

No way out

Michigan's parole board
redefines the meaning of "life"



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CITIZENS ALLIANCE ON PRISONS & PUBLIC SPENDING

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September, 2004



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Contents

Preface 1

Introduction 3

Multiple views on the meaning of life 5

- Michigan's Lifer Law - then and now 7
 - The view from the bench 14
 - The view from other states 17
 - The view from inside 19
- Should lifers be paroled? A review of the relevant facts 22

Prisoner profiles 27

- About these profiles 29
 - Henry Phillips 31
 - Reynaldo Rodriguez 32
 - Gladys Wilson 34
 - Leslie G. Moran 35
 - James R. Percy 37
 - Martin Vargas 38
- Gregory Lawrence & Robert Schraw 41
 - Ross Stephen Hayes 44
- Michelle Bazzetta-Southers 45
 - Gerald Lee Hessell 47
 - Jose Daniel Mares 49
 - Anthony Johnson 50
 - Derek Lee Foster 52
 - David Closser 53

- Philandius Ford 55
 - Monica Jahner 57
- Robert Weisenauer 58
 - Kenneth Foster 60
 - Ruth Bullock 62
- The view from then to now 64

Recommendations for change 67

Acknowledgments 72

Preface

There are two kinds of life sentences in Michigan. Life without the possibility of parole is mandatory for the crime of first-degree murder. Parolable life is one alternative judges can choose for many other offenses.

The law assumes that the difference between the two types of life sentences is significant. First-degree lifers can never leave prison unless the governor commutes their sentence. Parolable lifers can be released by the parole board after serving the number of years set by statute. Parolable lifers sentenced in the 1960s, 1970s and 1980s became eligible for parole after serving 10 years. In those days, judges often chose a life term in the belief that it was more lenient than a sentence with a long minimum and maximum. Yet today, hundreds of lifers who could have been released one, two or even three decades ago are growing old in Michigan's prisons, at a heavy cost to them and to Michigan taxpayers.

Why have the expectations of judges, prosecutors, defense attorneys and prior parole board members not proven true? Over time, as the prison system expanded and attitudes toward prisoners toughened in general, lifer paroles became less frequent. In recent years the Michigan parole board openly adopted the philosophy that "life means life," effectively eliminating the distinction between parolable and non-parolable life terms. This new philosophy is applied to all parolable lifers, regardless of when they were sentenced. In the vast majority of cases, the board reviews the file once every five years and then issues a "no interest" notice, often without even seeing the person.

These lifers committed serious crimes. For about half it was second-degree murder; for the rest it was such offenses as armed robbery, criminal sexual conduct, assault with intent to murder and kidnapping. This report makes no attempt to whitewash their behavior or minimize the harm done to their victims. Nor does it debate whether life terms were appropriate when imposed. However, over the decades, thousands of prisoners convicted of similar offenses have served 10, 15 or 20 years and been paroled. The lifers are not being denied release because their crimes were worse or their prison records are bad or they pose a high risk of re-offending. They are being denied because the parole board chooses to apply the Lifer Law very differently than anyone could have foreseen. This report examines whether current policies are fair, rational and cost-effective.

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Introduction

In July 1976, Washtenaw County Circuit Judge William Ager was sentencing Edward Hill for armed robbery. The judge gave Hill two choices. A 40-60 year sentence, with all the good time credits available then, would have meant parole eligibility in 16 years. A parolable life term, the judge said, would likely bring release in 12 years, eight months. Naturally, Hill chose life.

In October 1977, Macomb County Circuit Judge Alton Noe sentenced Henry Fante to parolable life terms for criminal sexual conduct and armed robbery, stating:

Now I am informed that the life sentences . . . depending upon your behavior in prison, that it probably will be cut down to maybe ten or twelve years.

In July 1978, Detroit Recorder's Court Judge Joseph Maher sentenced Ralph Purifoy on two counts of second-degree murder, imposing 30-50 years for one count and parolable life for the other. The judge explained:

These will be served concurrently. His life sentence should be available for discharge from the State Prison for Southern Michigan at the end of 12 years and on the other one, depending on his conduct, his time for release should run approximately the same, possibly a year or two more.

In June 1985, Roy Jackson appeared in Recorder's Court for a resentencing required by a legal error. Originally sentenced in 1977 to a parolable life term for second-degree murder, Jackson had served eight years in prison with an exemplary record. Jackson urged the Court to impose a sentence with a mini-

mum and maximum, such as 40-60 years, because he believed it would give him a better chance at parole. But Judge Joseph Gillis declined. Noting that Jackson would become eligible for parole in two more years on the life term, the judge said:

Well, you are getting along very well in prison, and apparently you should have no trouble with parole.

Today, each of these men has spent more than 26 years in prison. They are among nearly 850 Michigan lifers who became eligible for parole after serving 10 years but are now trapped by the current parole board's policy that "life means life."

These lifers include people like Ricky Coyle, for whom a life sentence would not be an option under today's sentencing guidelines. Coyle received life in 1979 for an Oakland County pizza parlor robbery in which no one was injured. Current sentencing guidelines would recommend a minimum term no longer than 12 years.

These lifers also include people like Kenneth White, who pled guilty in Recorder's Court in August 1985 to shooting another teenager when White was 17. The basis for the plea was the understanding of all parties that, even with two years added for a felony firearm charge, White would be released in 15 years.

And these lifers include people like Lloyd Tisi, now age 60, who has served 37 years for the second-degree murder of a female acquaintance. Tisi built an exceptional record in prison based on years of psychotherapy and a string of accomplishments. He obtained a bachelor's degree, learned drafting, was certified in Braille transcription and worked in the optical lab for 24 years, programming the

lab's computer. He was often responsible for instructing other prisoners. Since suffering a stroke in 1998, Tisi has had brain surgery on four occasions and, as a result of partial paralysis and vision loss, is too disabled to work any longer.

These lifers, and those whose stories will be told in more detail, raise many questions.

- Where the Legislature has drawn a clear distinction between life without parole for first-degree murder and life with parole possible after 10 years, why does the parole board insist that "life means life?"
- How has the application of the Lifer Law changed since these lifers were sentenced?
- Is it fair for an administrative agency to apply new policies retroactively?
- Should the actual intentions of sentencing judges be considered by the board?
- What is the value of a plea bargain if the terms can be rewritten many years later?
- Should people with similar backgrounds who have committed similar offenses serve vastly different sentences?
- Once they have served the minimum years required by statute, should lifers be assessed for parole on the same basis as other prisoners by considering their institutional conduct, achievements and risk for re-offending?
- Just who are the lifers now eligible for parole? Are we safer because they're behind bars?
- Is it cost-effective to keep people who are aging or ill locked up for additional decades?
- Does there come a time when enough punishment is enough and even people who committed

serious crimes should be given a second chance?

To answer these questions, we must first understand the place of the Lifer Law in Michigan's sentencing scheme and how it used to work.



***Multiple views
on the meaning of life***

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Michigan's Lifer Law - then and now

1942-1974: The Lifer Law serves its purpose

Under Michigan law, a defendant *must* be sentenced to life in prison for the crime of first-degree murder. A defendant *may* be sentenced to life for various other offenses, including second-degree murder, armed robbery, first-degree criminal sexual conduct, kidnapping and certain drug law violations. For these offenses, the judge can choose to impose either a life term or an indeterminate sentence (that is, one with a minimum and maximum number of years).

Until 1941, Michigan was one of the few states with a sizeable lifer population that had no parole process for these prisoners. Regardless of the offense, a lifer could only be released if the Governor commuted the sentence or granted a pardon. Thus the release process for lifers was very politically sensitive.

By enacting the Lifer Law (MCL 791.236(6)), the Legislature created two classes of lifers. Those sentenced to life without parole for first-degree murder still could be released only if the Governor exercised clemency. Those sentenced to life for other offenses became eligible for parole after serving 10 calendar years. In fact, the statute granted parole eligibility to any prisoner who had served 10 calendar years, even on a long indeterminate sentence. Thus, the lifer law recognized that 10 years is a long time to spend in prison and at that point it is reasonable to reassess people and release those who have demonstrated sufficient progress.

The lifer law also embodied three critical assump-

tions. One was that the parole board was composed of corrections professionals whose independence was protected by statute. They were selected for their expertise by a bi-partisan commission and could only be fired for good cause. Thus board members could assess each case on its merits without their jobs being threatened by unpopular decisions.¹

Second, once a prisoner was within the board's jurisdiction, a lifer's suitability for parole would presumably be judged according to the same criteria as any other prisoner. The statute sets no different standard for releasing lifers once they are eligible.

Third, prisoners other than lifers (those with indeterminate sentences) could receive generous quantities of "good time" credit against their sentences. The amount of time off that could be earned for good behavior increased as the prisoner served more years. Thus very long sentences were not necessarily as harsh as they seemed. A 75-year minimum could be served in less than 25 years. A parolable life term and a 20-year minimum were almost equivalent in terms of first parole eligibility, with release on the latter possible after 10 years and seven months.

The 1941 statute did establish a different process for considering parole under the lifer law. In recognition of the fact that paroles were being substituted for the commutation process, the statute required extra procedures to ensure public input and protect public safety.

1. The sentencing judge or that judge's successor in office must be given 30 days to file written

objections. If the judge objects, the board cannot grant parole. There is no process for appealing a judicial objection. [As originally drafted, only the sentencing judge, if alive, could enter an objection. In 1953, the statute was amended so that the objection could be filed by a retired or deceased judge's successor.]

2. Before making a final decision, the parole board must conduct a public hearing at which people can speak for or against the prisoner's release.
3. The parole period must be at least four years.

A 1942 report by the Michigan Department of Corrections was candid about the Lifer Law's purpose and optimistic about its prospects for depoliticizing the release process for lifers:

With the passing of the Lifer Law, the entire outlook for over three hundred life termers changed significantly. It is no longer necessary to go through the Governor's office to parole men serving life terms for any crime except first-degree murder. This broadening of the powers of the Parole Board will make it possible to consider for release more meritorious cases than had been previously possible. Practically speaking, the Parole Board has been limited in its consideration of outstanding life cases by the necessity for issuing commutations through the Governor's office. Even with a tremendous lifer population, Governors have been placed in an unfavorable position when they were asked to sign commutations. Much political capital has been made of the frequent use of the commuting power in the past; with the result commutations were regarded as fraught with political meanings, rather than open, straightforward granting of parole to a man who had earned consideration. By conforming to the statutory safeguards set up, the Parole Board may now consider the matter of release of a lifer (except Murder First Degree) directly with the sentencing

judge and grant parole and the Governor's power of executive clemency may now be used exclusively with murder first degree cases.²

For several decades, the Lifer Law apparently worked as planned. In the 1940s, 110 lifers were paroled. In the 1950s, it was 112, and in the '60s it was 124. Thus, for 28 years, lifer paroles averaged 12 per year. Data is not available about the number of lifers who had served ten years and were actually eligible for parole during these decades. However, it appears that the proportion of eligible lifers who were released was high. By 1973, when MDOC statistical reports added more information, there were 272 prisoners serving parolable life terms. Since 254 of them had been sentenced during the preceding 10 years, it appears the pool of eligible lifers was growing little, if at all.

Also as anticipated, the Lifer Law left the Governor more leeway to commute the sentences of prisoners serving life without parole. From 1942-49, 35 first-degree murder sentences were commuted; in the 1950s there were 114 commutations, and in the 1960s there were 221. In 1973, there were 336 prisoners serving non-parolable life terms.

The trend continued through the early 1970s. 1973 and 1974 were watershed years for lifers. Thirty-five were paroled. Of these, 21 had served fewer than 15 years; 26 had served fewer than 20 years. In addition, 30 first-degree lifers had their sentences commuted. These releases reflect the understanding of the Lifer Law that sentencing judges, prosecutors and defense attorneys shared throughout the 1970s and into the 1980s.

1975-1992: Lifer paroles decline

In the mid-1970s, reality began to diverge from the common understanding. From 1975-1992, only 65 lifers were paroled, an average of fewer than four per year. Commutations were granted to 36 people

convicted of first-degree murder. In part, this may well have reflected harsher public attitudes about crime and punishment. In 1978, voters had adopted a constitutional amendment to eliminate good time credits on minimum sentences imposed from then on. In the same year, the Legislature enacted draconian drug crime penalties that included life without parole for delivering more than 650 grams of certain controlled substances.

Yet the evidence does not suggest a significant change in parole board philosophy. On the contrary, in the early 1980s, the board began experimenting with a version of parole guidelines for prisoners being interviewed under the Lifer Law. Called "Commutation and Long Term Release Guidelines," they awarded points based on the prisoner's prior record and details of the offense, such as the degree of injury, use of a weapon and the offender's role. The points were summarized on a grid that suggested when parole or commutation would be appropriate. Although not binding on the board, the grid term was supposed to help make decisions more objective and consistent. For a first offender serving life for robbery or sexual assault, the longest grid term possible was 14 years. For a first offender convicted of second-degree murder without unusual aggravating circumstances, the grid term was also 14 years. For non-homicide cases, it took a substantial prior record and a very high offense severity score for the "grid term" to exceed 20 years.

Also during this period, the frequency with which lifers were interviewed by the parole board was increased. Prior to 1977, the board interviewed prisoners subject to the Lifer Law after they had served seven years and every three years thereafter. In 1977, this was changed to a first interview at seven years, a second three years later (when the board obtained jurisdiction) and every year thereafter. The purpose of these frequent interviews was described in the Michigan Department of Corrections' 1974

Annual Report on page 101:

While release cannot be prior to ten years, the Parole Board, as a practice, grants an initial interview in all lifer law cases after the service of seven years. This is done primarily to get acquainted with the individual prior to the service of ten years and to offer any advice or help relative to achieving future parole.

In 1982, the statute was amended to require an interview when the lifer had served four years and then every two years thereafter.

The decline in lifer paroles was attributable at least in part to the growth of the prison system overall. Statutory requirements notwithstanding, lifer interviews were put on the back burner while the board struggled to see prisoners who were immediately eligible for parole on their minimum sentences. Overcrowded prisons necessitated prompt board reviews of less serious offenders likely to be released quickly. Even lifers who were told that the board had interest in their cases waited years before hearing anything else. As one MDOC official said in a 1987 memo: ". . . everyone knows the Board is so far behind on lifer interviews they will never catch up."³

The dearth of lifer releases destroyed the equilibrium that had existed. The proportion of prisoners committed during this period who had life terms remained small (1.2 percent had parolable life and another 1.2 percent had non-parolable life). However the number of prisoners serving life increased steadily. In 1983, there were 770 people serving parolable life terms and 852 people serving non-parolable life. By 1992, there were 1,439 parolable lifers and 1,742 people serving non-parolable life for first-degree murder.



1993-2004: New policies applied to old lifers

In early 1992, a paroled sex offender raped and murdered four young girls in Oakland County. Although he had been released well after serving his seven-year minimum term, the events were a catalyst for numerous changes in the parole process that affected all prisoners.

Most significantly, the parole board itself was changed. Expanded from seven to ten members, the board was stripped of its civil service protection in order to make it "more accountable." All members are now appointed by the MDOC Director, who is, in turn, appointed by the Governor. By statute, at least four members must not have corrections experience. Under the Engler administration, few board members had any. The majority had backgrounds in law enforcement and prosecution. Parole rates for every type of offender plummeted.

There is no question that the new board was intended, as then Director Kenneth McGinnis said, to be "far more conservative than its predecessor." In his preface to a 1997 status report on the new board, McGinnis asserted:

To reinforce public confidence in Michigan's penal system, Gov. John Engler in 1992 ordered an overhaul of the Parole Board and the way in which paroles were granted. 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.⁴

For lifers, of course, "as long as possible" meant never being released. The new board inherited dozens of lifer cases in which the prior board had shown interest but failed to act. After reconsidering these cases, the board paroled 14 lifers in 1994 and 12 more from 1995-1998. But a new approach was

taking hold that became clear in legislative testimony the board chair gave in 1999:

It has been a long standing philosophy of the Michigan Parole Board that a life sentence means just that – life in prison. Of course there are exceptions and parole may be appropriate under certain circumstances...It is the parole board's belief that something exceptional must occur which would cause the parole board to request the sentencing judge or Governor to set aside a life sentence. Good behavior is expected and is not in and of itself grounds for parole.⁵

The new approach was reinforced in materials the board provided to a judicial conference in 2001. After asserting that the distinction between a parolable and a non-parolable life sentence is "who makes the final release decision," the board sought to clarify "misconceptions" by stating:

There are some who believe a life sentence equates to a number of years of confinement; i.e. a life sentence equals 10, 20, 30 years, etc. The parole board believes a life sentence means life in prison. There is nothing which exists in statute that allows the parole board to think, or do, otherwise.⁶

In this way, the Lifer Law, so carefully constructed to increase lifer paroles by decreasing the political sensitivity of the release process, has been redefined by a politically-appointed board to virtually eliminate lifer paroles altogether.

This redefinition of the Lifer Law was accompanied by changes in the decision-making process. In 1992, when the board was reconstituted, two key amendments were also made to the Lifer Law itself. First, everyone sentenced to a parolable life term on or after Oct. 1, 1992 must serve 15 calendar years instead of 10 before becoming eligible for release. Two points about this change are notewor-

thy. Although the time required for parole eligibility was lengthened, it still reflected a legislative intent to maintain the essential distinction between parolable and non-parolable life. In addition, as is constitutionally required for all increases in punishment for crime, the change applied only to people sentenced after the amendment took effect.

The other amendment to the Lifer Law changed the interview schedule. Lifers would now be interviewed for the first time after serving ten years and only once every five years thereafter. Although seeing lifers less often would naturally tend to reduce their chances for release, the federal court said this procedural change could be applied to all lifers, regardless of their offense date.

Also in 1992, the Legislature required the MDOC to develop parole guidelines to help structure board decision-making. Designed to assess the prisoner's risk of re-offending if released, the guidelines weigh numerous factors, including offense, prior record, age, institutional conduct, and length of time served. If a prisoner scores above a certain cut-off point, the parole board must provide substantial and compelling written reasons for denying release. Although the statute makes no mention of excluding any group of prisoners, the parole board has chosen not to apply the guidelines to lifers and the courts have upheld this position.

In 1999, the Legislature made four more important changes in the parole process.

1. The right of all prisoners to appeal parole board decisions was eliminated (although the right of prosecutors and victims to appeal grants of parole was retained).
2. The interview schedule for lifers was changed again. A personal interview, by a single board member, is required only when the prisoner

has served 10 calendar years. Thereafter, the prisoner's file must be reviewed, by one board member, every five years. The board retains complete discretion to decide if it ever sees the prisoner in person again.

3. The requirement that the board provide a written explanation of the reasons for denying release, applicable to all other prisoners, was eliminated for lifers.
4. The decision to grant or deny parole to a lifer was redefined as coming only after a public hearing has been held. Thus a board determination that it has "no interest" in even holding a public hearing is not considered a decision to deny parole, even though a public hearing is required before parole can be granted. Under this convoluted reasoning, if the right to appeal parole denials were restored to prisoners in general, lifers would still not be able to appeal decisions not to proceed to public hearing.

All the lifers who have now served more than 10 years have already been personally interviewed once. Therefore, by statute, the board does not ever have to see them again. Nor must it use parole guidelines to assess whether releasing them would pose a significant risk to the public. The board is required only to skim through their files, once every five years, before it can issue a notice that simply says "no interest." The board does not have to give any reason for its decision, which is technically not even a decision to deny release. The prisoner cannot appeal to any court or other administrative authority. The parole board's discretion to keep a parolable lifer is boundless, inscrutable and not subject to review.

One other change in the Lifer Law occurred in 1998. When the Michigan Legislature abolished

the penalty of life without parole for “650 drug lifers,” it also gave relief to prisoners already sentenced under that harsh law. It made them eligible for parole after 15, 17½ or 20 years, depending on whether they cooperated with authorities and whether they had a prior conviction for another serious crime.

The board immediately took this statutory change as a mandate to start releasing drug lifers. From 1999-2003, of 21 lifers who were paroled, 14 were drug offenders. During the same period, of 16 lifers who received commutations, 11 were drug lifers. While the board was no doubt correct in perceiving a legislative intent to act on the drug lifers, it apparently saw no contradiction in failing to act on hundreds of lifers who had been eligible for parole under existing law for many years.

Among the seven paroled lifers who were not drug offenders, the board characterizes five as medical cases, although all had served more than enough time to be eligible for release under the Lifer Law regardless of their health status. Three of the non-drug lifers who received commutations were also medical cases. Thus, in the five-year period from 1999-2003, only two lifers received paroles and two received commutations who were not either serving for drug offenses or seriously ill.⁷

The arbitrariness of the lifer parole process is illustrated by the case of Nick Lazin, paroled in July 2004 after serving 41 years for second-degree murder. His institutional record and psychological evaluations were good and his last misconduct citation was in 1987. Letters from his sentencing judge written in 1977 and 1981 indicated that the judge felt a life sentence was much less severe than a 30-year minimum and that he would have no objection to parole when the board wished to proceed.

Recognizing Lazin's apparent suitability for parole, the old board decided to hold a public hearing in 1988 and again in 1992, but each time the sentencing judge's successor in office objected to Lazin's release. Neither Lazin nor the board had any recourse. Then, in November 2001, at Lazin's request, the successor judge issued an order expressly withdrawing his objection and granting jurisdiction to the board. The judge and Lazin both sent the order directly to the parole board chair, but nothing happened.

Lazin was routinely considered again in November 2002. The board merely reviewed his file, notified him that it had no interest and scheduled the next review for 2007. Again, Lazin had no recourse. Then, for unknown reasons, the board chose to interview him in July 2003. In March 2004, it decided to proceed toward parole and held a public hearing a few months later.

Why did the board not act to release Lazin as soon as the judge lifted his objection in 2001? Why did it not act when it reviewed his file in 2002? What made the board suddenly decide to interview him in 2003? Why did it then take eight more months to decide to hold a public hearing? If it is reasonable to parole Lazin, who is neither a drug lifer nor seriously ill, why not hundreds of other lifers whose situations are similar?

Over the last 60 years, the situation for lifers has come full circle. The Legislature's intent to take politics out of release decisions for parolable lifers has been negated by the decision to put politics into the parole board appointment process. Instead of the “open, straightforward granting of parole to a [person] who had earned consideration” envisioned by the authors of the Lifer Law, lifer releases are now assumed to be political risks rarely worth taking.

The consequences of this “no release, no risk” approach are inevitable. From 1993-2001, the proportion of all newly-committed prisoners who had parolable life sentences declined and the proportion with non-parolable life remained constant. But the lack of releases has caused the lifer population to just keep growing. In 2001, there were 1,718 parolable lifers and 2,704 people serving life without parole.

of the Michigan Parole Board, Testimony in support of Proposed Legislation (Lansing, Sept. 28, 1999).

6. Martin, Steinman and Marschke, “Michigan Department of Corrections, Field Operations Administration, Office of the Parole Board,” prepared for Michigan Judges Association Annual Judicial Conference, Traverse City, Michigan, Oct. 1-3, 2001.

7. Commutations were also awarded to twelve non-lifers – seven other drug offenders and five non-drug offenders who were terminally ill.

Endnotes

1. When the Lifer Law was adopted, the parole board was composed of three members selected for their “familiarity with the problems of penology.” One member was the MDOC assistant director in charge of the bureau of pardons and paroles. The other two were appointed by the corrections commission and could be removed by the commission only for cause after a hearing.

The corrections commission oversaw department operations and chose the MDOC director. The commission had five members, appointed by the governor with the advice and consent of the senate. Commission members served staggered six-year terms and no more than three could come from one political party.

In 1948, the parole board was increased to four members, all appointed by the commission, and was given civil service protection. It was expanded to five members in 1953 and seven in 1978. In 1991, Gov. John Engler abolished the corrections commission and transferred its duties to the department director, who is now appointed by the governor.

2. *Corrections in Wartime*, the Department of Corrections’ Third Biennial Report, 1941-1942, pages 93-94.

3. Memorandum from Richard McKeon, MDOC Executive Assistant, to Clayton Burch, Legislative Corrections Ombudsman, Aug. 26, 1987.

4. Michigan Department of Corrections, “*Five Years After: An analysis of the Michigan Parole Board since 1992*” (Lansing, September 1997).

5. Michigan Department of Corrections, Office

The view from the bench

Exactly what did Michigan judges expect to happen when they imposed parolable life terms? Beyond the records of individual cases, there is systematic evidence of their intentions. In January 2002, the Prisons and Corrections Section of the State Bar of Michigan surveyed 379 current and former felony trial court judges.¹ The questionnaire asked about:

- the judges' understanding of what a parolable life sentence meant as a practical matter,
- their own intentions when they chose life sentences as opposed to indeterminate terms,
- how they view the parole board's current policy, and
- what remedies, if any, should be available to lifers being denied release contrary to the sentencing judge's intentions.

Ninety-five judges, representing 43 of Michigan's 81 counties, responded. They were evenly divided between those currently sitting and those who are retired.

Two-thirds of the responding judges said that the availability of parole was a factor they considered when selecting a life term. A number of them noted that if they wanted to avoid the possibility of parole, they imposed very long – even triple digit – minimum sentences that the defendant would not live to serve. Thus a retired Wayne County judge said:

There were times when a 'life' term was imposed precisely because I wanted the parole board to have the option of parole at some point in the future.

Another former Wayne County judge explained:

I understood a prisoner would be eligible for parole after about 10 years and many were released. I would give a term of years if I wanted to be sure a prisoner would remain in prison.

And a former Eaton County judge agreed:

...90% of life sentences I wanted MDOC to use their continuing discretion as to when release was appropriate. If I really wanted to assure a life sentence I would give a 'basketball score' term of years, the exact opposite of the claim MDOC is currently making. (original emphasis)

Twenty-four respondents noted exactly how much time they expected parolable lifers to actually serve. The average was 15.6 years. Even more telling were the answers to questions that compared the harshness of a life sentence to minimum terms of various lengths. Before generous good time provisions were eliminated in 1978, a 25-year term could be served in 12 years. Nonetheless, 60 percent of all survey participants thought that a life term imposed before 1978 was less harsh than a 25-year minimum.

Many judges acknowledged that defendants were often told how many years they could expect to serve on a life sentence or, at a minimum, that they could earn their release through good conduct, education and program participation. Many judges also said that when a defendant charged with first-degree murder pled guilty to second-degree murder in exchange for a parolable life term, the plea bargain was presumed to have value because the possibility of parole was presumed to be real.

The judges were asked specifically whether the cur-

rent parole board's position that "life means life" accurately reflects their intentions when they imposed parolable life terms. Two-thirds of the respondents said "No." (Another 16 percent did not answer; only 17 percent said "Yes.") Some explained their reasoning. A former Genesee County judge stated:

Because of the lifer law, I did not think life necessarily meant life.

A retired Marquette County judge also relied on the law:

Under the legislative scheme, 'life means life' simply is not accurate.

A Bay County judge relied on plain logic:

If it is parolable, it can't mean 'life is life', logically.

A Lapeer County judge with 23 years on the bench concluded:

I never considered that 'parolable life' meant the same as mandatory life. I believe other judges of my time (1969-1992) would agree.

Many of the respondents strongly criticized the parole board for violating legislative intent, usurping judicial authority or failing to exercise its own discretion appropriately. Thus a Kent County judge asserted:

The parole board's policy essentially vitiates the distinction between 1st and 2nd degree murder sentences which I am sure was not the legislature's intention. It is an extreme and misguided view. (original emphasis)

An Oakland County judge said:

The parole board is acting irresponsibly and if legislation is needed to prevent the board from, in effect, overruling the judge, then so be it.

A Muskegon judge who characterized the board's decisions as "too political" continued:

... any decision should be based on inmate's conduct and potential risk to community.

A St. Clair County respondent summed the situation up this way:

When I sentence a person today, I believe I am a pretty good judge of the minimum time society requires to be protected from the defendant – I believe that the parole board is better equipped to evaluate the defendant's progress several years later – unfortunately the present parole board does not seem to wish to exercise this discretion.

Two-thirds of the responding judges thought some avenue of relief should be available to lifers in appropriate cases. Despite the burden it would place on the trial courts, 60 percent said "Yes" to the question: Would you support a statute or court rule that permitted judges to resentence defendants who were eligible for parole, had good prison records, and were denied release contrary to the actual intentions of the sentencing judge? As one Wayne County judge put it:

I feel that the parole board should exercise its power in a fair way and consider rehabilitation as a release factor. If they don't exercise discretion then the sentencing court should be able to.

Another six percent who did not support resentencing as an option suggested that the solution is to change parole board practices.

Despite the desire of trial judges to have some sort of remedy available, prisoners' efforts to obtain judicial relief from the parole board's policy have been stymied. The appellate courts recently confirmed

that no statute permits prisoners to appeal parole board decisions, no matter how much the board may have abused its discretion.² And when trial judges have agreed to resentence lifers to terms of years, the appellate courts have reversed those decisions.

Numerous lifers have sought resentencing on the rationale that the parole board's redefinition of the Lifer Law long after they were sentenced is unconstitutional. One theory was that the judge's assumptions about when lifers would be released amounted to a misunderstanding of the law that violated due process. However, in *People v Moore*³ the Michigan Supreme Court found that a judge's reliance on the fact that a lifer would be considered for parole after 10 years was not a misunderstanding because lifers are in fact considered, they just are not paroled. The Court concluded that a sentencing judge's "failure to accurately predict the actions of the Parole Board" does not render the sentence invalid.

Lifers also argue that the board's retroactive application of its "life means life" policy has increased their punishment in violation of constitutional guarantees against ex post facto (retroactive) changes in criminal penalties. Lifers who pled guilty in exchange for the supposed benefit of a parolable life term argue that the board's policy makes their plea bargains illusory and their pleas involuntary. Although these claims have been raised repeatedly, the appellate courts have not decided them yet.

Since their arguments allege violations of the United States constitution, lifers can try to pursue them in federal court. However, the process is long and complicated, and there is no right to appointed counsel. Even those who have the resources to litigate their federal claims could face years of appeals or have their issues swallowed up in debates over

complex procedural points. And, of course, even if they surmount every hurdle, the outcome would still be uncertain. Unless the Michigan Legislature institutes a process for reviewing parole board decisions or authorizes trial judges to grant resentencing, the original intentions of the judges who imposed life sentences decades ago will continue to be frustrated for years to come.

Endnotes

1. The complete report, *What Should "Parolable Life" Mean? Judges Respond to the Controversy*, Report of a Survey Conducted by The Prisons and Corrections Section, State Bar of Michigan, March 2002, is available on the CAPPS website.

2. *Morales v Michigan Parole Board*, 206 Mich App 29 (2003), lv. den. 470 Mich 885 (2004).

3. 468 Mich 573; 664 NW2d 700 (2003)

The view from other states

How does Michigan compare to other states in its imposition of life sentences and its lifer release practices? Such comparisons are difficult to make because many relevant factors differ from state to state. Jurisdictions vary widely in the offenses for which life terms can be imposed, the use of parolable versus non-parolable life terms, the length of time before parolable lifers are eligible for release, the availability of good time for lifers, the imposition of very long indeterminate sentences that are virtually life terms and the retroactive application of changes in law and practice.

While systematic data does not exist for most of these variables, a recent report by The Sentencing Project provides information about the sheer number of prisoners currently serving parolable and non-parolable life terms.¹ Nationally, 127,677 people are serving life – 9.4 percent of all state and federal prisoners. In Michigan, lifers comprise 9.2 percent of the total prisoner population. With 4,572 in 2002-03, Michigan ranks eighth among the states in its total number of lifers.

The extent to which states impose life without parole varies dramatically. In six states and the federal system, all life sentences are without parole. Conversely, four states have no prisoners serving non-parolable life. Even among neighboring states of similar size, the practices are diametrically opposed. Illinois has 1,291 lifers, none of whom are eligible for parole, and Ohio has 4,729 lifers, but only 105 are serving life without parole. With 2,629 prisoners serving for first-degree murder, Michigan ranks fifth among all states in the number of people serving life without parole.

The growth in Michigan's lifer population over the last two decades is part of a national trend. The Sentencing Project reports that, nationally, the lifer population doubled from 1984-1992, and then grew by another 83 percent from 1992-2003.

The national data do not reveal whether increased lifer populations are due primarily to more life sentences or fewer releases. In some cases, such as California's adoption of a "three strikes" law that requires a life sentence for commission of a third felony under many circumstances, the imposition of more life sentences is clearly a contributing factor. Other states have, like Michigan, increased the length of time lifers must serve before becoming parole eligible or have eliminated parole for lifers altogether. Release rates, whether by parole or commutation, have also declined in some states. In Pennsylvania, for instance, where all life sentences are without parole, the number of commutations has plummeted. In California, former Governor Gray Davis refused to release lifers convicted of murder, rejecting all but eight of 294 paroles approved by the parole board.

Nonetheless, it appears that Michigan's lifer parole policies are harsher than those of many other states. This is particularly true when one recognizes that states that have modernized their penal codes often do not allow life sentences for crimes other than murder. Any meaningful comparison of how states treat parolable lifers must begin with an analysis of when a parolable life term can even be imposed.

An instructive comparison can be made between Michigan and Georgia, which does allow life sentences for non-homicide offenses.² Georgia has the eighth largest state prison system and the fifth larg-

est total number of lifers. In September 2001, it had 6,059 prisoners serving parolable life and 252 serving life without parole. In the 1990s, Georgia toughened up on lifer paroles in a number of ways. For seven serious violent felonies (murder, rape, kidnapping, armed robbery, aggravated sodomy, aggravated sexual battery and aggravated child molestation), the time to be served before parole eligibility was increased from seven to 14 years. The maximum time allowable between parole reviews of eligible lifers was increased from three years to eight. The number of lifers who received parole dropped by more than 50 percent over the decade. The average length of time served by those who were released grew from 11.4 years in 1991 to 15 years in 2000.

Yet it is clear that life does not mean life in Georgia. The decline in lifer paroles was from 136 in 1991 to 55 in 2000. The total paroled for the period was 607. That is a far cry from the total of 30 lifers paroled in Michigan in the entire decade of the '90s.

In Florida, too, parole-eligible lifers have an actual chance of being released. A recent news article described the "Men Going Home" program at the Everglades Correctional Institute in Florida.³ This transitional program designed for lifers eligible for parole "under old sentencing guidelines" teaches the prisoners, many of whom have served 25 years, about everything from budgeting to healthy relationships to dinner table etiquette. More than 100 men have gone through the program since it began in 1997. The chairperson of the Florida Parole Commission says: "They've clearly shown that they've changed. We wouldn't let them out if we thought they were at risk." A victims' counselor from the Miami-Dade state attorney's office who teaches in the program says that while her sympathy is with crime victims and their families: "These

men have spent most of their lives in pain. At some point, they deserve a break."

It cannot be denied that the tough on crime attitudes that swelled prison populations all over the country also affected the treatment of lifers. The Sentencing Project estimates that lifers who enter prison now will serve more years before being released than those sentenced in the past. Nonetheless, nationally, a meaningful distinction between parolable life and life without parole continues to exist. There is no evidence that any state other than Michigan has eliminated that distinction, retroactively, through a simple parole board pronouncement that "life means life."

Endnotes

1. Mauer, King and Young, *The Meaning of "Life": Long Prison Sentences in Context*, The Sentencing Project (Washington, D.C., May 2004).

2. Georgia Board of Pardons and Paroles, Research Evaluation and Technology Unit, *Criminal Justice Brief: Life sentences in Georgia's correctional system - 2001*; www.pap.state.ga.us.

3. Laughlin, *Preparing inmates for life outside of prison: 'Men Going Home' program designed for newly paroled 'lifers'*, Lansing State Journal, May 24, 2004, www.lsj.com/lifestyles/family/p_040525_goinghome_3d.html.

The view from inside

Many of the men and women serving life in Michigan prisons were quite young when they first came to prison decades ago. They want the public to know they have changed.

I was a boy then; I am a man now.

—Benjamin Roundtree Jr., 156507 ~ 25 years

Parolable lifers are not monsters. We are men and women who made a bad decision 10, 20, 30 and 40 years ago. They call us violent people. Violent since when?

—Reynaldo J. Rodriguez, 149675 ~ 27 years

Nearly 100 parolable lifers wrote to CAPPs to explain how current parole policies make them feel, what it is like to serve a life term and what they want the public to understand.

They report growing up in prison, maturing and gaining a different perspective on life.

... after 25 to 30 years not only have we grown out of what we used to be, but we've learned how important life is and family.

—Charles L. Ross, 142755 ~ 29 years

The older we become the less likely we think in violent terms as a means to an end.

—Lawrence Swearington, 145972 ~ 27½ years

Those who have served 25 or more years are no longer thinking like criminals. They are thinking about jobs and employment, pension plans,

health insurance, education and being productive citizens.

—Anthony Johnson, 125208 ~ 28 years

They express great frustration with their treatment by the parole board. Lifers feel that no matter what they do, they can never get beyond their past and be judged on their current behavior and achievements.

All we are judged on is our past and that can never be changed.

—Grant Uribe, 120475 ~ 32 years

We have zero credibility. We show a visible change in our life, they disregard it by saying it's a con job or the person is institution-wise and playing the system.

—Jose Mares, 135943 ~ 30½ years

Serving a life sentence is to know that regardless of the accomplishments you obtain, regardless of your good deeds and behavior, regardless of your maturity, your health, your social growth, regardless of your willingness to accept and show responsibility for the things you do, or have done, you will not be looked on with any favorable consideration. It's like pushing against an immovable object.

—Jerry Martin, Jr., 136142 ~ 30 years

They point to the unfairness of lumping all lifers together, then writing them off based on their sentences instead of their merits.

Not all lifers are evil people. That's why each case needs to be considered in its own way instead of just lifers.

—Melvina Smith, 234444 ~ 11 years

The term Life is not a characteristic but a sentence. People should not infer that a lifer is more dangerous than any of the other prisoners who are routinely released.

—George Costiel, 142984 ~ 29 years

All the board sees is this four letter word, like it's a curse. They don't see past the word life. They don't look at what I've done since being in prison nor any of the facts within my file.

—Larry Guy, 186643 ~ 19 years

Many express a sense of betrayal by a system that does not seem to follow its own rules or honor its own values.

I was never told by the court or prosecutor that in my plea everything I had just agreed to was all subject to change over the years . . . and I may never see the board again in this life time or be able to appeal.

—Arthur Thomas, 131044 ~ 25 years

My sentence was not to die in prison.

—Rita Wilson, 196690 ~ 16 years

When I came into the system, the popularly held philosophy was: 'Give us some time and learn a job skill and maybe get some education and we will give you another shot at life.' Today the concept is . . . punishment.

—Jack Lown, 122080 ~ 28 years

Retribution, punishment, corrections . . . these are all important goals, but no less so are understanding, compassion and mercy.

—Jay Bartlett, 151428 ~ 27 years

There is a point in time when the human beings responsible for violent acts against other human beings have atoned for their crimes and satisfied the ends of justice and that point in time for the majority of parolable lifers in Michigan prisons tolled long ago.

—Roy Chapel Jackson, 152389 ~ 27 years

Many parolable lifers have grown up while in prison. Many judges believed these young lifers would eventually be paroled, but they just never saw this new parole board coming.

—Martin Vargas, 133525 ~ 32 years

And they explain how the board's disinterest and unwillingness even to see them face-to-face leaves them feeling helpless and hopeless.

I'm not considered a human being. Having spent 30+ years maturing, growing and working to change, I'm now faced with a board that doesn't even wish to see me.

—Robert Otto Bryan, 137462 ~ 32 years

It is very disheartening to be rubber stamped 'no interest' every five years, after five years, after five years . . .

—Jerry Martin Jr., 136142 ~ 30 years

It's absurd to allow anyone to say: 'You don't count enough for us to even bother to see any more . . . In a country of second chances, why

doesn't this state's parole board give parolable lifers a second chance after two decades or more?

—Jack Rice, 156502 ~ 25 years

I have watched (the parole board) painstakingly strip the one thing that lifers cling to for many years — hope,

—Bill Sleeper, 116539 ~ 37½ years

The lifers describe the difficulty of not knowing if they will ever be released.

The parolable lifer has no idea when his sentence is over . . . He is at the whim of the board, the political climate, the mood of the public and the next idiot who gets out and commits a heinous crime.

—Ali Sareini, 203519 ~ 15½ years

Most prisoners have an idea of when they can be released and what they can do to improve their chances for parole. Lifers do not have that luxury. Having a life sentence is like having a disease that has no cure. You try to keep your hopes up, and pray that something positive will happen.

—Reginald Johnson, 115613 ~ 28½ years

Every time I see someone released, I die inside a little because at my age time is running out for me to be with the one family member I have left.

—Philandius Ford, 113879 ~ 31 years

It is frightening for 65 or 70-year-old lifers who see no light at the end of the tunnel.

—Kenneth Marshall, 094939 ~ 32 years

We have all seen the old and helpless die here in prison of old age and other sicknesses. All we wish to do is spend the rest of our days with friends and loved ones.

—Jonathan Mott, 129064 ~ 26 years

Ultimately they voice their certainty that they could still contribute to their families and communities if only they were given a second chance

We are your sons, brothers, fathers, uncles and cousins, who have made mistakes in life and though they are serious mistakes and warrant punishment we also deserve a second chance in life, especially those of us who were little more than children when we committed our crimes.

—John Clay-Bey, 145094 ~ 28½ years

We have the ability to reform and become a better person, just like any one else. Personally, I pray every day for a second chance in life . . .

—Charles Armaly 155946 ~ 26 years

We understand more than most the harm we caused our victims and families. We have spent years and years relieving that terrible event. We want a chance to give back. I personally have about 15 productive years left in me. Why waste those years?

—Bill Sleeper, 116539 ~ 37½ years

A lot of us have changed for the better, We long for the chance to live another day on the other side with you.

—Robert Wittmuss, 176724 ~ 20 years

Should lifers be paroled? A review of the relevant facts

By law, hundreds of lifers could now be released at any time. But should they be? Is the parole board's policy protecting the public from the "worst of the worst" or is it arbitrarily imposing the harshest possible punishment on people who could live safely in the community at far less cost to taxpayers? The evidence suggests that lifers present no greater risk for re-offending than prisoners who are paroled every day, many for similar offenses.

For its 2003 report, *The high cost of denying parole: an analysis of prisoners eligible for release*,¹ CAPPS examined the MDOC prisoner database as of May 6, 2003. On that date there were 1,943 prisoners serving parolable life terms. Of these, 834 were then eligible for parole. They had served the number of years required by the Lifer Law and had no additional sentences that would prevent their release.

CAPPS analyzed numerous background factors about these lifers, ranging from their offenses and prior records to their institutional conduct. This analysis provides a demographic snapshot of the parole-eligible lifers. It also addresses most of the factors the parole board would weigh if it calculated parole guidelines scores for lifers to systematically assess their risk for re-offending.

The lifers are similar to the rest of the prison population in gender and race. Slightly fewer are female (3.0 percent of eligible lifers versus 4.5 percent of total population). Somewhat more are African-American (57.6 percent of eligible lifers versus 54 percent of total population).

While the data is missing on 87 cases, it is clear that most of the non-drug lifers were relatively young when they committed their crimes, as tends to be true of assaultive offenders generally. Their median age was 24. Two-thirds were 28 or younger. Most striking is the fact that nearly 30 percent (218 people) were 20 years old or younger; 72 were ages 15 to 17.

The lifers' offenses are mostly serious crimes against people.

The parole-eligible lifers: a snapshot

- Nearly 58% are African-American; 3% are women.
- Most were relatively young when they committed their crimes; nearly 30% were 20 or younger.
- Half were convicted of 2nd-degree murder; the rest committed other serious offenses.
- They are much older than the prison population generally. Their median age is 49.
- Many lifers are first-time offenders. Two-thirds are serving their first Michigan prison terms.
- Most lifers have good institutional records.
- Of more than 13,000 prisoners currently serving for offenses punishable by life or any term of years, only 10% received life.
- Although they became parole-eligible in 10 years, the lifers have served 22 years on average — far more time than others convicted of similar crimes.

Half (51.1 percent) were convicted of second-degree murder. The rest were convicted of criminal sexual conduct (18.7 percent), armed robbery (12.8 percent), assault with intent to murder (7.8 percent), other assaultive crimes (6.2 percent), drug possession or delivery of over 650 grams (2.8 percent) or of non-assaultive crimes as habitual offenders (0.5 percent).

The vast majority of people convicted of offenses punishable by life or any term of years do not receive life sentences. The 2001 MDOC Statistical Report provides the latest available information about the minimum sentences all prisoners are serving. Table 1, following, shows the distribution of minimum sentences for the four offenses most common among parolable lifers. It also displays the proportion of prisoners who are lifers currently eligible for parole. The average minimum term excludes

criminal sexual conduct are serving life; of those sentenced for armed robbery it is less than one-twentieth. In the majority of non-murder cases and nearly 30 percent of the murders, the minimum sentence is 15 years or less.

These summary figures do not explain the wide disparities in the sentences being served for violation of the same statutes. Disparities may result in part from differences in local norms, offenders' prior records and the facts of individual crimes, as well as differing approaches to sentencing by individual judges. Nonetheless, the MDOC database does shed light on whether the parole-eligible lifers could now be safely released.

The parole-eligible lifers are much older than the prison population generally. Their median

Table 1. Minimum terms of prisoners currently serving for four offenses

| | 10 yrs or less | 10.1 - 15 yrs | 15.1 - 20 yrs | 20.1 - 25 yrs | Over 25 yrs | Life | Eligible lifers | Total | Average Minimum |
|---|----------------|---------------|---------------|---------------|--------------|--------------|-----------------|-------|-----------------|
| 2 nd -degree murder | 382 10.7% | 629 17.6% | 709 19.8% | 564 15.7% | 580 16.2% | 719 20.0% | 426 11.9% | 3,583 | 21.9 |
| Assault with intent to murder | 471 36.0% | 293 22.1% | 207 15.6% | 105 7.9% | 130 9.8% | 119 9.0% | 65 4.9% | 1,325 | 16.0 |
| 1 st -degree criminal sexual conduct | 1,594 40.0% | 738 18.6% | 569 14.4% | 319 8.1% | 426 10.8% | 315 8.0% | 156 3.9% | 3,961 | 15.8 |
| Armed robbery | 3,019 67.1% | 578 12.9% | 378 8.4% | 149 3.3% | 174 3.9% | 199 4.4% | 107 2.4% | 4,497 | 9.9 |

life sentences.

As Table 1 demonstrates, only one-fifth of all prisoners convicted of second-degree murder are serving life terms. Less than one-tenth of prisoners convicted of assault with intent to murder and

age is 49. Twelve percent (97 people) are more than 60 years old.

The lifers' greater age is related to the years they have served in prison. The average time served by those convicted of non-drug offenses is 22

years. Fifty-eight percent (471 people) have served more than 20 years. Thus, well over half were sentenced not only before the current legislative sentencing guidelines took effect but also before the prior sentencing guidelines, devised by the Michigan Supreme Court, became effective in 1984. One-third (270 people) have served more than 25 years. That is, they were sentenced in the 1970s or earlier, when judges knew that lifers were commonly paroled. Ninety-seven members of the parole-eligible group have served more than 30 years.

There is no doubt that lifers actually serve far more time than others convicted of similar offenses. Table 2 shows how many prisoners were serving sentences for second-degree murder, assault with intent to murder, rape or first-degree criminal sexual conduct and armed robbery in 1978. It then shows how many were continuously incarcerated until 2003, 25 years later.

The difference in years served between those who received life sentences and those who received indeterminate terms is dramatic. Of the 3,737 non-lifers serving in 1978, only 69 – fewer than two percent

Table 2. Prisoners who have served > 25 years for four offenses

| | Non-lifers serving in 1978 | Lifers serving in 1978 | Non-lifers still serving in 2003 | Lifers still serving in 2003 |
|----------------------------------|----------------------------|------------------------|----------------------------------|------------------------------|
| 2 nd -degree murder | 717 | 382 | 24 "A" prefix = 9 | 191 "A" prefix = 95 |
| Assault with intent to murder | 194 | 46 | 6 "A" prefix = 1 | 23 "A" prefix = 14 |
| Rape/1 st -degree CSC | 473 | 102 | 17 "A" prefix = 2 | 40 "A" prefix = 16 |
| Armed robbery | 2,353 | 128 | 22 "A" prefix = 1 | 47 "A" prefix = 19 |

– were still serving the same sentence in 2003. Of the 658 prisoners who were serving life, 301 – 46 percent – are still incarcerated. The disparity does not stem from differences in prior record. Nearly half the lifers who have served more than 25 years – 144 people — have “A” prefixes, indicating that they are serving their first sentence in a Michigan prison. Only 13 non-lifers with “A” prefixes have served that long.

It is fair to assume that most non-lifers were paroled. Some prisoners are discharged only after serving their maximum sentences. Some people die in prison. A handful get their convictions reversed on appeal. However, since generous good time provisions were in effect for sentences imposed through 1978, even people with very long indeterminate terms were able to earn release. Lifers, who earn no good time and have no minimum “out date”, have

largely just been left to continue doing time.

For the entire group of parole-eligible lifers, it seems apparent that relatively few received life sentences because of prior records. These prisoners have been incarcerated for so long that the database does not contain sufficient information to analyze their prior felony convictions in detail. However, fully two-thirds are serving their first Michigan prison terms and 86 percent had served no more than one.

It is also apparent that the vast majority of these lifers are not being denied release based on their institutional conduct. By MDOC policy, lifers are no longer classified at Level I (minimum security). However, over 87 percent of the currently parole-eligible lifers are classified at Level II. In the preceding three years, over 45 percent had not had a single misconduct citation, 73 percent had not had more than two, and 83 percent had not had any non-bondable misconducts (the most serious kind). The lifers' misconduct histories compare favorably with those of prisoners granted parole and awaiting release.

In sum, the evidence suggests several reasons why paroling eligible lifers should be considered.

First, research shows that criminal behavior declines as people get older. After age 30, every type of crime declines with each passing decade.² Thus the lifers' greater age is in itself a strong indicator that they are unlikely to commit new offenses.

Second, ironically, the very seriousness of the lifers' crimes indicates a lower likelihood of recidivism. MDOC data indicate that recidivism rates are lower for parolees whose offenses were crimes against people than for other offenders. Of 1,999 people convicted of homicide, assault, robbery or criminal sexual conduct who were paroled in 1990, more than 93 percent did not commit another assaultive or sexual offense while on parole.³ While paroles are granted to these prisoners more cautiously, this data also suggests that most lifers are unlikely to reoffend.

Third, thousands of prisoners convicted of the same offenses have been paroled over the last three decades. In each of those cases, the parole board conducted an individualized risk assessment before reaching its decision. There is no reason to believe that lifers

Some points to consider

- Criminal behavior declines sharply as people get older.
- Parolees whose offenses were crimes against people have lower recidivism rates than other offenders.
- Thousands of prisoners convicted of the same offenses as the parole-eligible lifers have been released over the last three decades.
- The majority of parole-eligible lifers were convicted before sentencing guidelines took effect; many would not receive life terms today.
- Lifers are uniquely expensive. Because they are an aging population, their medical care costs are vastly higher.
- If even 200 older parolable lifers who could have been safely released spend 10 additional years at a cost of \$50,000 each, the total cost to taxpayers will be \$100 million.

are at greater risk for re-offending solely because they received life sentences rather than terms of years or that similar individualized risk assessments would not protect the public adequately.

Still another important point is that lifers are uniquely expensive. Since most are housed at lower security prisons, their sheer custody costs are "only" about \$19,000 a year. Thus each five-year continuance costs a minimum of \$95,000. However, this figure does not include medical care, which averages nearly \$3,500 a year for Michigan prisoners generally. For lifers, because they are an aging population, the medical care costs are vastly higher. National estimates are that it costs as much as \$69,000 a year to maintain an aging prisoner.

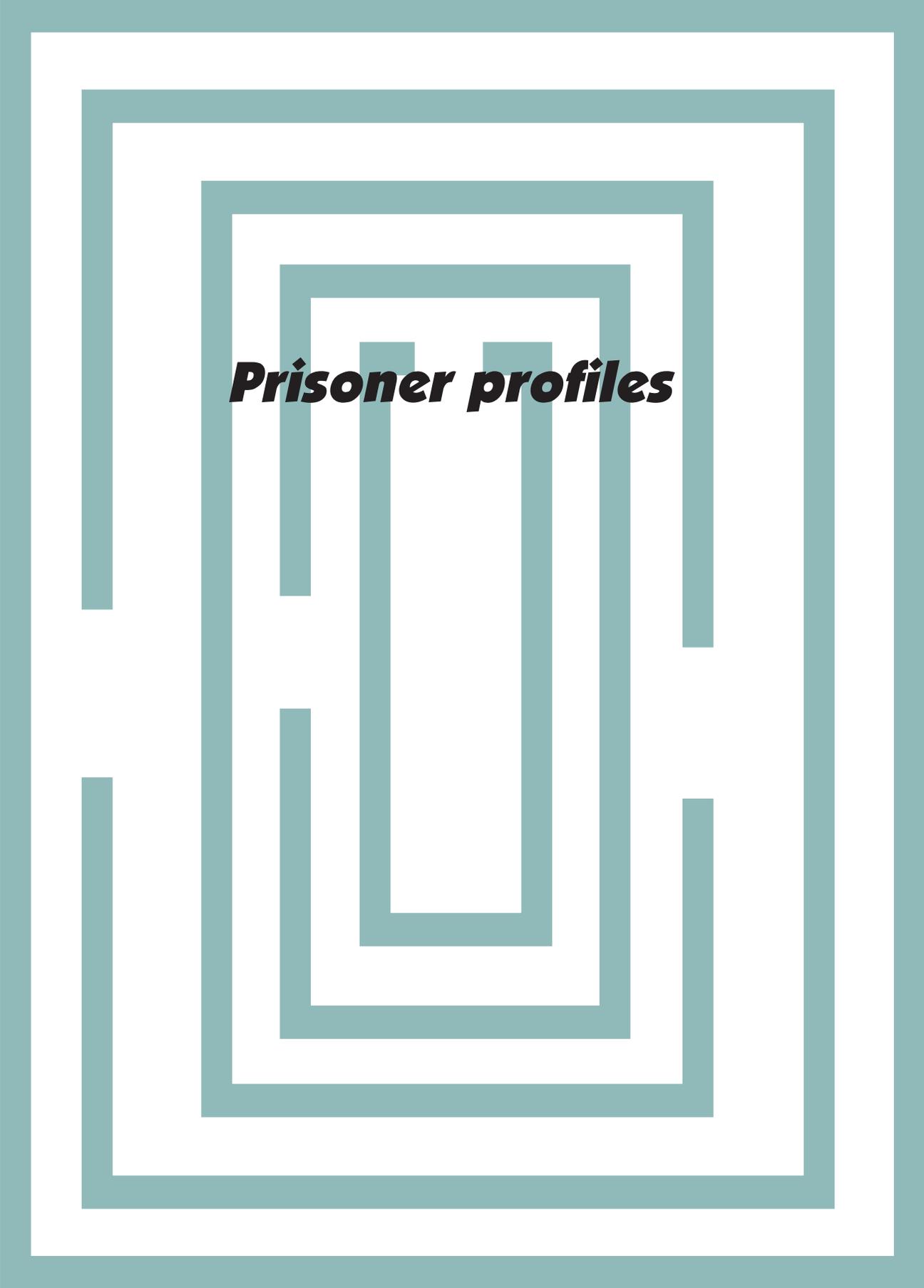
The Sentencing Project estimates that the total lifetime cost for a lifer who serves 40 years is \$1 million.⁴ If each of Michigan's 4,600 lifers (parolable and non-parolable) serves that long, the total cost over time will be \$4.6 billion. Less dramatic but quite realistic are the foreseeable costs of the parole board's "life means life" policy over the next decade. If even 200 older parolable lifers who could have been safely released spend 10 additional years at a cost of \$50,000 each, the total cost to taxpayers will be \$100 million.

Warehousing an ever-growing number of lifers who could, by law, be paroled simply to enforce the current philosophy that life *should* mean life has no apparent benefit to public safety. The disparities that appear to exist among similarly culpable prisoners sentenced at different times by different judges suggest the need for the parole board to undertake a leveling function that only it is in a position to perform. Assessing each of these lifers by the same criteria that are applied to similar of-

fenders serving indeterminate terms would seem to be not only the fairest but the most cost-effective approach

Endnotes

1. Available on the CAPPs website, www.capps-mi.org.
2. For an analysis of the Michigan prisoner population by age and offense, see CAPPs, *The high cost of denying parole: an analysis of prisoners eligible for release, op. cit.*, pg. 22.
3. *Id.* at pgs. 20-21. A recent Justice Department study of 9,691 male sex offenders released in 15 states (including Michigan) in 1994 showed that only 3.5 percent were convicted of another sex offense within three years. Langan, Schmitt and Durose, *Recidivism of Sex Offenders Released from Prison in 1994*, Bureau of Justice Statistics (Washington, D.C., November 2003).
4. Mauer, King and Young, *The Meaning of "Life": Long Prison Sentences in Context*, The Sentencing Project (Washington, D.C., May 2004), pg. 25.



Prisoner profiles

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About these profiles

The 20 prisoners whose stories are told here represent about 850 Michigan lifers who are currently eligible for parole. They are male and female, African-American, white and Hispanic, from all over the state. Their situations exemplify the issues raised in this report.

The facts of these prisoners' offenses are often disturbing, despite the passage of decades. But the decision the parole board must make is whether they would present a risk to the public if released today. That assessment requires examining who each person was at the time of the crime and how he or she has changed. Therefore, each profile gives background information about the person's life before prison, their crime, their conduct while in prison, the observations of custodial staff and psychologists, and their treatment by the board. Readers can then draw their own conclusions about whether the standard for release has been met and whether punishment has served its purpose.

Most of these lifers were under the age of 23 when they committed their offenses. Several were 19; Mares was 18; Vargas was 17; Hayes and Phillips were 16-year-olds waived from juvenile court. Two-thirds had no prior criminal convictions – only three had been to prison before.

More than half of those profiled were convicted of second-degree murder, but others received life terms for such offenses as armed robbery, criminal sexual conduct, kidnapping, drug possession and conspiracy to murder. The facts of these offenses vary widely. James Percy, for instance, was armed only with his hand in his pocket when he robbed a bookstore of \$62. A few were highly situational crimes involving family issues. Moran killed his estranged

wife; Rodriguez killed a young man who was threatening his family. Several people were acting at the direction of an older co-defendant or husband or boyfriend.

While all these prisoners became eligible for parole after serving 10 years, nearly all have served at least 25. Some have served more than 30. The severity of their treatment can be measured by several yardsticks.

In the early 1980s, over half the group received "grid scores" from the MDOC of 14 years or less. While these scores, resulting from the calculation of Commutation and Long Term Release Guidelines, were not binding on the parole board, they were designed to provide guidance about when release would be appropriate for a particular offender, assuming a clean institutional record. Until the guidelines were rescinded in 1992, board members routinely discussed them with prisoners at parole interviews. The scores reflect what were considered, 20 years ago, to be reasonable expectations of how long these lifers would actually serve.

A more current yardstick is the sentence the person would receive if convicted today. Since 1984, judges have had to follow sentencing guidelines that place boundaries on the exercise of their sentencing power. Designed to avoid sentences that are arbitrary or excessively long, the guidelines assess points for various characteristics of the offense and for the defendant's prior record. The guidelines score is then used to calculate a range within which the judge is supposed to select the defendant's minimum sentence. For instance, if the guidelines recommendation is 144 to 240 months, the minimum sentence must be from 12 to 20 years. A judge can

choose a sentence longer than the high end of the guidelines range only for "substantial and compelling reasons" that are subject to appellate review.

By statute, nearly all the offenses of which these lifers were convicted carried penalties of "life or any term," which gave the sentencing judge the option of imposing life or selecting both a minimum and maximum number of years. However, the sentencing guidelines narrow judicial discretion so that, in many cases, a life term is no longer an option. Even where life is an allowable choice, the alternative recommendation is for a minimum term that may be as low as 13½ years.

Had they been sentenced after 1983, 12 of the profiled lifers would not even have received a life term. Recommended minimum sentences would have been as low as 6¾ years (Percy, Bullock), 9 years (Vargas, Wilson, Weisenauer), 11¼ years (Lawrence, Schraw) or 12 years (Kenneth Foster, Moran, Phillips, Rodriguez, Mares).

Still another yardstick is the view of the judge in a particular case. Rodriguez, Kenneth Foster and Weisenauer have letters from their sentencing judges expressly stating that they chose parolable life terms on the understanding that the defendant would serve only 10-12 years, assuming a good institutional record. In several other cases, judges have indicated that they believe the person could safely re-enter the community and that they have no objection to parole. Hayes, Hessell, Rodriguez and Wilson all pled guilty on the specific understanding that they could earn release in 10 or 12 years.

Also noteworthy is the view of the Michigan Supreme Court. Bullock and Jahner were both sentenced under statutes that required the sentencing judge to impose a life term. Each of them raised on appeal the question of whether these mandatory terms, one for possession of more than 650

grams of drugs and the other for conspiracy to murder, were nonetheless parolable. In each case the Court engaged in lengthy analyses, then concluded that the prisoners were, indeed, eligible for parole after serving 10 years. It is clear that the Court believed the difference between the two types of life terms would have real practical significance.

The parole board itself has shown interest in granting parole to five of these lifers and then withdrawn it, even though the prisoner had done nothing to warrant such an about-face. In the case of Reynaldo Rodriguez, the board actually conducted a public hearing, then withdrew interest based on details of the offense it had known about for 18 years.

A few cases have uniquely favorable factors that have nonetheless failed to move the board. The victim and the Kent County prosecutor have written to the board on behalf of Ross Hayes. Similarly, Gerald Hessell's surviving victim supports his release on parole. Hessell and Henry Phillips both had equally culpable co-defendants who were paroled after serving far less time.

All these lifers have worked hard to earn their release. Many completed college when that opportunity was still available to prisoners. Some developed special skills that will enhance their chances for employment in the free world. Many completed group counseling or other forms of therapy before changes in eligibility criteria made those programs unavailable to lifers. Many have made remarkable turnarounds in their attitudes, accomplishments and relationships with others. A few were even trusted to work at regular jobs in the community before such placements were prohibited.

These men and women all have attributes that make them stand out, but they are not unique in their suitability for release on parole. Behind these 20 pictures and life stories lie hundreds more, equally worthy of careful, individualized consideration.

Henry Phillips, 128597
Parole eligible since 1981

Phillips was a homeless 16-year-old when he accompanied two older men on a gas station robbery that turned to murder.

According to the pre-sentence investigator, Henry Phillips "grew up as a very lonely and very deprived boy." He was expelled from school in 8th grade. His father was a chronic alcoholic; his mother was a semi-invalid who died when Phillips was 15. Following his mother's death, he went to live in Michigan with an abusive uncle. After 15 months, Phillips ran away.

In October 1970, 16-year-old Phillips and Tom Grifka, a 20-year-old Job Corps acquaintance, met Ray Doerfer, age 28, in a shelter in Milwaukee. Doerfer had a long criminal record in at least two states.

Eventually, the three returned to Michigan, where they decided to rob a gas station in Holly. Although Phillips and Grifka knew Doerfer had a loaded handgun, they didn't believe he would hurt anyone. Grifka was in the bathroom and Phillips was in an alcove getting coffee when they heard shots. They went into the service area and saw that Doerfer had killed the 18-year-old attendant. Doerfer held the gun on them and ordered them to drag the body into a storage area.

Arrested a few days later, all three were charged with

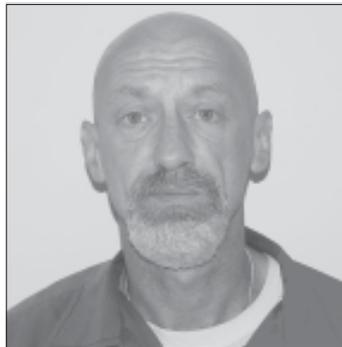
first-degree murder. Doerfer was convicted and sentenced to life without parole. Grifka pled guilty to second-degree murder, received 10-40 years and was paroled in 1978.

Although he had no prior record and thus had never been treated in the juvenile system (a factor judges had to consider at the time), Phillips was waived from juvenile court to Oakland Circuit Court for trial as an adult. He pled guilty to second-degree murder and was sentenced to parolable life. The pre-sentence investigator described him as rebellious, insolent and unremorseful for the death. No family member was present during any of the proceedings. Under current sentencing guidelines, Phillips' recommended minimum sentence would be between 12 and 20 years.

At 17, Phillips had a hard time adjusting to prison and received many misconduct citations. Nonetheless, he earned a GED in 1973 and work supervisors found him to be cooperative and conscientious. A frequent target of sexual predators, Phillips spent a great deal of time in protective custody. He attempted suicide three times in the 1970s. In 1974 he was found with a homemade knife and pled guilty to carrying a concealed weapon. That same year, though, the warden at the Michigan Reformatory commended him for helping staff subdue a violent inmate.

By the early 1980s Phillips had earned 41 college credits and completed a course in group counseling. He says, "I finally realized I was beating my head against a wall" and decided to stop. His attitude and behavior improved markedly. He became certified in several aspects of auto repair.

Phillips has worked steadily, including nine years at prison industries, receiving good to excellent reports on all his assignments. He currently works as an ABE/GED tutor. Since 1990 he has participated



Henry Phillips

regularly in several Christian ministries, especially witnessing and gospel music.

Over the years there were many indications that Phillips would be released while he was still fairly young. His grid term was 10 years. In 1979, the interviewing parole board member wrote:

Could be a good lifer law case if he'd establish some kind of adjustment record.

Interview notes from 1984 state:

Has avoided problems over four-five years and appears very stable today. Good work reports on a responsible assignment. He has matured into a fairly responsible adult.

That same year, the chairman wrote:

If he continues present trend, may have interest after next interview.

However, Phillips never obtained majority support. After a positive interview in 1994, the board ordered a psychological report. Although that report cites many factors which make him a good parole risk — his emotional stability, avoidance of assaultive behavior, his ability to persist in school and work, his lack of involvement in drug or alcohol abuse, and the support of his older brother and the brother's church in Memphis — only two members expressed interest in proceeding.

A prison chaplain who knew Phillips throughout the '90s wrote in 1999:

[I] watched him grow as a Christian and as a human being . . . He works hard to incorporate his Christian principles into his daily duties . . . Hank is respected by his peers and enjoys good rapport with prison staff.

Nevertheless, following Phillips' 1999 interview, the board again had no interest in his release.

In 2004, Phillips was not even interviewed. The board simply reviewed his file and sent him another "no interest" notice. His next consideration date is scheduled for 2009, when he will be 56 and will have served 39 years.

Reynaldo Rodriguez, 149675 Parole eligible since 1986

The board held a public hearing in 1994 but decided not to parole Rodriguez based on details of the offense it had known about since 1976.

Reynaldo Rodriguez was a 20-year-old husband and father when, as the presentence investigator put it, he "inadvertently became caught up in a vendetta situation." The fifth of six children in a close-knit

Saginaw family, Rodriguez had no criminal convictions and no substance abuse problem. At the time he killed Robert Cuellar, he was employed as a service representative for Pitney Bowes.



Reynaldo Rodriguez

The Cuellar family had ongoing disputes with both the Rodriguez and Barrera families. At an Easter dance in 1976, Robert Cuellar threatened harm to Rodriguez's younger brother Cruz. In June, someone shot at Cruz. The brothers believed it was Cuellar. Several days later shots were fired at Rodriguez's home. Someone also shot at his mother's house. The Barreras believed

that Robert Cuellar had killed an older member of their family.

The presentence report contains Rodriguez's detailed description of what happened in July. Rodriguez, Cruz, Raymond Barrera and Barrera's brother-in-law were playing baseball. Rodriguez's sister came to tell him that Cuellar had just threatened him and Cruz, stating he was going to finish what he started. The four men decided to drive around and look for Cuellar. When they saw him riding a bicycle, Rodriguez stopped the car and challenged Cuellar to a fist fight. Barrera placed a gun on the car's console. When Cuellar made a sudden move towards his waistband, Rodriguez thought Cuellar was reaching for a gun. He took the gun from the console and shot at Cuellar several times. When Cuellar continued to pedal, Rodriguez shot several times more until Cuellar fell off the bike. Someone in the vehicle said: "You better make sure he's dead." Rodriguez left the car and shot Cuellar a seventh time at close range.

Rodriguez pled guilty to second-degree murder. His defense attorney has explained in an affidavit that Judge Gary McDonald offered Rodriguez a choice between 15-30 years or parolable life. At the time, the earliest that parole could occur on a 15 year minimum was 12 1/3 years. Since Judge McDonald said that he would recommend parole at ten years on the life sentence if Rodriguez were a model prisoner, Rodriguez opted for the life term. Under today's sentencing guidelines, the recommended minimum would be between 12 and 20 years.

At sentencing, Judge McDonald spoke about the letters of support for Rodriguez he had received, the absence of a prior record and the harm caused by feuds and vendettas. McDonald concluded:

And I feel myself, at this time, that you will not be any menace to society when you're released in ten years.

Rodriguez lived up to the judge's expectations. He completed his GED, took college classes and completed a course in auto mechanics. He received only seven misconduct citations in 27 years. He also completed two years of group psychotherapy. In his 1984 termination report, the psychologist described Rodriguez as displaying excellent sensitivity to other people's feelings, having excellent skills in negotiating conflicts constructively and having a good prognosis for parole.

Above all, Rodriguez worked hard, sending home the money he made to help support his son. Among other jobs, he spent more than 13 years working for prison industries, primarily as a head mechanic responsible for maintaining machinery in the garment factory. His reference letters from three different factory superintendents are filled with praise for his knowledge, skills, dependability and ability to work cooperatively with both prisoners and staff. One letter, written in 1984, concluded:

I very seriously doubt that he will ever get into trouble again, and expect him to become a law-abiding citizen upon his release.

Rodriguez first became eligible for parole in 1986. True to his word, Judge McDonald wrote several letters affirming his support for Rodriguez's release. However, the board showed no interest until May 1992, when the "old" board notified Rodriguez it would begin processing his case. In March 1993, the "new" board also voted unanimously to proceed.

The public hearing was held in January 1994. A dozen people attended on behalf of Rodriguez. Sixteen officers who had known him during the 10 years he served at Kinross Correctional Facility signed a petition supporting his release. No one opposed it.

The presiding board member cross-examined

Rodriguez about whether the shooting had been an act of vengeance or self-defense. Rodriguez insisted he had thought Cuellar had a weapon but also agreed when the board member characterized vengeance as a motivation.

The board issued its decision two months later:

Following the public hearing of 01/10/94, the parole board has reviewed your case in executive session and has withdrawn interest for the following reasons: Nature of crime as described in public hearing causes further concern. During public hearing you admitted the fatal shot was act of vengeance. Victim was shot a total of 7 times, the last shot was reflected upon by you and was unnecessary. No interest at this time.

The board interviewed Rodriguez again in January 1999. Again it had "no interest." In 2003, the board merely reviewed his file. It then notified Rodriguez that it still had no interest and he would be considered next in 2008, when he will have served 32 years.

*Gladys D. Wilson, 157538
Parole eligible since 1988*

Although her 1978 guilty plea was designed to permit release in 10 years, her institutional record is exceptional, she would not receive a life sentence today and the parole board has repeatedly shown interest in releasing her, Wilson was recently continued until 2008.

In 1978, Gladys Wilson was the 31-year old mother of an 11-year-old girl. She had worked at the same company for ten years and had no prior record. However, she and her husband, Jerry, were having

marital and financial problems. When Jerry decided to rob a Berrien County grocery store, Wilson agreed to leave him there and pick him up later, after the store had closed. She had no idea Jerry would kill the young night manager.

Charged with aiding and abetting felony-murder, Wilson cooperated with the police in her husband's prosecution. She was



Gladys Wilson

allowed to plead guilty to aiding and abetting armed robbery. Although sentenced to parolable life, everyone involved assumed she would not serve much more than 10 years. This assumption was confirmed in 1982 when the board calculated Wilson's grid term at 10 years. Her defense attorney later explained in an affidavit:

There has always been consensus among the people familiar with all the details of the case that Mrs. Wilson was far less culpable than her husband. For her to spend her entire life in prison, just as he will, would not only be grossly unjust, but would wholly negate the benefit she was supposed to derive from her plea bargain.

Under today's sentencing guidelines, Wilson's recommended minimum sentence would be between 9 and 15 years.

As early as 1983, staff reported Wilson to be cooperative, mature and self-disciplined, and suggested that she should be given "early consideration" for release. A 1985 report stated that she "is well-respected by both prisoners and staff" and

that she “has an excellent attitude and has attempted to make the best of a bad situation.” She has received only one misconduct citation in all the years of her incarceration.

Wilson took full advantage of the programming available to her in prison and has been placed in numerous positions of responsibility. She earned 67 college credits with a cumulative grade point of 3.7. She also obtained a paralegal certificate. She has worked as a resident aide in a protective environment for mentally and physically impaired inmates, as a lab technician in the prison clinic, as a teacher's aide, tutor and administrative assistant. For several years, she served as trustee of an inmate trust fund and she volunteered to help set up and run the law library at Camp Gilman. For many years she served as the class representative in a lawsuit aimed at improving conditions in the women's prisons.

In 1986, the parole board confirmed its intent to release Wilson when she had served 10 years. It requested that she be transferred so she could spend her last year in minimum custody. In February 1987, Wilson was moved to Camp Gilman. A year later the board voted to begin the parole process under the lifer law. Wilson waited, but the board took no further action. When her family contacted the board for information, they were told that the board was overburdened and that lifers had been put “on the back burner.” Finally, in May 1992, the parole board wrote that it would begin actively processing her case in the next few months. Although nothing more was done before the board was reconstituted in October 1992, after reviewing Wilson's file in 1993, the new board also voted to proceed to a public hearing.

All consideration stopped when the successor judge objected to Wilson's parole “until she had served 20 years.” The board notified Wilson that it would

not review her again until 1998. Having spent six years in a minimum custody prison camp waiting for release, Wilson was transferred back to a secure facility because parole was no longer imminent.

In 1998, when Wilson had completed 20 years, the board did not recontact the sentencing court. After one member conducted a routine interview, the board simply notified her that it had “no interest.”

Wilson was interviewed next in April 2003. By then the successor judge, persuaded that Wilson had served more than enough time for her role in the offense, had written to the board strongly urging her release. Wilson believed she might finally be freed to live in Virginia with her daughter and grandchildren. However, in October the board notified her that, once again, it had no interest.

Wilson's health is now starting to decline. In the spring of 2004 she spent several days hospitalized in intensive care before being diagnosed as an insulin-dependent diabetic. When she is next reviewed in 2008, she will be 61 years old and will have been in prison 30 years.

Leslie G. Moran, 149819
Parole eligible since 1986

Psychologists say this former college instructor who has served 28 years for killing his wife presents no risk to the community, but the parole board disagrees.

When Leslie Moran was growing up, his family's life revolved around the Baptist church and the father's ministry. Household rules were strict and Moran felt isolated. At 17, he followed the path of

his three older brothers into the military.

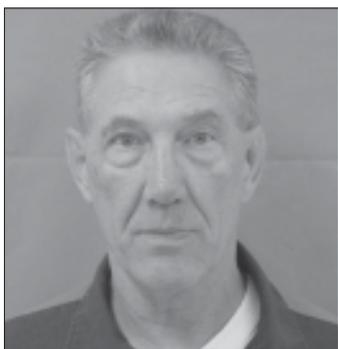
When he returned home after four years in the Air Force, Moran enrolled at Michigan State University-Oakland, graduating in 1965. He earned a master's degree in Eastern European history before beginning work as an instructor at Oakland Community College.

His first marriage having failed in 1969, Moran married again in 1974. He and his wife, Debbie, appeared to be a successful young couple, taking upscale vacations and buying a home in West Bloomfield. By the second year, though, the marriage was in trouble.

In January 1976, the couple began a cycle of separating and reconciling until they separated permanently in July.

Moran, in emotional turmoil over the impending breakup of his second marriage, continued trying to persuade his wife to work at saving it. When she would not, he felt abandoned and inadequate. His life started spinning out of control. Friends and acquaintances noticed his disheveled appearance and extreme mood swings. The psychologist he began seeing for help found him to be out of touch with reality. She warned Debbie that he could be dangerous to himself or others.

On Sept. 20, 1976, Moran went to a gun shop and purchased a shotgun and a pistol. He pretended to prepare for an out-of-town trip, then called Debbie and persuaded her to take him to the airport on the pretext that his mother in Florida was very ill. His real purpose was to make a final effort



Leslie Moran

to save their failing marriage.

When Debbie arrived, talk about their marriage escalated into a heated argument. Moran showed her the loaded gun and threatened to commit suicide. After 40 minutes, Debbie was determined to leave. Moran grabbed the pistol and shot her several times. He then wandered out into the yard, shaking his head. When a neighbor spoke to him, he said, "Joan, do me a favor. Take me to the police station. I just killed Debbie." Police found Moran sitting on a wooden fence in the yard, the pistol in his jacket pocket. As an officer led him to the patrol car, Moran began sobbing.

In 1977, after a two-week bench trial, Moran was found guilty of second-degree murder and given a life sentence. Moran's trial attorney has stated:

Judge Gilbert clearly understood the difference between 1st and 2nd degree life ... I recall the specific discussion with her...that parole would almost be a certainty in less than 20 years with a good institutional record.

Under today's sentencing guidelines, the recommended minimum sentence would be between 12 and 20 years.

Moran participated in extensive individual and group psychotherapy while in prison. Calling him a situational offender whose crime of passion would be unlikely to be repeated, a psychologist wrote in 1983:

Moran [is] remorseful and has accepted responsibility for the crime ... Prognosis for release seems to be favorable. He would be a good candidate for pre-release on . . . community programs.

The psychologist who conducted Moran's therapy group observed in 1987:

He is clearly not [now] mentally ill [or] a criminal by nature . . . I would like to state clearly that I do not view Les as a threat to the community upon release.

Moran has stayed in contact with family and old friends. All remember him as charming, non-violent and willing to go out of his way to help others. Many have offered to open their homes to him and assist him in his transition to free society.

In 1983, the parole board chair wrote of Moran:

He is a bright, articulate guy who I don't see as a risk, so it's a case of time . . . guideline score [14 years] looks about right to me.

In 1985, the board confirmed Moran's grid score of 14 years, minus one year for excellent behavior. In 1987, when he had been parole-eligible for a year, the full board considered Moran's case but decided he had not served enough time. After interviews in 1992 and 1997, it simply sent him "no interest" notices.

In 2002, the parole board again had no interest. Despite all the prior assessments, the member who interviewed Moran concluded:

P[risoner] says he was emotionally at his end when he killed his wife, has a very difficult time explaining his actions. I am not satisfied that the risk has been reduced due to insufficient insight into this event.

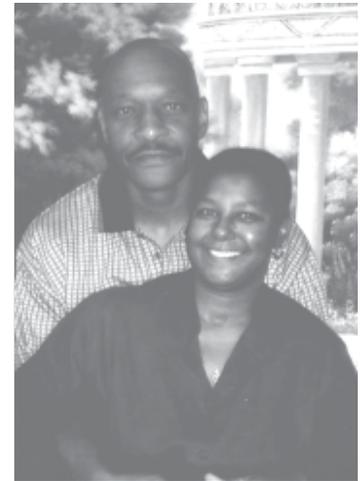
Moran's next consideration date is in 2007 when he will be 66 years old and will have served 31 years.

James Robert Percy, 146212 Parole eligible since 1986

Percy has served 28 years for robbery while armed with a hand in his pocket, an offense that might bring 7 years today.

There is no question that James Percy has not made life easy for himself, either as a young man or during his 28 years in prison. However, despite his conviction for robbery and a boatload of misconduct citations, Percy has never actually caused anyone serious physical harm.

Percy, now 53 years old, had a number of juvenile court contacts as a teenager. He was placed on probation twice in 1969, once for breaking and entering a business and once for assaulting a teacher. He dropped out of school in the 10th grade. In 1970, Percy was convicted of uttering and publishing and placed on probation.



Robert Percy and wife

In his early 20s, Percy settled down and fathered two sons. In 1975, he had worked for Chrysler Corp. for more than two years and, for a while, had worked a second job as well. He was saving to buy a house for his family, but he was also helping to support another woman he was involved with, Judith Claxton. Looking for an easy way to get more money, Percy entered a theater in Detroit with his hand in his pocket, claiming to have a gun. He obtained \$76 from the cashier

and left. He was convicted of assault with intent to commit unarmed robbery and, on March 1, 1976, was placed on five years' probation.

Three weeks spent in jail for that case cost Percy his job. Just nine days after being sentenced to probation he committed virtually the same offense again. This time he walked into a bookstore with his hand in his pocket, claimed to have a gun and obtained \$62. Under current sentencing guidelines Percy's minimum sentence would be between 6¾ and 11¼ years.

When he sentenced Percy to life, Judge John P. O'Brien stressed the fact that Percy had just received a break from another judge. It is clear, however, from his handling of a different case, nine years later, that Judge O'Brien did not believe Percy would actually spend much more than a decade in prison. In 1985, Judge O'Brien sentenced 17-year-old Kenneth White to life for second-degree murder plus two years for felony firearm. Judge O'Brien later signed an affidavit stating that he had intended White to serve a total of no more than 15 years

Percy did not adjust well to prison. He says that, among other things, he was reacting to marital problems and the inability to see his sons, the fact that his mother was dying of cancer, and his bitterness at seeing other people who were convicted of murder serve shorter sentences than his.

By the time he was first interviewed by the parole board in June 1983, he had received misconduct citations on 26 occasions. While many of these were disobeying an order or being out of place, several were for assaultive behavior. None involved actual injury to anyone. The interviewing board member noted the misconducts but also observed that Percy's grid score suggested he should serve eight years. She commented: "maybe 10 yr case."

The same board member interviewed Percy again in 1985 and was willing to start the public hearing process, but other members disagreed. Percy continued to receive misconducts, primarily for insolence, and in 1991, the board again had no interest.

Since then, Percy's institutional conduct has changed markedly. He has received only six misconduct citations in the last 10 years. He has been housed at Level II since 1996 and gets good block reports. He has completed his GED, several vocational skills courses and group counseling. He has no substance abuse history. His sons each have four-year-olds of their own; he and Judith Claxton are now married.

Nonetheless, after interviewing Percy in 1996, the board had no interest in proceeding. In 2001 it did not even bother to see him face-to-face. It simply reviewed his file, notified him that it had "no interest," and scheduled the next review for August 2006. At that point, Percy will be 56 years old and will have served over 30 years for taking \$62 by pretending he had a gun.

*Martin Vargas, 133525
Parole eligible since 1982*

Despite positive recommendations after six parole interviews and a unanimous vote to proceed by the full board in 1993, Vargas is the only first-time offender in Michigan who has served 32 years for a single count of rape.

Martin Vargas is the second oldest of 13 children in a close-knit Mexican-American family. He had no juvenile court contacts but was arrested for an adult felony when he was 17.

On an evening in October 1971, Vargas, another 17-year-old named Eduardo Guerrero, and a 15-year-old forced their way into the car of a 17-year-old girl at a Saginaw shopping mall. They drove the victim to a park, where they raped her and forced her to perform fellatio, releasing her after 4½ hours.

When he sentenced Vargas to a life term, Judge Hazen Armstrong said:

So far as what that means, your attorney will explain it to you.

In 2001, after Judge Armstrong had died, Vargas' trial attorney explained in an affidavit the understanding of a parolable life term shared by the Saginaw bench and bar in 1972. He concluded:

I firmly believe Judge Armstrong anticipated that Mr. Vargas would be released when he was still a relatively young man.

Under current sentencing guidelines, Vargas would receive a minimum sentence between 9 and 15 years.

The younger co-defendant was processed as a juvenile. Guerrero was convicted of additional rapes involving two other victims and is serving three concurrent life terms. Guerrero's sentencing judge is on record saying that he intended parole consideration after 10 years and that he did not intend a 17-year-old to spend the rest of his life in prison.

During his first few years in prison, Vargas was angry and rebellious. He accumulated 11 misconduct citations for such behavior as fighting, possessing contraband and disobeying direct orders. During the same period, however, he earned his GED and an associate's degree. He also worked as an assistant in the college program and tutored students in Spanish.

As he got older, Vargas built a solid record of ac-

complishments. In the 1980s he completed several vocational courses. In 1988, he received a commendation for preventing "life threatening injury" when another prisoner attacked a physician's assistant. In 1990, he was awarded his bachelor's degree with honors. Staff evaluations of his work as an aide on a geriatric unit were excellent. More recently, he co-facilitated substance abuse prevention groups with staff.

In the early 1990s Vargas began to develop his considerable talent as an artist. Since 1994, he has



Martin Vargas

been a tutor in a prison art program. He has won awards every year at the University of Michigan Prisoner Art Exhibit. The faculty members who curate the show praise his "technical virtuosity" and "his

unique personal vision." Paintings Vargas donated to a 1998 Lansing fundraiser raised over \$1,200 for Honduran victims of Hurricane Mitch.

Vargas participated in group sex offender counseling for nearly four years. In a 1989 termination report, the therapist wrote:

Despite the number of years he has been in the system, he shows evidence of psychosexual maturity that is virtually exemplary in this setting.

Two independent psychological evaluations completed in 2001 conclude that his offense reflected adolescent conflicts and that Vargas presents minimal risk for any sort of antisocial behavior. Vargas retains the support of his extended family, a broad network of friends, and his wife, Barbara Levine,

whom he married in 1994.

Various parole board members who met Vargas in person have been favorably impressed. Interview notes from his first interview in 1979 say: "looks like good 10 yr case." In July 1982, his grid score was calculated as 14 years. The next month, board member Tripp said after interviewing him that she could proceed at 12 years.

After a December 1989 interview, board member Walbrecq noted Vargas' grid score, achievements and family support and concluded:

– done all he can, would start process.

However, nothing happened until early 1992, when board member Makel interviewed Vargas, then wrote:

I support starting the process. Over the years there has been support. 20 yrs in now – Grid was 14 – not much more he could do – has support systems...

In March 1992, the board voted 5-0 to proceed to public hearing, but again nothing happened.

After the board was reconstituted, a roller coaster ride began. In January 1993, the new board considered Vargas and voted 7-1 that it had no interest. Then it decided to see him. Board member Gach conducted the interview and he, too, made a positive recommendation. The full board considered Vargas again. This time the vote was 5-5, one shy of the simple majority needed to proceed.

In August 1993, board member Rivers, who had voted against Vargas, met him when he was interpreting for a Spanish-speaking prisoner. Impressed by his demeanor, she spoke to institutional staff, then decided to change her vote. In September the full board voted 10-0 in favor of proceeding to public hearing.

As required, the board notified Judge Armstrong's

successor in office of its intent. The successor, a former prosecutor, objected to parole based solely on the offense. The public hearing process stopped and Vargas spent the next five years trying to appeal the judge's objection. Eventually, the judge stated that he had been disqualified from the case and that the appropriate successor was actually Judge Leopold Borrello.

By 1998, it was time for another routine interview. Board member Slaughter made a positive recommendation, but the board did not try to proceed again. A few months later, the Michigan Supreme Court sent the case to Judge Borrello who concluded:

Although Mr. Vargas has been incarcerated his entire adult life, facts indicate that it is likely he could successfully enter into the community and remain a productive citizen.

The Supreme Court sent the case back to the parole board for yet another interview, which was conducted by then-chairperson Marschke on February 25, 1999. Eight days later the board issued a no interest notice.

Vargas was next seen in April 2003 by board member McNutt who also supported his release. In October 2003, the full board considered him once again. Once again, the vote was 5-5.

Vargas turned 50 in January 2004. He has been in prison longer than any other first offender convicted of a single sex offense. His next review is scheduled for March 2008, when he will have served 36 years.

Gregory Lawrence, 154469
Robert Schraw, 154468
Parole eligible since 1988

Reluctant participants in a robbery gone bad, these co-defendants were already in custody when the ring-leader killed a police officer

Gregory Lawrence and Robert Schraw were both barely 20 when they got involved in a Lansing bank robbery that led to the murder of a police officer. The two young men from Kokomo, Indiana, were traveling in a rented motor home with Lawrence's older sister Melony, her two-year-old son, and her 29-year-old boyfriend David Bellah when Bellah conceived the robbery plan. The idea was to kidnap Lansing bank manager James Spoelma and his wife Connie from their home, drive them to the bank and force Spoelma to open the vault. Lawrence and Schraw repeatedly told Bellah they wanted nothing to do with his scheme and hoped he would change his mind. He did not.

On June 16, 1977, the group went to the Spoelma residence in the motor home. Bellah forced his way inside, holding the couple at gunpoint. The others drove the motor home and the Spoelmas' stolen car back to the campground where they were staying so they could leave Melony and her toddler behind. Lawrence and Schraw talked to Melony about not wanting to be involved in the crime. She told them they "couldn't just leave Dave," so they returned to the manager's home "to try and talk Dave out of it."

Bellah had no intention of aborting his plan. They all drove to the bank in the Spoelmas' car. Once there, Bellah ordered Lawrence and Schraw to wait in the parking lot with Mrs. Spoelma as hostage while he and Mr. Spoelma went inside. Bellah had given Schraw a gun, but Schraw took the clip out of it. Inside the bank, an employee tripped an alarm.

Police converged on the scene.

Lawrence and Schraw discussed surrendering, but feared they would be shot. They decided to drive away, but agreed they would not resist if they were stopped. Both were immediately arrested. They were in custody and cooperating with police when Bellah tried to escape in another car with four bank employees. When an officer approached the car, shots were fired and the hostages struggled for Bellah's gun. The officer was killed. Bellah was convicted of first-degree murder and is serving the mandatory sentence of life without parole.

The jury acquitted Lawrence and Schraw of murder. It convicted them of conspiracy to commit armed robbery and two counts of kidnapping. The pre-sentence investigator said he did not perceive either Lawrence or Schraw to be dangerous. Lawrence had no prior criminal record, juvenile or adult. Schraw had only one offense — attempted theft of gasoline — for which he was placed on juvenile probation. The investigator recommended that they receive sentences reflecting their passive involvement in the crimes.

The judge sentenced them each to 20-30 years for the conspiracy and to two parolable life terms for the kidnappings, all to run concurrently. They became eligible for parole on the conspiracy count in 1988, after serving 10 years and nine months. They "maxed out" on their conspiracy sentences in 1996. Under current sentencing guidelines, their recommended minimum sentences would be between 11¼ and 18¼ years for the conspiracy to rob and between 9 and 15 years for the kidnapping counts.

Gregory Lawrence

Lawrence was the second of seven children born and raised in Kokomo, Indiana. As a result of two divorces, a protracted custody battle and neglect, Lawrence was shuffled among relatives, various fos-

ter homes, and an orphanage. He dropped out of school in the 11th grade to go to work. Early in 1977, a break-up with his fiancée sent Lawrence into severe depression. He began to drink heavily, quit his job and moved in with Melony and Bellah.

The psychologist who interviewed and tested Lawrence prior to his trial said he had “few psychological resources” and was “vulnerable . . . to manipulation by others.” Lawrence himself said, “I wanted to talk Dave out of it, but couldn’t say anything . . . I was scared . . . I didn’t know what to do.”

As early as 1983, a staff member at the Michigan Reformatory who prepared Lawrence’s initial Lifer Review noted that Lawrence had “matured greatly” from the passive, easily-led young man who arrived in prison in 1978. His work reports had gone from fair to excellent. He had earned a GED and an associate’s degree.

Seven officers and work supervisors who observed Lawrence daily consistently praised his progress and performance. All recommended a reduction in custody and favorable consideration for parole. Although unusual for a lifer who had served just seven years, in 1984 Lawrence was transferred to Camp Pellston where he remained for 13 months, working at various private businesses in the community. He was transferred again after receiving an out-of-place ticket in September 1985 for leaving the unfenced camp temporarily to rendezvous in the woods with his then-wife .

In succeeding years, Lawrence held increasingly responsible jobs, mainly in the prison industries garment factory. He is also working on a bachelor’s degree from Indiana University. His current supervisor, who has known Lawrence for 20 years, says of him:

Greg is knowledgeable, well-disciplined, ma-

ture, self-confident and trustworthy . . . I believe he has done everything possible to prove he is ready for society . . . I have spoken with other civilian employees about Greg’s character and they . . . believe if there is one prisoner who would make it in society, without problems, it would be Greg Lawrence.

At Lawrence’s initial parole hearing in 1985, the interviewing board member wrote that she was “leaning favorably [toward parole] at 10 years.” In 1988, another board member made a favorable recommendation but the majority had no interest. Lawrence was interviewed again in 1994 and 1999, and turned down for parole each time. In March 2004, the board did not even meet with Lawrence. It simply reviewed his file and sent him another “no interest” notice.



Gregory Lawrence

Robert Schraw

Robert “Rick” Schraw was raised by his mother and step-father with four other children in a working class family. He dropped out of school in 10th grade “because all my friends were dropping out,” and took a job as a dishwasher. He then joined the Marine Corps but received a medical discharge after a year. He became engaged to be married, was expecting a baby, and got a job at Universal Steel in Kokomo.

Schraw said he was “in a daze” on the trip to Lansing, but kept telling Lawrence and his sister that

he didn't want to be involved in any bank robbery. A subsequent psychological assessment of him said, "[he] experiences himself as weak and childlike... His desire for acceptance and his fear of being seen as passive and unmasculine went into his decision to go along [with Bellah's plan]."



Robert Schraw and his father

In prison, Schraw lived in the honor block at the Michigan Reformatory for four years while working in the laundry, where he progressed to foreman. In 1983, his supervisor wrote:

[Schraw is] steady, dependable and trustworthy. Has made a considerable change in his outlook on life. If anyone deserves a break, I would have to say Rick Schraw not only deserves it, but has earned it.

The following year Schraw earned his GED and enrolled in college classes for the 1984 summer term. The staff member who wrote his initial lifer report concluded:

I am of the opinion that, when Mr. Schraw is released, he will become a positive, productive member of society. We urge Mr. Schraw to continue his positive adjustment and behavior if he is to be released.

Thereafter, Schraw always held a job. When he worked in the garment factory for 10 years, he received regular promotions. His supervisor praised his honesty, his work ethic and leadership.

In 1984, the interviewing parole board member indicated that she thought Schraw's was "a good ten year case." After Schraw's second board interview in 1987, the interviewing member recommended writing the judge, the first step to a public hearing. Schraw got two other votes, but the majority of the board was not willing to proceed. Four years later, the same board member wrote:

I supported writing Judge last time, and feel he is even a better case now. Set for Exec ASAP.

In 1992, the board began processing Schraw for a public hearing. In the meantime, the old board was replaced. Schraw was interviewed again and some new members also expressed interest in proceeding. However, in June 1993 he received a five-year continuance. Schraw was interviewed again in May 1998 and 2003. Although the board took nearly a year to decide each time, the result was the same.

Both Lawrence and Schraw have strong support from family members who are ready to assist them in adjusting to the free world. Their next scheduled reviews are in 2008 for Schraw and 2009 for Lawrence, when they will have spent more than 32 years in prison.

*Ross S. Hayes, 140420
Parole eligible since 1984*

Age 16 at the time he killed an elderly woman during a burglary, Hayes now counts the victim's nephew among his strongest supporters.

In 1974, Ross Hayes was an upcoming basketball star and a marginal ninth grade student at Ottawa Hills High School. While under the influence of LSD, marijuana, and alcohol, Hayes, age 16, and his 14-year-old cousin entered the Grand Rapids home of 89-year-old Katherine Thomas, looking for cash. When Thomas surprised them by returning home during the burglary, Hayes stabbed her once in the chest with a kitchen knife, killing her. He was arrested the next day.

Although Hayes had twice been referred to the juvenile court for breaking and entering, neither incident had resulted in a formal finding of guilt. As a result, he had never participated in any programs in the juvenile system – then one of the considerations for a juvenile waiver. The examining psychologist stated:

He has the mentality of an adolescent and he has the emotional disturbance of an adolescent. This young man is in need of a psychological treatment program and my recommendation would be that he receive treatment in the Pine Rest Adolescent Unit.

Nevertheless, the probate judge waived Hayes to adult court partly because “the time [needed for] treatment may well exceed the relatively short period remaining for juvenile jurisdiction.” He called his decision to have Hayes stand trial as an adult “the most difficult one in some seven years on the bench,” but said he was confident that the circuit judge would handle the case “with fairness, equity, mercy and justice.” On the advice of his attorney,

Hayes pled guilty to second degree murder, believing that with a parolable life sentence he could be released after 10 years.

In prison, Hayes earned his GED and two associates degrees. He completed group therapy and substance abuse treatment. His work and living unit reports are excellent.

In 1988, Hayes and another prisoner, Delmar Quezada, made a videotape in which they talk directly to young people about the consequences of criminal behavior. The video has been used in schools and juvenile facilities in several states.

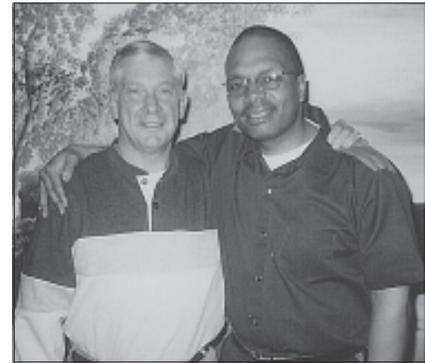
Hayes became a committed Christian in 1989. In 1998 he married Shirley Wright.

Since 1981, parole board members who interviewed Hayes have noted his positive attitude, his many accomplishments, his commitment to at-risk youth, and the support he has from staff, volunteers and the community. In a 1987 report to the board, his treatment team supervisor wrote:

[I am] very favorably impressed with the degree of [Hayes'] personal growth... and it would seem that now is the optimum time to release.

However, the interviewing board member said: “no interest now, but maybe next time.” Positive recommendations from interviews in subsequent years and numerous letters of support still resulted in routine “no interest” notices.

Meanwhile, Dale Daverman, Katherine Thomas’



Ross Hayes, right, and Dale Daverman.

nephew, was surprised to learn through a family friend that Hayes was still in prison and began corresponding with him. Following a three-hour visit with Hayes in the spring of 2001, he wrote to the parole board chair:

I am absolutely convinced that Ross Hayes is sincere and has remorse for what he did . . . my father, brother and I feel Ross has paid his debt to society.

Daverman envisions a partnership in ministry with Hayes and has advocated strongly for his release.

In 2001, after meeting with Daverman, Kent County Prosecutor William Forsyth wrote to parole board chair Stephen Marschke:

During my 27 years as a prosecutor, I have never [before] been asked to help facilitate the release of a convicted murderer by the family of the victim.

He continued that after reviewing the facts of the crime and Hayes' prison record:

I must confess . . . I am surprised that the Board has not taken interest in a potential release.

Forsyth concluded by urging the parole board to interview Hayes before his routinely scheduled interview in 2004.

Marschke replied:

After a careful review of Mr. Hayes' file, and your correspondence . . . I do not find any compelling information that would cause me to order another review at this time. Mr. Hayes will next be reviewed in May 2004.

On July 8, 2004, parole board member Margie McNutt interviewed Hayes at length. Dale Daverman traveled from his home in Gallup, New Mexico to be there. Hayes, who has now served 30 years, is awaiting the board's decision.

*Michelle Bazzetta-Southers,
205347*

Parole eligible since 1998

Although her sentencing judge wanted to change her life term so that Bazzetta could earn her release, the appellate courts would not permit it.

Joseph Bazzetta hated his stepmother, Helen Bazzetta, so much that in August 1983 he strangled her to death in his home. Her body was not discovered until nearly five years later in a wooded area in Oakland County. Joseph and his wife, Michelle, were arrested and tried for first-degree murder.

Michelle Bazzetta, who was not yet married to Joseph at the time of the killing, maintains that she was awakened by Helen's screams and that her only role was to help dispose of the body. She says she never went to authorities because she feared Joseph, who frequently beat her, and because he had convinced her that she would also be charged with murder. At trial, the defense submitted evidence that Joseph Bazzetta had abused Michelle, but did not call an expert on battered women's syndrome to explain the impact such abuse can have. The prosecution theorized that if she were not guilty herself, she would have come forward. Joseph was found guilty but mentally ill and sentenced to life without parole. The jury found Michelle guilty of second-degree murder.

By the time Bazzetta was sentenced in November 1989, judges knew that perceptions of parolable life terms varied widely. Faced with numerous requests for both leniency and harsh punishment, Judge Gene Schnelz was extremely ambivalent about Bazzetta and struggled to determine the appropriate sentence. He expressed the belief that Bazzetta had willingly participated in the murder

but that she also had the "potential to do good." After acknowledging that most people sentenced for second-degree murder receive minimum terms of about 20 years, he concluded:

I, therefore, feel that the fairest sentence under the circumstances, to allow sufficient time to elapse to determine whether you, in fact, are capable of rehabilitation and are not a danger to society, would be a sentence of life.

He indicated that Bazzetta could earn release by doing well in prison.

Bazzetta began by passing the GED exam while still in jail. In prison, she obtained an associate's degree and a bachelor's degree with high honors. She is currently studying for a master's degree at her own expense. College instructors have found her to be passionate about learning, assertive yet tolerant and a dynamic speaker.

Since 1994, Bazzetta has been employed as a peer educator for HIV/AIDS/hepatitis prevention and treatment, working with newly-arrived women prisoners. Bazzetta mentors youthful offenders and received a certificate for outstanding achievement as a prisoner representative on the Warden's Forum.

Bazzetta studied the dynamics of Battered Women's Syndrome and actively participated in group therapy for victims of domestic abuse. Psycholo-



Michelle Bazzetta-Southers

gist Nels Thompson, who facilitated the group, wrote of her:

Ms. Bazzetta-Southers has used her time of incarceration very wisely. She is no longer a victim, takes responsibility for her behavior and actively helps other women in her environment to realize their own potential . . . It is my professional opinion that Michelle Bazzetta-Southers is not a threat to society. She would be an asset. If she were released from incarceration, I believe her prognosis is excellent and that she would remain free of future toxic relationships.

She and Joseph divorced. She married James Southers in 1999.

Bazzetta regularly participates in religious services and has nurtured a deeply spiritual outlook. Staff and prisoners view her as a leader. Volunteer Isabell Joy Yingling writes:

At the monthly National Lifer Association meetings, which I sponsor, it is clearly evident that Michelle is respected by the women at Scott. The inmates and staff alike . . . depend on Michelle for her mature perspective on life and her willingness to help others who are in need of advice, a pep talk, or simply someone who will listen to their grievances.

When Bazzetta first became eligible for parole in 1998, the board continued her for five years. In 2001, she returned to the trial court to seek a resentencing. She argued that the current board's "life means life" policy subverts the intention of the judge, who never meant for her to die in prison if she showed evidence of rehabilitation.

Judge Schnelz agreed that the revised policy "is not what I understood at the time." To avoid injustice, he decided to resentence Bazzetta to the average indeterminate sentence for second-degree mur-

der – a minimum of about 20 years, which, with all available disciplinary credits, she could serve in about 17.

The prosecution appealed. In 2003, the Court of Appeals, in a 2-1 decision, reversed the trial court's ruling and reinstated Bazzetta's life sentence. The majority found that there had been no misconception of law or frustrated intent because Judge Schnelz had been aware that although legally eligible for parole, few lifers actually gained release. It held that a trial judge cannot change his mind about a sentence years later because the defendant has established an impressive prison record. It also held that Judge Schnelz had "improperly assumed the role of the parole board and determined that defendant had earned her parole." The Michigan Supreme Court declined to hear the case, ending any hope that Bazzetta could obtain relief from state courts.

Later in 2003, the parole board considered Bazzetta again and continued her for another five years. Her next routine review will be in 2008.

*Gerald Lee Hessell, 150163
Parole eligible since 1986*

Pressured at age 19 by the biological father he had just met, Hessell assisted in crimes for which he has now served far longer than the judge or victim intended.

Gerald Hessell remembers his childhood as "a ball of confusion." The man his mother married when she was a teenager was involved in drugs and alcohol. He was the only father Hessell knew. When Hessell was 13, this man was institutionalized. His mother obtained a divorce and remarried someone

barely older than Hessell himself. Hessell dropped out of school at 15. By the age of 18, he was out of work, married and on welfare. His only criminal conviction, however, was for breaking into an abandoned gas station, for which he received two years probation.

It was then that Hessell met Arthur Burgess, his biological father. Burgess, who drove a Cadillac and carried a pocketful of cash, made a strong impression on Hessell.

Burgess had served 13 years for murder and was awaiting trial for three more murders of which he was later convicted.



Gerald Hessell, his mother (left) and grandmother.

About four months after they met, Burgess told Hessell that Robert Johnson, a marijuana dealer they both knew, was a police informant who might implicate Burgess in the pending murder charges and that "we have to get rid of him." Hessell resisted getting involved, but ultimately gave in to pressure from Burgess, "partly out of some crazed desire to be accepted, but moreso out of fear."

In early April 1976, Hessell, Burgess and Scott Croyden drove to Johnson's apartment, intending to kill him, but no one was home. A week later they went there again, on the pretense of buying drugs. They lured Johnson into a car where Hessell and Croyden robbed him of marijuana and money. Burgess then ordered Hessell to drive away.

When Johnson tried to jump out of the car, Bur-

gess stabbed him twice. Johnson fell out, got up and ran, but Burgess pursued him, shot him several times, and left him for dead. Johnson survived the attack. Burgess then said someone had to go back and kill Johnson's girlfriend, Theresa Martell, because she was a potential witness. There are conflicting accounts as to whether Burgess or Croyden actually killed Martell, but no one says it was Hessell.

Croyden testified against his co-defendants and was sentenced to 8–15 years for armed robbery; he was released in 1985. Burgess was convicted of first-degree murder and is serving life without parole.

Hessell pled guilty to armed robbery and assault with intent to murder; he pled no contest to second-degree murder. Hessell's attorney bargained for three concurrent life sentences, telling Hessell that, with a good prison record, he could be released in 12 years. In negotiating the plea, the prosecutor and judge consulted Robert Johnson. They advised Johnson that, with three concurrent life sentences, Hessell would likely serve no more than 15 years. The judge explained that the plea was proposed because Hessell was a young man with the potential for rehabilitation. Johnson agreed that 10-15 years was sufficient punishment since Hessell was not the aggressor in the attack on him and he believed Hessell acted out of fear of Burgess.

In prison, Hessell participated in three years of group and six months of individual therapy. Since the early 1980s, staff reports painted a portrait of an insecure young man who grew into an insightful, self-confident adult. One corrections officer observed in 1982:

Over the last 3½ years, he has matured immensely. Mr. Hessell's accomplishments should merit some type of sentence leniency.

Years later, another officer said:

Hessell is quiet, intelligent, thoughtful and out-

standing in his interactions with staff and other prisoners . . . I cannot see how continuing his incarceration would benefit him or anyone else.

Psychologists concur. A group therapy termination report from 1989 says:

Hessell has the ability to lead a constructive and law-abiding existence upon release.

In 1991, a therapist concluded:

Hessell has obtained the maximum benefit from incarceration.

Hessell earned an associate's degree and is certified as a dental lab technician, a master gardener, an addiction counselor and a legal assistant. He has received only seven misconducts. He has maintained close ties with family, friends and clergy. Notably, Robert Johnson has offered to appear with Hessell at his next parole interview.

After Hessell's hearing in 1987, shortly after becoming eligible for release, board chair William Hudson wrote:

He continues to do an excellent job. The board has no interest at this time. Guideline score is 14. Not a bad number.

Since then, however, the board has shown no interest. In 2003, it continued Hessell's incarceration until 2008, without even seeing him. He will then be 51 years old and will have served 32 years.

Jose Daniel Mares, 135943
Parole eligible since 1982

Convicted at 18 of a murder he committed while drinking, Mares did so well in prison the parole board considered releasing him after 13 years. But Mares got drunk and briefly walked away from a prison camp in 1985 and the board has never shown interest again.

Jose Mares is the fourth of nine children born to a migrant family in Texas. Mares' father, an alcoholic, came and went. In his teen years, Mares began drinking excessively and often could not remember later what he had done while drunk. Even so, his only encounter with police was for one speeding ticket, until his conviction of second-degree murder at the age of 18.

At the time of his arrest, Mares worked the night shift at a tool and die company and attended high school in the mornings.

Mares started drinking early in the morning on Oct. 28, 1972. That night, he and his cousin, Domingo Ramirez, went to a bar in Holland where they met 80-year old Jessie Smith, who was also drinking heavily. The teens agreed to give Smith a ride home to drop off six-packs for his Sunday drinking.

Instead of returning to the bar as planned, Mares and Ramirez took Smith into the country to steal his money. After the larceny, they headed back into town, but the car slid into a ditch. Ramirez hitched a ride to get a wrecker. While he was gone, Smith got out of the car and insisted on walking home. Mares tried to stop him, but Smith would not return to the car. When Mares pushed Smith into a ditch to avoid being hit by an oncoming car, Smith started screaming and yelling. Mares panicked and struck Smith several times with a tree branch to

quiet him. Mares claimed no intent to kill, but Smith died from the blows.

The pre-sentence investigator wrote that Mares should finish high school and learn a trade to prepare for his return to the community. The judge imposed a parolable life sentence, recommending a pre-parole hearing at the end of seven years.

When Mares arrived at prison he tested "borderline defective" in intelligence with a fourth-grade overall level of academic achievement. He was judged to be immature and poorly socialized; he admitted to chronic alcoholism.



Jose Mares

In spite of this bleak assessment, Mares completed his GED in 1976, an associate's degree in arts and sciences in 1979, and earned 96 credits towards a bachelor's degree in community service. He also worked at a variety of prison jobs and developed several marketable skills.

A lifer review report in 1983 stated that Mares was "making great strides" in preparing himself to return to society. In 1984, a work supervisor wrote:

I was able to see him slowly shine and stand out from the crowd. I believe he has experienced 'rehabilitation' far beyond the expectations of Corrections.

MDOC staff consistently characterize him as responsible, mature, sincere and hardworking.

In September 1984, when he was 30 years old, Mares was moved to Camp Lehman at the request of the parole board. This was often done as a step toward release. He worked on a camp crew and received excellent reports. At that time, alcohol was available in the camp and eventually Mares gave in to drinking. One day in June 1985, already intoxicated, he went into the woods to pick up alcohol left there for the prisoners and got lost. He was gone until the next day when he came out of the woods and turned himself in to state police in Houghton Lake.

The parole board saw Mares again in November 1985, five months after the walk-away. Following the interview, board member Thomas Patten wrote:

Had chance, blew it – no interest now.

Since then, Mares has continued to work steadily and further his education. Teachers competed to hire him as a bi-lingual tutor. For several years he was a line foreman for prison industries where his supervisor wrote that he was a competent and conscientious worker. He has had no incidents of substance abuse since 1988. Mares has maintained contact with family members and has support in the religious community outside prison. He married Sara Harris in 1999.

The parole board saw Mares again in 1993 and 1998 and issued a “no interest” notice each time. In the summer of 2003, the parole board reviewed Mares’ file. Then, without even an interview, it continued him for another five years. His next scheduled review is in 2008, when he will be 54.

*Anthony Johnson, 125208
Parole eligible since 1986*

Despite a stack of reference letters from prison staff attesting to his character and accomplishments, the parole board does not consider Johnson safe to release.

Anthony Johnson’s early days in Benton Harbor were hardly promising. One of seven sons, after his parents separated Johnson spent most of his time with his father. At age 11, he was placed on probation by the juvenile court for breaking and entering and carrying a concealed weapon. While on probation he faced more charges for burglary, possession of stolen property and felonious assault. At age 13, he was sent to Boys Training School for 15 months. A week after his 16th birthday, Johnson knocked down an elderly woman and took her purse. He was tried as an adult and sentenced to 2-10 years in prison.



Anthony Johnson

When he was released on parole, Johnson married, fathered two children and worked at a factory. On April 23, 1973, when he was 19, he, his youngest brother, a cousin and a friend of theirs were out riding around and drinking wine. According to Johnson, when they ran out of money they attempted to pawn a shotgun. The owner of a pool hall wouldn’t take it, so they went across the street to a neighborhood grocery store. Johnson had known the owner, 55-year-old Sam Baum, for years and knew that Baum took items in pawn. Johnson,

his brother and cousin entered the store. Johnson says he was holding the gun when it accidentally discharged, killing Baum with one shot.

There was not enough evidence to prosecute until 1977, when the friend, who had been waiting in the car, was granted immunity in exchange for his testimony. Although the prosecution theory was felony-murder, there was no evidence of robbery and all three defendants were convicted of second-degree murder.

When Johnson started serving his sentence he took classes in drafting and blueprint reading. In the early 1980s he began working in food service. He obtained his GED in 1982, then began taking every course available related to institutional food service management, nutrition, the preparation of special diets and the teaching of food service skills. He completed the State of Michigan's food service management certification program in 1984, was certified by the U.S. Department of Labor as an apprentice chef, completed a University of Florida independent study course for dietetic assistants in 1985 and received his associate's degree in 1987.

Since the late 1980s, Johnson's work with the dietitians and food service supervisors at several different prisons, his instruction of other prisoners in food technology and his willingness to volunteer to prepare food for special activities have garnered him more than two dozen letters of support from staff. In 1988, Warden Emmett Baylor took the unusual step of personally forwarding a packet of letters to the parole board chair.

MDOC staff praise not only Johnson's knowledge and skills, but also his character.

Mr. Johnson has accepted the responsibility of assisting me in completely reorganizing our dietary department. He has been Head Diet Cook

since April of 1982, . . . a position which was created solely due to his dietary expertise. . . He has worked on much of our improvements on his own time. . .

—Donn Newhouse, Food Service Director, 1984.

. . . I was stunned by his perseverance. . . [and] personal growth. . . I have seen few people handle frustration and adversity as maturely.

— Prof. Raymond Ventre, Northern Michigan University, 1988

His talents and willingness have made him an exceptional role model. His integrity and honesty have led students and staff at E.C. Brooks Correctional Facility to have outstanding respect for him.

— John Brewer, Food Technology Instructor, 1993

He completely organized the Therapeutic Diet line, trained Diet Cooks, and used his vast knowledge to make our Therapeutic Diet line the best one in the state.

— Barbara Price, Assistant Food Service Director, 1997

Equally impressive is this 1988 evaluation by psychologist Charles Harper:

Mr. Johnson has been in group therapy for the past year. During that time his therapist reports that he has literally carried the group. . . He is especially capable of abstract thinking, conscientious and dominated by a sense of duty. He is attentive to others and can be relied on to complete assigned tasks. He seems to have developed

the ability to be self-reliant and realistic . . . It is doubtful that further incarceration would serve any rehabilitative purpose for Mr. Johnson or society.

Despite these assessments from people who know him well, and despite the fact that his last misconduct citation was in 1982, the parole board has shown little interest in Johnson. In 1993, then-board chair Stephen Marschke noted that he could support parole at the next interview if Johnson's behavior remained positive, but the 1998 and 2003 interviews resulted in routine "no interest" notices. Johnson is next scheduled for review in May 2008, when he will be age 55 and have served 32 years.

*Derek Lee Foster, 156952
Parole eligible since 1989*

Lavish praise from staff for his tutoring and counseling efforts with younger prisoners and a near-perfect institutional record for 25 year have not won Foster any attention from the parole board

Derek Foster was the older of two sons in a working-class Detroit family. He left school in the 10th grade, then held several factory jobs. He married at age 20; he and his wife separated after having one child. He had no juvenile court history, no adult convictions and no substance abuse problem.

Despite this unremarkable history, in December 1978, when Foster was 23, he and an 18-year-old co-defendant decided to rob a gas station. Foster held a gun on the woman attendant. When she struggled with him, he shot and killed her.

Foster explains that he had lost a new job after only

one week and wanted to buy Christmas presents for his daughters. "I had family I could have turned to, but my messed up sense of pride would not allow it. I hate the decision I made," he wrote in a letter discussing the offense.

Foster and his co-defendant both pled guilty to second-degree murder. The co-defendant received a 15 to 25 year sentence and was paroled after serving about 7½.



Derek Foster and granddaughter

Foster has focused his prison time on academic and counseling activities geared particularly at younger prisoners. He obtained his GED the year after he entered prison. By 1985, he had completed an associate's and a bachelor's degree.

For the last 14 years, Foster has been at Carson City Correctional Facility where he tutors in the school program during the day and volunteers as a literacy tutor during evenings and weekends. Teachers have strongly praised his patience and persistence in working with low-level learners. One wrote in 1995:

He has been a great asset to our classroom and has made remarkable progress in reading with many of our 'last chance' adult students. These special talents and his willingness to work hard with these students have made him a special person in our school.

Another teacher, who described Foster as "consistently helpful, calm and knowledgeable" wrote in 1997:

I have observed Mr. Foster's patience with irritable, sluggish students — especially young students who are lacking motivation. Mr. Foster has been a positive model for these young students to look up to and to imitate.

A third wrote in 2002:

My students and the other students here at [Carson City] are fortunate to have such a role model, whose conduct, manner and educational knowledge are all exemplary. . . . When released from prison, he should have a bright professional future.

The school principal has written that Foster "would make an excellent elementary school teacher or could have a career in social work." Foster would like to earn a master's degree in special education.

Since 1993, Foster has helped to facilitate group counseling sessions in his housing unit. The staff member responsible for supervising these sessions recently wrote of him:

He has the ability to relate and communicate with many different types of personalities . . . He appears to have made insightful changes in his own life and wishes to relate them to a primarily younger generation. He displays excellent leadership qualities in a group setting without appearing to dominate or limit group involvement. His topics of discussion are rooted in the core values of a moral society.

Foster has a grid score of 14 years. He has not received a misconduct citation since 1981. His sentencing judge, Hon. Dalton Roberson, wrote in 1990:

I have no objection to the parole board exercising any discretion they might wish to use to reward your excellent conduct.

A psychological evaluation requested by the parole board in 1997 concluded:

. . . this individual is highly motivated to re-adjust in society and given his increased education and demonstrated commitment to be productive, prognosis for his re-adjustment in the community would be above average.

Despite Foster's record, the parole board has shown no interest in releasing him. When, in 1993, Foster sought guidance from the board about how he could earn parole, then chairperson Gary Gabry replied:

The only thing a lifer can do is establish a record of stable and mature behavior, clear of misconduct, and participate in the institutional programming and activities which are available.

Although Foster continues to exceed this standard, the board continues to have no interest. Foster received 5-year rejections after interviews in 1997 and 2002. He will be considered again in 2007, when he will be 52 years old and have served 29 years.

*David Closser, 137666
Parole eligible since 1986*

Having paid dearly for foolish choices made many years ago, Closser is now a skilled draftsman and master gardener, quietly doing his time.

David Closser says he had a favorable home life and good parents but that his "restlessness" would get the better of him. According to a psychological re-

port, as an adolescent he spent his energies “defying authority and compulsively seeking independence.” At age 14, he was sent to Boys’ Republic for running away from home. At 15, he was arrested for carrying a concealed weapon and was sent to Boys’ Training School in Lansing. When he was 17, he was convicted of breaking and entering and unlawful use of an auto and sent to prison for 2-5 years, where he was housed at the Ionia Reformatory.

On May 31, 1976, Closser was transferred to the minimum security dormitory, but hated the crowded conditions there. The next day he walked away.

After walking for hours, Closser decided he needed a vehicle. He knocked on the door of the Ernest Allen residence. When no one answered, he broke a window to enter. His intent was to look for keys to the car he saw parked in the driveway.



David Closser at HOGs' garden in Kinross

Unfortunately, Mr. Allen was home. Closser knocked him down and demanded the car keys. When told the car was not working, but that Mrs. Allen would be home soon with another car, he tied Allen up and waited. Searching the house, he found rifles and ammunition. Two children arrived home from school; then Mrs. Allen returned with five more. At gunpoint, Closser had them tie each other up.

When a young neighbor peered in the door and saw the family tied up, she called 911. Police sur-

rounded the house before Closser could leave. He then took the 17-year-old daughter hostage, threatening to kill her if the police tried to stop them. They left in the family’s car with the daughter driving.

A high-speed chase and two vehicle exchanges followed. The Allen car skidded off the road on a curve and became stuck in a freshly plowed field. The police disabled the next car by shooting out its tires. Closser, who had traded his hostage for a third car, was arrested when he lost control of it, ending up on the highway median and injuring his back.

Closser was placed in segregation for 12 months while awaiting trial and sentencing. He received two life sentences — for armed robbery and kidnapping. He said later:

I realized then I was going to have to change my lifestyle or I was going to spend the rest of my life in one of these cells.

Despite his long history of incarceration, a psychologist judged that Closser had had “minimal treatment” for assaultive/impulse control issues. On his own, he began to develop strategies to keep himself out of trouble. Over the next 16 years, he had only two misconducts, neither assaultive.

Closser also began using the “superior intelligence and great potential” that the pre-sentence investigator noted in 1977. He became a certified mechanical draftsman and grew skilled in construction drafting. He applied his skills working for prison industries, where he also trained other prisoners. He studied electronics and was a cable-TV repairman for his facility. He was clerk to the education director at State Prison of Southern Michigan, worked at the facility’s radio station and completed coursework and on-the-job training for an FCC license.

In 1989, an interviewing psychologist found Closser to be patient, thoughtful and able to anticipate realistic consequences for his behavior. Closser told him:

I try to distance myself from the negative aspects of the prison environment. This is not the lifestyle I want.

In 1993 he was finally placed in a six-month program of group therapy for impulse control which he continued voluntarily for another six months. At the end of a year, the therapist judged that he Closser had achieved "maximum benefit" from the program.

In 2000, Closser entered the horticulture program at Kinross Correctional Facility. He is now a Michigan Certified Nurseryman and has completed the Advanced Master Gardener program through MSU. He currently spends his time tutoring in the horticulture program and chairing the Horticulture Organic Gardeners (H.O.G.s), a prisoner organization that provides flowers and produce to charitable organizations in the community.

By 1988 the parole board expressed interest in paroling Closser. The interviewing member wrote:

A different person than originally arrived in the system. I would be willing to start the process under the lifer law.

Closser was still waiting for his public hearing to be scheduled when the board was reconstituted in 1992.

After interviewing him, the new board reversed the prior decision and continued Closser for five more years. A 1998 interview had the same result. In 2003, the board only reviewed his file before sending another five-year continuance. His next review is scheduled for 2008, when he will be 52 and will have served 32 years.

*Philandius Ford, 113879
Parole eligible since 1983*

Although he was trusted by prison staff to spend years working in the community, often unsupervised, at age 56 the parole board still considers Ford too big a risk to release because of his prior record.

Philandius "Phil" Ford has traveled far from his troubled youth. He was a behavioral problem in school as early as second grade. Beginning at eight years old, when his parents couldn't handle him, he was placed in a series of foster homes. At age 14 he was sent to Boys' Training School in Lansing. At 17, Ford was sent to prison for larceny from a motor vehicle; he had just turned 20 when he was paroled in December 1967.

Over the next three years Ford was arrested many times for minor crimes and ordinance violations. When he was 23, he was sent to prison a second time for carrying a knife and receiving stolen property. He was released on parole in March 1973.



Philandius Ford

Two months later Ford was charged with felony-murder for a killing at a drug house in Detroit. Although the prosecution theory was that a robbery occurred, the jury found none and convicted Ford of second-degree murder.

Ford says he began to feel himself change when he entered prison for the third time. He was soon housed in the honor block at the Ionia Reformatory where he remained for eight years. During that time

he received excellent work reports and had only one misconduct citation.

According to Ford's 1982 Lifer Review Report:

Numerous prison staff believe that Phil Ford has come a long way and is doing a good job preparing himself for his release.

His 1983 report said:

Ford is a quiet individual that not only causes no problems, but helps maintain order in others through personal influence. He is a stable, mature person who takes great pride in his work.

And in 1985, auto shop instructor Bill Wiczorek wrote:

In [Phil Ford's] case "rehabilitation" has taken place. To delay his release any longer . . . would serve no purpose other than to punish him. He has learned from his past mistakes and is now ready to start a new life.

Ford was transferred to minimum custody in 1983. Under then-prevailing MDOC policy, prisoners who proved themselves trustworthy were given positions of responsibility and allowed to work in the community. Ford served as foreman of the groundskeeping crew and supervised a dozen other prisoners. Head Groundskeeper Richard Muscott wrote:

He is as valuable to this assignment as another fulltime employee would be, and will be next to impossible to replace with an inmate that has his capability. During my 25 years with the Department of Corrections I have had several thousand inmates working under my direct supervision and I would rate this man in the top five . . .

Ford also drove inmate crews to and from their work

assignments in the community. He was responsible for snowplowing around two prison facilities and was sometimes out on the job all night, unsupervised. He was foreman of a prisoner crew at the Ionia Free Fair for three summers.

At his request, Ford was transferred to the camp program in 1986. He was a driver at Camp Ojibway — transporting prisoners to facilities around the state and making supply runs for the camp. He was then sent to Camp Waterloo. While there he worked at St. Louis Center and St. Joseph Hall in Chelsea, doing maintenance and groundskeeping. He also worked for a year on a major building project for Rampy Construction Company. In 1986 and 1987 Ford went home on unescorted furloughs — for the funerals of his brother and mother. After almost six years in minimum custody, he was sent back to a secure prison in 1989 because a departmental policy change removed all lifers from community status.

Although he has lost several close family members, including his first wife who died of cancer in 1990, Ford has maintained family ties. He has been married to Nancy Dillard since 1992.

Ford had four parole interviews during the '80s. Each time the interviewing board member was impressed with his maturity, sincerity, and accomplishments, but the full board never took action to release him. In 1991, although the board member who saw him found "no indication of the lifestyle that brought him to prison," the full board still decided it had "no interest" in paroling him. It recommended psychotherapy "for the experience." In 1992, after ten sessions, Psychologist James Dickson noted that Ford's reaction to family deaths showed, "a great deal of maturity and behavioral control." Dickson continued:

He has assumed a great deal of responsibility

during his incarceration and has successfully met it . . . Mr. Ford acts as a healthy role model for other inmates to follow, intervenes in disputes at his discretion, and prides himself on maintaining a cool head. Other inmates reportedly seek him out for advice, which is to his credit.

In 1993, after serving 20 years, Ford wrote then parole board chair Gary Gabry asking what he could do to improve his chances for parole. Gabry answered:

The Board's concern is your lengthy criminal history and this will continue to be of concern every time your case is reviewed. About the only thing you can do is maintain a positive institutional record.

Ford did as advised, but the parole board continued him again after a 1997 interview. In 2002 it sent him a "no interest" notice after simply reviewing his file. He is scheduled to be considered again in 2007 when he will be 60 years old.

*Monica Ann Jahner, 151946
Parole eligible since 1989*

A Supreme Court declaration that Jahner's life sentence is in fact parolable has made no practical difference in how the parole board treats her.

Monica Ann Jahner was only 22 years old, but she had already spent years helping her father run his two drapery shops — one in Detroit and one in Howell — when she was arrested for conspiring to murder her step-mother. On Jan. 18, 1977, Roy Catlett attacked Sandra Jahner in her Livingston

County home. He hit and choked Mrs. Jahner, leaving her unconscious, but did not succeed in killing her. Catlett, who had been out of prison only a month and had a heavy heroin habit to feed, had been arrested for an unrelated armed robbery when evidence was found linking him to the Jahner assault.

In exchange for a plea to felonious assault, which netted him a sentence of 2 2/3 - 4 years, Catlett testified that Monica Jahner had paid him \$5,000 to kill her stepmother. Jahner maintains that it was her father who wanted Sandra Jahner dead and that her only role had been to convey money at her father's direction. Jahner's father moved to the Bahamas and has never been charged.

Jahner was convicted of conspiracy to murder and assault with intent to commit murder. Her convictions were reversed on appeal but she was convicted again at a retrial.



Monica Jahner and her mother

Jahner, who has no prior criminal record, adult or juvenile, was free on bond without incident for 11 months before her first trial and 14 months before her second trial.

Jahner received a 10-20 year term for the assault, which she completed in January 1993. The law required the court to impose a life sentence for the conspiracy conviction. Jahner and three other prisoners, also convicted of conspiracy to murder, petitioned the Michigan Supreme Court to determine whether their life sentences, although mandatory, were nonetheless parolable. In 1989, the Court held

that unlike convictions for first-degree murder, those for conspiracy are subject to the 10-year parole provisions of the Lifer Law. Noting that the victim was not killed in any of the cases, the Court declined to eliminate the parole board's opportunity to exercise discretion. Two of the defendants were paroled in 1995; both had served about 20 years. Like Jahner, the fourth defendant, Ricky L. Jones, who has now served 23 years, is still incarcerated.

Jahner has compiled an impressive record in prison and is well regarded by administrators and staff. She earned her bachelor's degree and a paralegal certificate, completed two years of psychotherapy in the early 1990s and received a perfect termination report from the Assaultive Offender Program in 2002. She was active in coordinating prisoner projects that served others — a visitation program for prisoners and their children, a books on tape program for the learning disabled and a videotape series addressed to juvenile offenders.

In 1991, Warden Carol Howes wrote a letter on Jahner's behalf to the parole board chair that concluded:

Further incarceration of Ms. Jahner would serve no meaningful purpose other than to punish. She has already involved herself in every institutional program available to her. She works well with the administration and does not appear to be any threat to the public. Her continued incarceration is a significant burden to taxpayers. The longer her incarceration the more difficult it will be for her to begin a new life on the outside.

Jahner was considered by the full board that year. Although two members indicated they could approve release at 18 years, the board has never chosen to exercise the discretion the Supreme Court accorded it. As a result of her last five-year continu-

ance, Jahner will next be considered in 2006, when she will be 52 years old and will have served 27 years.

Robert Weisenauer, 157085 Parole eligible since 1989

Despite every possible positive indicator, the support of his sentencing judge and interest from the old parole board, the new board has continued Weisenauer until 2008 for an offense that would not bring a life sentence today.

Robert Weisenauer's father died when he was seven. Weisenauer began drinking and taking barbiturates at the age of 12 and went on to develop a serious substance abuse history. He quit school after the ninth grade, spent some time in a juvenile detention facility for truancy and running away, and left home for good at 16. Nonetheless, his only adult criminal convictions were for malicious destruction of property and disorderly conduct — both misdemeanors.

On December 4, 1977, when Weisenauer was 24, he was at a motorcycle gang clubhouse in Flint where more than 100 people were engaged in loud partying. In the early morning hours, a 24-year-old woman was abducted from her car and brought to the clubhouse. The victim was turned over to a man named Cal who took her to a bedroom and forced her into sexual activities with nine or ten men over a six-hour period. The presentence report says: "After her initial contact with Cal, she was directed to perform fellatio on a male that she believes was . . . Robert Weisenauer."

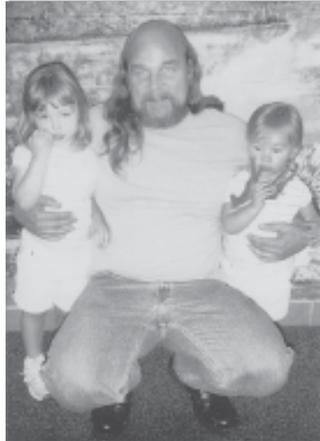
Weisenauer insisted that he spent that night being sick from two days of hard drinking and had no involvement with the victim. He thought she might have confused him with another club member who strongly resembled him. However, a jury convicted Weisenauer and four co-defendants based on the victim's identification. Cal, the ringleader, was never caught.

Before sentencing Weisenauer to life in prison, Judge Earl Borradaile stated that, given the chance, he would impose on the main perpetrator a sentence "much more severe than what I'm handing out today to these five." In a letter written to Weisenauer in November 2000, Judge Borradaile said:

It seems quite clear that I did say that I was giving you a life term but that unlike first degree murder, it would probably not last too many years.

Weisenauer has used his time in prison effectively. He obtained his GED, then trained as a welder. He received excellent work reports on every job he held. For the last several years he has been a volunteer mentor to young prisoners sentenced under the Holmes Youthful Trainee Act. He has received only three misconducts and has numerous letters in his file indicating that he gets along well with both prisoners and staff. Memos from several officers written in 1988 characterize him as honest, even-tempered and helpful to others.

Weisenauer spent more than six years attending AA



Robert Weisenauer and granddaughters

and more than two in group psychotherapy. In 1982, psychologist Larry Thornton stated:

In all the time that he participated in group, I never saw him act out what I would consider inappropriate behavior under stressful situations. I personally have a strong admiration for the way this resident was able to demonstrate a strong, friendly manner in a situation which is demeaning at times.

Although Weisenauer did not become eligible for parole until 1989, his grid score suggested that he should serve only eight years. The parole board member who interviewed him in 1984 noted: "He presents quite positively." After his 1989 interview, a majority of the board voted to proceed to public hearing. Reports were prepared, but processing was never completed.

In 1992, psychologist Richard Carrill evaluated Weisenauer at the parole board's request. Mr. Carrill concluded:

Mr. Weisenauer's prognosis is very good at this time. He should be able to be a productive citizen if given the chance to go back to society.

In 1993, after the new board took over, Weisenauer was again considered in executive session. The vote was 7-3 against proceeding.

Weisenauer wrote to the board. Despite his actual record and the court's actual intent, he received the following response:

When the Parole Board reviews a life sentence, a number of factors are taken into consideration. They include the nature and circumstances of the offense, any prior criminal history, the prisoner's risk factors for future assaultive behavior and property crimes, and the prisoner's institutional adjustment and pro-

gram involvement over the years. The fact that the court could have imposed a sentence short of life imprisonment is also a factor. Before the Board could agree to proceed toward a public hearing, there must be a compelling argument to present to the court and to the public that the life sentence should not be carried out.

In 1998, the board interviewed Weisenauer again and again had "no interest."

On February 4, 2003, Judge Borradaile wrote to the parole board chairman:

When I sentenced Mr. Weisenauer, it was my belief that review would be had in ten years and if Mr. Weisenauer showed much progress, he would likely get parole . . . While I realize that the Parole Board is greatly concerned about release of sex offenders, I believe that his activity in straightening himself out shows he would not pose a great danger . . . I would hope that you would let him personally appear before the Parole Board and that your board would lean toward leniency in considering parole.

Nonetheless, that year the board only reviewed Weisenauer's file. On March 17, 2003, it notified Weisenauer that it had no interest in his case and that he will be reviewed again in February 2008, when he will have served 29 years. Under current sentencing guidelines, his minimum sentence would be between 9 and 15 years.

*Kenneth Foster, 142187
Parole eligible since 1984*

Foster has done everything possible to rehabilitate himself, but the sentencing judge's expectation that this would lead to parole has not come true

No one expected Kenneth Foster to still be in prison after 30 years – least of all the judge who sentenced him. Charged with two counts of first-degree murder for the January 1974 shooting deaths of two Detroit drug dealers, Foster was convicted of second-degree murder by a jury. He was 22 years old and had no prior record, adult or juvenile. However, he had gotten involved in selling drugs and the killings occurred during the robbery of dealers he knew.



Kenneth Foster

At his sentencing, Foster, who had dropped out in the tenth grade, asked the court to recommend that he be allowed to finish school. Judge Robert J. Colombo replied:

I would like to see you finish up school, Mr. Foster. While perhaps I think I'm going to be here in ten years, too, if I am not I am making a record here. I will follow your case and follow your progress and again, if you are ever recommended for parole, and you can be in ten years, I will approve it . . . If you successfully complete your education you can return to the community as a responsible individual. I have heard a lot of people say a lot of good things about you. I appreciate that you have potential.

Foster lived up to his potential. He completed his GED and an associate's degree, then received his bachelor's degree in 1993. He participated in a wide variety of prison programs, from group counseling and substance abuse treatment to the NAACP, Moorish Science Temple of America and Jaycees. His work reports are excellent. While at the Michigan Reformatory, he worked his way up to inmate supervisor of the garment factory cutting room. At the Muskegon Correctional Facility he worked as a dental clerk and chair side dental assistant. The dentist praised Foster's "ability and his attitude." The program coordinator for Muskegon Community College characterized Foster as a steady, dependable, hardworking student who showed substantial leadership ability. She also wrote:

Ken is a very sincere person, with an amiable personality and wonderful sense of humor...I believe that he will benefit the community when he is released.

Several letters from corrections officers who supervised Foster in the 1990s describe him as someone who regularly volunteers to help out, who communicates well with other prisoners and staff, and who would be an asset to the free community. Foster has received only a dozen misconduct citations in total, none since 1991.

In 1982, the MDOC calculated Foster's grid term at 14 years. Although three parole board members showed interest in 1993, a majority was never willing to proceed to public hearing. Foster finally turned to the courts, seeking a resentencing on the rationale that the parole board's policies were subverting the intent of his sentencing judge. In support of his motion, Foster submitted a letter written by Judge Colombo in July 2001 that stated in part:

[N]ot only I, but the vast majority of trial judges in the State of Michigan were aware that by imposing life sentences rather than [in]determinate sentences of minimum and maximums, the Michigan Parole Board at that time was able to parole defendants who had made substantial progress toward rehabilitation upon completion of a term of 10 years . . .

Unfortunately there has also been a huge change in the position of the . . . Parole Board . . . between my sentence and this date, and Mr. Foster is caught in the middle of it . . . I would never have sentenced Mr. Foster to a term of more than two concurrent terms of 25 to 30 years . . . And in the year of 1975 that would have meant with then applied good time he would have served no more than 17 or so years in prison.

Judge Colombo's letter persuaded his successor in office to grant Foster a resentencing. However, the prosecutor appealed and the Court of Appeals reversed the lower court's decision.

The parole board last reviewed Foster's case in December 2003. It did not even afford him a personal interview. The next month he was hospitalized for diabetes. He will be considered again for parole in 2008, when he will be 55 years old and have served nearly 35 years in prison.

Ruth Bullock, 195075
Parole eligible since 1998

Aging and ill, Bullock had hoped a Supreme Court decision making her life sentence for drug possession parolable would lead to release. But even after 16 years the parole board never chose to act.

In February 1988, Ruth Bullock picked up Kenneth Hasson at the Lansing airport. He placed luggage in her trunk containing over 15 kilograms of cocaine. Although Bullock denied knowledge of the drugs, a Clinton County jury convicted her of possessing more than 650 grams based on traces of cocaine found in her purse and glove compartment. She also had several thousand dollars in cash. At the time, the offense carried a mandatory penalty of life in prison without the possibility of parole.



Ruth Bullock

When she was arrested, Bullock was a 48-year-old grandmother. She had been married for 23 years and had worked for General Motors for 16. Her prior record consisted of three misdemeanors for drunkenness, gambling and driving on a suspended license when she was 20.

In 1992, the Michigan Supreme Court issued an opinion in Bullock's case. The Court held that a mandatory sentence of life without parole for possessing (as opposed to distributing) drugs violated the state constitutional ban on cruel or unusual punishment. Its solution was to make Bullock and

all other prisoners serving life sentences for possession eligible for parole after serving 10 years.

The parole board saw Bullock briefly in 1992, after her sentence was changed, but she did not become eligible for parole until July 1998. The board chose not to release her then, notifying her instead that she would be interviewed again in July 2003. Bullock described the experience:

When I was first seen by the Parole Board, the lady told me that everything looks good for you Ms. Bullock, within the next five years you should be going home, try not to bring us no tickets, and you should be going home. I sat here and counted the days believing that I would be going home in five years. All I could do was wait. When they saw me the second time, I saw no reason why I couldn't go after my ten years... They do not give you any reason why they come to that decision. When I got my decision from the parole board, I could not think, I had built my hopes up too high. I could not believe what had happened. They did not tell me that I walked on the wrong side of the ground or anything, just no interest.

When Bullock entered prison she was an insulin-dependent diabetic. Over the years, her health deteriorated dramatically. In 2000, Bullock wrote:

I am now 59 years old. I am Diabetic. I have Kidney Failure, Seizures, High Blood Pressure and a Brain Tumor. I take approximately 15 medications a day, and I am put on a Kidney machine about every other day. I have been Blind in my left eye for about eight years... All of my time is dedicated to taking care of my health problems and basic hygiene. I am unable to participate in any of the activities or programs within the institution. I have a few friends that assist me in getting my food tray

from the chow hall while I am on the Kidney machine.

The board did see Bullock again in July 2003, when she was 63. By then, the Michigan Legislature had completely overhauled the drug laws, eliminating mandatory sentences and applying sentencing guidelines instead. Under the new laws, given her minimal prior record, the trial judge would have been able to sentence Bullock to a minimum term as low as nine years. In November, when she had still received no decision, Bullock wrote in a letter:

I saw the board on July 14th. As far as I know there is no reason for them keeping me. They ask me questions about being at a gambling party & getting a \$5.00 drunk driving ticket 40 years ago, but I don't remember that and he seem to have a problem with me not remembering it but I don't remember. I can't see why they would keep me here for that. I've already served 15½ years and a little over. I need help real bad. You know these people could have let me go after 10 yrs. I'm old & sick. I really want to go home.

Bullock never got home. In late January 2004, pressure from the tumor caused blood vessels in her brain to burst. Multiple surgeries performed at University of Michigan Hospital were not enough to save her. Bullock died on February 11, 2004, never having received another decision from the parole board.

The view from then to now



Nick Lazin



Lloyd Tisi



No Way Out: Michigan's parole board redefines the meaning of "life"



Martin Vargas



Robert Schraw



Philandius Ford

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***Recommendations
for change***

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RECOMMENDATIONS FOR CHANGE

Making the lifer review process fairer, more rational and more cost-effective would not be difficult. The problems raised in this report have straightforward solutions. Some involve restoring discarded practices. Others involve increasing accountability. Still others are meant to ensure that all relevant factors are thoroughly considered.

Implementing some of these recommendations would carry marginal short-term fiscal costs. However, not only would these costs be relatively small, they would be justified by offsetting gains. The human costs of present practices would decrease; the quality of parole decision-making would increase; the MDOC budget could be reduced if it turns out that hundreds of lifers can be safely released.

Recommendation One

Problem

Reviewing lifers' files without conducting personal interviews does not give the board an adequate basis for assessing the person's character and potential risk. Parole eligibility reports that merely summarize a prisoner's program participation and misconduct history convey little sense of who a person is. The lack of an interview also denies the prisoner an opportunity to try to persuade the board that he or she has earned release. A process built on the assumption that lifers are not even worth the time to see in person inevitably reduces the chances that parole will be granted.

Solution

Restore the requirement that lifers must be interviewed in person before the board decides whether to proceed to public hearing.

Recommendation Two

Problem

Five years is too long a period between routine lifer reviews. It is based on the assumption that lifers are not likely to be paroled in any event so it is not worth the trouble of reviewing them more often. These unreasonably long intervals between parole interviews unnecessarily lengthen the time served by people who could be safely released.

Solution

Once a lifer is eligible for parole, review them no less often than every two years, like other parole-eligible prisoners.

Recommendation Three

Problem

The board does not calculate parole guidelines scores for lifers and therefore lacks any proven, objective basis for assessing a lifer's actual risk of reoffending. Risk is logically related to various characteristics of

the offender, not to the nature of the sentence, so a risk assessment instrument is no less valid for lifers than for any other offender.

Solution

Use the parole guidelines to assess the risk of releasing parole-eligible lifers as is done with all other prisoners.

Recommendation Four

Problem

The parole board has the absolute power to deny a lifer release forever by simply stating it has “no interest” in proceeding to public hearing. It need offer no explanation and its decision is not subject to any review. The process creates a high risk of arbitrary or poorly-reasoned decisions that cannot be corrected.

Solution

Require the board to provide written reasons, tied specifically to each lifer’s individual facts, when it decides not to proceed to public hearing. If the prisoner scores “high probability of release” on the parole guidelines, require these reasons to be substantial and compelling, as they must be for other prisoners with similar scores, and permit the prisoner to appeal a “no interest” decision to the courts.

Recommendation Five

Problem

Even when the parole board has interest in proceeding to public hearing, a judge who may know little about the prisoner can prevent parole by filing, without explanation, an objection that is not subject to review by a higher court. Currently a successor judge may exercise a veto based primarily on the contents of the original, decades-old presentence report.

Solution

Take steps to ensure that judges make thoughtful decisions based on complete, up-to-date information. 1) Require the parole board to give adequate information to the sentencing or successor judge about the prisoner’s institutional history and to explain specifically why the board thinks release may be appropriate. 2) Require the board to provide the prisoner with a copy of the material sent to the judge so the prisoner can supplement it if he or she so desires. 3) Require a judge who objects to a lifer’s parole to articulate specific reasons. 4) Permit the prisoner to appeal a judicial objection as an abuse of discretion.

Recommendation Six

Problem

There are presently at least 670 parolable lifers who have served more than 15 years and at least 360 prisoners who have served 25 years on mandatory life terms. Even if procedures are changed to im-

prove the lifer review process in the future, it would take an inordinately long time for the board to work through this backlog, given its responsibilities for deciding thousands of other non-lifer cases annually. In addition, since these lifers have all received five-year continuances during the last decade under the current "life means life" policy, it is important they receive a fresh look from a body not predisposed to deny release.

Solution

Establish, for a period of three years, a special lifer review board with the responsibility for assessing only these cases and the authority to grant parole or recommend commutation. Require the board to consider, along with all other relevant factors, any evidence of the sentencing court's intention regarding how long the prisoner would actually serve and the sentence the prisoner could receive under current sentencing guidelines. The existence of the special lifer review board could be extended for one year at a time if needed to complete consideration of every designated case. Lifers who have been considered and rejected for parole or commutation by the special board would thereafter be routinely reviewed by the parole board.

Acknowledgments

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This report was written by Barbara Levine and Dena Anderson. Gail Light designed and produced it. Diane Russell provided editorial assistance. Attorney Sherrie Guess calculated the sentencing guidelines scores for the cases that were profiled.

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