

# State Notes

## TOPICS OF LEGISLATIVE INTEREST

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### **Life Without Parole Sentencing For Youth** **By Lindsay Hollander, Fiscal Analyst**

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Michigan is one of 43 states that allow offenders under the age of 18 to be sentenced to life without parole. In Michigan, all 17-year-olds are tried and sentenced as adults for any crime, and juveniles aged 16 and under can be tried or sentenced as adults. During the past 20 years, the issue of trying juveniles in adult courts has been revisited by the Legislature on several occasions. Additionally, Senate Bills 6, 9, 28, and 40, which would prohibit the courts from sentencing offenders under the age of 18 to a life sentence without parole eligibility, were introduced in January 2007 and referred to the Senate Judiciary Committee. This article provides background on and analysis of the issue of life sentences without parole for offenders under the age of 18.

#### **Statutory Background**

Before 1988 revisions to the juvenile code, Code of Criminal Procedure, and Revised Judicature Act, 15- and 16-year-old offenders could be tried as an adult only if the juvenile court judge provided a waiver. Since 1988, prosecutors have been able to try some juveniles 15 and older in adult court through an automatic waiver, bypassing the judge. This automatic waiver applies only to certain crimes, such as first-degree murder. Once the juvenile is tried in adult court, the circuit court judge has the responsibility of deciding whether the offender will receive a juvenile or adult sentence. Amendments to these statutes in 1996 extended automatic waivers to 14-year-old offenders. Additionally, judges are required to sentence juveniles tried in circuit court the same as an adult would be sentenced. Prosecutors also gained the ability to try juveniles of any age in juvenile court, and in these cases, judges have the option to sentence the juvenile as an adult or as a juvenile, or to give the offender a blended sentence.

#### **Sentencing Background**

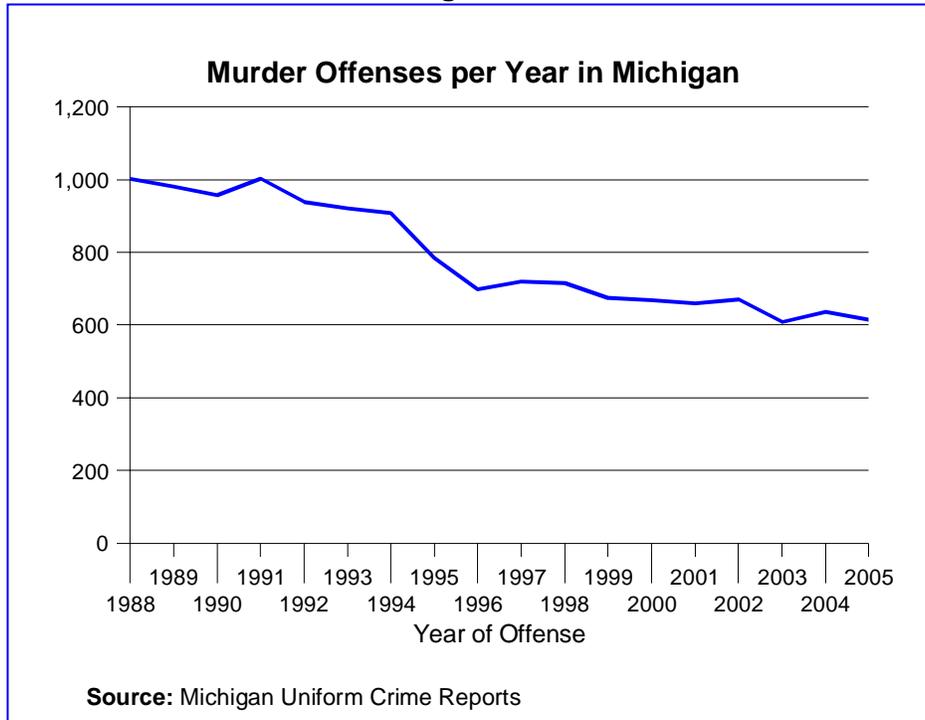
For first-degree murder under the Michigan Penal Code, the sentence is life without parole. As previously noted, the sentencing judge has had more sentencing options for juveniles since 1996. Before 1996, faced with a large discrepancy between a juvenile sentence, which would release the offender on his or her 21<sup>st</sup> birthday, and an adult sentence of life without parole, several sentencing judges had stated that they felt no choice but to use the adult sentence.<sup>1</sup> In the period between the 1988 amendments and the 1996 amendments to the statutes, when blended sentences were not provided for in any court, 85 youths under age 17 were sentenced to life without parole, over two and a half times the rate than after the 1996 amendments. The decrease may have been the result of prosecutors' trying more juveniles in juvenile court due to the additional sentencing discretion provided to judges in juvenile court. Similarly, before automatic waivers began in 1988, the rate of life without parole sentences for these offenders was half that of the rate during the years between the 1988 and 1996 amendments. However, these data may be due to declining murder offenses in Michigan as shown in [Figures 1 and 2](#).

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<sup>1</sup> "Second Chances: Juveniles serving life without parole in Michigan prisons", American Civil Liberties Union of Michigan, 2004, pp. 8, 12.



**Figure 1**



**Figure 2**





Table 1 shows when the offense was committed, broken down by specific Michigan Compiled Law (MCL) citation. For the purposes of this table, only offenders under 17 are used, as automatic waivers do not affect 17-year-olds since they are always tried in adult court.

**Table 1**

Time Period of Offense and Crime Committed for Offenders under 17 at Date of Offense Sentenced to Life Without Parole*	Offense Date		
	01/01/1980 - 05/31/1988 (101 months)	06/01/1988 - 12/31/1996 (103 months)	01/01/1997 – 05/31/2006 (113 months)
<b>Offense Under MCL 750.316</b>			
1 <sup>st</sup> degree murder.....	34	46	1**
1 <sup>st</sup> degree murder – premeditated .....	0	11	15
1 <sup>st</sup> degree murder - felony murder .....	1	15	15**
Open murder.....	0	3	4
<b>Total.....</b>	<b>35</b>	<b>75</b>	<b>32</b>
Number of Offenders Sentenced per Month	0.35	0.73	0.28
* Does not include convictions since reversed or discharged by the court.			
** One 750.316 offender and two 750.316B offenders in this offense date group were counted in both this cell and in the cell for 750.316A, as the offenders were convicted of both offenses. The totals, however, count these three offenders only once.			

**Source:** Michigan Department of Corrections (MDOC), CMIS, 11-26-06

### Fiscal Impact

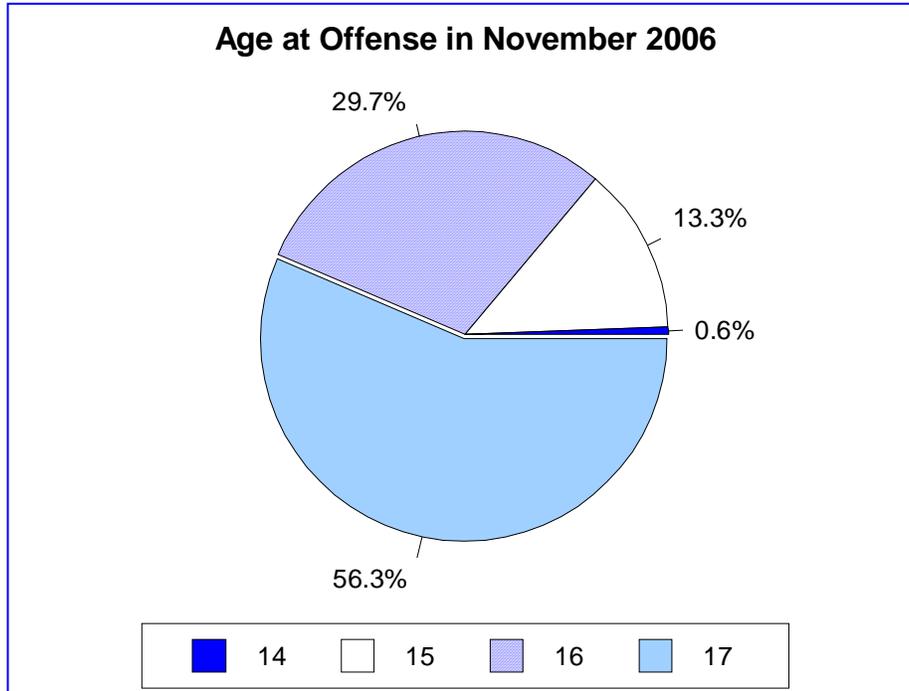
As of November 2006, in Michigan, 328 prisoners who committed an offense before turning 18 were serving a life sentence without the possibility of parole.<sup>2</sup> Of those 328 prisoners, 146 committed the offense before turning 17, which is the age at which youths are excluded from juvenile court jurisdiction. Figure 3 displays the offenders by their age at the time of the offense. All of the prisoners were sentenced under MCL 750.316 for first-degree murder.

As shown in Figure 3, almost all juvenile offenders in the Michigan prison system serving a life sentence without parole were 15 years of age or older when they committed the offense. As these offenders are serving life sentences, youth offenders are likely to serve longer sentences than adult offenders serve. Figure 4 exhibits the age of these 328 offenders as of November 2006.

<sup>2</sup> This number includes all offenders currently serving. This number does not include deceased offenders counted in Table 1, and includes available information for offenses from before 1980, which are not counted in Table 1.

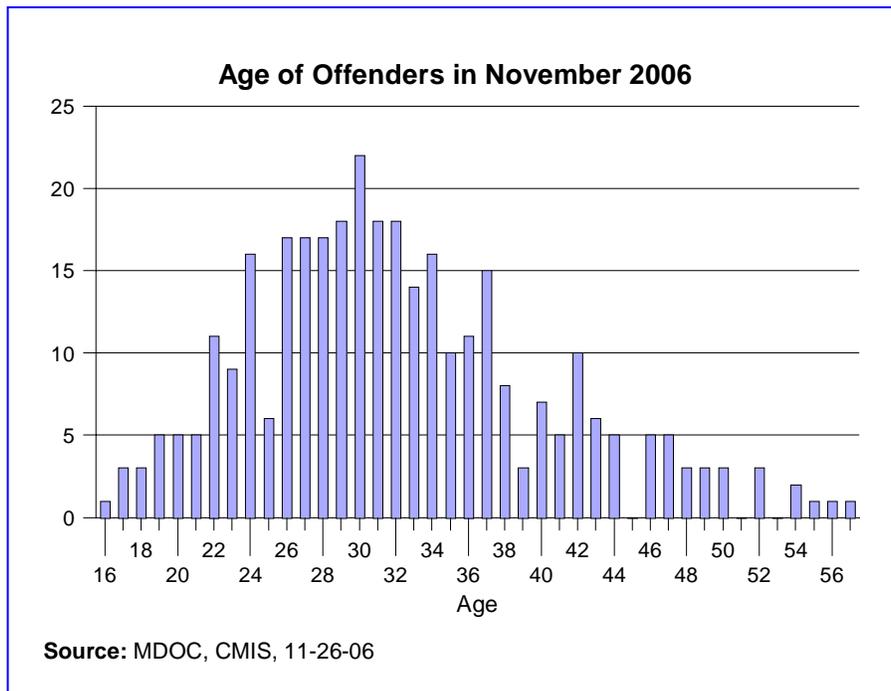


**Figure 3**



Source: MDOC, CMIS, 11-26-06

**Figure 4**





As the figure shows, the majority of these offenders are currently 22 to 37 years of age, with an average age of 32. The current life expectancy in the United States is 77.6 years. If each offender lives to be 77.6 years old, and the average annual cost of incarceration in a State facility continues to be \$31,000, the State will spend a total of \$462,110,800 on these 328 prisoners between now and the time of their deaths. The average annual cost of incarceration for these offenders is likely to rise due to health care costs for older prisoners. To the extent that the 1988 and 1996 amendments result in more youth offenders sentenced to life without parole, the average age of these offenders is likely to stay stable.

### **National Trends**

Six states<sup>3</sup> plus the District of Columbia do not sentence youth offenders to life without parole, and two of these, Alaska and New Mexico, do not allow the sentence at all.<sup>4</sup> In Michigan, this sentence is used only for juveniles convicted of first-degree murder and murder caused by a terrorist act. However, nationwide, 7.2% of youth offenders serving the sentence were convicted of crimes other than some type of homicide, such as kidnapping, property crimes, sex crimes, and other violent crimes.<sup>5</sup> Approximately 2,225 offenders who were convicted as youths are serving life sentences without parole in the United States.<sup>6</sup> In comparison to other states, Michigan, with 328 currently serving, has a large number of these offenders. Michigan has the third-highest number of offenders who were convicted as youths serving life sentences without parole, with Louisiana coming in second and Pennsylvania coming in first.<sup>7</sup> However, Michigan has the second-highest rate of incarceration of these offenders, at 52.9 offenders per 100,000 youths.<sup>8</sup> Louisiana has the highest rate at 109.6 offenders per 100,000 youths.<sup>9</sup> Michigan's current sentencing scheme, which allows for blended sentences, may result in the rate's decrease. The six of the 12 states with a rate of fewer than five offenders per 100,000 youths have mandatory life sentences without parole.<sup>10</sup> Of the other 22 states for which data are available, 16 make such sentences mandatory.<sup>11</sup>

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<sup>3</sup> Alaska, Kansas, Kentucky, Maine, New Mexico, and West Virginia. New York is frequently included in this classification, but sentences 16- and 17-year-olds to life without parole because offenders aged 16 are always considered adults and automatically put under the jurisdiction of the adult criminal justice system.

<sup>4</sup> The Rest of Their Lives: Life without Parole for Child Offenders in the United States, Human Rights Watch and Amnesty International USA, 2005; DC ST § 22-2104; Kan. Stat. Ann. § 21-4622; KRS § 640.040.

<sup>5</sup> The Rest of Their Lives: Life without Parole for Child Offenders in the United States, Human Rights Watch and Amnesty International USA, 2005

<sup>6</sup> Ibid

<sup>7</sup> Ibid

<sup>8</sup> Ibid

<sup>9</sup> Ibid

<sup>10</sup> Ibid

<sup>11</sup> Ibid



## **Conclusion**

The sentencing of youth offenders affects not only the youth and his or her victim, but also society at large. Society bears the cost of incarcerating the offender, and whatever resources were put into his or her upbringing that the offender would have repaid to society as a productive adult. Allowing the sentence of life without the possibility of parole for youths means that society is willing to accept those costs because it will potentially benefit if this results in fewer future crimes by the incarcerated offenders or by other individuals.

The number of youth offenders sentenced to life without parole has dropped in recent years. As discussed above, this could be due to statutory changes or a general drop in the murder rate. Judges' and society's willingness to bear the costs of putting youths in prison for life may have dropped. Prosecutors might not be using automatic waivers as often, or perhaps more offenders are negotiating pleas to lesser offenses. In any case, the recent attention to this issue coupled with a decline in such sentences may reflect changes in the way youth offenders are viewed and managed in the criminal and juvenile justice systems.