

Why should the Governor's recommended \$1.1 million increase for SADO be appropriated on an ongoing basis?

1. Because counsel must be provided to Michigan's 364 Juvenile Lifers

The U S Supreme Court recently applied the landmark *Miller* decision retroactively to the 364 individuals who were previously sentenced to life without parole for crimes committed before they turned eighteen. *Miller* requires robust and fully-informed examinations of each defendant and offense, rather than summary proceedings. To avoid further costly and time-consuming litigation, the State of Michigan should ensure that compliance is done right, by well-resourced and competent attorneys. Since the proceedings are post-conviction, SADO is statutorily authorized to handle them.

2. Because SADO is best-equipped to represent Juvenile Lifers

SADO's staff of 25 trained and supervised attorneys are representing several juvenile lifers on direct appeal (post-*Miller* offenses), and have conducted full resentencing hearings in two cases with the assistance of investigators and experts. In one case where the prosecution sought a life without parole sentence, the trial judge was persuaded to impose a term of 35 to 60 years. If this client is paroled at his earliest release date, satisfying the Parole Board that he doesn't present a risk to the public, the State of Michigan saves a projected \$450,000 in prison costs.

3. Because with the \$1.1 million investment, SADO can represent its own 114 previously assigned clients through the key investigation and negotiation stages

The timing and priorities set in MCL 769.25a make it extremely unlikely that all cases will be completed within FY 2017. Prosecutors are not required to make elections of life without parole cases until nearly September of 2016, and resentencing of those with the longest time served is to take priority. No matter which election occurs, every case must be adequately investigated and prepared. Records from cases handled 20 or 30 years ago must be assembled, clients contacted and evaluated, and witnesses both located and prepared. Work on the cases is very front-loaded, with investigation needed to inform any negotiations between defense and prosecution.

4. Because ongoing investment of the \$1.1 million will ensure competent representation and avoidance of further litigation

It is essential to invest in *Montgomery* compliance on the front end, to avoid litigation over whether Michigan's response was adequate. Quick resentencings, without the robust examination of mitigating and aggravating factors, will lead to further appeals. With an ongoing investment, SADO can ensure the competent representation of its clients, and possibly additional clients as assigned by MAACS, over the next several years. Of the 364 Juvenile Lifers entitled to *Miller* resentencings, 114 are represented by SADO pursuant to prior appointment orders, 75 are represented by private counsel, and 175 are not yet represented.

5. Because ongoing investment of the \$1.1 million will ensure competent counsel in more cases, over time, supporting MAACS needs

As work on the juvenile lifer cases is completed, staff will transition to regular SADO caseloads, increasing capacity of the office from 28% to 40% of the statewide workload. MAACS assigns cases to private roster attorneys, and has urgent need in some counties for counsel capable of handling complex, serious and costly cases. SADO can fill that gap, enabling MAACS to work with counties that face challenges of paying, or even finding, competent appellate counsel. This increased workload rationale was used in SADO's initial FY 2017 Proposal for Change, submitted by the Supreme Court, before the unprecedented *Montgomery* decision was released in January, 2016. The Governor's recommendation incorporated the response to *Montgomery*.