to offenders sentenced on or after the *Miller* decision. The Michigan Court of Appeals ruled in *People v Carp*, 298 Mich App 472 (Nov. 15, 2012) that *Miller* is not retroactive and that it does not apply to anyone who had completed a direct appeal before the *Miller* decision.

In September, in *Hill v Snyder* (a federal civil rights case), a U.S. district court judge ruled that a Michigan law which bars the Michigan Parole Board from considering juveniles for parole if sentenced to life for first-degree murder is unconstitutional and that *Miller* should be applied retroactively. That same judge issued an Order on November 26, 2013, requiring the state to, by the end of the year, create an administrative structure for processing and determining the appropriateness of paroles for prisoners sentenced to life without parole for crimes committed as juveniles (17 and younger); give notice to all such prisoners who have completed at least 10 years of imprisonment that their eligibility for parole must be considered in a meaningful and realistic manner; prohibit a parole

board from issuing a "no interest" order (which effectively denies parole); prohibit a sentencing or successor judge from vetoing a parole; and prohibit a juvenile lifer from being deprived of any educational or training programs otherwise available to the general prison population. By January 31, 2014, the state must submit to the court a program and process that complies with the specifics of the Order. Failure to comply with the Order could result in the court appointing a Special Master to make available to juvenile lifers the process the Order envisions.

FISCAL IMPACT:

A fiscal analysis is in process.

POSITIONS:

A representative of the Prosecuting Attorneys Association of Michigan testified in support of SB 318 and 319 and indicated support for HB 4806. (12-4-13)

The Department of Attorney General indicated support for the bills. (12-4-13)

The Michigan Department of Corrections indicated a neutral position on the bills. (12-4-13)

The ACLU of Michigan indicated opposition to Senate Bills 318 and 319. (12-4-13)

The Criminal Defense Attorneys of Michigan indicated opposition to Senate Bills 318 and 319. (12-4-13)

The Michigan Council on Crime and Delinquency indicated opposition to Senate Bills 318 and 319. (12-4-13)

Michigan Citizens for Prison Reform indicated opposition to Senate Bills 318 and 319. (12-4-13)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.