

# Procedures for Handling Juvenile Life-Without-Parole (“LWOP”) Sentencings and Resentencings Under *Miller v Alabama*,<sup>1</sup> *Jones v Mississippi*,<sup>2</sup> *People v Skinner*,<sup>3</sup> and MCL 769.25/MCL 769.25a<sup>4</sup>

## 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. MCL 769.25(2). The motion must specify the grounds on which LWOP is sought. MCL 769.25(3).	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 provided in MCL 769.25(9). MCL 769.25(4).
The defendant must file a response to the prosecution's motion within 14 days after receiving notice of the motion. MCL 769.25(5).	No action on the part of the defendant is required under MCL 769.25 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(6).	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. MCL 769.25(8).	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. MCL 769.25(8).

<sup>1</sup> *Miller v Alabama*, 567 US 460 (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.

<sup>2</sup> *Jones v Mississippi*, 593 US \_\_\_ (2021). Under *Jones*, the decision to sentence a juvenile to LWOP does not require a separate factual finding of permanent incorrigibility, nor is the sentencing court required to provide an explanation with an implicit finding of permanent incorrigibility on the record. *Id.* at \_\_\_, \_\_\_. The *Jones* decision does not disturb the *Miller* or *Montgomery v Louisiana*, 577 US 190 (2016), holdings. *Jones*, 593 US at \_\_\_.

<sup>3</sup> *People v Skinner (Skinner II)*, 502 Mich 89 (2018), rev’g *People v Skinner (Skinner I)*, 312 Mich App 15 (2015) and aff’g in part and rev’g in part *People v Hyatt*, 316 Mich App 368 (2016). Under *Skinner II*, the decision to sentence a juvenile to LWOP must be made by a judge; the decision is reviewed for an abuse of discretion. *Id.* at 137.

<sup>4</sup> 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. “MCL 769.25 does not violate the Sixth Amendment because neither the statute nor the Eighth Amendment requires a judge to find any particular fact before imposing life without parole; instead, life without parole is authorized by the jury’s verdict alone.” *Skinner II*, 502 Mich at 97. 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 190 (2016).

<u>Prosecutor Seeks LWOP</u>	<u>Prosecutor Does Not Seek LWOP</u>
<p>“[T]here is a rebuttable presumption against the imposition of juvenile LWOP sentences in Michigan and . . . it is the prosecution’s burden to overcome this presumption by clear and convincing evidence at a <i>Miller</i> hearing.” <i>People v Taylor</i>, ___ Mich ___, ___ (2022). At the hearing, the trial court must consider the factors listed in <i>Miller v Alabama</i>, 567 US 460 (2012), and may consider any other criteria relevant to its decision, including the individual’s record while incarcerated. <a href="#">MCL 769.25(6)</a>. Although “<a href="#">MCL 769.25</a> does not require the trial court to make any particular factual finding before it can impose a life-without-parole sentence,” <i>Skinner II</i>, 502 Mich at 119, the court must specify on the record the aggravating and mitigating circumstances it considered and the reasons supporting the sentence imposed, <a href="#">MCL 769.25(7)</a>. Evidence presented at trial may be considered together with any evidence presented at the sentencing hearing. <a href="#">MCL 769.25(7)</a>. The decision to sentence a juvenile to LWOP does not require a separate factual finding of permanent incorrigibility, nor is the sentencing court required to provide an explanation with an implicit finding of permanent incorrigibility on the record. <i>Jones</i>, 593 US at ___, ___. The trial court is not required to explicitly find that a juvenile is or is not “rare” or “uncommon” before it can impose LWOP. <i>Skinner II</i>, 502 Mich at 137.</p>	<p><a href="#">MCL 769.25</a> 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.</p> <p>While “trial courts must consider a juvenile defendant’s youth to be a mitigating factor when sentencing them to term-of-years sentences under <a href="#">MCL 769.25</a>[,]” they are not required to “articulate on the record how a defendant’s youth affected the decision.” <i>People v Boykin</i>, ___ Mich ___, ___ (2022).</p> <p>“[T]he court should be guided by a balancing of the [<i>People v Snow</i>, 386 Mich 586, 592 (1972)] objectives [(reformation of the offender; protection of society; punishment of the offender; and deterrence of others from committing like offenses)] and in that context is required to take into account the attributes of youth, such as those described in <i>Miller</i>.” <i>People v Wines</i>, 323 Mich App 343, 352 (2018), rev’d in part on other grounds 506 Mich 954 (2020).</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. <a href="#">MCL 769.25(9)</a>.</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. <a href="#">MCL 769.25(9)</a>.</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. <a href="#">MCL 769.25(10)</a>.</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. <a href="#">MCL 769.25(10)</a>.</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. <a href="#">MCL 769.25a(4)(a)</a>.</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. <a href="#">MCL 769.25a(2)-(3)</a>. See also <i>People v Howard</i>, 323 Mich App 239, 249 (2018).</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. <a href="#">MCL 769.25a(4)(b)</a>.</p>
<p>SCAO recommends that the court should not require a defendant to initiate resentencing proceedings under <i>Montgomery</i>.</p>
<p>SCAO recommends that the court provide notice to each defendant that under <i>Montgomery</i>:</p> <ol style="list-style-type: none"> <li>1. defendant must be resentenced and defendant need not file for relief from judgment;</li> <li>2. the prosecutor may file a motion seeking to resentence defendant to LWOP;</li> <li>3. if a timely motion is not filed, <a href="#">MCL 769.25a(4)(c)</a> 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</li> <li>4. the defendant’s case will be scheduled according to the priority established by statute.</li> </ol> <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"> <li>1. Cases involving defendants who have served 20 or more years of imprisonment;</li> <li>2. Cases in which the prosecuting attorney has filed a motion requesting a LWOP sentence;</li> <li>3. All other cases. <a href="#">MCL 769.25a(5)</a>.</li> </ol>
<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. <a href="#">MCL 769.25a(4)(c)</a>.</p>

<p align="center"><b><u>Prosecutor Seeks LWOP</u></b></p>	<p align="center"><b><u>Prosecutor Does Not Seek LWOP</u></b></p>
<p>The court must conduct a hearing on the motion as provided in <a href="#">MCL 769.25</a> as part of the sentencing process. <a href="#">MCL 769.25a(4)(b)</a>.</p>	<p><a href="#">MCL 769.25</a> and <a href="#">MCL 769.25a</a> do 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.</p>
<p>“[T]here is a rebuttable presumption against the imposition of juvenile LWOP sentences in Michigan and . . . it is the prosecution’s burden to overcome this presumption by clear and convincing evidence at a <i>Miller</i> hearing.” <i>People v Taylor</i>, ___ Mich ___, ___ (2022). At the hearing, the trial court must consider the factors listed in <i>Miller v Alabama</i>, 567 US 460 (2012), and may consider any other criteria relevant to its decision, including the individual's record while incarcerated. <a href="#">MCL 769.25(6)</a>; <a href="#">MCL 769.25a(4)(b)</a>. Although “<a href="#">MCL 769.25</a> does not require the trial court to make any particular factual finding before it can impose a life-without-parole sentence,” <i>Skinner II</i>, 502 Mich at 119, the court must specify on the record the aggravating and mitigating circumstances it considered and the reasons supporting the sentence imposed, <a href="#">MCL 769.25(7)</a>. Evidence presented at trial may be considered together with any evidence presented at the sentencing hearing. <i>Id.</i>; <a href="#">MCL 769.25a(4)(b)</a>. The decision to sentence a juvenile to LWOP does not require a separate factual finding of permanent incorrigibility, nor is the sentencing court required to provide an explanation with an implicit finding of permanent incorrigibility on the record. <i>Jones</i>, 593 US at ___, ___. The trial court is not required to explicitly find that a juvenile is or is not “rare” or “uncommon” before it can impose LWOP. <i>Skinner II</i>, 502 Mich at 137.</p>	<p><a href="#">MCL 769.25</a> and <a href="#">MCL 769.25a</a> do 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>While “trial courts must consider a juvenile defendant’s youth to be a mitigating factor when sentencing them to term-of-years sentences under <a href="#">MCL 769.25</a> or <a href="#">MCL 769.25a[,]</a>” they are not required to “articulate on the record how a defendant’s youth affected the decision.” <i>People v Boykin</i>, ___ Mich ___, ___ (2022).</p> <p>“[T]he court should be guided by a balancing of the [<i>People v Snow</i>, 386 Mich 586, 592 (1972)] objectives [(reformation of the offender; protection of society; punishment of the offender; and deterrence of others from committing like offenses)] and in that context is required to take into account the attributes of youth, such as those described in <i>Miller</i>.” <i>People v Wines</i>, 323 Mich App 343, 352 (2018), rev’d in part on other grounds 506 Mich 954 (2020).</p>
<p>If the court rejects LWOP, it must exercise its discretion and sentence the defendant to a term of imprisonment for which the maximum term <b>must be 60 years</b><sup>1</sup> and the minimum term cannot be less than 25 years or more than 40 years. <a href="#">MCL 769.25(9)</a>; <a href="#">MCL 769.25a(4)(b)</a>.</p>	<p>The court must exercise its discretion and sentence the defendant to a term of imprisonment for which the maximum term <b>must be 60 years</b><sup>2</sup> and the minimum term cannot be less than 25 years or more than 40 years. <a href="#">MCL 769.25a(4)(c)</a>.</p>

<u>Prosecutor Seeks LWOP</u>	<u>Prosecutor Does Not Seek LWOP</u>
<p>Although <a href="#">MCL 769.25a(6)</a> provides that defendants must be given credit for time served but must not receive any credits that reduce the minimum or maximum sentence, the Court of Appeals found this provision unconstitutional in <i>People v Wiley</i>, 324 Mich App 130, 135 (2018).</p>	<p>Although <a href="#">MCL 769.25a(6)</a> provides that defendants must be given credit for time served but must not receive any credits that reduce the minimum or maximum sentence, the Court of Appeals found this provision unconstitutional in <i>People v Wiley</i>, 324 Mich App 130, 135 (2018).</p>

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.) See *People v Meadows*, 319 Mich App 187, 190 (2017) (holding that the trial court erred in imposing a 45-year maximum sentence under [MCL 769.25a\(4\)\(c\)](#)).
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.) See *People v Meadows*, 319 Mich App 187, 190 (2017) (holding that the trial court erred in imposing a 45-year maximum sentence under [MCL 769.25a\(4\)\(c\)](#)).





