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**BILL ANALYSIS**

Telephone: (517) 373-5383  
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Senate Bill 318 (Substitute S-1 as reported)  
Senate Bill 319 (Substitute S-2 as reported)  
Sponsor: Senator Rick Jones  
Committee: Judiciary

**CONTENT**

Senate Bill 319 (S-2) would add Section 32 to Chapter IX (Judgment and Sentence) of the Code of Criminal Procedure to allow a prosecuting attorney to file a motion to sentence a defendant to imprisonment for life without the possibility of 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.

Chapter 32 would apply to a defendant 1) who was convicted on or after the bill's effective date, or 2) who was convicted before that date and either a) the case was still pending in the trial court or the applicable time for direct appellate review had not expired, or b) on June 25, 2012, the case was pending in the trial court or the applicable time for direct appellate review had not expired. (June 25, 2012, is the date of the U.S. Supreme Court decision in *Miller v Alabama*, discussed below.)

If the prosecutor did not file a motion within the required period, or if the prosecutor filed a motion and the court decided not to sentence the defendant to life imprisonment without parole, the court would have to sentence the defendant to a term of imprisonment with a minimum of not less than 25 or more than 40 years and a maximum of at least 60 years.

The prosecuting attorney could file a motion under Section 32 if the defendant were convicted of first-degree murder or of any of the following 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, or possessing a harmful biological or chemical substance or device, a harmful radioactive material or device, or a harmful electronic or electromagnetic device.
- A violation of the Michigan Penal Code involving an explosive (as listed in the bill).
- Willfully poisoning food, drink, or medicine.
- An act of terrorism.

If the prosecutor intended to seek a sentence of life without parole, he or she would have to file the motion within 21 days after conviction for a conviction that occurred after the bill's effective date, or within 90 days after the bill's effective date for a conviction that occurred

before the bill's effective date. The defendant would have to file a response within 14 days after receiving notice of the prosecuting attorney's motion.

The court would have to conduct a hearing to consider the factors listed in *Miller v Alabama* (132 S Ct 2455) and could consider any other criteria relevant to its decision, including the defendant's record while incarcerated. The court would have to 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.

A defendant sentenced under Section 32 would have to be given credit for time served.

(In *Miller v Alabama*, 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.")

Senate Bill 318 (S-1) would amend the Corrections Code 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.

Senate Bills 318 (S-1) and 319 (S-2) are tie-barred to each other. Senate Bill 319 (S-2) also is tie-barred to House Bill 4808. (That bill would amend sections of the Michigan Penal Code that prescribe a sentence of life imprisonment without parole for certain offenses. The bill would make exceptions to that sentence.)

MCL 791.234 (S.B. 318)  
Proposed MCL 769.32 (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 and several other serious offenses resulting in death, including individuals 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 for juvenile offenders, 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 (S-1) and 319 (S-2) 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 term of years with a minimum ranging from 25 to 40 years and a maximum of at least 60 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 25 to 40 years, the bills would present an opportunity for savings if the individuals were paroled. In addition to avoiding the general cost of incarceration, paroling offenders after 25 to 40 years would allow the Michigan Department of Corrections to avoid the medical costs associated with aging and elderly offenders in prison.

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 25 years (since the bills would not have retroactivity), after 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 25 years could generate some future savings relative to the status quo, incarcerating an individual for 25 to 40 years still has substantial cost to the State. The average cost per prisoner is \$35,000 annually, which means a 25- to 40-year minimum sentence would cost a minimum of approximately \$875,000 to \$1.4 million.

Lastly, simply because an offender would reach parole eligibility after serving 25 to 40 years, there would be no guarantee that he or she would actually be paroled.

Date Completed: 9-23-13

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.