

JUVENILE LIFERS

Senate Bill 318 (Substitute S-1)

Senate Bill 319 (Substitute S-2)

Sponsor: Sen. Rick Jones

House Committee: Criminal Justice

Senate Committee: Judiciary

Complete to 12-3-13

A SUMMARY OF SENATE BILLS 318-319 AS PASSED BY THE SENATE 10-24-13

Briefly, the package would do the following:

- Establish a process by which a prosecutor could file a court motion seeking life imprisonment without parole for defendants convicted of certain crimes committed while they were juveniles.
- Require a defendant to file a response within 14 days of receiving a notice of such a motion.
- Require a court to conduct a *Miller* hearing.
- Preserve victims' rights to appear before a court and make an oral impact statement at any sentencing or resentencing of the defendant.
- 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.

Senate Bill 319 adds Section 32 to the Code of Criminal Procedure. Section 32 applies 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 case was pending in the trial court or the applicable time periods for direct appellate review by state or federal courts had not expired. (That date is the date of the U.S. Supreme Court decision in *Miller v Alabama*, see **Background Information**.)

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 possibility of parole is expressly denied under state law, or any of the following violations 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, possessing, or releasing a harmful biological or chemical substance or device, a harmful radioactive material or device, or a harmful electronic or electromagnetic device.
- Certain offenses involving explosives and offensive or injurious substances.
- Willfully poisoning food, drink, or medicine.
- An act of terrorism.

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 defendant'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 defendant 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 defendant 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. A defendant sentenced under this provision would be given credit for time served.

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.

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. [House Bill

4808 would amend the Michigan Penal Code 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 (to be added by Senate Bill 319 and House Bill 4806, respectively]. Therefore, 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. House Bill 4808 is tie-barred to House Bill 4806 and Senate Bill 319.]

Senate Bill 318 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 offenders sentenced to life imprisonment without the possibility of parole for crimes committed when they were juveniles (often referred to as juvvie lifers) 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 juvvie 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 sentenced to life for first-degree murder for parole is unconstitutional and 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; 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 juvvie 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 do so could result in the court appointing a Special Master to make available to juvvie lifers the process the Order envisions.

FISCAL IMPACT:

A fiscal analysis is in process.

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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.