

Legislative Analysis



LIFE WITHOUT PAROLE FOR JUVENILE OFFENDERS: REVISE

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

Complete to 12-5-13

A PRELIMINARY SUMMARY OF HOUSE BILL 4808 AS REPORTED BY COMMITTEE 12-4-13

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.

(Under Senate Bill 319, Section 32 applies to offenders who received a mandatory sentence of life without parole for crimes committed when they were less than 18 years of age. The bill would create a framework by which a prosecutor could seek a life sentence without parole for an offender who was convicted after the bill took effect or who had been convicted prior to the *Miller v Alabama* U.S. Supreme Court decision but for whom the time period for appeals had not yet expired. The proposed Section 33 would, if the state or U.S. Supreme Court applied the *Miller* decision retroactively, establish a framework by which a prosecutor could seek to resentence to life without parole a youthful offender who had exhausted the appeals process. If the court did not impose a life sentence without parole, or if the prosecutor did not seek resentencing of an offender to restore a sentence of life without parole, the court would have to impose a sentence with a 60-year maximum term of imprisonment and a minimum term of imprisonment of at least 25 years but not more than 40 years.

Under House Bill 4806, 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.)

Briefly speaking, 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 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.

FISCAL IMPACT:

A fiscal analysis is in process.

POSITIONS:

The Prosecuting Attorneys Association of Michigan indicated support for the bill. (12-4-13)

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

The Michigan Department of Corrections indicated support for the bill. (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.