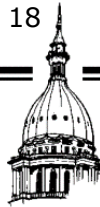




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BILL ANALYSIS



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Senate Bills 318 and 319 (as introduced 4-16-13)
Sponsor: Senator Rick Jones
Committee: Judiciary

Date Completed: 9-17-13

CONTENT

Senate Bill 318 would amend the Corrections Code to exclude a prisoner convicted of first-degree murder from a provision denying eligibility for parole for certain violations, if the prisoner were under 18 years of age at the time of the murder.

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

- Beginning in 2014, allow a prosecuting attorney to file a motion requesting that a defendant convicted of a first-degree murder that was committed when he or she was under 18 years of age be sentenced to life without parole.
- Require a court to sentence a person described above to imprisonment for life with parole eligibility after 45 years, if the prosecutor did not file a motion within 14 days.
- Require a defendant to respond within 14 days to a prosecutor's motion for a sentence of life without parole, and to specify the basis on which the defendant believed the proper sentence should be life with parole eligibility after 45 years.
- Require a court to conduct a hearing on the prosecutor's motion, considering aggravating and mitigating factors.
- Specify that the procedures for requesting a sentence of life without parole, and for a hearing on such a motion, would not apply to a case that was final for purposes of appeal on or before June 24, 2012.
- Specify that, if the U.S. Supreme Court's decision in *Miller v Alabama* were applied retroactively, the sentencing judge or the judge's successor would have to make the determination of whether a sentence of life would be with or without parole eligibility.
- If *Miller* were held to apply retroactively, allow a prosecuting attorney to file a motion to resentence any defendant who would be subject to that decision.
- If a prosecutor filed that motion, require the court to hold a hearing to determine whether the defendant should be sentenced or resentenced to life without parole or life with parole eligibility after 45 years.
- Specify that, if a prosecutor did not file a motion to resentence, the defendant would be eligible for parole after serving 45 years' imprisonment.

The bills are tie-barred.

(In *Miller v Alabama* (Supreme Court No. 10-9646), 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".)

Senate Bill 318

Section 34 of the Corrections Code outlines the procedures for a prisoner to become subject to the jurisdiction of the parole board after having served a portion of his or her sentence. Under Section 34, a prisoner sentenced to imprisonment for life for first-degree murder or for any of certain other offenses is not eligible for parole and is instead subject to Section 44 of the Code. Under the bill, that provision would apply except as provided in Chapter IX of the Code of Criminal Procedure (as amended by Senate Bill 319).

(Section 44 of the Corrections Code outlines the procedures for parole board interviews of prisoners sentenced to imprisonment for life without parole, subject to the constitutional authority of the Governor to grant reprieves, commutations, and pardons.)

Senate Bill 319

Motion to Sentence to Life Without Parole

Under the bill, beginning January 1, 2014, if a defendant were convicted of first-degree murder, and he or she were under 18 at the time of the violation, the prosecuting attorney could file a motion with the court requesting that the defendant be sentenced to imprisonment for life without the possibility of parole. The prosecuting attorney would have to file the motion within 14 days after the defendant was convicted. The motion would have to specify the grounds on which the prosecuting attorney was making the request. If the prosecuting attorney failed to file the motion within 14 days, the court would have to sentence the defendant to imprisonment for life with parole eligibility after the defendant had served 45 years of the term of imprisonment.

If the prosecuting attorney did file this motion, the defendant would have to file a response within 14 days after receiving notice of the motion. The response would have to specify the basis on which the defendant believed the proper sentence should be imprisonment for life with parole eligibility after 45 years.

Hearing on the Motion

If the prosecuting attorney filed a motion requesting that a defendant who was under 18 when he or she committed first-degree murder be sentenced to imprisonment for life without the possibility of parole, the court would have to conduct a hearing on the motion. At the hearing, the trial court would have to consider aggravating and mitigating factors.

Aggravating factors for consideration by the court would have to include at least the following:

- The defendant committed the murder by intentionally killing the victim while committing or attempting to commit any of the crimes that constitute first-degree murder.
- The defendant committed the murder by the unlawful detonation of an explosive with the intent to injure any person or to damage property.
- The defendant committed the murder by lying in wait.
- The defendant was hired to kill any individual.
- The defendant hired another person to kill any individual.

- The victim was a corrections employee, probation officer, parole officer, community corrections worker, home detention officer, juvenile court official, firefighter, judge, prosecutor, or law enforcement officer and either the victim was acting in the course of duty or the violation was motivated by an act the victim performed in the course of duty.
- The defendant was previously convicted of another murder.
- The defendant, at any other time, committed another murder regardless of whether he or she had been convicted of that murder.
- The defendant was in the custody of the Department of Corrections or a county sheriff, was on probation or parole, or was under the jurisdiction of the family court under the juvenile code.
- The defendant dismembered the victim.
- The defendant tortured the victim or burned or mutilated the victim while he or she was alive.
- The victim was under 13 when the violation was committed.
- During the course of the murder, the defendant committed a violation of Chapter 11 (Assault) or Chapter 50 (Kidnapping) of the Michigan Penal Code, or first-, second-, third-, or fourth-degree criminal sexual conduct (CSC) or assault with intent to commit CSC, against the murder victim.
- The victim was listed by the State or known by the defendant to be a witness against the defendant and the murder was committed to prevent the victim from testifying.
- The defendant committed the murder by intentionally discharging a firearm into an inhabited dwelling or from a vehicle.
- The victim of the murder was pregnant or the defendant believed or suspected she was pregnant.

Mitigating factors for consideration by the court would have to include at least the following:

- The defendant had no significant history of prior criminal conduct.
- The defendant was under the influence of extreme mental or emotional disturbance when the murder was committed.
- The victim was a participant in, or consented to, the defendant's conduct.
- The defendant was an accomplice in a murder committed by another person and the defendant's participation was relatively minor.
- The defendant acted under the substantial domination of another person.
- The defendant's capacity to appreciate the criminality of his or her conduct, or to conform that conduct to the requirements of law, was substantially impaired as a result of mental illness or mental retardation.
- The defendant's age, family circumstances, or mental development substantially affected his or her ability to appreciate the consequences of his or her actions.

Aggravating and mitigating factors also would include any other circumstances the court determined were appropriate for its consideration.

At the hearing, the court would have to specify on the record the aggravating and mitigating circumstances considered by the court and the court's reasons supporting the sentence imposed. The court could consider evidence presented at trial together with any new evidence presented at the sentencing hearing.

The hearing would have to be considered a sentencing hearing to which the Michigan Rule of Evidence (MRE) 1101 would apply. (Under MRE 1101, the Michigan Rules of Evidence apply to all actions and proceedings in Michigan courts except in situations and proceedings listed in MRE 1101. These include certain proceedings involving juveniles and miscellaneous proceedings, including sentencing proceedings. Rules that govern privileges, however, continue to apply to those situations and proceedings.)

A defendant sentenced to imprisonment for life without parole eligibility would not be subject to Section 34 of the Corrections Code, but would be subject to Section 44 of the Corrections Code.

Retroactivity

Except as otherwise provided, the procedures described above for sentencing a person convicted of first-degree murder that was committed when he or she was under 18 would not apply to any case that was final for purposes of appeal on or before June 24, 2012. A case would be final for purposes of appeal if any of the following applied:

- The time for filing an appeal in the Michigan Court of Appeals had expired.
- The appeal was filed in the Michigan Court of Appeals after the time for filing an application for leave to appeal in the Michigan Supreme Court had expired.
- The application for leave to appeal was filed in the Michigan Supreme Court after the application for leave to appeal was denied or after a timely filed motion for rehearing was denied.

Also, if the Michigan Supreme Court had granted leave to appeal, the case would be final for purpose of appeal after the Court rendered its decision or after a timely filed motion for rehearing was denied.

If the Michigan Supreme Court or the U.S. Supreme Court found that *Miller v Alabama* applied retroactively to defendants who were under 18 at the time of their crimes and that the decision was final for appellate purposes, the determination of whether a sentence of imprisonment for life for first-degree murder would be with or without parole eligibility would have to be made by the sentencing judge or his or her successor.

If the Michigan Supreme Court or the U.S. Supreme Court held that *Miller* applied retroactively, the prosecuting attorney for a county could file a motion to resentence any defendant who was convicted of first-degree murder in that county whose sentence would be subject to that decision. The motion would have to be filed within 180 days after the bill's effective date or within 60 days after a final determination on retroactivity by the Michigan Supreme Court or the U.S. Supreme Court, whichever was later. The court would have to hold a hearing on the motion to determine whether the defendant should be sentenced or resentenced to imprisonment for life without parole eligibility or with parole eligibility after having served 45 years of that term of imprisonment. If the prosecuting attorney did not file a motion within the required time, defendant would be eligible for parole after he or she had served 45 years of his or her term of imprisonment.

MCL 791.234 (S.B. 318)
Proposed MCL 769.32 & 769.33 (S.B. 319)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Currently, Michigan law mandates life-without-parole sentences for all individuals convicted of first-degree murder, including those who were under the age of 18 at the time of their offense but were tried as adults. The *Miller v Alabama* U.S. Supreme Court decision concluded that such a sentence, while allowable, cannot be mandated under all circumstances without individualized consideration, which means the status quo in Michigan is no longer constitutional.

Typically, a fiscal analysis of proposed legislation aims to compare the estimated results of the legislation to the status quo, but in this case it is clear that the status quo will not be maintained, regardless of whether Senate Bills 318 and 319 become law. Therefore, it is

unclear whether a comparison to the status quo is appropriate to make. Despite this ambiguity, the following will attempt to shed light on potential impacts of the bills.

The bills would allow some juvenile offenders to avoid a life-without-parole sentence and instead be given a life sentence with the possibility of parole after serving 45 years. Although there is no way to know how many prosecutors would file a motion to seek life without parole, or how those motions would be decided, it is likely that the majority of offenders would 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 45 years, the bills would present an opportunity for savings if the individuals were paroled. If an offender began a sentence as a teenager, then he or she would likely be over 60 years old before first seeing the parole board, and prisoners over 60 years old impose significant costs on the Department of Corrections Bureau of Health Care Services. Paroling these individuals, especially those who have costly medical conditions, would allow them to be released into community-based care, where costs may be eligible for Medicaid reimbursement and thereby be partially shared with the Federal government.

Under the current 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 the status quo, the bills have the potential for a positive indeterminate fiscal impact, but this positive fiscal impact would not be realized for at least 45 years (since the bills would not have retroactivity), when the first individual sentenced under this new structure would 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 45 years could generate some future savings relative to the status quo, incarcerating an individual for 45 years still has substantial cost to the State. Offenders sentenced to life in prison cannot be housed below Security Level II, which in FY 2011-12 had an average annual cost per prisoner of \$35,000. While they cannot go below Level II, they can go above it, in which case the costs will be higher. Therefore, a 45-year minimum sentence would cost a minimum of approximately \$1.6 million.

Lastly, simply because an offender would reach parole eligibility after serving 45 years, there would be no guarantee that he or she would actually be paroled. Offenders serving life sentences with the possibility of parole have a number of significant hurdles that must be overcome if they are to be paroled. Unlike a term-of-years parole, which must get approval from two members of a subset of three parole board members, a parolable lifer must be reviewed by the entire 10-member parole board, and receive at least six approving votes. Additionally, the sentencing judge or his or her successor can prevent parole eligibility by filing written objections, and victims and concerned parties also have an opportunity to provide input.

Fiscal Analyst: Dan O'Connor

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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.