

Juvenile LWOP Resentencing—Collateral Cases

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

<p>Cases must be handled by the judge who originally imposed sentence, or the successor judge. “[W]hen the original sentencing judge is unavailable, in addition to following the other . . . remand requirements, the assigned judge must allow the defendant an opportunity to appear before the court and be heard before the judge can decide whether he or she would resentence the defendant.” <i>People v Howard</i>, 323 Mich App 239, 523 (2018).</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"> 1. defendant must be resentenced and defendant need not file for relief from judgment; 2. the prosecutor may file a motion seeking to sentence defendant to LWOP; 3. if a timely motion is not filed, MCL 769.25a(4)(c) requires that the court sentence 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 an LWOP sentence; 3. All other cases. MCL 769.25a(5).

¹*Miller v Alabama*, 567 US 460 (2012). Within 30 days after *Montgomery v Louisiana*, 577 US 190 (2016), which provided for the retroactive application of *Miller*, became final (by the end of March 2016), the prosecuting attorney was required to have provided to the chief circuit judge of the county a list of all defendants to be resentenced. [MCL 769.25a\(4\)\(a\)](#). Within 180 days after *Montgomery* became final (by August 17, 2016), the prosecutor should have filed motions for resentencing in all cases in which LWOP was to be sought. [MCL 769.25a\(4\)\(b\)](#). Nothing in [MCL 769.25a\(4\)\(b\)](#) indicates when a defendant is required to respond to a motion seeking a sentence of LWOP; therefore, a defendant must respond to the motion within the time provided in [MCR 2.119\(C\)](#).

<p>A defendant is entitled to a reasonably updated PSIR. <i>People v Triplett</i>, 407 Mich 510 (1980). 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. MCL 769.25a(4)(c).</p>

<p style="text-align: center;"><u>Prosecutor Seeks LWOP</u></p>	<p style="text-align: center;"><u>Prosecutor Does Not Seek LWOP</u></p>
<p>The court must conduct a hearing on the motion as provided in MCL 769.25 as part of the sentencing process. MCL 769.25a(4)(b).</p>	<p>MCL 769.25(4) and MCL 769.25a(4)(c) require a court to sentence a defendant to a term of years if the prosecutor did <i>not</i> file a timely motion for LWOP. No additional requirements for sentencing/resentencing in the absence of such a motion are found in MCL 769.25 or MCL 769.25a.</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>, 510 Mich 112, 129 (2022).</p> <p>At the hearing, the trial court must consider the factors listed in <i>Miller</i> and may consider any other criteria relevant to its decision, including the individual’s record while incarcerated. MCL 769.25(6); MCL 769.25a(4)(b).</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 MCL 769.25 or MCL 769.25a[,]” they are not required “to articulate on the record how a defendant’s youth affected the decision.” <i>People v Boykin</i>, 510 Mich 171, 178 (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>

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<p>Although “MCL 769.25 does not require the trial court to make any particular factual finding before it can impose a life-without-parole sentence,” <i>Skinner</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. MCL 769.25(7). Evidence presented at trial may be considered together with any evidence presented at the sentencing hearing. <i>Id.</i>; MCL 769.25a(4)(b).</p>	<p>“Courts sentencing juvenile defendants to a term-of-years sentence under MCL 769.25a are required only to make a record demonstrating that the court considered the defendant’s youth and treated it as a mitigating factor.” <i>People v Copeland</i>, ___ Mich App ___, ___ (2024) (noting that “courts sentencing juvenile defendants to a term of years have discretion to consider the <i>Miller</i> factors when fashioning an appropriate sentence, which in turn ‘enhances an appellate court’s ability to review the proportionality’ of the sentence”) quoting <i>Boykin</i>, 510 Mich at 194 n 9. See also <i>People v Eads</i>, ___ Mich App ___, ___ (2025) (holding that considering the attributes of youth “as aggravating factors in support of a significant departure sentence [is] plainly contrary to <i>Miller</i> and its progeny”).</p>
<p>“[T]he Michigan Constitution requires that 18-year-olds convicted of first-degree murder receive the same individualized sentencing procedure under MCL 769.25 as juveniles who have committed first-degree murder, instead of being subjected to a mandatory life-without-parole sentence like other older adults.” <i>People v Parks</i>, 510 Mich 225, 244 (2022).¹</p> <p>Further, “application of a <i>mandatory</i> sentence of LWOP under MCL 750.316 to [defendants who were 19 or 20 years old at the time of the offense] constitutes unconstitutionally harsh and disproportionate punishment and thus ‘cruel’ punishment in violation of Const 1963, art 1, § 16.” <i>People v Taylor</i>, ___ Mich ___, ___ (2025), <i>rev’g People v Czarnecki (On Remand, On Reconsideration)</i>, ___ Mich App ___ (2023). The decision in <i>Taylor</i> “also applies retroactively to all relevant criminal cases on collateral review.” <i>Taylor</i>, ___ Mich at ___.</p>	<p>“Pursuant to the statutory scheme created by the Legislature, if the prosecutor does not seek LWOP for a juvenile defendant convicted of one of the enumerated offenses in MCL 769.25(2), then the default sentence is a term of years.” <i>People v Taylor</i>, 510 Mich 112, 132 (2022), citing MCL 769.25(4).</p> <p>“A sentence is reasonable if it adheres to the ‘principle of proportionality,’ which requires the sentence to be ‘proportionate to the seriousness of the circumstances surrounding the offense and the offender.’” <i>People v Campbell</i>, ___ Mich App ___, ___ (2025), quoting <i>People v Steanhouse</i>, 500 Mich 453, 474 (2017) (quotation marks and citation omitted).</p>

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<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 must be 60 years² and the minimum term cannot be less than 25 years or more than 40 years. MCL 769.25(9); MCL 769.25a(4)(c).</p>	<p>The court must exercise its discretion and sentence the defendant to a term of imprisonment for which the maximum term must be 60 years³ and the minimum term cannot be less than 25 years or more than 40 years. MCL 769.25a(4)(c).</p>
<p>Although MCL 769.25a(6) 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 MCL 769.25a(6) 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. *People v Poole*, ___ Mich ___, ___ (2025). *Poole* held that *Parks*, 510 Mich 225 (2022), was retroactive “to cases where the period for direct review had expired when *Parks* was decided” and overruled the state retroactivity analysis in *People v Carp*, 496 Mich 440 (2014).

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, 191 (2017) (holding that the trial court erred in imposing a 45-year maximum sentence under [MCL 769.25a\(4\)\(c\)](#)).

3. 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, 191 (2017) (holding that the trial court erred in imposing a 45-year maximum sentence under [MCL 769.25a\(4\)\(c\)](#)).