

Procedures for Handling Juvenile Life-Without-Parole (“LWOP”) Sentencings and Resentencings Under *Miller v Alabama*,¹ *People v Hyatt*,² and MCL 769.25/MCL 769.25a³

I. Resentencings in Pending Cases and Sentencings in New Cases: MCL 769.25

This table applies to pending cases that were not final for purposes of direct review at the time that *Miller* was decided. See MCL 769.25(1). MCL 769.25a provides further guidance for applying MCL 769.25 retroactively.

<u>Prosecutor Seeks LWOP</u>	<u>Prosecutor Does Not Seek LWOP</u>
The prosecutor may file a motion seeking imposition of LWOP if defendant was under age 18 at the time of a LWOP offense. The motion must specify the grounds on which LWOP is sought.	If the prosecutor does not timely file a motion seeking LWOP (see MCL 769.25(3)), the court must impose a term-of-years sentence as directed below.
The defendant must file a response to the prosecution's motion within 14 days after receiving notice of the motion.	No action on the part of the defendant is required if the prosecutor does not seek a LWOP sentence.
The court must conduct a hearing on the motion as part of the sentencing process.	MCL 769.25 does not address whether a hearing is required if the prosecutor does not file a motion seeking LWOP; however, it can be assumed that a normal sentencing hearing is required.
Any victim must be afforded the right, under the Crime Victim’s Rights Act, to appear before the court and make an oral impact statement at any sentencing or resentencing.	Any victim must be afforded the right, under the Crime Victim’s Rights Act, to appear before the court and make an oral impact statement at any sentencing or resentencing.

¹ *Miller v Alabama*, 567 US ___ (2012). Under *Miller*, a juvenile who was under the age of 18 at the time of the commission of an offense cannot be sentenced to *mandatory* life imprisonment without parole. A life-without-parole sentence may be imposed, but only after consideration of whether the circumstances reflect “irreparable corruption.”

² *People v Hyatt*, ___ Mich App ___ (2016), abrogating in part *People v Skinner*, 312 Mich App 15 (2015). The *Hyatt* Court, resolving a conflict between *Skinner* (which had held that the Sixth Amendment requires that a jury must make the findings required by MCL 769.25(6) before a juvenile may be sentenced to life without parole) and *People v Perkins (Floyd)*, ___ Mich App ___, ___ (2016) (opining that *Skinner* was wrongly decided), concluded that “a judge, not a jury, is to make [the] determination[]” whether to sentence a juvenile to life without parole under MCL 769.25. *Hyatt*, ___ Mich App at ___.

³ MCL 769.25 establishes procedures for sentencing or resentencing a juvenile who was under the age of 18 at the time of the commission of an offense calling for the mandatory imposition of a life-without-parole sentence. The prosecution may file a motion seeking a life-without-parole sentence for such juveniles. If a motion is filed, a hearing must be conducted and the *Miller* factors must be considered to determine whether the circumstances reflect “irreparable corruption.” If no motion is filed, or if it is determined after a hearing that a life-without-parole sentence is not justified, the defendant must be given a term-of-years sentence with a minimum term of between 25 and 40 years and a maximum term of at least 60 years. MCL 769.25a provides further guidance for applying MCL 769.25 collaterally, in the event that *Miller* applies retroactively. *Miller* was, indeed, given retroactive effect in *Montgomery v Louisiana*, 577 US ___ (2016).

<u>Prosecutor Seeks LWOP</u>	<u>Prosecutor Does Not Seek LWOP</u>
<p>At the hearing, the trial court must consider the factors listed in <i>Miller v Alabama</i>, 567 US ___ (2012), and may consider any other criteria relevant to its decision, including the individual's record while incarcerated. The court must specify on the record the aggravating and mitigating circumstances it considered and the reasons supporting the sentence imposed. Evidence presented at trial may be considered together with any evidence presented at the sentencing hearing. A life-without-parole sentence will very rarely be proportionate; such a sentence is appropriate only for "the truly rare individual who is incapable of reform." <i>Hyatt</i>, ___ Mich App at ___ (citations omitted).</p>	<p>MCL 769.25 does not provide guidance for conducting a hearing or fashioning a sentence when LWOP is not sought. In the absence of guidance, normal sentencing procedures should be followed, with the caveat that there does not appear to be any basis for attempting to apply the sentencing guidelines.</p>
<p>If the court rejects LWOP, the court must exercise its discretion and sentence the defendant to a term of imprisonment for which the maximum term cannot be less than 60 years and the minimum term cannot be less than 25 years or more than 40 years.</p>	<p>The court must exercise its discretion and sentence the defendant to a term of imprisonment for which the maximum term cannot be less than 60 years and the minimum term cannot be less than 25 years or more than 40 years.</p>
<p>Defendant must be given credit for time already served but must not receive any good time credits, special good time credits, disciplinary credits, or any other credits that reduce the minimum or maximum sentence.</p>	<p>Defendant must be given credit for time already served but must not receive any good time credits, special good time credits, disciplinary credits, or any other credits that reduce the minimum or maximum sentence.</p>

II. Collateral Resentencings: [MCL 769.25](#) and [MCL 769.25a](#)

This table applies to resentencings in cases that were final for purposes of direct review at the time that *Miller* was decided. See [MCL 769.25a\(1\)](#). [MCL 769.25a](#) provides guidance for applying [MCL 769.25](#) retroactively to these cases.

<p>Within 30 days after <i>Montgomery</i> became final—i.e., by the end of March 2016—the prosecuting attorney should have provided a list of defendants who must be resentenced.</p>
<p>Cases must be handled by the judge who originally imposed sentence, or the successor judge. A different judge may not be assigned unless the sentencing judge’s judgeship was eliminated.</p>
<p>Within 180 days after <i>Montgomery</i> became final—i.e., by approximately August 24, 2016—the prosecuting attorney should have filed motions for resentencing in all cases in which LWOP will be sought.</p>
<p>SCAO recommends that the court should not require a defendant to initiate resentencing proceedings under <i>Montgomery</i>. (See SCAO Memorandum, March 4, 2016.)</p>
<p>SCAO recommends that the court provide notice to each defendant that under <i>Montgomery</i>:</p> <ol style="list-style-type: none"> 1. defendant must be resentenced and defendant need not file for relief from judgment; 2. the prosecutor may file a motion seeking to resentence defendant to LWOP; 3. if a timely motion is not filed, MCL 769.25a(4)(c) requires that the court resentence the defendant to a term of years for which the maximum shall be 60 years and the minimum shall be not less than 25 years or more than 40 years; and 4. the defendant’s case will be scheduled according to the priority established by statute. <p>If notice is sent, it should be recorded on the register of actions and placed in the court file.</p>
<p>Along with the notice described above, SCAO recommends that the court provide defendants with documentation for requesting court-appointed counsel.</p>
<p>The court should immediately begin to block out dates for conducting the necessary resentencing hearings. Resentencing hearings must be held in the following order of priority:</p> <ol style="list-style-type: none"> 1. Cases involving defendants who have served 20 or more years of imprisonment 2. Cases in which the prosecuting attorney has filed a motion requesting a LWOP sentence 3. All other cases
<p>A defendant is entitled to a reasonably updated PSIR. Therefore, the court should communicate with the probation supervisor regarding the identity of defendants that will be resentenced.</p>
<p>Any victim must be afforded the right, under the Crime Victim’s Rights Act, to appear before the court and make an oral impact statement at any sentencing or resentencing.</p>

<u>Prosecutor Seeks LWOP</u>	<u>Prosecutor Does Not Seek LWOP</u>
The court must conduct a hearing on the motion as part of the sentencing process.	MCL 769.25 does not address whether a hearing is required in a case in which the prosecutor does not file a motion seeking LWOP; however, it can be assumed that a normal sentencing hearing is required.
At the hearing, the trial court must consider the factors listed in Miller v Alabama , 567 US ___ (2012), and may consider any other criteria relevant to its decision, including the individual's record while incarcerated. The court must specify on the record the aggravating and mitigating circumstances it considered and the reasons supporting the sentence imposed. Evidence presented at trial may be considered together with any evidence presented at the sentencing hearing. A life-without-parole sentence will very rarely be proportionate ; such a sentence is appropriate only for "the truly rare individual who is incapable of reform." People v Hyatt , ___ Mich App ___ (2016) (citations omitted).	MCL 769.25 does not provide guidance for conducting a hearing or fashioning a sentence when LWOP is not sought. In the absence of guidance, normal sentencing procedures should be followed, with the caveat that there does not appear to be any basis for attempting to apply the sentencing guidelines.
If the court rejects LWOP, it must exercise its discretion and sentence the defendant to a term of imprisonment for which the maximum term must be 60 years ¹ and the minimum term cannot be less than 25 years or more than 40 years.	The court must exercise its discretion and sentence the defendant to a term of imprisonment for which the maximum term must be 60 years ² and the minimum term cannot be less than 25 years or more than 40 years.
Defendant must be given credit for time served but must not receive any credits that reduce the minimum or maximum sentence.	Defendant must be given credit for time served but must not receive any credits that reduce the minimum or maximum sentence.

1. Note that although [MCL 769.25\(9\)](#) provides that the maximum sentence "shall be *not less than* 60 years[.]" [MCL 769.25a\(4\)\(c\)](#) provides that "the maximum term *shall be* 60 years[.]" (Emphasis added.)

2. Note that although [MCL 769.25\(9\)](#) provides that the maximum sentence "shall be *not less than* 60 years[.]" [MCL 769.25a\(4\)\(c\)](#) provides that "the maximum term *shall be* 60 years[.]" (Emphasis added.)