Submitted by
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Criminal Defense Attorneys of Michigan (CDAM)
House Judiciary Committee
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House Bills 4518 and 4594-96; Juvenile Life Without Parole

The Criminal Defense Attorneys of Michigan (CDAM) support HB 4518 and 4594-4596, referred to as the Juvenile Life With-Out Parole (LWOP) package as a practical matter. That support, however, comes with an acknowledgment that there are still some major issues to resolve which are discussed below.

Ideally, the legislation would have done away with life with-out parole for any juvenile for any offense, acknowledging that it is a cruel and unusual punishment. Given the Supreme Court of the United States' Decision on Graham v. Florida (life with-out parole is unconstitutional in non-homicide cases), among other factors, the House Judiciary Committee has decided that a judge should be granted the *option* to sentence life with-out parole. This leaves intact the concept of judicial discretion in sentencing (despite the fact that even with passage of a complete ban on this type of sentence, a judge can still depart if so compelled), but again, there are a few major issues with the bills.

If sentenced to life with-out parole, a juvenile can only get relief a prosecutor files a petition authorizing the parole board to consider release. Further, that petition would have to be supported by the victim's family and the sentencing court. As a practical matter, even well-meaning prosecutors will not have some sort of calendar system 15 years ahead to submit a parole application for any given offender, especially each offender through their office. This language essentially renders illusory the relief it anticipates providing. Rather, an improvement would be to allow the offender to make the application, while still keeping the prosecutor, victim and court approval in place as a condition to parole. Even then, the likelihood of a successful application is near null. But if a prosecutor is in charge of the application process to begin with, the relief is essentially zero.

Another problem with the package is that it lacks established criteria that a judge should consider when determining whether a juvenile should receive this sentence. Discretion without some objective criteria can (and has) lead to arbitrary results: disparity will occur within and across circuit courts all over the state based on a number of subjective criteria. In other words, whether a teenager receives life without parole should depend on objective factors about the juvenile, the crime, the circumstances and the victim, not the identity or location of the judge. Further, if the legislature provides guidelines, appellate courts can determine whether sentencing judges have applied them correctly as this judicial discretion is open to appellate review.

CDAM believes that these issues can be resolved through additional work between the interested parties and doing so would create a compromise that would provide relief for juveniles sentenced to life with-out parole. Thus, while CDAM supports the legislation as a measure of moving the issue forward, we urge the committee to take pause, consider our (and others') concerns and work to adopt some changes to get to a good compromise.