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Senate Bill 119 through 123 (as introduced 3-1-23)  
Sponsor: Senator Jeff Irwin (S.B. 119)  
Senator Sue Shink (S.B. 120)  
Senator Mary Cavanagh (S.B. 121)  
Senator Erika Geiss (S.B. 122)  
Senator Sylvia Santana (S.B. 123)  
Committee: Civil Rights, Judiciary, and Public Safety

Date Completed: 4-19-23

### **INTRODUCTION**

Taken together, the bills would prohibit a court from sentencing an individual who was less than 19 years old when a crime was committed to imprisonment for life without parole eligibility. The bills would modify numerous penalties prescribed in the Corrections Code, the Probate Code, the Penal Code, and the Public Health Code to reflect this prohibition. In addition, the bills would make eligible for parole an individual who was less than 19 years old when a crime was committed for which the individual was sentenced to life imprisonment without parole eligibility and who had served 10 years of the sentence. The bills are tie-barred.

### **FISCAL IMPACT**

The bills would codify sentencing changes that are already required under two 2022 State Supreme Court decisions, *People v. Parks*, 508 Mich 940 (2021) and *People v. Stovall*, 507 Mich 938 (2021) (see **BACKGROUND**). These decisions create a direct cost to the State as they will require an additional 350 resentencing hearings for individuals sentenced to life imprisonment for offenses committed under the age of 19, according to the State Appellate Defender Office (SADO). The Office has already calculated a preliminary cost and made an FY 2023-24 ongoing budget request for an additional \$1.6 million and 8 FTEs to address at least half of the resentencing hearings that will be required by the Michigan Supreme Court decisions. This budget request is currently under consideration in the Senate and House appropriations committees.

Conversely, there is an indirect savings to the State when resentencing hearings occur, specifically because juvenile lifer resentencing hearings most always result in a reduced sentence than that of life or life without the possibility of parole. Resentencing hearings required under the U.S. Supreme Court decision in *Montgomery v. Louisiana* have been heard in state trial courts since 2016. The Office has represented 193 of the 364 juvenile lifers that were required to be resentenced under *Montgomery*. In all but 8 of those cases, SADO's representation has resulted in a reduced (term of years) sentence or a release from prison via parole or discharge from Michigan Department of Corrections' custody. The cumulative total of reduced sentences and cost is estimated at nearly 1,900 years and over \$69.1 million. The bills would require a similar resentencing process to that which was required under *Montgomery*; likewise, a similar up-front cost and indirect savings also would be expected.

MCL 769.1 et al. (S.B. 119); 791.234 (S.B. 120);  
712A.18 (S.B. 121); 333.17764 (S.B. 122);  
750.16 et al. (S.B. 123)

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## **CONTENT**

**Senate Bill 119 would amend the Code of Criminal Procedure to prohibit a court from sentencing an individual who was less than 19 years old when a crime was committed to imprisonment for life without parole eligibility.**

**Senate Bill 120 would amend Chapter III (Bureau of Pardons and Paroles; Parole Board) of the Corrections Code to make eligible for parole an individual who was less than 19 years old at the time the individual committed a crime for which the individual was sentenced to life imprisonment without parole eligibility and who had served 10 years of the sentence.**

**Senate Bill 121 would amend Chapter XIIA (Jurisdiction, Procedure, and Disposition Involving Minors) of the Probate Code to prohibit a court from imposing a sentence of imprisonment for life without parole eligibility on a juvenile tried and convicted as an adult.**

**Senate Bill 122 would amend Part 177 (Pharmacy Practice and Drug Control) of the Public Health Code to prescribe a felony penalty punishable by between 10 and 60 years' imprisonment to a person who was less than 19 years old and who knowingly or recklessly adulterated or misbranded a drug or device with specific intentions that resulted in death.**

**Senate Bill 123 would amend the Penal Code to do the following:**

- Prohibit an individual who was less than 19 years old at the time the individual committed a crime from being sentenced to imprisonment for life without parole eligibility for that crime.**
- Modify penalties for specified violations to reflect the bill's prohibition.**

The bills are tie-barred, and each bill would take effect 90 days after its enactment.

### **Senate Bill 119**

The Code of Criminal Procedure allows a judge to pronounce judgement against a person convicted of an offense and to impose a sentence on the person for a duration of time that may not exceed the sentence prescribed by law. The Code requires a judge to conduct a hearing at a juvenile's sentencing to determine if the best interests of the public would be served by placing the juvenile on probation and committing the juvenile to an institution described in the Youth Rehabilitation Services Act.

The Code requires the court to sentence a juvenile convicted of specified offenses in the same manner as an adult, such as an offense for first degree arson or assault with the intent to murder. The Code also requires the court to conduct a final review of the juvenile's probation and commitment to an institution within three months before the end of the period that the juvenile is on probation. If the court determines at the review that the best interests of the public would be served by imposing any other sentence provided by law for an adult offender, the court could impose the sentence. These provisions would be subject to the provision below.

Under the bill, a court could not sentence an individual who was less than 19 years old when the crime was committed to imprisonment for life without parole eligibility.

## Senate Bill 120

Generally, Chapter III of the Corrections Code governs parole for prisoners in the State. It specifies the responsibilities and duties of the Parole Board and establishes guidelines that the Board must follow when considering granting a prisoner parole.

Under Chapter III, except as otherwise provided, a prisoner that meets one of the following circumstances is subject to the jurisdiction of the Board (eligible for parole) when the prisoner has served a period equal to the minimum sentence imposed by the court for the crime of which the prisoner was convicted:

- A prisoner sentenced to an indeterminate sentence and confined in a State correctional facility with a minimum in terms of years other than a prisoner subject to disciplinary time.
- A prisoner subject to disciplinary time sentenced to an indeterminate sentence and confined in a State correctional facility with a minimum in terms of years.
- A prisoner sentenced for consecutive terms, other than a prisoner subject to disciplinary terms, that has served the total time of the added minimum terms.
- A prisoner subject to disciplinary time and sentence for consecutive terms that has served the total time of the added minimum terms.

Chapter III specifies that a prisoner sentenced to imprisonment for life for specified violations is not eligible for parole. These violations include first degree murder, the adulteration of a drug with the intent to kill, and a violation of Chapter XXXIII (Explosives and Bombs, and Harmful Devices) of the Penal Code, among others. Chapter III also specifies that a prisoner sentenced to imprisonment for life, other than one described above, is subject to the jurisdiction of the parole board and may be placed on parole according to the specified conditions if the prisoner meets any of the following criteria:

- Except as provided below, the prisoner has served 10 calendar years of the sentence for a crime committed before October 1, 1992 or 15 calendar years of the sentence for a crime committed on or after October 1, 1992.
- The prisoner has served 20 calendar years of a sentence for violating, or attempting or conspiring to violate, prohibitions concerning the manufacturing or deliver of controlled substances under the Public Health Code, and has another conviction for a serious crime.
- The prisoner has served 17-1/2 calendar years of the sentence for violating, or attempting or conspiring to violate, the prohibition of the Public Health Code described above, and does not have another conviction for a serious crime.

Chapter III requires the Board to provide notice to the prosecuting attorney of the county in which the prisoner was convicted before granting parole.

All the provisions described above would not apply to the bill's provision described below.

Under the bill, notwithstanding any provision to the contrary, an individual who was less than 19 years old at the time the individual committed a crime for which the individual was sentenced to life imprisonment without parole eligibility or to a term of years for a violation of specified sections of the Penal Code and the Public Health Code described in detail below, who had served 10 years of the sentence would be subject to the jurisdiction of the Board and could be released on parole by the Board. In determining whether to release an individual on parole under the bill, the Board would have to consider all the following factors:

- The individual's age and immaturity at the time of the offense.
- The individual's family and home environment at the time of the offense.

- The circumstances surrounding the offense, including the role the individual had in commissioning the offense and the influence of peer pressure.

The bill's provision above would pertain to violations of the following sections of the Penal Code and the Public Health Code:

- Section 16 of the Penal Code, which prohibits the knowing or reckless adulteration of drugs or medicine.
- Section 18 of the Penal Code, which prohibits the knowing or reckless mixing of drugs or medicine.
- Section 200i of the Penal Code, which prohibits the use of a harmful biological, chemical, radioactive, or electric substance or device.
- Section 204 of the Penal Code, which prohibits the sending or delivery of an explosive substance with malicious intent.
- Section 207 of the Penal Code, which prohibits the placement of an explosive substance in or near any property with malicious intent.
- Section 209 of the Penal Code, which prohibits the placement of offensive or injurious substances in or near property with intent to wrongfully injure or coerce someone.
- Section 210 of the Penal Code, which prohibits the possession of a substance that when combined with another substance will become explosive or combustible.
- Section 211a of the Penal Code, which prohibits a person from possessing a Molotov cocktail or similar device that is designed to explode.
- Section 316 of the Penal Code, which prescribes felony charges punishable by life imprisonment without parole eligibility for certain instances of first-degree murder.
- Section 436 of the Penal Code, which prohibits a person from willfully poisoning someone.
- Section 534f of the Penal Code, which prohibits a person from committing an act of terrorism.
- Section 17764 of the Public Health Code, which prohibits specified activity related to the adulteration of drugs and devices.

(All of the sections described above prescribe felony penalties punishable by life imprisonment without eligibility for parole for specific, significant violations of their prohibitions. The detailed summary below of [Senate Bill 122](#) describes the exact violations for which these sections prescribe the felony penalties punishable by life imprisonment without eligibility for parole.)

### **Senate Bill 121**

Generally, Chapter XIIIA of the Probate Code grants the family division of a circuit court (the court) authority and jurisdiction over proceedings concerning a juvenile under 18 years old who is found within the county and who violates any law of the State.

Under the Chapter XIIIA, the court may enter specified orders of disposition that are appropriate for the welfare of the juvenile and society in view of the facts proven and ascertained. Among other orders, if a court tried and convicted a juvenile as an adult, the court could impose any sentence upon the juvenile that could be imposed on an adult convicted of the same offense. Under the bill, the court could not impose a sentence of imprisonment for life without parole eligibility.

### **Senate Bill 122**

The Public Health Code prohibits a person knowingly or recklessly doing either of the following:

- Adulterating, misbranding, removing, or substituting a drug or device knowing or intending that the drug or device be used.

- Selling, offering for sale, possessing for sale, causing to be sold, or manufacturing for sale an adulterated or misbranded drug.

The Code prescribes a felony punishable by imprisonment for life without the possibility of parole and a fine of \$40,000 if a person who violates one of the prohibitions did so with the intent to kill or to cause serious impairment of a body function of two or more individuals and the violation results in death. Under the bill, if a person who violated one of the prohibitions in a manner as described above was less than 19 years old at the time of the violation, the person would be guilty of a felony punishable by imprisonment with a minimum term of 10 years and a maximum term of 60 years and a fine of \$40,000.

### **Senate Bill 123**

Generally, the Penal Code defines crimes and prescribes the associated penalties. The Code specifies that the penalties described below do not apply as provided in Sections 25 and 25a of the Code of Criminal Procedure. The bill would delete these exemptions. Instead, under the bill, if any violation described below were committed by a person who was less than 19 years old at the time of the violation, the person would be guilty of a felony punishable by imprisonment between 10 and 60 years and a fine of up to \$40,000.

(Generally, Sections 25 of the Code of Criminal Procedure specifies circumstances under which a prosecuting attorney may file a motion to sentence a defendant who was a minor at the time he or she committed the offense to life without the possibility of parole. The circumstances require the defendant to be convicted of any of specified offenses on or after March 5, 2014, the date that Sections 25 and 25a took effect. The specified offenses include a violation of sections of the Public Health Code and Penal Code described below.

Section 25a specifies that, if the State Supreme Court or United States Supreme Court finds that the decision in *Miller v. Alabama* (see **BACKGROUND**) applies retroactively, then the judge who sentenced a minor defendant to life imprisonment without possibility of parole must determine whether that sentence should stand.)

Chapter IV (Adulterating or Misbranding) of the Penal Code prescribes a felony punishable by imprisonment for life without the possibility of parole for a person that knowingly or recklessly commits the following with the intent to kill or cause serious impairment of a body function of two or more individuals that results in death:

- Adulteration, misbranding, removal, or substitution of a drug or medicine.
- The sale, offer for sale, possession for sale, the cause to be sold, or the manufacturing for sale of an adulterated or misbranded drug.

Chapter IV also prescribes a felony punishable by imprisonment for life without the possibility of parole for a person who commits the following with the intent to kill or to cause serious impairment of a body function of two or more individuals that results in death:

- Except for the purpose of compounding in the necessary preparation of medicine, knowingly or recklessly mixing, coloring, staining, powdering a drug or medicine with an ingredient or material to injuriously affect the quality or potency of the drug or medicine.
- Selling, offering for sale, possessing for sale, causing to be sold, or manufacturing for sale a drug or medicine mixed, colored, stained, or powdered in the manner described above.

Chapter XXXIII of the Code prescribes a felony punishable by imprisonment for life without the possibility for parole for a person who manufactures, delivers, possesses, transports,

places, uses, or releases any of the following and the action results in the death of another individual:

- A harmful biological substance or device.
- A harmful chemical substance or device.
- A harmful radioactive material or device.
- A harmful electronic or electromagnetic device.

Chapter XXXIII also prescribes a felony punishable by imprisonment for life without the possibility for parole for a person who does either of the following, and that action causes the death of another individual:

- Possesses a Molotov cocktail or any similar device.
- Possesses any device designed to explode or that will explode upon impact or with the application of heat or a flame or that is highly incendiary, with the general intent to intimidate or kill any person or with the intent to damage or destroy property without permission.

In addition, Chapter XXXIII prescribes a felony punishable by imprisonment for life without the possibility for parole for a person who does any of the following, and that action causes the death of another individual:

- Sends or delivers to another person or causes to be taken or received by any person any kind of explosive substance or any other dangerous thing with the general intent to intimidate or kill any person, or with the intent to damage or destroy any property without permission.
- Places an explosive substance in or near any property with the general intent to intimidate or kill any person, or with the intent to damage or destroy any property without permission.
- Places an offensive or injurious substance on any property with the intent to wrongfully injure or coerce another person or to injure the property or business of another person.
- Possesses an explosive or combustible substance that when combined with another substance will become explosive or combustible with the general intent to intimidate or kill any person, or with the intent to damage or destroy property without permission.

Chapter XLV (Homicide) of the Code prescribes a felony punishable by imprisonment for life without the possibility for parole for a person who commits any of the following:

- Premeditated murder.
- Murder committed in the perpetration of another crime, such as arson and criminal sexual conduct, among others.
- Murder of a peace or corrections officer committed while the officer is lawfully engaged in the performance of duties and with the knowledge that the individual is an officer.

Chapter LXIV (Poisons) of the Code prescribes a felony punishable by imprisonment for life without the possibility for parole for a person who does either of the following:

- Willingly mingles a poison or harmful substance with a food, drink, medicine, or pharmaceutical product, or willfully places a poison or harmful substance in a spring, well, or public water supply, knowing or having reason to know that any of the above may be ingested or used by another person and cause injury.
- Maliciously inform another person that a poison or harmful substance has been placed in any of the places described above and knowing that the information is false and that it is likely the information will be disseminated to the public.

The Code prescribes a felony punishable by imprisonment for life without the possibility for parole for a person who knowingly and premeditatedly commits an act of terrorism and that act causes a death. The bill's fine of \$40,000 would not apply to this provision.

Under the bill, notwithstanding any provision to the contrary in the Code, an individual who was less than 19 years old at the time the individual committed a crime could not be sentenced to imprisonment for life without parole eligibility for that crime.

## **BACKGROUND**

In *Miller v. Alabama*, 567 US 460 (2012), 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 did not list factors that must be considered in sentencing a juvenile, but it does state generally the features of a juvenile's age that require a rethinking of the mandatory life without parole sentencing practice, such as immaturity, impetuosity, and the failure to appreciate risks and consequences.

Following *Miller*, the Michigan Legislature enacted Public Acts (PA) 22 and 23 of 2014, which added Sections 25 and 25a to the Penal Code. These Sections established a procedure for a prosecutor to request a sentence of life imprisonment without possibility of parole for a defendant who is under the age of 18 at the time he or she commits the crime. The Sections required courts to consider the features of a juvenile's age as described in *Miller* and any other relevant criteria. The Sections also specified that the procedure above could retroactively apply if the US Supreme Court found that *Miller* should apply retroactively, in which case previous sentences of life without parole eligibility in the State would need to be reconsidered.

In 2016, the US Supreme Court in *Montgomery v. Louisiana* 577 US \_\_\_\_ (2016), ruled that *Miller* applied retroactively. This ruling required Michigan to redetermine the sentences of any individual who committed a crime while he or she was under the age of 18 and received a life sentence without parole eligibility. Resentencing cases in Michigan since then, such as *People v. Parks*, have reaffirmed the ruling of *Montgomery*, specifying that judges can still sentence 18-year-old defendants to life sentences without parole eligibility, but these defendants are entitled to the resentencing procedure established in Sections 25 and 25a of the Penal Code.

## **PREVIOUS LEGISLATION**

*(Please note: The information in this summary provides a cursory overview of previous legislation and its progress. It does not provide a comprehensive account of all previous legislative efforts on the relevant subject matter.)*

Senate Bills 119, 120, 121, and 123 are reintroductions of Senate Bills 850, 849, 851, and 848, respectively, from the 2021-2022 Legislative Session.

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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.