

Retroactive? State Units Debate Juvenile Lifers Decision

After the U.S. Supreme Court decided mandatory life sentences for juveniles without the possibility of parole are unconstitutional, Michigan's State Appellate Defender Office (SADO) is reading the decision as retroactive and moving forward with plans to file motions for having 125 such cases resentenced.

The Attorney General's (AG) Office disagrees, arguing the high court decision does not have a retroactive impact.

The debate will likely be settled in court.

The Appropriations Subcommittee on Corrections had a special hearing today for several state units to discuss the implications of the U.S. Supreme Court's *Miller v Alabama* decision, which was handed down last month.

Department of Corrections (DOC) spokesman Russ **MARLAN** said there are roughly 370 prisoners the decision may apply to, and the department is reviewing those files before forwarding the information to the AG's office. Of those 370 prisoners who could be impacted, 202 were 17 at the time of their offense. The oldest of the currently imprisoned offenders who was sentenced under juvenile lifer laws is now 67.

What happens next with any cases identified by DOC as potentially falling under the Miller decision will be up the AG's office, Marlan said.

That's where the debate sparks between the AG's office and SADO.

SADO handles indigent defense cases. SADO Director Dawn **Van HOEK** said that of the 370 juvenile lifer cases identified in Michigan, SADO handled approximately one-third or 125 of those. SADO will handle bringing those cases up for a resentencing based on the idea that the Miller decision is retroactive, she said. The caseload can be handled with the current resources the state office has, but SADO is also looking for additional funds that could help it add one more attorney and one more social worker to handle the work. Those funds would come through grants and possibly private foundations, Van Hoek said.

For the remaining two-thirds of the juvenile lifer cases in Michigan, a group of private attorneys is already volunteering to step up and represent the defendants on a mostly pro bono basis. Training for those lawyers is scheduled for as soon as this month.

"I think Miller's decision made it very clear that Michigan's scheme of life without parole for juveniles is unconstitutional," Van Hoek said.

The hope is that a judge will consider relevant factors and mitigating circumstances in sentencing a criminal who was under 18 at the time of the offense. Van Hoek noted that in a significant number of juvenile lifer cases, the judges expressed being very concerned about what they had to do by sending a young person away for the rest of their life. In some cases, however, that was the only option after juveniles turned down plea deals or because of other factors.

If you ask people in the AG's office, SADO's plans for addressing the cases of juveniles who have already been sentenced to life without parole are preemptive.

Margaret **NELSON**, an assistant attorney general, said the AG's office believes the issue of retroactivity is still unclear. The Miller decision would impact those who have currently only been charged or convicted and could face an applicable sentencing, but the AG's office hinted that for now there is still debate about whether old sentences can be brought back up and reexamined.

Van Hoek said the differences will "probably be worked out through litigation," adding it's the kind of thing "you don't typically sit down at a table and try to work out beforehand."

"We think we are on very solid ground -- there is a ton of very excellent precedent supporting our position that we should be looking at these old cases," she said. "What does it mean to have this watershed decision where we might change so many lives nationally if it is not applied to those very people who have been serving these life without parole sentences for so many years? It would really be an empty sort of judgment if it didn't apply."

She said people should also trust trial judges to make the right decisions when it comes to resentencing those whose cases are brought back up. That's why they are elected, she said.

Rep. Fred **DURHAL** (D-Detroit) today raised a question about how juveniles would be sentenced or resentenced under the decision that has been handed down. He questioned how the decision would translate into sentencing guidelines since there are several ideas about what it all means.

Nelson said the Prosecuting Attorneys Association of Michigan and the Michigan Prosecuting Attorneys Coordinating Council are working to develop a consistent and cohesive plan "because we don't want an inequity in the outcome of these cases county by county."

Judges will also likely talk about the appropriate sentencing guidelines at their annual meeting in September, Nelson said.

John **LAZAT**, director of crime victim advocacy in the AG's office, emphasized that Attorney General Bill **SCHUETTE** is concerned that as this process advances, crime victims' rights are preserved and exercised.

Victims have a right to make a statement to the court at resentencing. That means there could be a scramble to figure out who the victims are for all of the cases that could be brought back up, and some of those victims may be hard to track down so many years after the initial crime.