

JURISDICTION WAIVER RECENT SENTENCING AND LEGISLATIVE ISSUES

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WAIVER

- In Michigan, there are three ways a juvenile's case may be removed from juvenile court and referred to circuit (adult criminal) court. This process is referred to as "waiver." There are three different types juvenile waiver:
 - traditional (discretionary) waiver,
 - mandatory waiver, and
 - automatic waiver.

Traditional Waiver

MCL 712A(1)-(4)

- This form of waiver provides the juvenile court some discretion in the waiver determination.
 - ▣ If a juvenile 14 years of age or older is accused of an act that if committed by an adult would be a felony, the judge of the family division of circuit court in the county in which the offense is alleged to have been committed may waive jurisdiction.
 - ▣ If the juvenile court waives jurisdiction, the juvenile's case is transferred to circuit (adult criminal) court.

- Prosecuting attorney must move to have jurisdiction waived.
 - ▣ If the prosecutor files such a motion, before conducting a hearing on the motion to waive jurisdiction, the court must give notice of the hearing to the juvenile and the prosecuting attorney and, if addresses are known, to the juvenile's parents or guardians.
 - ▣ The notice shall state clearly that a waiver of jurisdiction to a court of general criminal jurisdiction has been requested and that, if granted, the juvenile can be prosecuted for the alleged offense as though he or she were an adult.

Two-part Hearing

- First, the court shall determine on the record if there is probable cause to believe that an offense has been committed that if committed by an adult would be a felony and if there is probable cause to believe that the juvenile committed the offense.
- If the prosecutor establishes probable cause, the court must conduct the second part of the hearing.
 - ▣ Here, the court must determine if the waiver of jurisdiction is in the child's best interests and if the child's transfer to the criminal court would serve the public interest.

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- In making its determination, the court shall consider all of the following criteria, giving greater weight to the seriousness of the alleged offense and the juvenile's prior record of delinquency than to the other criteria:
 - ▣ The seriousness of the alleged offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines, the use of a firearm or other dangerous weapon, and the impact on any victim.
 - ▣ The culpability of the juvenile in committing the alleged offense, including, but not limited to, the level of the juvenile's participation in planning and carrying out the offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines.

- The juvenile's prior record of delinquency including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior.
- The juvenile's programming history, including, but not limited to, the juvenile's past willingness to participate meaningfully in available programming.
- The adequacy of the punishment or programming available in the juvenile justice system.
- The dispositional options available for the juvenile.

Mandatory Waiver, MCL 712A.4(5)

- If the court determines that there is probable cause to believe that the juvenile committed an offense, that if committed by an adult would be a felony, the court ***shall*** waive jurisdiction if the court determines the juvenile has been previously subject to the jurisdiction of circuit court.
- ▣ Due to the mandatory nature of this method of waiver, the juvenile court judge need only to conduct phase I of the bifurcated hearing involved in the traditional waiver process.

Automatic Waiver, MCL 764.1f

- If the prosecuting attorney has reason to believe that a juvenile 14 years of age or older but less than 17 years of age has committed a specified juvenile violation, the prosecuting attorney may authorize the filing of a complaint and warrant on the charge with a magistrate concerning the juvenile.



- First-degree arson, assault with intent to commit murder, assault with intent to maim, assault with intent to rob and steal (armed), attempted murder, first-degree murder, second-degree murder, kidnapping, criminal sexual conduct-first degree, armed robbery, carjacking, and stealing from bank, safe, vault, or other depository.
- Assault with intent to do great bodily harm less than murder; assault by strangulation or suffocation and home invasion if the juvenile is armed with a dangerous weapon.

- Escape or attempted escape from a juvenile facility, but only if the juvenile facility from which the individual escaped or attempted to escape was 1 of the following:
 - (i) A high-security or medium-security facility operated by the family independence agency or a county juvenile agency.
 - (ii) A high-security facility operated by a private agency under contract with the family independence agency or a county juvenile agency.

- Certain drug offenses; MCL 333.7401 and 333.7403.
- An attempt to commit a violation described in subdivisions (a) to (d).
- Conspiracy to commit a violation described in subdivisions (a) to (d).
- Solicitation to commit a violation described in subdivisions (a) to (d).
- Any lesser-included offense of a violation described in subdivisions (a) to (g) if the individual is charged with a violation described in subdivisions (a) to (g).

Sentencing the Juvenile Convicted in Juvenile Court

- Sentencing a juvenile that has been waived to circuit court has been the subject of change and controversy. In some cases, the court retains discretion to sentence the offender as either a juvenile or as an adult in discretionary designation cases. A discretionary designation case or a court designated case occurs when the prosecutor files a petition alleging the juvenile committed an offense other than the specified juvenile violation and requests the court to designate the case as one in which the juvenile is tried the same as an adult. MCR 3.951(A)(1)(b).

- **Juvenile.** The options available in the designated case regarding sentencing are Juvenile sentencing where the court may enter a completely juvenile disposition with no adult sentence. MCL 712A.18(1)(m).



- **Blended.** The court may delay a sentence of imprisonment by entering a juvenile order of disposition of the sentence and placing the juvenile on probation on terms and conditions it considers appropriate. This is called a delayed sentence as the court reserves the right to impose an adult sentence later. This occurrence is usually saved for the party who commits the same crime again. For example, if an armed robber gets a blended sentence and then gets caught smoking marijuana, this usually would not trigger adult sentencing.

- **Adult Sentencing.** The court has the right to impose a purely adult sentence. MCL 712A.18(1)(m). The sentence may include the Department of Corrections or adult probation. The only exception is that Juveniles may not be sent to prison (unlike jail) unless they are convicted of a crime specified under MCL712A.18h.

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- **Revocation.** If a juvenile is placed on probation, the court must revoke probation and impose sentence if the Juvenile is convicted of a felony or a misdemeanor punishable by more than a year.

Sentencing on Specified Felonies

Prior to 1996, a juvenile who was waived into circuit court was entitled to a mandatory hearing, post-conviction, “to determine whether to sentence the juvenile as a juvenile or as an adult.” This protection was abolished by [M.C.L. § 769.1](#)(1) to require that juveniles convicted of one of twelve out of the nineteen “specified juvenile violations” be sentenced in the same manner as adults.

- See, Bell, Matthew William, *Prosecutorial Waiver in Michigan and Nationwide*, 2004 Mich. St. L. Rev. 1071 (2004), citing [Mich. Comp. Laws § 769.1](#)(1) (2004). The violations for which an adult sentence must be imposed are: arson of a dwelling; assault with intent to commit murder; assault with intent to maim; attempted murder; conspiracy to commit murder; solicitation to commit murder; first degree murder; second degree murder; kidnapping; first degree criminal sexual conduct; armed robbery; carjacking and [Conat, 605 N.W.2d at 55](#).

United States Supreme Court

- **1. Roper v. Simmons**, 543 U.S. 551; 125 S.Ct. 1183 (2005)
- The United States Supreme Court held The Eighth and Fourteenth Amendments forbid imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed. The Court noted that scientific and sociological studies confirm, youth tend to demonstrate “[a] lack of maturity and an underdeveloped sense of responsibility. . . . These qualities often result in impetuous and ill-considered actions and decisions.” 543 U.S. at 569.
- **2. Graham v. Florida**, 560 US 48; 130 S.Ct. 2011 (May 17, 2010)
- The Supreme Court held that the Eighth Amendment prohibits imposition of life without parole sentence on juvenile offender for a non-homicide. Further, States must give juvenile non-homicide offenders sentenced to life without parole a meaningful opportunity to obtain release.
- **3. Miller v. Alabama**, 567 U.S. _; 132 S.Ct. 2455 (2102)
- The United States Supreme Court ruled that the Eighth Amendment prohibits a sentencing scheme that mandates life in prison without parole for juvenile offenders. The Court found these sentencing schemes flawed because they failed to give courts the opportunity to consider mitigating circumstances before imposing a lifetime sentence without parole.

Michigan's Response

- **1. People v. Carp, 298 Mich. App. 472 (Nov. 15, 2012)**
 - The court addressed retroactive application of *Miller v. Alabama*. The Michigan Court of Appeals recognized the *Miller* announced a new rule because it was not dictated by precedent existing at the time of the defendant's conviction became final. But, the court concluded that *Miller* was a procedural rule, not a watershed rule. As a result, the court found *Miller* inapplicable to Michigan cases on collateral review.
 - However, according to *Carp*, MCL 791.234 (6)(a) providing that a prisoner sentenced to life imprisonment for first-degree murder is ineligible for parole is unconstitutional as applied to juveniles. As a result, sentencing courts must consider, at the time of sentencing, characteristics associated with youth as well as circumstances of offense in order to decide whether to sentence a juvenile to life with or without parole. For purposes of sentencing, a juvenile is a person under 18. The court ruled that *Miller* is only applicable to cases pending on direct appeal.
 - Finally, in rare language, the Court of Appeals urged the legislature to address “with all possible expedience” revising current statutory sentencing scheme for juveniles. The court also urged the parole board to respect a sentencing court's decision by also providing a meaningful determination and review when parole eligibility arises.

Federal Response: Eastern District of Michigan

- 1. **Hill v. Snyder**, 14568, 2013 WL 364198 (E.D. Mich., Jan. 30 2103).
- District Judge John Corbett O'Meara ruled that *Miller* applies retroactively, not just on cases going forward (prospectively). This means that all individuals currently servicing the sentence must be eligible and considered for parole.

Subsequent Michigan Cases

- 1. **People v. Skinner**, 306903, 2013 WL 951265 (February 21, 2013).
- The Court of Appeals ruled that defendant was entitled to a resentencing at which time the trial court must consider the “characteristics of youth and the circumstances of the offense” before sentencing the defendant for the first-degree murder conviction. The court noted that the trial court was still permitted to sentence the defendant to life without parole, but that it must engage in the proper analysis first.
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- **People v. Skinner**, 494 Mich. 872; 832 NW2d 237 (June 25, 2013).
- The Michigan Supreme Court denied review.

- **2. People v. Masalmani**, 301376, 2013 WL 1137181 (March 19, 2013).
- The Michigan Court of Appeals vacated the defendant's mandatory life sentence for first-degree murder and remanded for sentencing consistent with *Miller v. Alabama* and *People v. Carp*.

- **3. People v. Taylor**, 303208, 2013 WL 1165239 (March 21, 2013).
- The Michigan Court of Appeals vacated the defendant's mandatory life sentence for first-degree murder and remanded for sentencing consistent with *Miller v. Alabama* and *People v. Carp*.

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- **4. People v. Eliason**, 302353, 300 Mich. App. 293; ___N.W.2d_ (April 4, 2013).
- The Michigan Court of Appeals ruled that after *Miller*, the only discretion afforded to trial courts when sentencing a juvenile for first-degree murder is whether to impose life imprisonment without parole or life imprisonment with the possibility of parole. In making such a decision, the court should consider the following non-exclusive list of factors:
 - -the character and record of the individual offender [and] the circumstances of the offense,
 - -the chronological age of the minor,
 - -the background and mental and emotional development of a youthful defendant, the family and home environment,
 - -the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressure may have affected [the juvenile],
 - -whether the juvenile might have been charged [with] and convicted of a lesser offense if not for incompetencies associated with youth, and
 - -the potential for rehabilitation.

- **5. People v. McCloud**, 296256, 2013 WL 2360122 (May 30, 2013).
- The Michigan Court of Appeals vacated the defendant's mandatory life sentence for first-degree murder and remanded for sentencing consistent with *Miller v. Alabama* and *People v. Carp*.

- **6. People v. McDade**, 307597, 2013 WL 3020686 (June 18, 2013).
- The Michigan Court of Appeals vacated the defendant's mandatory life sentence for first-degree murder and remanded for sentencing consistent with *Miller v. Alabama* and *People v. Carp*.

Important Legislative Update

- The joint meeting of the House Criminal Justice and Senate Judiciary committees was rescheduled for August 27 at 9 a.m. A vote was not scheduled. State lawmakers are expected to hear testimony next month on [proposed changes](#) to Michigan's "juvenile lifer" law.
- [House Bill 4806](#) would allow juvenile lifers or prosecuting attorneys to request a resentencing hearing. Judges would be required to consider mitigating circumstances, including the offender's youth at the time of their crime, before affirming the original sentence or considering an alternative, including a term of years less than life.
- In the event that an offender was resentenced to life *with* the possibility of parole, [House Bill 4809](#) would make them eligible for review after serving 15 years, including any time served under their original sentence. A member of the state parole board would be required to interview the prisoner every two years until their release or death.

Miscellaneous Cases--Waiver

- **People v Kiyoshk**, 493 Mich. 923, 924; 825 N.W.2d 56 (January 18, 2013)
 - Whether a juvenile is of an age that allows circuit court jurisdiction is a question of personal jurisdiction. A party may stipulate to, waive, or implicitly consent to *personal* jurisdiction. Therefore, when the defendant plead guilty in circuit court without contesting the court's jurisdiction, the defendant implicitly consented to that court's exercise of personal jurisdiction.
 - **A. People v. Kiyoshk**, Docket No. 29552, 2013 WL 1845613 (Mich. App., May 2, 2013) (on remand)
 - The Michigan Supreme Court remanded the case to address defendant's ineffective assistance of counsel claim. The court opined that when a claim of ineffective assistance of counsel arises in the context of a plea, the relevant inquiry addresses whether the defendant tendered the plea voluntarily and understandingly, whether counsel's advice was within the range of competence for attorneys in a criminal case. The court also noted that defense counsel is given a wide discretion in matters of trial strategy.
- **People v Etter**, 308157, 2013 WL 951133 (Mich. Ct. App. Feb. 21, 2013)
- Whether defendant was of an age that made circuit court jurisdiction appropriate is ... a question of personal jurisdiction. *People v. Kiyoshk*, 493 Mich. 923, 825 N.W.2d 56; — NW2d — (Docket No. 143469, entered January 18, 2013). A party may stipulate to, waive, or implicitly consent to *personal* jurisdiction Defendant's failure to contest the circuit court's jurisdiction over him waived that issue.