



State Appellate Defender Office

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The Juvenile Lifer Unit of the State Appellate Defender Office:
Need for \$700,000 budget allocation to continue in FY 2019

For FY 2019, the State Appellate Defender Office (SADO) requests the continued appropriation of \$700,000 to support representation of clients serving Life Without Parole sentences for offenses committed as youth. These clients require new sentencing hearings because they are now serving mandatory life sentences in violation of the constitutional prohibition against cruel and unusual punishments.

A decision of the United States Supreme Court in January of 2016 created an extraordinary one-time compliance effort limited to 364 cases in Michigan. *Montgomery v Louisiana*, 577 US ___ (2016) requires resentencing of all individuals serving unconstitutional mandatory sentences of Life Without Parole. Recognizing a shortage of qualified and willing volunteer and county-appointed counsel to handle these complex cases, SADO agreed to represent 193 of Michigan's 364 juvenile lifers, many former clients of the Office. 66 of these clients have now received new sentences.

SADO first received a supplemental \$300,000 appropriation (FY 2016), then appropriations of \$700,000 (FY 2017), and \$700,000 (FY 2018) to dedicate staff to represent these clients. Although it was estimated that an additional annual appropriation was needed for SADO to best complete the project, the FY 2019 Governor's recommendation did not include any appropriation, effectively zeroing out SADO's budget for this important work.

To continue this work for the remaining 126 clients, SADO requires the similar \$700,000 appropriation for FY 2019. With the majority of work ramping up in FY 2019, this is the absolute minimum needed for this complex representation.

Phase one – 2016: The project began

The first phase of the work began in January 2016, immediately after the *Montgomery* decision. Michigan prosecutors had six months to designate each of Michigan's 364 cases into one of two categories: first, individuals eligible for resentencing to a Term of Years, and second, individuals in which the prosecution

again seeks a Life Without Parole sentence. Meanwhile, SADO appointments to these cases grew until the number reached 193 clients by the end of FY 2016. The SADO Juvenile Lifer Unit was formed, and it began the massive task of gathering decades-old files and records, investigating and triaging cases, consulting with clients, and presenting mitigation packages to prosecutors as they deliberated whether to seek a Term of Years Sentence, or Life Without Parole again.

Phase two - FY 2017-2018: Clients resentenced to Term of Years

Despite the United States Supreme Court's admonition that Life without Parole sentences for juveniles should be "rare", Michigan prosecutors decided to seek Life Without Parole sentences in 229 of the 364 juvenile lifer cases in Michigan. Nearly 70%, or 131 of SADO's clients, were originally designated for Life Without Parole sentences by prosecutors.

During FY 2017, phase two of SADO's project began, as resentencing hearings for those designated for Term of Years sentences were held. By February 2018, the status of SADO's clients is as follows:

- 14 clients where prosecutors withdrew motions seeking Life Without Parole as a result of negotiation with the Juvenile Lifer Unit and mitigation evidence presented by the Unit. Most recently, Genesee County withdrew a Life Without Parole recommendation on February 23, 2018.
- 66 clients were resentenced, with an average age at time of resentencing of 42.9 years
 - Average sentence: 29.9 years
 - Average time served: 25.7 years
- 25 clients were approved for parole and 22 clients released on parole
- 126 clients await resentencing hearings
 - 9 clients awaiting Term of Years resentencing
 - 114 clients face comprehensive and contested "*Miller*" resentencing hearings
 - 3 clients in miscellaneous situations

Phase three - FY 2019 – FY?: Contested resentencing hearings

Appellate courts are slated to resolve significant legal questions on the process and substance of resentencing hearings. This dynamic landscape and the mitigation and investigation still underway mean that compliance efforts are expected to peak in FYs 2019 - 2021.

- Nearly 60% of SADO clients, 114 people, await comprehensive and contested “Miller” resentencing hearings. These hearings carry the risk of the ultimate penalty: death in prison for an offense committed as a juvenile.
- These cases await both massive investigation and preparation, and pending litigation over outstanding legal issues such as the right to a jury trial. A Michigan Supreme Court decision on this issue could arrive in weeks to months. *People v. Tia Skinner*, MSC# 152448.

With over two years of work underway, continuation of SADO funding for this third phase is the only cost-effective, successful and efficient strategy:

- **SADO spent two years building an operating Juvenile Lifer Unit. Should funding end in FY 2019, in the middle of the project, this unit would be disbanded, just as the most critical work gets underway.** SADO brought on two full-time attorneys, two full-time mitigation specialists, and multiple contractors to focus on representation and mitigation for hearings. Their work complemented in-kind contributions by SADO attorneys and staff.
- **This unit has already dedicated at least 40,232 hours on juvenile lifer clients in the following resource areas:** 19,840 hours on legal services; 8,240 hours on document review; 7,632 hours on mitigation; 2,600 hours on clerical support; and 1,950 hours on investigation.
- **Cost to the state.** SADO representation of clients by the Juvenile Lifer Unit lessens the risk of appeals and repeat proceedings. A rush to dispose of such cases quickly and cheaply in Arizona recently led to Supreme Court reversal and remand of at least five such cases to the state, with instructions to treat them more seriously and with adequate resources.

For cases that proceed to hearings, an adequately-funded defense saves significant money for the State of Michigan:

- Estimated cumulative number of reduced sentences for 66 clients no longer serving life sentences: 848 years
 - Estimated savings in incarceration costs: \$29,311,941
 - Return on Investment: 16:1 (1624%)
- **Cost to counties.** Hearings where a client will receive either a Term of Years sentence or Life without Parole are similar to death penalty mitigation hearings in other states. SADO attorneys have been specially trained for this sort of work. Attorneys qualified and able to take the cases from SADO simply don’t exist in any substantial number at the county levels. Nevertheless, counties would need to recruit, train, appoint, and compensate

attorneys for these 126 clients. In addition, the Michigan Appellate Assigned Counsel System is unprepared to represent this volume of clients if the SADO Juvenile Lifer Unit disbands.

- **Cost to clients.** 126 juvenile lifer clients have built relationships with their attorneys and started the work necessary for resentencing hearings. They would need to completely reset to newly appointed attorneys. Restarting relationships and redoing work results in slowdowns and costly inefficiencies in representation.
- **Cost to crime victims.** Closure is a critical value to victims of crime and their families. Ending the work of a unit that has spent two years preparing for new sentencing hearings for 123 remaining juvenile lifer clients means that the new sentencings will be significantly delayed as new lawyers redo this work. Unprepared lawyers also risk repeated proceedings ordered by appellate courts that will further traumatize families and friends of homicide victims.
- **Cost to other agencies.** The Michigan Department of Corrections could benefit significantly from the work of the Juvenile Lifer Unit, and one potential partnership has already resulted. MDOC has started a pilot project with an organization called Out4Life for reentry services to released juvenile lifers. Michael Eagan, the Chair of the Michigan Parole Board has called the work of SADO's Juvenile Lifer Unit an "asset" to their work.

Continuing the \$700,000 in appropriations provides the best representation for 126 remaining clients and provides significant savings to both the State of Michigan and county governments.

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