

Act No. 22
Public Acts of 2014
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**STATE OF MICHIGAN
97TH LEGISLATURE
REGULAR SESSION OF 2014**

Introduced by Senators Jones, Pappageorge and Schuitmaker

ENROLLED SENATE BILL No. 319

AN ACT to amend 1927 PA 175, entitled "An act to revise, consolidate, and codify the laws relating to criminal procedure and to define the jurisdiction, powers, and duties of courts, judges, and other officers of the court under the provisions of this act; to provide laws relative to the rights of persons accused of criminal offenses and ordinance violations; to provide for the arrest of persons charged with or suspected of criminal offenses and ordinance violations; to provide for bail of persons arrested for or accused of criminal offenses and ordinance violations; to provide for the examination of persons accused of criminal offenses; to regulate the procedure relative to grand juries, indictments, informations, and proceedings before trial; to provide for trials of persons complained of or indicted for criminal offenses and ordinance violations and to provide for the procedure in those trials; to provide for judgments and sentences of persons convicted of criminal offenses and ordinance violations; to establish a sentencing commission and to prescribe its powers and duties; to provide for procedure relating to new trials and appeals in criminal and ordinance violation cases; to provide a uniform system of probation throughout this state and the appointment of probation officers; to prescribe the powers, duties, and compensation of probation officers; to provide penalties for the violation of the duties of probation officers; to provide for procedure governing proceedings to prevent crime and proceedings for the discovery of crime; to provide for fees of officers, witnesses, and others in criminal and ordinance violation cases; to set forth miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act," (MCL 760.1 to 777.69) by adding sections 25 and 25a to chapter IX.

The People of the State of Michigan enact:

CHAPTER IX

Sec. 25. (1) This section applies to a criminal defendant who was less than 18 years of age at the time he or she committed an offense described in subsection (2) if either of the following circumstances exists:

(a) The defendant is convicted of the offense on or after the effective date of the amendatory act that added this section.

(b) The defendant was convicted of the offense before the effective date of the amendatory act that added this section and either of the following applies:

(i) The case is still pending in the trial court or the applicable time periods for direct appellate review by state or federal courts have not expired.

(ii) 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.

(2) The prosecuting attorney may file a motion under this section to sentence a defendant described in subsection (1) to imprisonment for life without the possibility of parole if the individual is or was convicted of any of the following violations:

(a) A violation of section 17764(7) of the public health code, 1978 PA 368, MCL 333.17764.

(b) A violation of section 16(5), 18(7), 316, 436(2)(e), or 543f of the Michigan penal code, 1931 PA 328, MCL 750.16, 750.18, 750.316, 750.436, and 750.543f.

(c) A violation of chapter XXXIII of the Michigan penal code, 1931 PA 328, MCL 750.200 to 750.212a.

(d) Any violation of law involving the death of another person for which parole eligibility is expressly denied under state law.

(3) If the prosecuting attorney intends to seek a sentence of imprisonment for life without the possibility of parole for a case described in subsection (1)(a), the prosecuting attorney shall file the motion within 21 days after the defendant is convicted of that violation. If the prosecuting attorney intends to seek a sentence of imprisonment for life without the possibility of parole for a case described under subsection (1)(b), the prosecuting attorney shall file the motion within 90 days after the effective date of the amendatory act that added this section. The motion shall specify the grounds on which the prosecuting attorney is requesting the court to impose a sentence of imprisonment for life without the possibility of parole.

(4) If the prosecuting attorney does not file a motion under subsection (3) within the time periods provided for in that subsection, the court shall sentence the defendant to a term of years as provided in subsection (9).

(5) If the prosecuting attorney files a motion under subsection (2) requesting that the individual be sentenced to imprisonment for life without parole eligibility, the individual shall file a response to the prosecution's motion within 14 days after receiving notice of the motion.

(6) If the prosecuting attorney files a motion under subsection (2), the court shall conduct a hearing on the motion as part of the sentencing process. At the hearing, the trial court shall consider the factors listed in Miller v Alabama, 576 US ____; 183 L Ed 2d 407; 132 S Ct 2455 (2012), and may consider any other criteria relevant to its decision, including the individual's record while incarcerated.

(7) At the hearing under subsection (6), the court shall specify on the record the aggravating and mitigating circumstances considered by the court and the court's reasons supporting the sentence imposed. The court may consider evidence presented at trial together with any evidence presented at the sentencing hearing.

(8) Each victim shall be afforded the right under section 15 of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.765, to appear before the court and make an oral impact statement at any sentencing or resentencing of the defendant under this section.

(9) If the court decides not to sentence the individual to imprisonment for life without parole eligibility, the court shall sentence the individual to a term of imprisonment for which the maximum term shall be not less than 60 years and the minimum term shall be not less than 25 years or more than 40 years.

(10) A defendant who is sentenced under this section shall be given credit for time already served but shall not receive any good time credits, special good time credits, disciplinary credits, or any other credits that reduce the defendant's minimum or maximum sentence.

Sec. 25a. (1) Except as otherwise provided in subsections (2) and (3), the procedures set forth in section 25 of this chapter do not apply to any case that is final for purposes of appeal on or before June 24, 2012. A case is final for purposes of appeal under this section if any of the following apply:

(a) The time for filing an appeal in the state court of appeals has expired.

(b) The application for leave to appeal is filed in the state supreme court and is denied or a timely filed motion for rehearing is denied.

(c) If the state supreme court has granted leave to appeal, after the court renders its decision or after a timely filed motion for rehearing is denied.

(2) If the state supreme court or the United States supreme court finds that the decision of the United States supreme court in Miller v Alabama, 576 US ____; 183 L Ed 2d 407; 132 S Ct 2455 (2012), applies retroactively to all defendants who were under the age of 18 at the time of their crimes, and that decision is final for appellate purposes, the determination of whether a sentence of imprisonment for a violation set forth in section 25(2) of this chapter shall be imprisonment for life without parole eligibility or a term of years as set forth in section 25(9) of this chapter shall be made by the sentencing judge or his or her successor as provided in this section. For purposes of this subsection, a decision of the state supreme court is final when either the United States supreme court denies a petition for certiorari challenging the decision or the time for filing that petition passes without a petition being filed.

(3) If the state supreme court or the United States supreme court finds that the decision of the United States supreme court in Miller v Alabama, 576 US ____; 183 L Ed 2d 407; 132 S Ct 2455 (2012), applies retroactively to all defendants who were convicted of felony murder under section 316(1)(b) of the Michigan penal code, 1931 PA 328,

MCL 750.316, and who were under the age of 18 at the time of their crimes, and that the decision is final for appellate purposes, the determination of whether a sentence of imprisonment shall be imprisonment for life without parole eligibility or a term of years as set forth in section 25(9) of this chapter shall be made by the sentencing judge or his or her successor as provided in this section. For purposes of this subsection, a decision of the state supreme court is final when either the United States supreme court denies a petition for certiorari challenging the decision with regard to the retroactive application of Miller v Alabama, 576 US ____; 183 L Ed 2d 407; 132 S Ct 2455 (2012), to defendants who committed felony murder and who were under the age of 18 at the time of their crimes, or when the time for filing that petition passes without a petition being filed.

(4) The following procedures apply to cases described in subsections (2) and (3):

(a) Within 30 days after the date the supreme court's decision becomes final, the prosecuting attorney shall provide a list of names to the chief circuit judge of that county of all defendants who are subject to the jurisdiction of that court and who must be resentenced under that decision.

(b) Within 180 days after the date the supreme court's decision becomes final, the prosecuting attorney shall file motions for resentencing in all cases in which the prosecuting attorney will be requesting the court to impose a sentence of imprisonment for life without the possibility of parole. A hearing on the motion shall be conducted as provided in section 25 of this chapter.

(c) If the prosecuting attorney does not file a motion under subdivision (b), the court shall sentence the individual to a term of imprisonment for which the maximum term shall be 60 years and the minimum term shall be not less than 25 years or more than 40 years. Each victim shall be afforded the right under section 15 of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.765, to appear before the court and make an oral impact statement at any resentencing of the defendant under this subdivision.

(5) Resentencing hearings under subsection (4) shall be held in the following order of priority:

(a) Cases involving defendants who have served 20 or more years of imprisonment shall be held first.

(b) Cases in which the prosecuting attorney has filed a motion requesting a sentence of imprisonment for life without the possibility of parole shall be held after cases described in subdivision (a) are held.

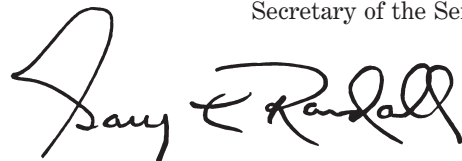
(c) Cases other than those described in subdivisions (a) and (b) shall be held after the cases described in subdivisions (a) and (b) are held.

(6) A defendant who is resentenced under subsection (4) shall be given credit for time already served, but shall not receive any good time credits, special good time credits, disciplinary credits, or any other credits that reduce the defendant's minimum or maximum sentence.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved

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Governor