

**FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
COURT OF COMMON PLEAS
TRIAL DIVISION**

General Court Regulation

No. 1 of 2016

Juvenile Lifers Sentenced Without the Possibility of Parole Program

The United States Supreme Court held in *Miller v. Alabama*, 567 U.S. —, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012) that life without parole is an excessive sentence for children whose crimes reflect transient immaturity and violates the Eighth Amendment’s prohibition on “cruel and unusual punishments. While *Miller* does not foreclose a sentencing court’s ability to impose life without parole on a juvenile, it does require that the sentencing court consider a child’s “diminished culpability and heightened capacity for change” before condemning him or her to die in prison. The Court noted that a lifetime in prison is a disproportionate sentence for all but the rarest of children, those whose crimes reflect “irreparable corruption.”

In *Montgomery v. Louisiana*, ___, U.S. ___, 136 S. Ct. 718, 726 (as revised Jan. 27, 2016), the United States Supreme Court held that *Miller* had adopted a new substantive rule of constitutional law and that the federal Constitution requires state collateral review courts to give it retroactive effect to people condemned as juveniles to die in prison. The Court stated that *Miller* mandates a “hearing where ‘youth and its attendant characteristics’ are considered as sentencing factors is necessary to separate those juveniles who may be sentenced to life without parole from those who may not. The Court further noted that giving *Miller* retroactive effect does not require States to relitigate sentences in every case where a juvenile offender received mandatory life without parole. Rather, a State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them.

The Court concluded by noting that minors sentenced to life without the possibility of parole “must be given the opportunity to show their crime did not reflect irreparable corruption; and, if it did not, their hope for some years of life outside prison walls must be restored.” *Montgomery*, at 136 S. Ct.736-737.

The within General Court Regulation establishes the procedure which will be used to provide **Juvenile Lifers Sentenced Without the Possibility of Parole (“JLSWOP”)** the opportunity to show that their crime did not reflect irreparable corruption and that they should be considered to be released on parole. Moreover, in light of the fact that cases eligible for this Program span decades and involved numerous trial judges who have retired, have been reassigned, and are otherwise unavailable, extraordinary circumstances exist which, in accordance with Pa. R. Crim. P. 700 (A), justify the assignment of these cases as provided herein, to enable the Court to efficiently and expeditiously dispose of these cases.

The following procedures and protocol will be utilized in the disposition of cases assigned to the **JLSWOP Program**:

1. *PCRA Conference*: Cases to be processed under this Program shall be listed for a *PCRA Conference* (“**JLSWOP Status**”) before the Homicide Team Leader.

- a. At the JLSWOP-Status hearing the parties shall be prepared to submit a concise statement of the case which shall include, the nature and extent of discovery sought, if any, legal issues, factual disputes, anticipated length of the resentencing hearing, number of witnesses anticipated, etc.
- b. Counsel shall be prepared to identify any extraordinary factors impacting issuance of a **JLSWOP Conference Order** as more clearly set forth herein below.

2. **JLSWOP Conference Order:** Upon conclusion of the JLSWOP-Status hearing, the Homicide Team Leader shall issue a **JLSWOP Conference Order**, substantially in the form attached as Exhibit “A,” setting forth the date for the projected resentencing hearing. The JLSWOP Conference Order will also include deadlines for the submission of all relevant resentencing information and any questions of law.

- a. *Event Types.* Based upon the nature and complexity of the case, the Homicide Team Leader, with input from the parties at the **JLSWOP Status**, shall assign the case to an event type. The JLSWOP Conference Order shall typically employ the following management event types:
 - i. “**JLSWOP Resentencing**”: Projected Resentencing Date within 120 days of the **JLSWOP Status**
 - ii. “**JLSWOP Hearing**”: Projected Resentencing Date more than 120 days of the **JLSWOP Status**
- b. Cases should be designated JLSWOP Hearing only upon “good cause shown.” Any case so designated shall be assigned a Projected Resentencing date not greater than 240 days beyond the **JLSWOP Status**.
- c. Any request for an extension of deadlines or event type changes as set forth in the JLSWOP Conference Order shall be upon motion which shall be decided by the Homicide Team Leader.

3. An *en banc* panel of Common Pleas judges is established to hear and decide all JLSWOP questions of law. Consistent with the U.S. Supreme Court’s directive in *Montgomery v. Louisiana* any interlocutory appeal of an Order issued by the *en banc* panel shall be immediately certified pursuant to 42 Pa.C.S. § 702. Decisions rendered by the *en banc* panel shall be binding on all trial courts of the First Judicial District and as such shall be considered the law of the case.

4. Until further order, the following assignments are made:

- a. *En Banc* panel: The Honorable Lillian H. Ransom, Homicide Team Leader, the Honorable Barbara A. McDermott and the Honorable Jeffrey P. Minehart shall comprise the *En Banc* panel of judges herein referenced. The Administrative Judge may from time to time designate other judges to comprise the *en banc* panel.
- b. Presiding Judges: the Honorable Barbara A. McDermott or the Honorable Jeffrey P. Minehart shall be assigned as presiding judge in all contested resentencing hearings. The Administrative Judge may from time to time designate other judges to preside in

contested resentencing hearings. Individual case assignments shall be made by the Homicide Team leader at the JLSWOP Status hearing.

- c. Should negotiations result in a stipulation addressing all issues prior to the resentencing hearing, the case shall be slated forthwith for immediate disposition before the assigned presiding judge.

This General Court Regulation is issued in accordance with the April 11, 1986 order of the Supreme Court of Pennsylvania, Eastern District, No. 55 Judicial Administration, Docket No. 1. As required by Pa.R.Crim.P. No. 105 (D), this General Court Regulation has been submitted to the Supreme Court's Criminal Procedural Rules Committee for review and written notification has been received from the Committee certifying that this General Court Regulation is not inconsistent with any general rule of the Supreme Court. This General Court Regulation shall be filed with the Office of Judicial Records (formerly the *Prothonotary, Clerk of Quarter Sessions and Clerk of Courts*) in a docket maintained for Orders issued by the First Judicial District of Pennsylvania. As required by Pa.R.Crim.P. No. 105(E), two certified copies of this Order and a copy on a computer diskette, shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* and will become effective thirty (30) days after publication in the *Pennsylvania Bulletin*. As required by Pa.R.Crim.P. No. 105 (F) one certified copy of this General Court Regulation shall be filed with the Administrative Office of Pennsylvania Courts and will also be published on the Unified Judicial System's web site at <http://ujportal.pacourts.us/localrules/ruleselection.aspx> and posted on the First Judicial District's website at <http://courts.phila.gov>. Copies shall be published in *The Legal Intelligencer* and will be submitted to *American Lawyer Media, Jenkins Memorial Law Library*, and the Law Library for the First Judicial District.

BY THE COURT:

/s/ Jacqueline F. Allen

Dated: 5/23/16

HONORABLE JACQUELINE F. ALLEN
Administrative Judge, Trial Division
Court of Common Pleas, Philadelphia County

Exhibit "A" – JLSWOP CONFERENCE ORDER

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION - CRIMINAL**

Caption : *CPCMS Docket No.*

**JUVENILE LIFERS SENTENCED WITHOUT THE POSSIBILITY OF
PAROLE PROGRAM CONFERENCE ORDER**

AND NOW, this day of , 20__ , upon consideration of the *JLSWOP Status Conference hearing* conducted this day, it is **ORDERED** that:

1. The deadlines and time standard adopted for the *JLSWOP* _____ Event Type shall apply in this case and are incorporated herein. Any request for event type changes and deadline extensions must be submitted by motion to the Homicide Team Leader who may only grant changes and extensions upon good cause shown.
2. Counsel shall identify any questions of law within thirty (30) days of this Order by written submission to the Homicide Team Leader.
3. The presiding judge assigned is the Honorable _____.
4. All relevant resentencing information shall be filed not later than _____ days prior to the resentencing hearing, i.e., _____.
5. Parties shall identify and submit Curriculum Vitae and any corresponding reports from all experts thirty (30) days prior to the resentencing hearing.
6. The projected date for the said resentencing hearing is _____. The anticipated length of resentencing hearing _____ day(s).

BY THE COURT:

J.