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BILL ANALYSIS

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Senate Bill 319 (as enacted)
House Bill 4808 (as enacted)
Sponsor: Senator Rick Jones (S.B. 319)
Representative Margaret E. O'Brien (H.B. 4808)
Senate Committee: Judiciary
House Committee: Criminal Justice

PUBLIC ACT 22 of 2014
PUBLIC ACT 23 of 2014

Date Completed: 3-10-14

CONTENT

Senate Bill 319 amended Chapter IX (Judgment and Sentence) of the Code of Criminal Procedure to do the following:

- Establish a procedure for a prosecuting attorney to request a sentence of imprisonment for life without possibility of parole for defendants who were under 18 years of age at the time of committing an offense that otherwise requires a sentence of life without parole.
- Require a minimum sentence of 25 to 40 years, and a maximum sentence of at least 60 years, if the prosecutor does not file a motion for a sentence of life without parole, or if the court decides not to impose a sentence of life without parole.
- Specify that the sentencing procedures described above do not apply to any case that was final on or before June 24, 2012, unless the Michigan Supreme Court or the U.S. Supreme Court finds that the 2012 decision in *Miller v Alabama* (132 S Ct 2455) applies retroactively.
- Establish a procedure for resentencing certain individuals if either the Michigan Supreme Court or the U.S. Supreme Court finds that *Miller* applies retroactively.

(June 25, 2012, is the date of the U.S. Supreme Court decision in *Miller v Alabama*, discussed in BACKGROUND, below.)

House Bill 4808 amended the Michigan Penal Code to specify that various statutory provisions requiring a sentence of imprisonment for life without possibility of parole apply except as provided in Chapter IX of the Code of Criminal Procedure.

The bill also increased from 17 years to 18 the minimum age of an individual who must be sentenced to life imprisonment without parole for first-degree criminal sexual conduct (CSC) under certain circumstances.

The bills took effect on March 5, 2014.

Senate Bill 319

The bill added Sections 25 and 25a to Chapter IX of the Code of Criminal Procedure, to establish sentencing procedures for a person who was under 18 at the time he or she

committed a violation that otherwise is punishable by a mandatory sentence of life in prison without possibility of parole.

Prospective Application

Section 25 authorizes a prosecuting attorney to file a motion to sentence a defendant to imprisonment for life without the possibility of parole if the individual is or was convicted of an offense described below and was under 18 years old at the time he or she committed the offense.

Section 25 applies to a defendant 1) who is convicted on or after the bill's effective date, or 2) who was convicted before that date and either a) the case is still pending in the trial court or the applicable time for direct appellate review has not expired, or b) on June 25, 2012, the case was pending in the trial court or the applicable time for direct appellate review had not expired.

The prosecuting attorney may file a motion under Section 25 if the defendant was convicted of first-degree murder or of any of the following that resulted in death:

- 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.
- Manufacturing, delivering, or possessing a harmful biological or chemical substance or device, a harmful radioactive material or device, or a harmful electronic or electromagnetic device.
- Willfully poisoning food, drink, or medicine.
- An act of terrorism.
- A violation of Chapter 33 (Explosives, Bombs, and Harmful Devices) of the Michigan Penal Code.
- Any other violation of law involving the death of another person for which parole eligibility is expressly denied under State law.

If a prosecuting attorney intends to seek a sentence of imprisonment for life without parole under Section 25 for a conviction occurring on or after the bill's effective date, he or she must file the motion within 21 days after the defendant is convicted. If the prosecutor intends to seek a sentence of life without parole under Section 25 for a conviction that occurred before the bill's effective date and either the case is still pending in the trial court or the applicable time for direct appellate review has not expired, or if the case was pending on June 25, 2012, or the appellate period had not expired, the prosecutor must file the motion within 90 days after the bill's effective date. The motion must specify the grounds on which the prosecuting attorney is requesting the court to impose a sentence of life without parole.

If the prosecuting attorney files a motion under Section 25 requesting that an individual be sentenced to life without parole, the individual must file a response within 14 days after receiving notice of the prosecutor's motion. The court must conduct a hearing on the motion as part of the sentencing process. 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 hearing, the court must specify on the record the aggravating and mitigating circumstances it considered, and its reasons supporting the sentence imposed. The court

may consider evidence presented at trial together with any evidence presented at the sentencing hearing.

Each victim must be given the right under the Crime Victim's Rights Act to appear before the court and make an oral impact statement at any sentencing or resentencing of the defendant.

If the prosecutor does not file a motion within the required period, or if he or she files a motion and the court decides not to sentence the defendant to life without parole, the court must sentence the individual to a term of imprisonment with a minimum of not less than 25 or more than 40 years and a maximum of at least 60 years.

A defendant sentenced under Section 25 must be given credit for time already served but may not receive any good time credits, special good time credits, disciplinary credits, or other credits that reduce a minimum or maximum sentence.

Retroactive Application

Under Section 25a, except as otherwise provided, the procedures established in Section 25 do not apply to any case that was final for purposes of appeal on or before June 24, 2012. A case was final for purposes of appeal under Section 25a if any of the following apply:

- The time for filing an appeal in the Michigan Court of Appeals has expired.
- The application for leave to appeal was filed in the Michigan Supreme Court and was denied, or a timely filed motion for rehearing was denied.
- If the Michigan 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 Michigan Supreme Court or the U.S. Supreme Court finds that the decision in *Miller* applies retroactively to all defendants who were under 18 at the time of their crimes, and that decision is final for appellate purposes, the sentencing judge or his or her successor must determine whether a sentence of imprisonment for a violation listed in Section 25 is imprisonment for life without parole eligibility, or a minimum term of 25 to 40 years and a maximum of 60 years or more.

Similarly, if either the Michigan Supreme Court or the U.S. Supreme Court finds that *Miller* applies retroactively to all defendants who were convicted of felony murder, and who were under 18 at the time of their crimes, and the decision is final for appellate purposes, the sentencing judge or his or her successor must determine whether a sentence of imprisonment is for life without parole, or a minimum term of 25 to 40 years and a maximum of at least 60 years.

For purposes of those provisions, a decision of the Michigan Supreme Court is final when either the U.S. Supreme Court denies a petition for certiorari challenging the decision or the time for filing that petition passes without a petition being filed.

The following procedures apply, if the Michigan Supreme Court or the U.S. Supreme Court finds that *Miller* applies retroactively:

- Within 30 days after the date the Supreme Court's decision becomes final, the prosecuting attorney must give a list of names to the chief circuit judge of the county of all defendants who are subject to that court's jurisdiction and will have to be resentenced.
- Within 180 days after the decision becomes final, the prosecuting attorney must file motions for resentencing in all cases in which he or she will be requesting the court to

impose a sentence of life without parole, and a hearing must be conducted as provided under Section 25.

- If the prosecuting attorney does not file a motion for resentencing, the court must sentence the individual to a minimum term of 25 to 40 years and a maximum term of 60 years; and each victim must be given the right to appear before the court and make an oral impact statement at the resentencing.

Resentencing hearings under Section 25a must be held in the following order of priority: 1) cases involving defendants who have served 20 or more years of imprisonment; 2) cases in which the prosecuting attorney files a motion requesting a sentence of imprisonment for life without parole; and 3) cases other than those described above.

A defendant who is resentenced under Section 25a must be given credit for time already served, but may not receive any good time credits, special good time credits, disciplinary credits, or other credits that reduce the defendant's minimum or maximum sentence.

House Bill 4808

Mandatory Sentence of Life Without Parole

Under the Penal Code, the mandatory penalty for first-degree murder and various other offenses that result in death is imprisonment for life without possibility of parole. Under the bill, that penalty applies except as provided in Chapter IX of the Code of Criminal Procedure (as amended by Senate Bill 319).

House Bill 4808 applies to first-degree murder and to the following offenses, if the violation results in death:

- Adulteration or mixing of drugs, with the intent to kill or to cause serious impairment of a body function.
- Various violations of Chapter 33 (Explosives and Bombs, and Harmful Devices).
- Poisoning food, drink, or medication.
- Terrorism.

First-Degree Criminal Sexual Conduct

Under the Penal Code, first-degree CSC is a felony, with various penalties depending on the circumstances of the violation. As amended by the bill, for a violation that is committed by an individual who is 18 or older against an individual who is under 13, the penalty is imprisonment for life without the possibility of parole if the person had previously been convicted of first-, second-, third-, or fourth-degree CSC or assault with intent to commit CSC, against a person who was under 13. Previously, that mandatory penalty applied if the offender was 17 or older.

MCL 769.25 & 769.25a (S.B. 319)
750.16 et al. (H.B. 4808)

BACKGROUND

In *Miller v Alabama* (132 S Ct 2455), the United States Supreme Court held, "[M]andatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.'" The Court also ruled that "a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles".

The *Miller* decision does not actually list factors that must be considered in sentencing a juvenile, but it does discuss considerations that are precluded by a mandatory life without parole sentencing practice. The decision states: "Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him...It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys...And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it."

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Michigan law mandates life-without-parole sentences for all individuals convicted of first-degree murder and several other serious offenses resulting in death. Until recently, this had included individuals who were under the age of 18 at the time of their offenses but were tried as adults. The *Miller v Alabama* U.S. Supreme Court decision concluded that such a sentence for juvenile offenders, while allowable, cannot be mandated under all circumstances without individualized consideration, which meant the status quo in Michigan was no longer constitutional.

Typically, a fiscal analysis of legislation aims to compare the estimated impact of the legislation to the status quo, but in this case it is clear that what had been that status quo could not be maintained, regardless of whether the bills became law. Therefore, it is unclear whether a comparison to the former status quo is appropriate. Despite this ambiguity, the following will attempt to shed light on potential impacts of the bills.

The bills allow some juvenile offenders to avoid a life-without-parole sentence and instead be given a term of years with a minimum ranging from 25 to 40 years and a maximum of at least 60 years. Although there is no way to know how many prosecutors will file a motion to seek life without parole, or how those motions will be decided, it is likely that the majority of offenders will be given the lesser sentence because *Miller v Alabama* indicated that the Court expects life without parole for juveniles to be "uncommon". By making these offenders eligible for parole after 25 to 40 years, the bills present an opportunity for savings if the individuals are paroled. In addition to avoiding the general cost of incarceration, paroling offenders after 25 to 40 years will allow the Michigan Department of Corrections to avoid the medical costs associated with aging and elderly offenders in prison.

Under Michigan law, when offenders must be sentenced to life without parole, they can be released only if their sentence is commuted or they are pardoned by the Governor. Therefore, relative to this law, the bills have the potential for a positive but uncertain fiscal impact, but the timing of this positive fiscal realization is not yet known since the bills will apply retroactively to individuals sentenced to life without parole only if the U.S. Supreme Court or the Michigan Supreme Court applies *Miller v Alabama* to sentences imposed before that decision. If retroactivity does not apply, the savings will not be realized for at least 25 years after the first individual sentenced under this new structure will theoretically meet with the parole board, when he or she would otherwise not have been eligible.

While letting an offender out after serving a minimum of 25 years might generate some future savings relative to life without parole, incarcerating an individual for 25 to 40 years still has substantial cost to the State. The average cost per prisoner is \$35, 000 annually,

which means a 25- to 40-year minimum sentence will cost a minimum of approximately \$875,000 to \$1.4 million.

Lastly, simply because an offender will reach parole eligibility after serving 25 to 40 years, there is no guarantee that he or she will actually parole.

Fiscal Analyst: John Maxwell

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.