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House Bill 4808 (Substitute H-2 as passed by the House)
Sponsor: Representative Margaret E. O'Brien
House Committee: Criminal Justice
Senate Committee: Judiciary

Date Completed: 1-14-14

CONTENT

The bill would amend the Michigan Penal Code to specify that various statutory provisions requiring a sentence of imprisonment for life without possibility of parole would apply except as provided in Chapter IX (Judgment and Sentence) of the Code of Criminal Procedure.

The bill also would increase 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 bill is tie-barred to Senate Bills 318 and 319, which would amend the Corrections Code and Chapter IX of the Code of Criminal Procedure, respectively. (As passed by the Senate, Senate Bill 318 (S-1) would 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. Senate Bill 319 (S-2) would allow a prosecuting attorney to file a motion to sentence a defendant to life imprisonment without parole if the defendant were convicted of first-degree murder or another offense listed in the bill, and were under 18 at the time he or she committed the offense. When sentencing an individual who was under 18 at the time of a violation for which the sentence is life without parole, the sentencing court would have to conduct a hearing to consider the factors listed in *Miller v Alabama* (discussed below) and could consider any other criteria relevant to its decision, including the defendant's record while incarcerated.)

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 House Bill 4808 (H-2), those penalties would apply except as provided in Chapter IX of the Code of Criminal Procedure (as it would be amended by Senate Bill 319).

House Bill 4808 (H-2) would apply to first-degree murder and to the following offenses, if the violation resulted 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. For a violation that is committed by an individual who is 17 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. Under the bill, that mandatory penalty would apply if the offender were 18 or older.

MCL 750.16 et al.

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

As noted above, the bill is tie-barred to Senate Bills 318 and 319, which would allow the reduction of potential life sentences for juveniles to a minimum of 25 to 40 years. Those bills would lead to significant cost savings to the State, albeit not for several decades. House Bill 4808 (H-2) would, in conjunction with Senate Bills 318 and 319, eliminate mandatory application of life without parole for juveniles. Therefore, House Bill 4808 (H-2) would have the potential to reduce the length of stay in prison for juveniles, with a resulting reduction in prison costs several decades in the future.

Fiscal Analyst: Steve Angelotti

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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.