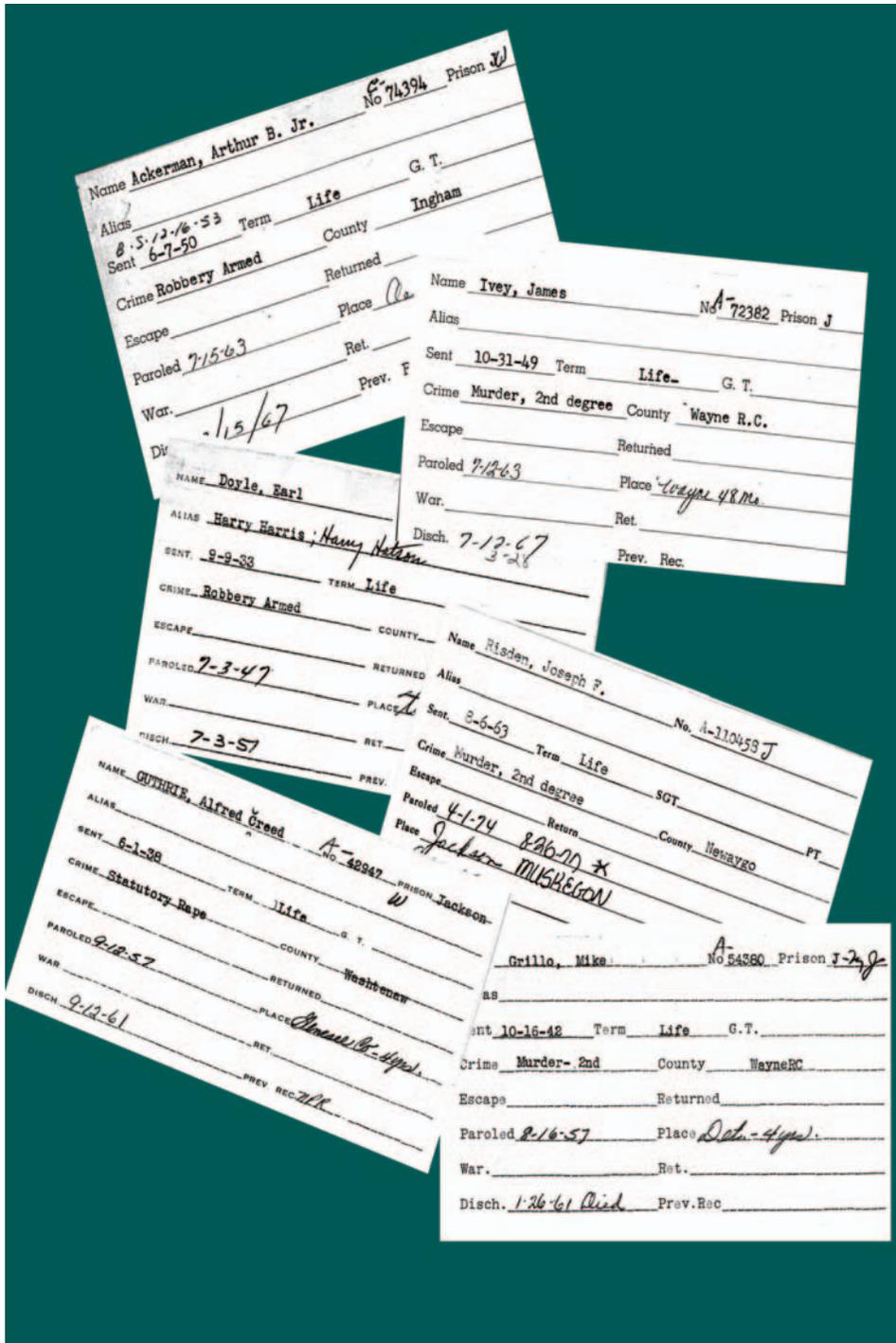


When "life" did not mean life



A Historical Analysis of Life Sentences Imposed in Michigan Since 1900

September 2006

Acknowledgments

The preparation of this report required months of painstaking work by several members of the CAPPS staff. Jered Leo and the late Sara Mares reviewed approximately 168,000 records to identify everyone sentenced to serve life in prison in Michigan from 1848-1985 and recorded data about nearly 4,000 cases. Without their discipline and dedication this research could not have been completed. LeAnn Voigtritter entered the information into a computer database. Barbara Levine supervised the data collection, analyzed the data and wrote the report. Gail Light assisted in the research, designed the graphics and produced the report. The cooperation of Mark Harvey, State Archivist, and his staff is also gratefully acknowledged.



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When “life” did not mean life

A Historical Analysis of Life Sentences Imposed in Michigan Since 1900

Summary of Findings

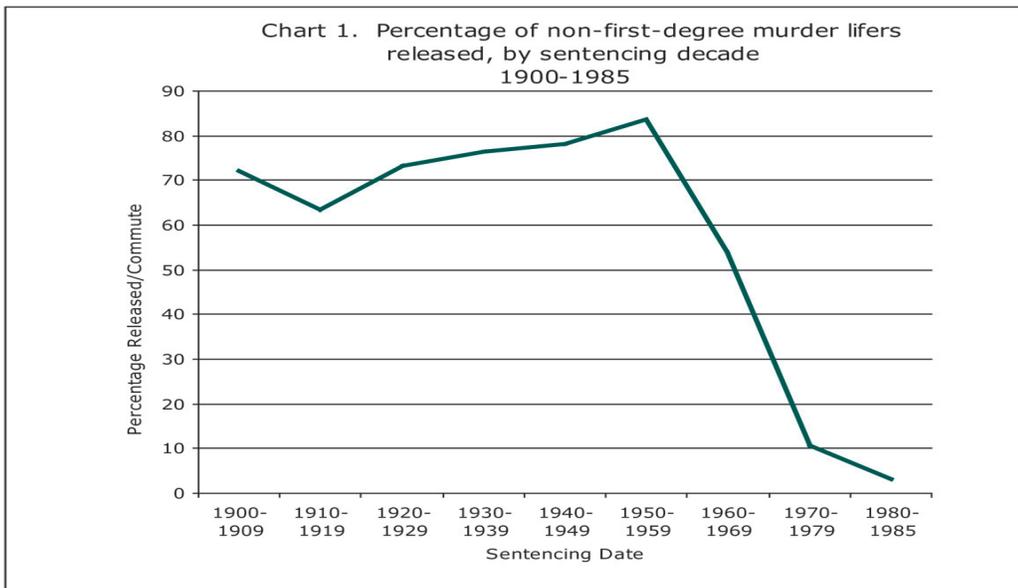
The historical record makes it indisputably clear that a life sentence in Michigan did *not* always mean “no release.” On the contrary, a parolable lifer’s chances of being released from prison have dropped dramatically since many people currently incarcerated received their life sentences.

The decline began in the mid-1980s when rapid prison growth overwhelmed the “old” parole board and lifers were placed on the back burner. The current parole board has affirmatively decided not to release most of those lifers who, under Michigan’s Lifer Law, became eligible for parole after serving 10 years. It has adopted the view that “life means life.”

The data can be approached from two directions. When examined by the year in which people were sentenced, it appears:

- Of 855 people sentenced to life terms for offenses other than first-degree murder from 1900-1969, nearly 73% were released by commutation or parole. They served, on average, 15.8 years.
- Of 846 people similarly sentenced from 1970-1985, only 8.2% have been released to date.

As Chart 1 illustrates, people sentenced in the 1970s and 1980s, who could reasonably have expected parole in the late 1980s and the 1990s, have seen their chances for release plummet.



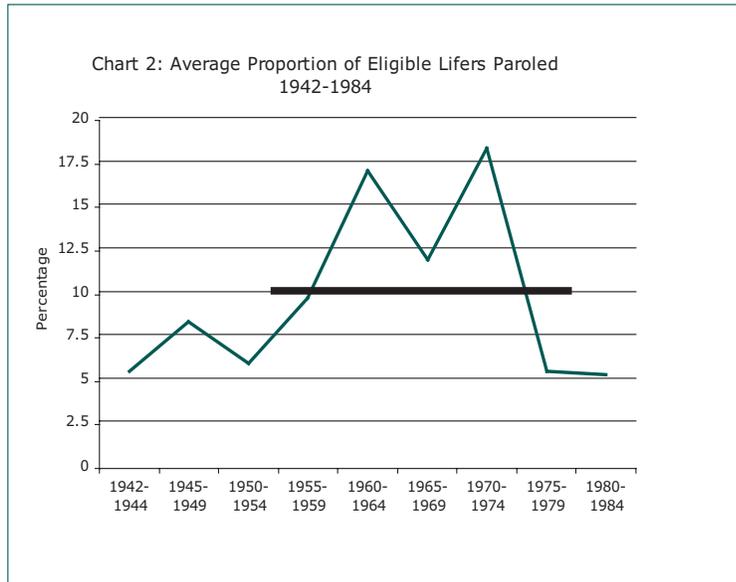
People sentenced during the first seven decades of the 20th century to life terms for crimes other than first-degree murder were nearly 9 times more likely to be released than people who received the same sentences for similar offenses during the next 15 years.

When “life” did not mean life – September, 2006

The second approach is to examine, year by year, what proportion of the lifers who were eligible for parole actually received it.

Release date	Av. proportion paroled annually	Av. years served
1942-1949	7.5%	16.2
1950-1959	7.6%	17.3
1960-1969	14.8%	18.0
1970-1979	12.1%	18.0
1980-1984	5.1%	15.1

Viewed from that angle, it is clear that the parole board released a significant percentage of eligible lifers annually through the early 1980s. The average years served never exceeded 18.



Although new people reached the 10-year mark each year, the annual grants of parole steadily reduced the pool of eligible lifers from a high of 215 in 1946 and 1947. The trend reached its peak in 1973, when 26.8% of the eligible lifers were paroled, and 1974, when 32% of those eligible were released. By 1975, there were only 39 parolable lifers left who had served the requisite ten years.

Chart 2 illustrates how average annual parole grant rates fluctuated over the course of 43 years. They never fell below 5%, and during the 20-year period from 1955-1974, the average annual parole grant rate was consistently at 10% or higher – sometimes much higher.

As a result of changed parole practices, people who long ago served the 14 or 16 years their sentencing judges intended are now being left to die in prison.

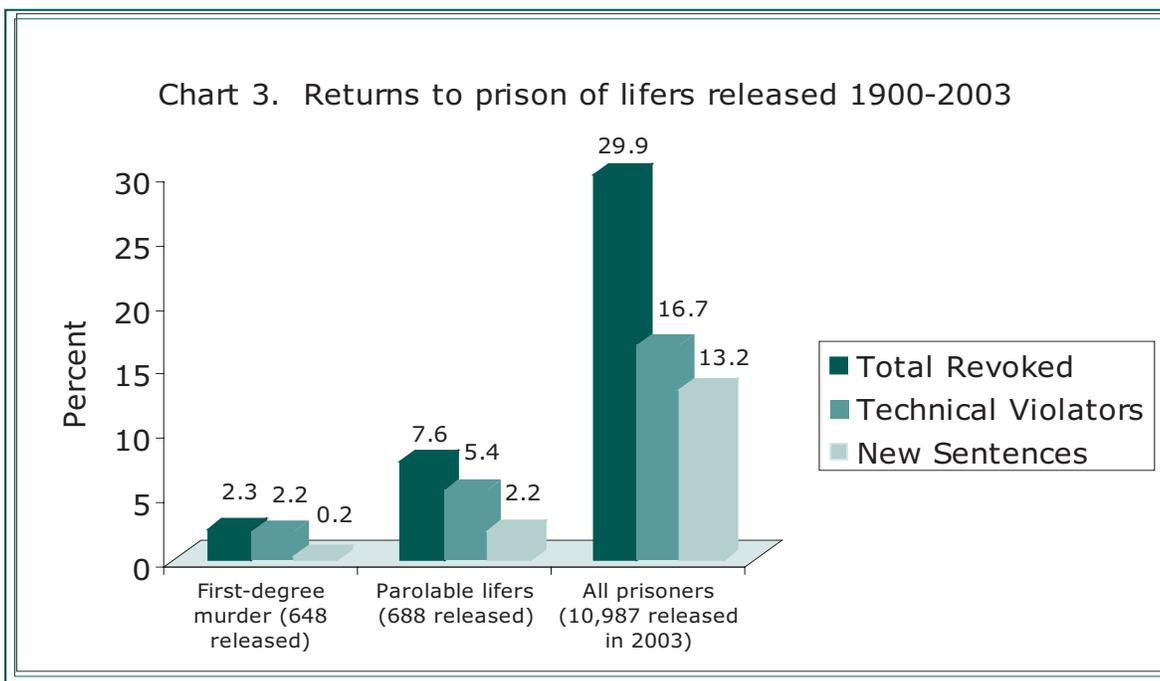
- Today, there are 29 parolable lifers who were sentenced before 1970, 404 who were sentenced in the 1970s and 255 who were sentenced from 1980-1985, a total of 688 people still serving for non-drug offenses.
- The parole board has released drug offenders who became eligible in 15 years when a statutory change made their mandatory life sentences parolable. However, of all the people sentenced for a non-drug offense through 1985, only 12 were paroled from 1999 through June 2006, an average of 1.6 per year. For these non-drug offenders the parole grant rate has dropped to 0.2%.

When compared to the 12.1% average release rate during the 1970s and the even higher rate in the 1960s, it appears that for non-drug lifers convicted before 1980, the chance of being paroled was 43 times greater when they committed their crimes than it is today.

Even commutations of non-parolable life sentences for first-degree murder used to be routine. Nearly 57% of people sentenced for first-degree murder from 1900-1969 were released, in an average of fewer than 24 years.

A person sentenced to non-parolable life for first-degree murder in the 1950s was nearly seven times more likely to be released than a person sentenced to a parolable life term for another crime in the 1970s.

Both parolable and non-parolable lifers present an especially low risk to the public when released. Their overall rate of return to prison is five percent, compared to 30 percent for parolees generally. As Chart 3 shows, most of these returns were for technical violations of parole conditions. The available data indicates only 16 of 1,334 lifers released since 1900 were returned to prison with convictions for new crimes.



THE HISTORY OF THE LIFER LAW

Before 1885, there was no such thing as parole in Michigan. In that year, the governor was authorized to grant parole to any felon except those who were third offenders and those sentenced to life terms. From 1911-1921, the governor was allowed to parole lifers who had served 25 years or more, minus generous good time credits, but that authority was allowed to expire.

From 1921-1941, the number of people serving life for any of 23 capital crimes (such as second-degree murder, armed robbery, rape and kidnapping) nearly doubled. The only way they could obtain release was through executive clemency. During that period, governors granted 160 commutations and five pardons. Nonetheless, by 1941, the 863 lifers constituted almost 12 percent of the total prison population of 7,556. Other states provided for the parole of prisoners serving life. In at least 26 states, a term of years for parole eligibility ranging from five to 35 years was provided by law.

In 1941, the parole board issued a statement to the Legislative Committee of the State Bar. It said, in part:

“For two decades, ‘life’ has meant ‘life’. So, in 1941, Michigan has the largest number of lifers in the United States, whose cases can not become eligible for parole consideration. Whenever a lifer is considered worthy in Michigan, resort must be made to the Governor’s power of commutation. Pardon and commutation are devices for the correction of miscarriages of justice and extreme hardship, where no other power exists to alleviate the distress. They were never intended for the purpose of submitting to parole those whose rehabilitation in prison over a long period indicates the acceptability of supervised release into the community...

If an avenue shall be provided for the alleviation of such conditions by the routine

consideration and parole of those lifers completely able to adjust in free life, an extended parole authority is the most serviceable and responsive agency for the accomplishment of ultimate parole release...”¹

In the same year, the legislature passed what came to be known as the “Lifer Law”. Currently MCL 791.234, it became effective January 9, 1942. It created parole eligibility for anyone, whether serving life or a long minimum term, who had served 10 calendar years for any offense other than first-degree murder.² It prohibited parole if the sentencing judge objected and established a public hearing process in order to guarantee complete public awareness of lifer releases.

The board immediately created the position of parole eligibility examiner and hired a prison psychologist to fill it. The examiner’s task was to identify all the people who were then eligible for release under the Lifer Law, review their files in order of the number of years served, and provide case summaries and recommendations to the board. A 1942 report by the MDOC said of the law:

“Prison officials say the law has improved morale among life termers. The Parole Board now has a definite program for the selection of meritorious long term cases for release action.”³

THE CURRENT CONTROVERSY

For several decades, the Lifer Law worked as planned. From 1942-1984, 504 lifers were paroled with 233, nearly half, serving 15 years or less. Judges imposed life terms in the belief that defendants would receive meaningful consideration for release once they became eligible. Ironically, faced with the choice of imposing “life or any term”, many judges chose parolable life terms in the belief they were showing leniency, because a life term would bring parole eligibility sooner than a

very long minimum sentence.⁴

However, for lifers whose release, based on prior practices, would have been expected by the late 1980s, things have changed drastically. In 1977 and 1978, steps taken in response to increased crime rates, such as mandatory penalties for possessing a gun while committing a felony, harsh mandatory sentences for drug offenses, increased use of enhanced sentences for habitual offenders and the elimination of sentence reductions through generous “good time” provisions, caused the prisoner population to explode. The overcrowding that resulted by 1980 led first to a series of 90-day sentence reductions under the Emergency Powers Act (EPA) and then to the building of 23 new prisons from 1985 to 1992.

Lifers who would have begun receiving serious parole consideration by the mid-1980s were initially caught in the massive build-up. The prisons were bulging and the parole board was overwhelmed. With a pressing need for beds, the focus was on paroling people with relatively short minimum sentences who could be released quickly. Lifers were put on the back burner. Many had required interviews delayed for years. Dozens who the board had decided to schedule for public hearings never had their cases processed.

The treatment of lifers during the mid to late 1980s was apparently situational, not philosophical. In the early 1980s, the parole board began experimenting with release guidelines for lifers that incorporated the norms of the preceding decades. A 1982 statutory amendment required parole board interviews when a lifer had served four years and then every two years thereafter. Although reality did not keep pace with intentions, there is little evidence that the parole board’s attitude toward lifers had fundamentally changed.

What began as situational became permanent after a 1992 statute revamped the membership of the parole board. No longer comprised of corrections professionals with civil service protection, the board now consists of ten political appointees. According to a 1997 MDOC

report: “The intent of the overhaul was to make Michigan’s communities safer by making more criminals serve more time and keeping many more locked up for as long as possible.”⁵ For lifers, “as long as possible” means never being released. By the late 1990s, the board had explicitly adopted the policy that “life means life”, effectively coming full circle to the situation that triggered the adoption of the lifer law in the first place. With very few exceptions, the only lifers the board currently paroles are those whom MDOC documents indicate are terminally ill and those convicted of possessing or delivering more than 650 grams of narcotics.⁶

The parolable lifers allege that their changed treatment violates the *Ex Post Facto* Clause of the United States Constitution, which prohibits changing the rules after the fact. Specifically, courts have interpreted the clause to mean that a change in the law cannot be applied to people who committed their crimes earlier if the change would create a significant risk of increasing the punishment applicable when the offense was committed. In *People v Edward Hill*,⁷ the Michigan Court of Appeals considered whether the parole board’s current “life means life” policy, as applied to a parolable lifer convicted in 1976 and eligible for parole under the Lifer Law after serving 10 years, is constitutional.

The Court concluded that no constitutional violation exists because, it said, the defendant had failed to establish a discernible change in parole board policy and practices. The Court relied on data showing that from 1941 through 1974, an average of 12 lifers were paroled each year. From 1975 until the new parole board took office in 1992, the average number of lifer paroles was four per year. The Court concluded from these figures that “the policy of enforcing a valid life sentence has almost invariably been the policy and practice of the parole board. Accordingly, there was no government action instituted after defendant’s sentencing that produced a significant risk of increasing his punishment.”

The critical piece missing from the Court’s analysis is the number of lifers who were eligible for

parole each year, i.e., the number who had served the ten years required by the Lifer Law before the board obtained jurisdiction. To determine whether a person’s chances for release have declined over time, we must know whether the rate of paroles has changed. What is relevant is not the raw number of lifers paroled each year, but the percentage of those who could be paroled. If only 12 lifers had served enough time to be released in any given year and 12 were paroled, the rate would be 100 percent. If 1,200 were within the board’s jurisdiction, the rate would be one percent.

THE CAPPS RESEARCH

Michigan Department of Corrections records were computerized in the mid-1980s. Thus it is impossible to obtain consistent information about lifers released during earlier years from the department’s database. However, the State Archives of Michigan contain a 3x5 index card for virtually every person committed to a Michigan prison from 1840 until computers replaced hand-written records.

Researchers for the Citizens Alliance on Prisons and Public Spending (CAPPS) reviewed the approximately 168,000 cards and identified everyone sentenced to a life term, whether parolable or non-parolable. Information was recorded about each person’s offense, sentencing date, whether, when and how they came to be released (e.g., commutation, parole, death, escape), and whether they were returned to prison for a new offense or parole violation. Information about other long sentences the person received was noted, when available. This review was cross-checked against available information from the Department of Corrections in an effort to capture all possible missing data.

The result is a database of 2,026 people sentenced to life in prison for first-degree murder and 1,770 people sentenced to life for offenses other than first-degree murder through December 1985.⁸ Of the 3,796 total cases, 223 were sentenced before 1900. This data can be approached from different

directions. By starting from the sentencing date, it is possible to trace the extent to which both parolable and non-parolable lifers sentenced at specific times were released and how long they served.⁹ Recidivism rates for lifers can be compared to recidivism rates for paroled prisoners generally.

Perhaps most importantly, we can reconstruct the pool of lifers eligible for parole on a year-by-year basis. When the number of paroles granted each year is compared to the size of the pool, it is possible to see how the rate of lifer paroles has changed over time. Determining the number of lifers who were eligible for release in any given year requires several steps:

- Identify everyone who has served at least 10 calendar years on a parolable life sentence
- Subtract those who were serving a long indeterminate sentence on another conviction that would make them ineligible for release.
- Subtract those who died, were resentenced, received commutations or were no longer there to be paroled for other reasons, such as an escape or transfer to a mental hospital.

What follows are preliminary findings from the analysis to date. These findings do not address every lifer who is currently parole-eligible because people sentenced from 1986-1992 are not in the database.¹⁰ As more sophisticated statistical tools are applied to the data, more extensive and detailed results may be available and minor adjustments to figures may occur.

Even with these caveats, however, it appears that the historical record wholly undermines the *Hill* decision’s reliance on raw numbers removed from the context that gives them meaning. Contrary to the Court of Appeals’ conclusion, “enforcing a valid life sentence” was far from the invariable policy and practice of the parole board before 1992.

THE FINDINGS

A. The release of “parolable” lifers: examined by sentencing cohorts

Table 1 shows, by decade, all the people sentenced to life terms between 1900 and 1985

Table 1. Release patterns of parolable lifers sentenced 1900-1985

Sentence date	Commuted/ paroled	Av. time served before release	Died in prison	Other*	Still Serving 6/30/2006
1900-1909 (N=18)	13 72.2%	13.1 yrs	5 27.8%	0	0
1910-1919 (N=55)	35 63.6%	11.7 yrs	17 30.9%	3 5.5%	0
1920-1929 (N=168)	123 73.2%	13.5 yrs	43 25.6%	2 1.2%	0
1930-1939 (N=255)	195 76.5%	18.1 yrs	56 22.0%	4 1.6%	0
1940-1949 (N=106)	83 78.3%	15.2 yrs	17 16.0%	6 5.7%	0
1950-1959 (N=123)	103 83.7%	11.4 yrs	15 12.2%	4 3.3%	1 0.8%
1960-1969 (N=130)	70 53.9%	14.3 yrs	27 20.8%	4 3.1%	28 21.5%
1970-1979 (N=545)	59 10.8%	17.9 yrs	68 12.5%	14 2.6%	404 74.1%
1980-1985 (N=301)	10 3.3%	19.9 yrs	28 9.3%	8 2.6%	255 84.7%
1900-1969 (N=855)	622 72.8%	15.8 yrs	180 21.1%	23 2.7%	29 3.4%
1970-1985 (N=846)	69 8.2%	18.2 yrs	96 11.3%	22 2.6%	659 77.9%

*Includes escape, transfer to asylum, transfer to foreign country, missing data

for offenses other than first-degree murder. For convenience, this group will be referred to as parolable lifers regardless of whether they were sentenced before or after the Lifer Law took effect in 1942.

Of the 725 people sentenced from 1900-1959, more than three-quarters were released by commutation or parole. For fifty years, the proportion increased each decade. Of those sentenced in the 1950s, nearly 84% were released. Although the average time served before release varied, the longest was 18.1 years for those sentenced in the 1930s. Lifers sentenced in the 1950s served, on average, just 11.4 years before being released.

For those sentenced in the 1960s, the release rate declined to 53.9%, reflecting the decline in parole grant rates starting in the mid-1980s. Nonetheless, even for this group, the release rate exceeded 50% and the average time served was just a little over 14 years.

Overall, nearly 73% of the people sentenced to life terms during the first seven decades of the century for crimes other than first-degree murder were released after serving an average of fewer than 16 years. Only 180 people, 21.1%, actually died in prison. Of these, 58 had served fewer than 10 years and only 62 had served more than 20 years.

The change for people sentenced thereafter is enormous. As crime rates and total prison commitments increased in the 1970s, so did the number of parolable lifers. From 1970-1985, 846 people were sentenced to parolable life terms, almost as many as in the preceding 70 years. Of the 545 people sentenced in the 1970s, fewer than 11% have been released. And those who were served more time than their predecessors – an average of almost 18 years. Nearly three-quarters of those sentenced in the ‘70s – 404 people – are still incarcerated, although they have now served between 27 and 36 years.

For the 301 people sentenced from 1980-1985 (the last years in the CAPPs data base), the situation is even bleaker. Although they have now all served more than 20 years, only 10 – 3.3% – have been released after serving an average of nearly 20 years.

The release rate for the entire group of parolable lifers sentenced from 1970-1985 was 8.2%, compared to 72.8% for those sentenced earlier. Thus, people sentenced during the first seven decades of the 20th century to life terms for crimes other than first-degree murder were nearly 9 times more likely to be released than people who received the same sentences for the same kinds of offenses during the next 15 years.

B. The release of “parolable” lifers: examined by year of parole

Viewed from the year in which people were paroled, the disparities become even more dramatic. Table 2 displays, in five-year increments, parole release rates from 1942-1984. That is, for everyone sentenced from the effective date of the Lifer Law through the last full five-year period in the CAPPs database, it is possible to see the parole grant rates at the time people were sentenced. The average number of lifers paroled was divided by the average number of lifers eligible for parole in each period (i.e. those who had served at least 10 calendar years for an offense other than first-degree murder and had no other sentences preventing release) to produce the average percent paroled annually. The number paroled does not include five commutations.

Table 2 demonstrates that for 43 years after the Lifer Law was enacted, a significant proportion of the eligible lifers were routinely released. In the 1940s and 1950s, the average parole rate was about 7.5% per year. In the 1960s, the average annual rate

nearly doubled to 14.8%. In just the three years from 1961-1963, 78 lifers were paroled. For the first half of the 1970s, the parole rate exceeded 18%.

While new people became eligible for parole upon completing 10 years and some people left the pool through death or other causes, the steady pattern of paroles caused the pool to shrink year by year. Even the sudden drop in the grant rate to 5.0% in the second half of the 1970s appears to be the result of prior liberal release practices. The yearly figures that underlie Table 2 show that, although the pool had declined from a high of 215 in 1947 to 71 in 1973, 26.8% of those eligible in 1973 were paroled. In 1974, the rate was even higher, at

Table 2. Proportion of eligible lifers granted parole 1942-1984

Year paroled	Av. no. eligible/yr	Total no. paroled	Av. no. paroled/yr	Av. percent paroled/yr	Av. yrs served
1942-1944	185.3	30	10	5.4%	14.2
1945-1949	211.6	87	17.4	8.2%	16.9
1950-1954	175.8	51	10.2	5.8%	16.2
1955-1959	158.4	76	15.2	9.6%	18.1
1960-1964	115.0	97	19.4	16.9%	18.0
1965-1969	77.8	46	9.2	11.8%	18.0
1970-1974	69.2	63	12.6	18.2%	20.3
1975-1979	63.6	17	3.4	5.4%	15.1
1980-1984	144.2	37	7.4	5.1%	15.1

32.1%. Thus, by 1975, the pool had dwindled to 39 eligible lifers. It is not surprising that, after such an intense amount of “housecleaning”, only one lifer was released that year.

The average annual size of the pool was at its lowest from 1975-1979. It more than doubled in the next five years to 144.2, reflecting the increased

number of people sentenced to parolable life terms 10 years earlier. However, the release *rate* from 1980-1984 held at 5.1%.

The average number of years served by those who were paroled increased from 14.2 years in the 1940s to 20.3 years in the early 1970s before dropping back to 15 years from 1975-1984. Nonetheless, of the 504 people paroled during the entire 43-year period, 233, about 46%, served 15 years or less.

CAPPS focused on identifying the lifers’ chances of release at the time they were sentenced. Because its database ends with people sentenced in 1985, it did not attempt to calculate the exact number of lifers who were parole-eligible in each year after that. Nonetheless, we know that from 1970-1974, 156 people received life terms. If required to serve an average of 15 years, their release would be expected in 1985-1990. However, as explained above, this was a period of rapid expansion when the time-consuming process of paroling lifers was given low priority.

From 1975-1979, 389 more people received parolable life terms. If past practice held, their average release dates would occur from 1990-1994. We know that another 301 parolable lifers were sentenced from 1980-1985, so they might have reasonably expected release in the mid to late 1990s. And we know what actually happened during those years. With the pool continuing to grow and the raw number of paroles granted being very small, the rate of paroles for lifers other than drug offenders dwindled to almost nothing.

After 1992, the new board reconsidered 47 cases in which the old board had voted to proceed but had not done so. Of these, 16 were paroled from 1993-1995. These involved 11 convictions for second-degree murder, four for armed robbery and one for kidnapping.¹¹ They served, on average, 20.6 years. Eleven other lifers convicted of similar offenses but not carried over from the old board’s list were also paroled between 1995 and 1998.

In 1998, the Lifer Law was amended to permit the parole of “650 drug lifers” who had been

serving mandatory sentences of life without parole for the manufacture or delivery of more than 650 grams of various illegal drugs. The first drug lifer release occurred in 1999. It was the only lifer parole that year. From 1999 through June 2006, of 50 lifers paroled for the first time, 34 – 68% – were drug lifers.¹² The drug lifers had served an average of 16.3 years. Of the 16 non-drug lifers paroled in the same 7.5-year period, at least five were seriously or terminally ill.

Only 12 people paroled between January 1999 and June 2006 had been sentenced through 1985 for an offense other than drugs, an average of 1.6 per year. There are 688 such people currently eligible for parole. Thus, for this group as a whole, the parole rate has dropped to 0.23%.

A closer look at sub-groups within this population is instructive. Focusing only on those sentenced before 1980, 433 are currently eligible. Only nine were released during the 7.5-year period, an average of 1.2 per year, for a grant rate of 0.28%. **When compared to the 12.1% average release rate during the 1970s, and the even higher rate in the 1960s, it appears that for non-drug lifers convicted before 1980, the chance of being paroled was more than 43 times greater when they committed their offenses than it is today.**

When one looks only at the people sentenced from 1980-1984, the decline in parole grant rates since the time of sentencing remains dramatic. Only three non-drug lifers sentenced during this period were released between 1999 and June 2006, an average of 0.4 per year. There are 209 currently eligible, so their grant rate is 0.19%. **Compared to the 5.1% average grant rate during the first half of the 1980s, for non-drug lifers sentenced during that time, the chance of being paroled was 27 times greater when they committed their offenses than it is today.**

C. A comparison: the commutation of non-parolable life sentences

It is useful to compare the commutation of life terms for first-degree murder with the release of other lifers for two reasons. First, it confirms what one would expect – that release patterns in the two groups are similar. This not only reflects philosophical and political changes that affect both groups similarly but the very practical fact that, since 1937, the parole board has been responsible for reviewing all commutation applications and making recommendations to the governor.

More instructive is the extent to which sentences for first-degree murder used to be routinely commuted. Table 3 shows, by sentencing decade, the 1,875 people convicted of first-degree murder (or murder, degree unspecified) from 1900-1985.

Nearly 57% of the people sentenced to life without parole during the first seven decades of the 20th century were actually released through commutation after serving an average of 23.6 years. As seen in Table 1, the release rate for people sentenced during the same period to life terms for offenses other than first-degree murder was nearly 73% after an average of 15.8 years. Thus, first-degree murderers were released at about three-quarters of the rate of parolable lifers after serving about 50% more time.

What is most striking is the contrast between how first-degree murder cases used to be treated and how parolable lifers are treated now. Where a person sentenced to a non-parolable life term in the 1950s had nearly a seven in ten chance of gaining release in the 1970s, the chances of release for a parolable lifer sentenced in the 1970s are barely one in ten.

Table 3. Commutations of sentences for first-degree murder, 1900-1985

Sentencing Date	Total Sentenced	Total Commuted	Average Years Served
1900-1909	69	48 69.6%	16.1
1910-1919	127	76 59.8%	16.9
1920-1929	289	167 57.8%	25.9
1930-1939	235	130 55.3%	31.0
1940-1949	143	102 71.4%	21.8
1950-1959	84	57 67.9%	19.1
1960-1969	112	21 18.8%	21.2
1970-1979	443	4 0.9%	20.5
1980-1985	373	0	--
1900-1969	1,059	601 56.8%	23.6
1970-1985	816	4 0.5%	20.5

D. A note on recidivism rates

In its 1943 report on the Lifer Law, the parole board reported on the success rates of the twelve people who had been paroled so far. It concluded:

The record thus far established by the eleven men and one woman who have been released, brings to the forefront several

factors which may now be mentioned and backed up by proof. We have always considered, for example, that lifers in general constituted the best type of parolee, that by reason of long institutionalization they were much more aware of the serious responsibility involved in their release than most other groups. While this, of course, can not be said for all lifers, we had always believed it would be true for the carefully selected outstanding group. Our experience in the past two years has proven, on the basis of reports from Parole Officers who are supervising lifer cases, that these men as a group are much more careful to abide not only by the laws of the State but by every regulation of the Bureau than any other group. The twelve lifers, as a group, have shown an unusual aptitude to stabilize themselves in the community, working steadily, saving their money, buying war bonds, earning promotions on their jobs, re-uniting themselves with their families and taking serious cognizance of the trust the Parole Board has placed in them. These men realize and have said many times they know only too well that upon their successes or failures in the community probably depend to some degree the schedule of release for other “Lifer Law” cases.¹³

The historical record appears to bear out the board’s belief that lifers make the best parolees. As Table 4 indicates, the 7.6% parole revocation rate for parolable lifers is one-fourth the rate for parolees generally. At 2.3%, the rate for those convicted of first-degree murder is even more impressive. Add to this the fact that, whatever their offenses, released lifers must stay on parole for four years. The average length of parole for non-lifers is two years. Thus the lifers are far more successful than the average parolee

despite the fact that they must avoid the possibility of a parole violation for twice as long.

Table 4. Returns to prison by lifers released 1900-2003

	No. released	Total revoked	Technical violators	New sentences
First-degree murder	648	15 2.3%	14 2.2%	1 0.2%
Parolable lifers	688	52 7.6%	37 5.4%	15 2.2%
All prisoners paroled in 2003	10,987	3,288 29.9%	1,837 16.7%	1,451 13.2%

What is particularly noteworthy is how few of the returns were for convictions of new crimes. The available data indicates that only one of the first-degree murder cases (0.2% of all those released) involved a new conviction and that was for a relatively minor drug offense. It appears that the other 14 were all returns for technical violations. Eleven were re-paroled.

Of the 52 (7.6%) parolable lifers who were returned, 37 (5.4%) were technical violators, 29 of whom were re-paroled. Only fifteen of these returns – 2.2% -- were for new crimes. While the data is missing in several cases, it does not appear that any of the new crimes were murders.

It is not surprising that lifers are especially good risks for release. Because of the length of time they have served, they tend to be older and more mature. Notably, their crimes actually make them better candidates as well. Research shows that those who commit crimes against people, as the vast majority of lifers did, actually have lower re-offense rates than property and drug offenders. In addition, many were first offenders whose crimes, although very serious, were situational.¹⁴ And, of course, having been given a reprieve from the prospect of

dying in prison, lifers have a unique appreciation for their freedom.

Over 100 years of experience with over 1,300 cases indicates that the majority of lifers, both parolable and non-parolable, do not commit new crimes when released. Whatever justification may exist for the current parole board’s “life means life” policy, the data suggest that it is not public safety.

CONCLUSION

In *People v Hill*, the Court of Appeals said: “. . . it is unclear why in 1976 legal practitioners and sentencing judges would have believed that a sentence of parolable life meant that a prisoner would be released shortly after they became parole-eligible.” It is now possible to see exactly on what past practices these judges and lawyers relied. Sentencing judges or their successors are contacted before lifers are paroled. They knew in fact that the majority of parolable lifers were routinely released, often after serving fewer than 15 years. They knew in fact that even the majority of people sentenced to life without parole routinely received commutations, often in fewer than 20 years. Six decades of familiarity with the decisions of governors and parole board members gave every reason to believe that life did not mean life. Unable to anticipate that dramatic changes in the parole board would occur nearly two decades later, judges could only assume that the life sentences they were imposing would continue to constitute the same measure of punishment when the defendants became eligible for release.

Endnotes

¹ *The Lifer Law (Act 173, P.A. 1941)*, Biennial Report—1942-1943, pp. 1-2.

² The Lifer Law was subsequently amended to require people whose crimes were committed on or after Oct. 1, 1992 to serve 15 calendar years. Because Michigan’s “truth in sentencing” provisions now require everyone sentenced after certain dates to serve their entire minimum

sentences, the provision of the Lifer Law that allowed people with long indeterminate sentences to be released after 10 calendar years has been eliminated.

³ State of Michigan, Department of Corrections, *Corrections in War Time*, Third Biennial Report, 1941-1942, p. 92.

⁴ For discussion of a survey of judges’ views on the current treatment of parolable lifers conducted in 2002 by the Prisons and Corrections Section of the State Bar of Michigan, see *No way out: Michigan’s parole board redefines the meaning of “life”*, CAPPs (Lansing, September 2004), pp 14-16. The Michigan Supreme Court has held that a sentencing judge’s reliance on the fact that a lifer would be considered for parole after 10 years is not grounds for resentencing now that the board has changed its release policies. *People v Louis Moore*, 468 Mich 573; 664 NW2d 700 (2003).

⁵ Michigan Department of Corrections, *Five Years After: An analysis of the Michigan Parole Board since 1992* (Lansing, September 1997), p.2.

⁶ A 1978 statute required judges to impose life without parole for manufacture or delivery of more than 650 grams. In 1998, the Legislature abolished that harsh penalty and made “650 drug lifers” sentenced under it eligible for parole after serving 15, 17.5 or 20 years, depending on certain circumstances. The board took this statutory change as a mandate to start releasing drug lifers. It applies its “life means life” policy to lifers who had always been parole-eligible after serving 10 years. For a more detailed discussion of how the application of the Lifer Law has evolved, including statutory changes in the interview and review process, see *No way out*: pp. 7-13, op cit., note 2.

⁷ 267 Mich App 345 (2005).

⁸ The first-degree murder group includes 346 pre-1942 cases where the degree of murder was unspecified. The non-first-degree murder group includes 140 cases where judges imposed a minimum term of years and a life maximum. While this is no longer permitted, the practice occurred sporadically until 1959. The minimum term of years allowed the parole board to grant parole independently of the Lifer Law. For instance, a person serving a sentence of 5-life could be paroled after serving the five-year minimum minus applicable good time credits. However, that person could also be held for decades or denied parole altogether. Cases in the database go in both directions. Thus, although people serving sentences of a minimum term to life did not have their parole eligibility determined by the Lifer Law, they were still parolable lifers because the board had the authority to keep them for the rest of their lives.

⁹ The actual sentencing date was used throughout for the sake of consistency. The “corrected date”, which includes credit for time spent in jail before sentencing, was missing for many cases.

¹⁰ People sentenced after Oct. 1, 1992 will not become eligible until at least 2007. See note 2.

¹¹ Of the remaining cases, 8 faced judicial objections. Four were released in subsequent years, including 1 that resulted in commutation and 2 where judicial objections were lifted. One person was resentenced. Five died in prison. One who was released returned to prison as a technical parole violator. Twenty-two who were never released remain incarcerated, more than 13 years after the “new” board was appointed.

¹² Nine had been convicted of possessing more than 650 grams and had become eligible for parole after serving 10 years. The other 25 had been convicted of manufacture or delivery and became eligible at 15, 17.5 or 20 years depending on their circumstances.

¹³ *The Lifer Law*, op. cit., note 1.

¹⁴ For more detailed discussion of the characteristics of parolable lifers, see *No way out*, op cit., note 2.

