What Should "Parolable Life" Mean?

Judges Respond to the Controversy

Report of a Survey Conducted by

The Prisons and Corrections Section

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TABLE OF CONTENTS

THE PAROLABLE LIFE CONTROVERSY 1
- Framing the Debate 1
- Determining the Intentions of Sentencing Judges 2

PLACING THE CONTROVERSY IN CONTEXT 2
- Parolable vs. Non-parolable Life Terms 2
- Who are the Parolable Lifers? 3
- The Specific Terms of Michigan's Lifer Law 3
- The Parole Board View: "Life Means Life" 4
  - Decisionmaker Distinguishes Parolable from Non-parolable Life 4
  - Presentence Investigation Report and Choice of Life Term are Key Considerations 5
- What Do Critics Say? 5
  - Treating All Lifers Alike is Wrong 5
  - Board Negates Intent of Legislature, Sentencing Judges 6
  - Harsh Policies and Racial Disparities are Being Perpetuated 6
  - Decisions are Not Based on Meaningful Assessments 7
- The Historical Record 7
  - 1941 Law Created Parole for Lifers 7
  - Interview Procedures used to be Proactive 8
- How Have Lifer Parole Rates Changed Over Time? 9
  - For Decades, Eligible Lifers Were Paroled Routinely 9
  - Decreased Rates Reflect Shift from Rehabilitation to "Tough on Crime" 10
- Appellate Court Interpretations of the Lifer Law 11
  - *Johnson* Holds Lifers Eligible at 10 Years, Long Minimums must be Served in Full 11
  - Courts Debate Whether Life is Harsher Than Long Minimum 11
  - Recent Cases do not Address Old Sentences 13

WHAT MICHIGAN JUDGES SAY 13
- How the Survey was Conducted 13
- Who Responded? 13
- What Was Respondents' Understanding of the Lifer Law? 14
  - Many Judges Expected Lifers to Serve Less Than 20 Years 14

Two Thirds Considered Parole Availability When Selecting a Life Term 15
"If You Wanted to Give a Long Sentence, You Gave Them 60-90" 16
Defendants Were Often Advised When to Expect Eventual Release... 16
Judges Believed Parole Possibility Had Plea Bargain Value.. 17
Did Judges Believe that "Life Means Life"? 18
Two Thirds Said "Life Means Life" was Not Their Intention... 18
Comments Show Wide Gulf Between Judicial Intentions and Parole Board Practices 18
Judges Refute Board's Reasoning 18
Less Critical Judges are Minority 19
Majority Believe Judicial Objection Protects Against Inappropriate Release 19
Over 60 Percent Support Resentencing to Release Lifers in Appropriate Cases......................... 19
How Did Respondents View Parole Board Performance? 20
Board is Ignoring History 20
Board is Usurping Role of Sentencing Judge 20
Board is Failing to Exercise its Own Discretion 21
Board is Unfairly Ignoring Rehabilitation.. 22
A Few Said "Leave it Alone" 22

CONCLUSION: WHAT ARE THE SURVEY'S IMPLICATIONS?..23
Judges Say "Parolable Means Parolable".. 23
Should There Be a Remedy? 23

Appendix A: Letter to Judges & Survey Questionnaire 25
Appendix B: Survey Results 30

THE PAROLABLE LIFE CONTROVERSY

Framing the Debate

For over 60 years, Michigan law has permitted the imposition of "parolable life" sentences for a wide variety of crimes. Unlike "mandatory lifers", who can be released only if the governor grants a commutation, parolable lifers come within the parole board's jurisdiction after serving a period of years set by statute. Absent written objection by the sentencing court, they can be released in the parole board's discretion.

In recent years, substantial controversy has arisen over what a parolable life sentence is actually supposed to mean.

- The parole board asserts quite emphatically that "life means life". It uses the fact that the sentencing judge chose a life sentence instead of a term of years to justify releasing almost no parolable lifers.
- Defense attorneys, prisoner advocates, and, of course, lifers themselves point to parole eligibility under the "lifer law" and say that, once they are within the parole board's jurisdiction, lifers should be considered for parole on the same basis as any other prisoner. They argue the parole board is effectively rewriting the lifer law, and applying changed attitudes to sentences imposed decades earlier.

In September 2000, the Prisons and Corrections Section of the State Bar devoted its annual meeting program to this controversy. It presented a panel discussion entitled "Parolable Life: Is It Parolable or Is It Life?" Panel members included the parole board chairperson, a sitting judge, a prosecutor, a defense attorney, and a former lifer who had been granted a resentencing after the parole board showed no interest in releasing him.

The panelists represented widely divergent points of view. Attorney Steven Fishman noted that in the 70s and 80s, defense lawyers debated whether a 15- or 20-year sentence was more to a client's advantage than a life term. Prosecutor Brian Mackie agreed that "in the old days" he did not think that life meant life. However, board chair Stephen Marschke said that lifers face a higher threshold for release because of the nature of their sentences. He said that if a judge wants a defendant to serve 12, 15, or 20 years, the judge should impose an appropriate indeterminate term.

Judge Vera Massey Jones, who had been imposing felony sentences since becoming a Detroit Recorder's Court judge in 1979, replied that judges had relied on the terms of the lifer law and the parole board's historical practices. She said: "[W]e all believed that you spend a maximum of 15 years, unless you continuously find yourself involved in violent behavior within the prison." Judge Jones found it unfortunate that lifers who have shown themselves to be rehabilitated are not being given serious consideration for release because of changed political practices.[1]

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[1] A complete transcript was prepared and the discussion was summarized in the Section newsletter. See "Panel At Annual Meeting Discusses Meaning of Parolable Life Terms", *Prisons and Corrections Forum,* Winter 2001, p. 14.

Determining the Intentions of Sentencing Judges

To further examine whether parole-eligible lifers are being denied release despite the intentions of the judges who sentenced them, the Prisons and Corrections Section conducted a survey in January 2002. Sent to all current and former felony trial court judges, the survey 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.

The questionnaire and enclosure letter are contained in Appendix A.

PLACING THE CONTROVERSY IN CONTEXT

Parolable vs. Non-parolable Life Terms

Under Michigan law, there are two types of life sentences.

- Life without parole is mandatory for convictions of first-degree murder. Until the law was changed in 1998, it was also mandatory for delivering certain controlled substances in quantities exceeding 650 grams. [2]
- For many other serious offenses, including second-degree murder, assault with intent to murder, armed robbery, first-degree criminal sexual conduct, kidnapping, and in some circumstances, being convicted of a fourth non-violent felony, the statutes permit "life or any term of years". The sentencing judge has the discretion to select both a minimum and maximum term, or a term of "parolable" life.[3]

Under sentencing guidelines implemented by the Michigan Supreme Court in 1984 and then by the legislature in 1998, the judge's discretion is constrained to some extent. For instance, under current guidelines, a life sentence is not recommended for any non-homicide offenses unless the facts of the case and the defendant's prior record are both especially serious. Sentences that depart from the guidelines are subject to appellate review. Parolable life sentences imposed prior to the existence of guidelines were imposed without any such constraints.

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[2] The penalty for delivering over 650 grams of a controlled substance is now life or any term of years not less than 20. Drug lifers, including those who received mandatory life terms prior to the 1998 amendments, are eligible for parole in either 20 or 17.5 years, depending on their prior records. They may receive an additional 2.5 year reduction if they cooperated with law enforcement. MCL 791.234 (6) and (10).

[3] Parolable life sentences are also common in other states, although the circumstances under which they can be imposed vary greatly, as does the period that must be served for parole eligibility. For instance, in Wisconsin, parolable lifers must serve 20 years; in Florida they become eligible for review after five years; in Georgia, prisoners sentenced to life for a serious violent felony must serve at least 14 years; in New York, depending on the degree of murder, the statute requires a minimum term of either 15 or 25 years and a maximum of life.

Who are the Parolable Lifers?

Currently there are over 1,700 parolable lifers. According to figures provided by the MDOC in October 2001, 723 were convicted of second-degree murder, 761 are serving for violent offenses other than murder, and 203 are serving for drug offenses. Over 1,000 of the non-drug lifers have served more than 10 calendar years and are within the parole board's jurisdiction. About half have served more than 20 years, meaning they were convicted before sentencing guidelines existed. More than three-quarters are over 40 years old; about two-thirds are non-white. While most are male, dozens are female.

The Specific Terms of Michigan's Lifer Law

MCL 791.34(6), commonly called the "lifer law", governs parole eligibility for parolable lifers. That law states:

> "A prisoner under sentence for life, other than a prisoner sentenced for life for murder in the first degree, or sentenced for life for a violation of chapter XXXIII of the Michigan penal code, 1931 PA 328, MCL 750.200 to 750.212a [deliberately causing serious injury by explosives or chemicals] who has served 10 calendar years of the sentence in the case of a prisoner sentenced for any other crime committed before October 1, 1992, …[4]or who has served 15 calendar years of the sentence in the case of a prisoner sentenced for any other crime committed on or after October 1, 1992, is subject to the jurisdiction of the parole board and may be released on parole by the parole board, subject to the following conditions…"

The conditions are:

(a) Each lifer must be interviewed by one parole board member after serving 10 years, and may be interviewed thereafter in the board's discretion;

(b) After a lifer has served 15 years, and every five years thereafter, the board must review his or her file;

(c) The board cannot decide to grant or deny parole to a lifer until after conducting a public hearing.[5] "Notice of the public hearing shall be given to the sentencing judge, or the judge's successor in office, and parole shall not be granted if the sentencing judge, or the judge's successor in office, files written objections to the granting of the parole within 30 days of receipt of the notice of hearing."[6]

(d) A parole granted to a lifer must be for a period of not less than 4 years.

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[4] The lengthy description of parole eligibility for drug lifers was omitted for ease of reading.

[5] A decision not to proceed to public hearing is not considered a decision to deny parole, although the consequence is that the prisoner's file will not be reviewed for another five years. See *Gilmore v Parole Board, Vargas v Parole Board, Cespedes v Parole Board,* 247 Mich App 205 (2001) (S Ct. lv app pending).

[6] As originally enacted, the lifer law gave a veto only to the actual sentencing judge, if alive. The opportunity for a successor judge to object was added in 1953.

The interview schedule for lifers has been changed repeatedly. Prior to 1977, by policy, the board interviewed parolable lifers after they had served seven years and every three years thereafter. In 1977, this was changed by administrative rule to a first interview at seven years, a second at 10 years, and every year thereafter. In 1982, the statute was amended to require an interview when the lifer had served four years and then every two years thereafter. In 1992, the schedule was changed dramatically to require no interview until the lifer had served ten years and subsequent interviews only every five years thereafter.[7] In 1999, at the parole board's urging, the requirement of any personal interview after the first one was eliminated. These changes have all applied to all parolable lifers, regardless of when they were sentenced.

The Parole Board View: "Life Means Life"

Decisionmaker Distinguishes Parolable from Non-parolable Life

In material provided for the October 2001 Annual Judicial Conference, the parole board sought to clear up "misconceptions" about "what exactly constitutes a life sentence."[8] The board explained that the distinction between a parolable and non-parolable life sentence is "who makes the final release decision." While release from a non-parolable life term for first-degree murder can occur only if the governor grants commutation, with a parolable life term, the parole board makes the final decision "after obtaining jurisdiction from the sentencing court."[9]

The board went on to explain that if a majority of members have interest in proceeding, the board contacts both the sentencing (or successor) judge and the county prosecutor. Both have 30 days to make written objections to parole. While the board explained that only the judge can stop the parole process, it then said: "If neither the sentencing judge or prosecutor object, the matter is scheduled for public hearing."[10] The board then makes its final decision by majority vote after the hearing.

The conference materials further state at pages 15-16:

> "The lifer law process does not consider any particular parole board member's personal opinion, but rather, is a long standing process that has long historical roots in Michigan. There are many misconceptions about the lifer law process, and what exactly constitutes a life sentence. 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. State law provides and clearly defines the process which allows for parole or commutation from a life sentence.

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[7] See summary in *Shabazz v Gabry*, 123 F3d 909, 910-912 (CA 6, 1997).

[8] "Michigan Department of Corrections, Field Operations Administration, Office of the Parole Board", prepared for Michigan Judges Association, Annual Judicial Conference, Traverse City, Michigan, October 1-3, 2001, at p. 15.

[9] *Id*., at p. 14.

[10] *Id*.

> The statistics over the past 30 years have been fairly consistent. An average of 8.3 prisoners per year, serving a life sentence, have been released through the lifer law or commutation process.

Presentence Investigation Report and Choice of Life Term are Key Considerations

Again, from the conference materials (pp. 15-16):

> Michigan has 83 counties, 57 circuit courts, and approximately 210 circuit court judges. One of the most important documents utilized by the Michigan Parole Board is the presentence investigation report (PSI). Generally, the PSI makes no mention of plea negotiations, reduced sentences, or any "mutual understanding" between the judge, prosecutor or prisoner's counsel. The determination as to whether any case has merit and deserves parole, will always be based on the nature of the crime, past criminal record, and overall adjustment and behavior, etc.
>
> There is a higher threshold for lifers due to the nature of their sentence. The Michigan Parole Board does not, nor will they in the future, "read into" the statute; to provide for something the law does not provide for.
>
> The parole board values the importance of the life sentence in protecting the public. There are usually good reasons why a life sentence was imposed versus an indeterminant [sic] sentence. When a judge hands down a life sentence, the parole board reviews that case very carefully. The parole board will not "re-sentence" the prisoner. Rather the parole board makes a determination whether the prisoner has earned parole. The responsibility and authority to parole a prisoner from a life sentence is clearly on the parole board. If a judge or prosecutor wishes to convey additional information regarding a particular case (or sentence), that information in some way needs to be included in the presentence investigation report or on the Judgement [sic] of Sentence.[11]

What Do Critics Say?

Treating All Lifers Alike is Wrong

Those who disagree with the parole board's interpretation of the lifer law contend that the board is effectively erasing the distinction between non-parolable and parolable life terms, and is treating people sentenced for a variety of crimes as if they had committed first-degree murder. The critical distinction between parolable and non-parolable lifers, they say, is not who makes the ultimate release decision but that one group of lifers is presumed to get meaningful

[11] In written testimony dated September 28, 1999, given to the Michigan House Committee on Criminal Justice in support of the 1999 statutory amendments, Parole Board Chairperson Stephen Marschke stated:

> "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."

consideration for release, when they are eligible, and the other group will presumptively spend their entire lives in prison.

Board Negates Intent of Legislature, Sentencing Judges

The board's "life means life" policy, critics say, nullifies the legislative intent that parole be an actual possibility after 10 or 15 years, depending on individualized assessments of each prisoner's conduct and achievements. The policy also negates the intent of sentencing judges who, especially 20 and more years ago, believed that parolable lifers who behaved well in prison would be released after a period of years.[12] Board policy also negates the value of plea bargains in which the parties thought that a parolable life term had significant value compared to a sentence of non-parolable life.

Harsh Policies and Racial Disparities are Being Perpetuated

Critics also point to the fact that many prisoners sentenced to life before 1984 would not receive a life term under sentencing guidelines that were designed to curb excessive sentences by individual judges and prevent racial disparity. Instead of compensating for unduly harsh sentences imposed long ago, the parole board is perpetuating the very practices sentencing

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[12] To support this point critics offer transcripts and other documents in which judges described their understanding of the life sentences they imposed in particular cases. For instance:

People v Taurus Duncan, Wayne County Circuit No. 77-725510-FM, Sentencing Transcript, 12/12/77, p. 9 (Judge James N. Canham advises Defendant: "In this particular offense you do have the right to parole after ten years, do you understand that, that is depending a great deal upon how you conduct yourself in prison.").

People v Henry Fante, Macomb County Circuit No. 77-360-FY, Sentencing Transcript, 10/7/77, p. 5 (Judge Alton Noe advises Defendant: "now I am informed that the life sentences, which, of course, will be the most important for you, that there is a possibility, depending upon your behavior in prison, that it probably will be cut down to maybe ten or twelve years.").

People v Roy Jackson, Recorder's Court No. 77-6481, Resentencing Transcript, 6/11/85, p. 6 (Judge Joseph A. Gillis, reimposing a life sentence after appeal despite Defendant's request for a 40-60 year term, notes that Defendant will be parole eligible in two years and states: "Well, you are getting along very well in prison, and apparently you should have no trouble with parole.").

Letter dated 11/30/90 to parole board from Oakland County Circuit Judge John N. O'Brien re: life term imposed on Dennis Davey in 1975 in lieu of 25-40 years, notes: "I would like to state as clearly as possible that it was my understanding then, as it is now, (an understanding that I think is shared by most trial court judges) that when such a sentence is imposed, the Parole Board opens a parole file on the person after 10 years and thereafter the average release will occur after 14 years. This was discussed thoroughly by this court, the Prosecutor, and Defense Counsel at the time of sentence."

Letter dated 7/20/02 to Rep. Paul DeWeese from retired Saginaw County Circuit Judge Joseph R. McDonald re: life sentence imposed on Eduardo Guerrero in 1972, stating: "I have been told that in the last few years the Parole Board has considered that "Life means Life". If that is true then it would be a distortion of the law, and the reasons for my sentence. As stated before, I was well aware that I was imposing a life sentence on a 17 year old, and to him that was an eternity. That was why I told him that the law allowed a consideration for parole after 10 years. I would have selected a term of years, with a minimum and a maximum otherwise, if life meant the rest of his natural life. I would not have set a minimum of 29 years, because I wanted an incentive for him to use those years to better himself."

guidelines were adopted to correct. The board's policy treats unfairly those lifers who have been told for decades by the parole board itself that their release would depend on their own maturation and good conduct, leading many to be model prisoners. The policy also wastes enormous amounts of taxpayer dollars by keeping people locked up long past the time they pose any danger to the community.[13]

Decisions are Not Based on Meaningful Assessments

Finally, critics point to the board's procedure for reviewing lifers and its description of its role. Contrary to the board's representation, it obtains jurisdiction from the statute, not the sentencing court. While the court can prevent release by objecting, the initial responsibility for assessing the prisoner is the board's. The shift from personal interviews to paper file reviews once every five years demonstrates a presumption against paroling lifers, not an intention to conduct meaningful individualized review. The board's own statements suggest it is effectively giving veto power over lifer paroles to prosecutors, although this is contrary to the statutory scheme.

The Historical Record

1941 Law Created Parole for Lifers

Until 1941, lifers could only be released if the Governor granted commutation or a pardon. 1941 PA 173 created a parole process for those serving life for offenses other than first-degree murder. The Legislature's purpose was to differentiate those lifers whose release depended on the politically sensitive process of executive commutation or pardon from those who could be released by the parole board without the Governor's intervention.

The newly created procedure was a hybrid that combined features of both the commutation process used for mandatory life sentences and the parole process used for those serving indeterminate terms. It was described in *Corrections in Wartime*, the Department of Corrections' Third Biennial Report, 1941-1942, at pages 91-92:

> "Of considerable importance in the entire field of penal affairs is the operation of the so-called Lifer Law, Act No. 173, Public Acts of 1941. This act went into effect on January 9, 1942. In brief, the act grants the Parole Board jurisdiction to parole any lifer except one serving for first degree murder, after the service of ten calendar years, providing the sentencing judge, if alive, does not object to the granting of parole. The law also includes men serving indeterminate sentences whose minimum terms were so long that they would normally be required to serve in excess of ten calendar years before becoming eligible for parole consideration. In effect, this law now provides that every man and woman serving in the prisons of the state, with the exception of first-degree murder cases, is eligible for parole after the service of ten calendar years.
>
> A parole eligibility examiner was added to the Bureau staff to prepare cases for submission to the Parole Board. At the present time there are approximately eight hundred and fifty persons, both lifers and men serving indeterminate sentences,

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[13] At an average annual cost per prisoner of over $30,000, every additional five-year continuance of a single lifer costs approximately $150,000.

who come under the provisions of the Lifer Law. Since January 9, 1942, approximately seventy-five examinations have taken place among the eligible group of about two hundred who have served ten years or more. Four inmates were granted public hearings and ordered paroled under this law, and approximately fifteen other cases have been favorably regarded for possible early release. Prison officials say the law has improved morale among life termers. The Parole Board now has a definite program for the selection of meritorious long termer cases for release action.

In the past, Michigan had the second largest number of lifers serving of any state in the country. It was one of the few states in the country with a sizeable number of lifer cases which had no provision in the law for release of these persons other than by invoking the pardoning or commuting power of the Governor. With the Lifer Law, deserving cases may now be considered for release in a systematic and searching manner without the necessity of disturbing the Governor's office. Although lifer cases do not go through the Governor's office, statutory safeguards identical with those present in the pardon and commutations procedure are thrown around each such release to guarantee complete public awareness."[14]

Interview Procedures used to be Proactive

The historic view of lifer paroles may also be gleaned from the parole board's own prior practices regarding lifer interviews, described above. Regardless of the prisoner's sentence, the interview serves the function of acquainting the board with the prisoner so the board can exercise its discretion in a rational and informed manner.[15] The interview also informs the prisoner about the board's expectations. For decades, board members began personally interviewing lifers long before the prisoners were even eligible for release. The MDOC explained the practice in its 1974 Annual Report at page 101:

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[14] Another quotation from the Biennial Report sheds further light on the intent of the 1941 Act:

> "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." *Id*. at pp. 93-94.

[15] The functional similarity of the review process for lifers and non-lifers is further illustrated by the fact that the lifer process was also applicable to prisoners serving long indeterminate sentences. Until the law was changed to require everyone serving an indeterminate term to complete their minimum sentences (minus applicable credits) before coming within the board's jurisdiction, every prisoner who had served 10 calendar years on either a life sentence or a long indeterminate sentence could be considered for release under the procedures of the lifer law.

> "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."

The frequency of lifer interviews was as significant as the stated purpose. Although the precise interview schedule for lifers was adjusted as it was relocated from internal board memoranda to administrative rule to statute, every change increased the required frequency until 1992, when the board began reducing its direct contact with lifers dramatically.

How Have Lifer Parole Rates Changed Over Time?

For Decades, Eligible Lifers Were Paroled Routinely

MDOC data reveals a dramatic change during the last six decades in the number of lifers paroled each year. In the 1940s, the average was 13.7. It was 11.2 in the 1950s and 12.4 in the 1960s. In the 1970s it declined to 7.4, dropped further to 4.9 in the 1980s, and was only 3.1 in the 1990s. In the decade of the 60s, 124 lifers were paroled. In the 1990s, it was only 31 – a decline in raw numbers of 75 percent.[16]

Significantly, the data does not indicate the number of lifers who had served more than 10 years. Thus the raw numbers do not reveal what proportion of the lifers actually eligible for parole in a given year received it. Since the pool of eligible lifers was far smaller in the 60s than it is today, the rate of release, i.e., the proportion of eligible prisoners who were paroled then, was undoubtedly much more than four times greater.

Piecing together MDOC statistics sheds some light on the question. According to the Third Biennial Report, when the lifer law took effect in January 1942, there were about 850 prisoners subject to its operation. These included both parolable lifers and those serving long indeterminate sentences. About 200 prisoners had served 10 years and were immediately eligible for parole. By the end of 1949, 110 lifers alone had been released. Since some additional prisoners became eligible each succeeding year, and we cannot distinguish lifers from LIDs, one cannot assume that over 55 percent of those eligible in 1942 were released. Nonetheless, the figures are suggestive.

Even more suggestive is the fact that by 1973, the MDOC Annual Report indicates a total population of 272 parolable lifers. That is, 30 years after the lifer law was enacted, the lifer population appears to have grown little if at all. This equilibrium can be achieved only if the number of lifers being released roughly equals the number being committed. [17]

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[16] Table prepared by Michigan parole board: "Parolable Lifers Granted Parole By Board".

[17] This hypothesis is easy to test. Starting in 1964, MDOC annual statistical reports show how many prisoners with parolable life sentences were committed to prison each year. In the ten years from 1964-1973, MDOC reports show 254 prisoners committed to serve parolable life terms [1964 = 8, 1965 = 3, 1966 = 7, 1967 = 3, 1968 = 37, 1969 = 45, 1970 = 43, 1971 = 43, 1972 = 37, 1973 = 28].

In 1973, a new chart was added to the annual report. It shows the distribution of sentences among all prisoners incarcerated at year-end, regardless of when they were sentenced. The 1973 report shows 272 prisoners serving life. Without knowing which prisoners may have died or obtained release by some means other than parole, it appears that, at most, 18 lifers were eligible for parole by the end of 1973. (272 prisoners serving life in 1973 *minus* 254

A case-by-case examination of the available data confirms the appearance that the pool of lifers eligible for consideration in the 1970s and early 1980s was small because people were commonly released in 14 years or less. In 1974, the 17 lifers released included 14 convicted of second-degree murder who had served an average of 14.5 years. In 1981, the 14 lifers who were released included 10 convicted of second-degree murder who had served an average of 14.3 years. Even commutations of mandatory life sentences for first-degree murder used to be common. In 1973 alone, there were 21.[18]

Decreased Rates Reflect Shift from Rehabilitation to "Tough on Crime"

Clearly parole board practices began to change by the late 1980s, although at that point the dearth of lifer paroles may have been as much a function of parole board overload as changed philo-sophy.[19] As "tough on crime" legislation and sentencing practices took hold, parole board attitudes also hardened. The board of the late 80s was less inclined to credit individual efforts at rehabilitation and far more likely to worry about the risk that a parolee would commit a serious offense.[20]

When the reconstituted board took over in late 1992, it inherited dozens of lifer cases in which the "old board" had shown interest but regarding which there had been no action. After reconsidering these cases, the "new board" held a few dozen public hearings and actually paroled 14 lifers in 1994. Then the pace slowed to a crawl. Although more lifers became eligible every year, only 12 were paroled from 1995-1999. In 2000, there were three more, all convicted of possessing over 650 grams of drugs. There were no life sentences commuted.

In 2001, three prisoners convicted of first-degree murder had their sentences commuted, apparently all based on medical considerations. Seven lifers received paroles. Three were 650

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lifers sentenced within past 10 years *equals* 18 lifers who had served 10 or more years by 12/73.) According to MDOC data, the number of lifers paroled the following year was 18. Thus, it appears that in 1974, every lifer eligible for release was paroled.

[18] This information appears in two tables provided by the MDOC in response to Freedom of Information Act Requests: "Michigan Lifers Paroled Between 1/1/70 and 06/01/01" and "Commutations Approved by Governor, 1969-2001".

[19] The 1982 statutory increase in the frequency of lifer interviews caused a large scheduling backlog for the board. As the chairman explained to a lifer who inquired when she would be interviewed next: "We are doing our best to deplete this backlog. We are also faced with a large number of prisoners who are immediately eligible for parole on their minimum sentence which limits the number of lifers and long indeterminates that we can add to each hearing list. We will schedule an interview for you as the schedule permits, but it is impossible to predict when your hearing might take place. Prisoners with the greatest number of years served on their life or long indeterminate sentence will be scheduled first." Letter from William J. Hudson to Victoria Hollis, dated October 10, 1985. In 1985, the Michigan prison system began a huge and very rapid expansion that increased the parole board's overall caseload accordingly.

[20]There is no evidence to suggest that lifers pose any greater risk for recidivism than other prisoners serving for the same offenses. The fact that lifers have usually been sentenced for murder or other serious assaultive offenses does not indicate that they are high risks for re-offending. Michigan Department Of Corrections four-year follow-up studies of parolees have consistently shown that homicide and CSC offenders have the highest success rates on parole of any major crime group. See Girard, *Michigan Prison Sentences – A Guide for Defense Attorneys*, 1996 (Lansing: Michigan Appellate Assigned Counsel System, 1996), pp. 163-164.

drug lifers; two were women convicted of murder for domestic killings; one was serving for criminal sexual conduct and one was serving for armed robbery.

As of early February 2002, eight more parolable lifers were scheduled for public hearings. All were convicted of delivering over 650 grams of drugs. It appears that most of them have not served enough years to be parole-eligible and are being considered for commutation. [21]

Appellate Court Interpretations of the Lifer Law

Johnson **Holds Lifers Eligible at 10 Years, Long Minimums must be Served in Full**

The appellate courts had little occasion to interpret the meaning of parolable life until December 1984, when the Michigan Supreme Court decided *People v Johnson*.[22] In *Johnson* the Court considered the impact on the lifer law of a successful 1978 ballot initiative. "Proposal B" prohibited granting parole to prisoners convicted of a long list of offenses until they have served their minimum sentences without reductions for good time, special good time, or special parole. Prosecutors argued that the minimum term of a parolable life sentence is life. However, the majority found that the concepts of "life" and "any term of years" are mutually exclusive and that life describes only the maximum sentence that can be imposed. Thus, the majority held, "Proposal B" had no impact on the lifer law and parolable lifers remain eligible for release after serving 10 years. The dissenters noted the anomalous result that lifers would become parole eligible in 10 years while people sentenced to indeterminate terms exceeding 10 years would have to serve their entire minimums.[23]

Courts Debate Whether Life Is Harsher Than Long Minimum

Johnson led some judges to impose 40, 60, and even 100 year minimums in lieu of life terms for the express purpose of preventing parole eligibility as a practical matter. However, *Johnson* was decided shortly after the Supreme Court implemented appellate review of the length of sentences that are within statutory limits. Over the next 12 years, the appellate courts grappled with appeals from extremely long indeterminate terms. As defendants claimed that such sentences were impermissible because they were effectively longer than life, the courts repeatedly tried to resolve the question of which sentence is actually harsher – parolable life or a very long indeterminate term.

The seminal case was *People v Hurst.*[24] The 27-year old defendant argued that his concurrent sentences of 40-80 years were excessive. Noting that a lifer could be considered for release after serving 10 years, the *Hurst* panel was reluctant to affirm the defendant's sentences without

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[21] See note 2, *supra.*

[22] 421 Mich 494 (1984).

[23] In 1982, the legislature restored some sentence reductions for good behavior in the form of "disciplinary credits", although the size of the potential reduction was far smaller than the old "good time" statute allowed. In 1998, in the guise of "truth in sentencing", the legislature voted to phase in the elimination of disciplinary credits on all future sentences. Lifers were never eligible to receive either good time or disciplinary credits. The 10 (or 15) years they are required to serve under the lifer law are not subject to reduction by any means.

[24] 155 Mich App 573 (1986).

understanding exactly what they entailed. The Court remanded the case for an evidentiary hearing at which then parole board chairperson William Hudson testified. Mr. Hudson emphasized that lifers who come within the board's jurisdiction face a number of hurdles before they can be released, and that if the sentencing court objects, the lifer can never be paroled. Nonetheless, the Court ultimately concluded that a life sentence is less harsh than a 40-year minimum because life carries the possibility of release any time after 10 years, while a 40 year minimum (minus disciplinary credits) requires service of 32 years and six months before the board obtains jurisdiction.[25]

Other Court of Appeals panels took the opposite view. For instance, in 1995, the Court concluded in *People v Lino (After Remand)*[26] that a 40-60 year sentence was less harsh than life. Thus the trial court had erred in imposing a life term in order to give the defendant an advantage. *Lino* relied partly on the proposition that, as a matter of law, when the statute allows life or any term of years, life is by definition the greater penalty. However, the *Lino* panel also relied heavily on statistics showing that relatively few lifers had been paroled since 1986. It reasoned that although lifers may come within the board's jurisdiction more quickly than those with long indeterminate terms, as a practical matter the lifers are rarely released.[27]

Finally, in 1996, a special seven-member panel of the Court of Appeals was convened to resolve the conflict. In *People v Carson*,[28] that panel reviewed the relevant case law. It noted in particular the Supreme Court's holding in a 1994 case[29] that it is permissible for a trial court to impose a term of years the defendant could not possibly serve, and therefore to make an indeterminate term effectively non-parolable. The Supreme Court had explicitly acknowledged that a defendant might be better off with a life term than a long minimum because of parole eligibility under the lifer law. The *Carson* panel went on to list various factors, such as the availability of disciplinary credits, the defendant's age, and the possibility that the sentencing court would object to parole, that can affect whether, in a given case, life or a long indeterminate term would be the harsher sentence.[30]

Ultimately, the Court in *Carson* threw up its hands and decided not to decide. Both life and very long indeterminate terms are among the most severe sentences available, it said. A trial court need not determine which would be greatest, so long as the sentence actually imposed is proportional to the offense and the offender.

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[25] *People v Hurst (After Remand),* 169 Mich App 160 (1988).

[26] 213 Mich App 89 (1995).

[27] The same result had been reached without any analysis in *People v Biggs*, 202 Mich App 450, 456 (1993), when the prosecution stipulated that "the trial court erred in imposing a life sentence under the erroneous belief that a life sentence would make defendant eligible for parole sooner than a long term of years."

[28] 220 Mich App 662 (1996).

[29] *People v Merriweather,* 447 Mich 799 (1994).

[30] The *Carson* panel also noted: "The analysis becomes even murkier when statistics are utilized to determine whether parolable life or a term of years is a greater punishment." While *Lino* had relied on the fact that only 50 lifers were released in the 10 years from 1986-1995, 30 had been released in just three years from 1979-1981. *Carson*, *supra* note 19, at pp. 675-676.

Recent Cases do not Address Old Sentences

These relatively recent decisions shed little light on the interplay between current parole board policies and life sentences imposed decades ago. The appellate courts were assessing sentences imposed since 1985, after the rate of lifer paroles had decreased substantially, in light of those lower rates. The courts have not yet assessed the impact of current parole board practices on lifers who have been parole-eligible for many years. They have not decided, for instance, whether parole board practices have resulted in lengthening the time served by lifers to an extent that violates the *ex post facto* clause,[31] whether due process is violated when the factual premises for a sentence subsequently become invalid, or whether a guilty plea is rendered involuntary when the expectations that underlay it are nullified after the fact.

The *Hurst-Lino-Carson* line of cases does make it clear that, until recently at least, there has been no body of law suggesting that "life means life" and no consensus within the judiciary to that effect. On the contrary, in the "get tough" atmosphere of the late 1980s, judges who wanted to avoid the possibility that a particular defendant would be released did not impose a life sentence but chose a long minimum term instead.

WHAT MICHIGAN JUDGES SAY

How the Survey was Conducted

The questionnaire and cover letter were mailed on January 2, 2002 to 210 current circuit judges, 166 retired circuit and Recorder's Court judges, and 14 current Court of Appeals judges who formerly served on a trial bench. The questionnaires were not coded to track the identity of respondents and the anonymity of responses was guaranteed.[32] Eleven surveys were returned by the post office as undeliverable. A total of 98 judges sent back the questionnaire, however three did not complete it. Thus a total of 95 judges, or 25 percent of the 379 contacted, provided substantive responses.

The responses are summarized in Appendix B. For answers that could be quantified, the number and percentage of respondents who gave each answer are presented. Not all respondents answered every question. When the respondent either skipped the question or marked it "not applicable" or "don't know", it was coded as "no answer". Narrative responses to Questions 9, 12 and 15, as well as some miscellaneous comments, are presented verbatim.

Who Responded?

Of the 95 judges who responded, 47 are currently sitting, 46 are retired and two did not identify their current status. Twenty-three indicated that they had been prosecutors before taking the bench; 19 said they had been defense attorneys. As the list below indicates, the respondents represent at least 31 of Michigan's 57 circuits, 43 of 81 counties, and every area in the state.

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[31] See, e.g. *Garner v Jones*, 529 US 244; 120 S Ct 1362; 146 L Ed 2d 236 (2000) (whether risk of lengthened punishment is sufficient to violate *ex post facto* clause depends on factual assessment of how parole board is exercising its discretion under internal policy statements and actual practices).

[32] Since the Michigan Freedom of Information Act does not apply to the State Bar, the survey results are not subject to disclosure through FOIA requests.

Circuit	County	Respondents
2nd	Berrien	1
3rd	Wayne (inclu. Rec's Ct)	30
4th	Jackson	2
6th	Oakland	7
7th	Genesee	3
8th	Ionia/Montcalm	2
9th	Kalamazoo	2
10th	Saginaw	2
13th	Grand Traverse, Antrim, Leelanau	1
14th	Muskegon	4
16th	Macomb	2
17th	Kent	3
18th	Bay	2
23rd	Iosco/Oscoda	2
25th	Marquette	1
27th	Newaygo/Oceana	2
28th	Missaukee/Wexford	1
29th	Clinton/Gratiot	1
30th	Ingham	1
31st	St. Clair	3
32nd	Gogebic/Ontonagon	2
34th	Arenac, Ogemaw, Roscommon	2
33rd	Charlevoix/Emmet	1
36th	Van Buren	2
37th	Calhoun	1
39th	Lenawee	1
40th	Lapeer	2
42nd	Midland	2
43rd	Cass	1
49th	Mecosta/Osceola	1
56th	Eaton	2
Unknown		6

What was Respondents' Understanding of the Lifer Law?

Many Judges Expected Lifers to Serve Less Than 20 Years

Question 2 asked each respondent to: "Please explain the understanding you had of a parolable life sentence in the 1970s and 80s." Fifty-nine respondents answered in terms of when they expected the prisoner would become "eligible" for parole. Of these, 39 gave the 10-year

minimum period required by the lifer law. Others gave periods ranging from 12 to 20 years. The average expectation was 12.0 years.

Twenty-four respondents indicated the number of years they expected a parolable lifer to actually serve. Of these, five said 10 years, 14 respondents said 15 years or less, 23 picked a number up to 20 years, and one said 23 years. The average expectation was 15.6 years.

Nine respondents simply indicated that a life sentence meant it was possible a defendant would spend the rest of his or her life in prison. Only four indicated the belief that it was probable the defendant would be in prison for the rest of his or her life.

It is unclear whether some judges used the term "eligible" in a broad sense to include when prisoners would be considered for release as a practical matter. Nonetheless, it appears that many judges viewed a parolable life term as one the prisoner could serve in less than 20 years. The belief that release occurred in 12 or 14 years was not uncommon.

This appearance is reinforced by the answers to Questions 6a and 6b, which both asked whether a life term was less harsh than various minimum terms of years. Question 6a focused on the years prior to 1978, when generous good time was still available on indeterminate terms and a 25-year minimum could be served in 12 years. Question 6b focused on the period from 1978-1992, after good time had been replaced by disciplinary credits but before the parole board was reconstituted. A 25-year minimum imposed during this period could be served in 20 years and four months.

Of the 71 respondents who answered 6a, 22 thought life was less harsh than a 15 year minimum, 14 thought life was less harsh than a 20 year minimum, and 21 thought it was less harsh than a 25-year minimum. Thus, 60 percent of all survey participants thought that a life sentence imposed before 1978 was less harsh than a minimum term that brought parole eligibility in 12 years to prisoners who received all their good time. Fourteen (15 percent) selected minimums of 30, 40 or more than 40 years as being harsher than life, while 24 (25 percent) gave no answer.

For the period after 1978, 67 respondents answered the question. The responses show a small shift in the perception of what a life sentence actually meant. Twenty-one judges said life was less harsh than a 15-year minimum, 15 said life was less harsh than a 20-year minimum, and 14 said it was less harsh than a 25-year minimum. Thus about 53 percent of all survey participants thought that a life sentence imposed between 1978 and 1992 was less harsh than a minimum term that could be served in 20 years and 4 months. Seventeen (18 percent) selected minimums of 30, 40 or more than 40 years as being harsher than life, and 28 (nearly 30 percent) gave no answer.

It is not possible to tell how much these judges accounted for practical differences between the same minimum terms imposed before and after the elimination of "good time". It is noteworthy, however, that for both periods, nearly two fifths of all respondents viewed a life sentence as less harsh than a 20 year minimum and over one fifth viewed life as less harsh than a 15 year term.

Two Thirds Considered Parole Availability When Selecting a Life Term

Without focusing on the number of years to be served, Question 4 simply asked: Was the availability of parole a factor you considered in imposing a life term? Two-thirds of the respondents said it was. Fewer than 17 percent of the respondents said parole availability was not a factor, while nearly 16 percent did not answer. Ten percent added comments stressing that if

they wanted to avoid the possibility of parole, they imposed very long minimum terms. Such long indeterminate terms would prevent the parole board from obtaining jurisdiction until the prisoner was elderly, at best.

"If You Wanted to Give a Long Sentence, You Gave Them 60-90"

One current Wayne County judge [002] [33] said: *"If you wanted to give a long sentence, you gave them 60-90. That sentence would keep a prisoner for life."*

Another current Wayne County judge [009] similarly stated: *"...the general belief then was that parolable lifers would indeed be paroled. I believe that was part of what led to "basketball" sentences prior to People v Moore."*

A former Wayne County judge [055] agreed: *"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."*

The belief was not unique to Wayne County. A retired 13th Circuit judge [036] also said:

"It was my expectation that a 'life' sentence would result in parole shortly after 10 years; that an indeterminate sentence was necessary to assure longer incarceration."

A Kent County respondent [040] noted: *"I understood that defendants were eligible after 10 years and I considered that in sentencing. In at least one case, I sentenced someone to life because I thought the guidelines for a CSC were too high and said why I was doing it. Despite that the defendant is still in after 12 years."*

And a former Eaton County judge [032] observed: *"…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."* (orig. emph.)

From these responses, it seems clear that judges expected parole to be a realistic possibility for lifers and assumed the parole board would exercise its discretion based on the defendant's in-prison conduct. Ironically, if they actually wanted a defendant to spend the rest of his or her life in prison, based on their own perception of the offense and the offender, these judges did not choose life sentences. Instead they selected minimum terms that allowed them to control the possibility of release.

The importance of parole availability in selecting a life term was reinforced by the answers to Question 7, which asked: Are you were personally aware of cases in which defendants were purposefully given parolable life sentences instead of indeterminate terms on the rationale they would obtain release sooner? Over 40 percent of the respondents said they were.

Defendants were Often Advised When to Expect Eventual Release

Question 8 asked respondents: Are you personally aware of defendants being advised that on a parolable life sentence they could expect to serve a specified number of years, assuming appropriate in-prison behavior? Again, over 40 percent said "yes". In answer to Question 8a, 30

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[33] Numbers in brackets are the identification numbers assigned to surveys when they were returned. See Chart: Narrative Responses to Judicial Survey Questions, By Status of Respondent and Circuit in Appendix B.

respondents indicated the number of years that was specified ranged from 10 to 20 years and averaged 12.9. Asked in Question 8b whether such advice would necessarily appear on the record of the plea or sentencing, 31 respondents said no, three said maybe, and only seven said yes. (Fifty-four gave no answer.)

Respondents were not asked who might have given advice off the record. While judges themselves may have expressed their own expectations during in-chambers discussions, the responses may also reflect judicial awareness that defense attorneys and even prosecutors conveyed to defendants, particularly in the context of plea negotiations, an assessment of what a life sentence "really means". Moreover, in response to Question 10, 18 judges acknowledged that, without specifying a number of years, they themselves advised defendants they sentenced to parolable life that release could be earned through good conduct, education, or program participation. Collectively these answers demonstrate that the criminal justice system, both formally and informally, encouraged defendants facing life to expect meaningful parole consideration in 10-20 years.

Judges Believed Parole Possibility Had Plea Bargain Value

The judges' understanding of what a life sentence meant was further clarified by their responses to Question 9, which asked: "When a defendant who was originally charged with first-degree murder pled guilty to second-degree murder and received a life sentence, what actual value did you think the bargain had for the defendant?" Many respondents simply noted the fact that the plea bargain permitted the possibility of parole. However some said that with good behavior, the defendant would be released in a specific number of years, such as 10 [038, 085], 15 [012, 051], 15-20 [017, 029], 20 [048], or 20-25 [016].

Still others described the benefit of such a plea bargain without quantifying it. For instance, a Berrien County judge [050] called the value *"substantial"*; a former Recorder's Court judge [018] called it *"tremendous"*, while a Van Buren judge [003] said the bargain had *"significant value"*.

A Bay County judge [053] said the bargain *"would be of great value because of the possibility of parole",* and three judges [082, 090, 094] noted that *good behavior could bring parole.*

Three others defined the bargain's benefit even more concretely. An Oakland judge [044] said: *"He would serve less time"*; a retired 13th Circuit judge [036] said the bargain: *"Substantially shortened time to be served"*; and a retired St. Clair County judge [026] said the bargain would *"definitely result in less prison time."*

Collectively, the responses to Question 9 demonstrate that Michigan judges see a significant distinction between a mandatory life term and a parolable life term. That distinction appears to be based not on who makes the release decision, but on the likelihood that release in the foreseeable future will actually occur.

Did Judges Believe that "Life Means Life"?

Several questions addressed the judges' reactions to current parole board policy. They elicited strong responses.

Two Thirds said "Life Means Life" was Not Their Intention

Question 12 asked directly: Does the current parole board's position that lifers should not be released because "life means life" accurately reflect your intentions whenever you imposed parolable life terms?" Fully two-thirds of the respondents said "No". Only 17 percent said yes, while 16 percent provided no answer.

Comments Show Wide Gulf Between Judicial Intentions and Parole Board Practices

The explanations that accompanied these responses demonstrate a wide gulf between judicial intentions and parole board practices. For instance, a Berrien County judge [050] said: *"I sentenced on the assumption that 'life' meant at least a 10 year sentence."* Similarly, a Wayne County judge [033] said: *"Most judges understood that a possible life sentence meant serving approximately 10 years."* A retired Wayne County judge [045] explained: *"I generally believed a defendant sentenced by me to nonmandatory life would serve between 15 and 20 years."* And another retired Wayne County judge [024] observed: *"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."*

Judges Refute Board's Reasoning

Several judges addressed the board's position in light of the law. Thus a former Genesee County judge [001] stated: *"Because of the lifer law, I did not think life necessarily meant life."* A retired Marquette judge [086] noted: *"Under the legislative scheme, 'life means life' simply is not accurate."* A Calhoun County judge noted: *"Mandatory life in prison is distinguishable from 'life' and statute and case law do not support parole board's position."* And one retired Oakland County judge [004] said: *"Life did not mean life when I was sentencing except for murder one which stated life without possibility of parole."*

Others addressed the board's reasoning. A Bay County judge [027] observed: *"If it is parolable, it can't mean 'life is life', logically."* Another retired Oakland County judge [012] made the point with increasing emphasis in a series of responses. Replying to one question the judge stated: *"Always intent of prosecutor, defense and judge was for earlier release."* Replying to the next question, the same judge asked: *"Why would any reasonable person think the sentence for 1 & 2 should be the same?"* And finally, answering his own rhetorical question, this judge subsequently commented: *"No judge in his right mind would want murder one and murder two the same severity."*

A Lapeer County judge [049] with over two decades on the bench stated: *"I never considered that 'parolable life' meant the same as mandatory life. I believe other judges of my time (1969-1992) would agree."*

A retired St Clair County judge [30] explained: *"If the defendant made no effort to change, or remained unremorseful, or had a poor prison record, etc. then life meant life."*

And a retired Midland County judge concluded: *"Previous: completely contrary to my understanding when sentencing to a non-mandatory life term, e.g., 2nd degree murder. Now: Know life means life!*

Less Critical Judges are Minority

A few respondents were less critical of the board's position. For instance, one Oakland County judge [080] observed: *"Life means the defendant is so dangerous that he or she needs to be very old before released to society."*

A Saginaw respondent [006] stated: *"The presumption that life means life is sound but I am aware before truth in sentencing was enacted, it wasn't assumed that life meant life."*

A judge from the Upper Peninsula [079] said: *"I believe society, its institutions and citizens benefit by "truth in sentencing". All of this supposed confusion is reduced, perhaps eliminated, when life means life, 20 means 20 and 20 to 40 years means at least 20 but not more than 40."*

And a retired judge who did not indicate a circuit or county stated: *"When a convicted criminal is sentenced to life in prison, it should mean just that, i.e., life, except in very rare extraordinary circumstances. A life sentence replaced the death sentence with the express understanding that the convicted criminal would never be free again to prey on society. If life sentences are regularly reduced, this would be a tremendous fraud on the public."*

Majority Believe Judicial Objection Protects Against Inappropriate Release

The majority of respondents are not concerned that lifers will be released contrary to the wishes of the sentencing judge. Question 11 asked: Do you believe the judicial objection provision of the lifer law provides adequate protection against the release of parolable lifers who the sentencing judge actually intended to incarcerate for life? Fifty-eight percent said "Yes". Eighteen percent did not answer. However, 23 percent disagreed. While 10 simply said "No", 12 noted that the original sentencing judge is often retired when parole consideration occurs and the successor judge may not have adequate information about the predecessor's intentions.[34] The majority of respondents appear to be far more concerned about the parole board choosing <u>not</u> to release people against the wishes of the sentencing judge.

Over 60 Percent Support Resentencing to Release Lifers in Appropriate Cases

Question 14 asked: "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 being denied release contrary to the actual intentions of the sentencing judge?" Despite the additional burden this would place on trial courts, over 60 percent of the respondents said "Yes". Another six percent said "No", but added a comment to the effect that the solution is to change parole board practices. Thus 66 percent of all respondents support the concept that some action should be taken to promote the release of parolable lifers in appropriate cases.

Twenty-five judges (27.5 percent) said "No" to Question 14, and six (6.6 percent) did not answer it. While few of the negative answers were explained, the following note from a Wayne County

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[34] Respondents were not asked whether, the sentencing judge's actual intentions aside, the public hearing process and the opportunity for prosecutors to appeal provide an adequate check on the correctness of parole board decisions to release lifers.

judge [071] may reflect the concerns of others: *"Opening up judicial review of prior legal sentences would lead to every sentence (life or not) being reviewed with hearings, testimony, transportation, attorney fees as often as prisoners wish to seek hearings – maybe monthly!"*

How Did Respondents View Parole Board Performance?

Perhaps the most revealing aspect of the survey was the observations judges made about how the parole board is doing its job. Many were strongly critical. The following comments are representative.

Board is Ignoring History

"The parole board should not apply 'life means life' to sentences before 1993.

Berrien County [050]

"The parole board is ignoring the reality of the way those cases were handled under parole boards prior to Gov. Engler's appointments."

Macomb County [048]

"I believe that virtually every judge that presided over felony trials in the 60's, 70's, 80's and 90's perceived that there was a significant difference between the murder first mandatory life 'in solitary confinement at hard labor' and a parolable life sentence. The parole board's policy is an indefensible rejection of their duty to exercise responsible discretion."

Wayne County [021]

"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."

Kent County [040]

Board Is Usurping Role of Sentencing Judge

"It is obviously unfair for the parole board to become the sentencer, in fact, instead of the judge who heard the case."

Wayne County [090]

"In general, in all paroles, I believe the board acts like a 2nd sentencing judge. It happens with lifers and indeterminate sentences, especially sex crimes."

Wayne County [055]

"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."

Oakland County [044]

"As far as I know the parole board has not surveyed judges to see what the judges wanted. I do not think most judges agree with the policy of the parole board."

Kent County [087]

Board is Failing to Exercise Its Own Discretion

"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."

St. Clair County [058]

"The parole board was established to use its discretion to recognize and reward change in the attitude of prisoners."

Oceana & Newaygo Counties [028]

"I don't believe the rationale. I think it is a convenient way to avoid making very difficult release decisions. That rationale is the prop supporting one political choice. 'Actual intention' is a prop supporting the other."

Recorder's Court [054]

"I expected the parole board to make parole decisions independent of the life sentence."

Midland County [039]

Board is Unfairly Ignoring Rehabilitation

"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."

Wayne County [095]

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

Muskegon County [10]

"I seldom felt sufficiently prescient to control a parole decision that would be made 15-20 (or more) years in the future, without any information about intervening conduct. The more time that passes, the less significant is the intent (whether severe or lenient) of the sentencing judge. By adopting such a policy, the parole board abdicates its discretionary duty, and attributes an intent to a sentencing judge which I, for one, did not have."

Marquette County [086]

"Unfair – unreasonable"

Lapeer County [094]

A Few Said "Leave it Alone"

While none actually praised the board's conduct, a few respondents expressed support for the board's independence:

"I'll leave it up to parole board."

Wayne County [063]

"Believe parole board should be able to make its own decision based on fact of each individual case.

Arenac, Ogemaw, Roscommon [041]

"The judge has his role in the indeterminate sentence law and the parole board, its role. The indeterminate sentence law in its pure form is a good law. It has been so tampered with by court decision and 'good time' – no one knows what the hell is going on."

Newaygo & Oceana Counties [091]

CONCLUSION: WHAT ARE THE SURVEY'S IMPLICATIONS?

Judges Say "Parolable Means Parolable"

The survey results indicate that most Michigan trial judges, present and former, do not agree with the current parole board's treatment of parolable lifers. This is evidenced in part by the high response rate and the strong views expressed in many narrative responses. It is clearly demonstrated by the answers to key questions. Two thirds of the respondents said the availability of parole was a factor they considered when imposing a life sentence. Two thirds said the parole board's view that "life means life" does not reflect their intentions when they imposed parolable life terms.

The majority of respondents believed parolable lifers would actually serve 20 years or less, depending on their behavior in prison. Many thought release would occur in 10, 12, or 15 years. Some defendants were actually told this at the time of sentencing, whether on or off the record. Many were encouraged to plead guilty in exchange for a parolable term, in the belief that was more lenient than either mandatory life without parole or a very long minimum term. The prevalent assumption was that, once a lifer came within the parole board's jurisdiction pursuant to the lifer law, the parole board would assess the prisoner's conduct since incarceration and decide whether to grant parole based on the current risk to the community.

This assumption was buttressed by the history and terms of the lifer law itself, parole board interview practices, knowledge of individual cases, and the actual rate of lifer paroles for several decades. As the declining rate of lifer paroles in the 1980's demonstrates, judges' perceptions may have lagged behind changes in parole board practices. After *People v Johnson* was decided in December 1984, some judges still felt compelled to impose extremely lengthy minimum terms instead of life sentences to be sure that the parole board did not release a particular offender when it obtained jurisdiction in 10 years. Thus it appears that at least until the lifer law was amended in 1992 and the parole board was reconstituted the same year, judges, particularly those whose perceptions were rooted in long experience, continued to impose parolable life terms in the belief that individualized review might well bring release between 10 and 20 years.

Should There be a Remedy?

Hundreds of parolable lifers who have now served more than 15 years are being denied parole despite the expectations of the judges who sentenced them. Whether they referenced a specific term of years at a particular individual's sentencing, trial judges in the 1970s and 1980s had a widely shared understanding of the consequences of imposing a parolable life term. Had those judges known what today's parole policies would be, some would have opted for a 15- or 20-year minimum instead. With available good time or disciplinary credits, many prisoners might have been released years ago.

Should there be a remedy for these failed expectations? Certainly, when they selected a life term, judges knowingly created the possibility that a prisoner would be incarcerated for the rest of his or her life. And they knew, as the parole board now emphasizes, that while a judge can prevent the release of a lifer by objecting, the parole board has total discretion in deciding whether it has any interest in proceeding toward release in the first place. Therefore, it is easy to

say that those sentencing judges, and the defendants they sentenced, assumed the risks that parole board policies would change over time.

It is easy to say, but is it fair? And, at a time when there is so much value placed on "truth in sentencing", is it good public policy to make prisoners serve sentences that are far harsher than any parties to the sentencing proceeding intended them to be? Is it even constitutional?

Two thirds of the survey respondents thought some means should be available to enable the release of parolable lifers with good records when the intent of the sentencing judge is being violated. While some thought the answer lay with compelling the board to exercise its discretion, over 60 percent thought resentencing should be permitted by statute or court rule. This approach raises additional questions.

- Is the current motion for relief from judgment procedure under MCR 6.500 *et seq* an adequate vehicle for obtaining resentencing based on circumstances that changed after the original sentencing?
- Is a dramatic change in parole board policies the equivalent of newly discovered evidence or a retroactive change in the law?
- Is a sentence that is not being executed as the judge believed it would be "invalid"?
- Is the parole board's interpretation of the lifer law "offensive to the maintenance of a sound judicial system?"
- Must a lifer have documentation of the judge's actual intentions in his or her case, or will circumstantial evidence suffice?

If a motion for relief from judgment is not an appropriate remedy, questions arise about what other process should be available.

- Is a statute or court rule authorizing resentencing in this specific situation necessary?
- Would judicial action to circumvent parole board decisionmaking violate the constitution's separation of powers provision or is the parole board's policy infringing on the sentencing court's domain?
- Should the parole statutes be modified in some way to address the current board's conduct?
- Or should the legislature establish a separate lifer review board to examine parolable lifer and possible commutation cases?

These are complex questions and their answers have many significant consequences. However, the response of Michigan judges to the controversy about parolable life sentences suggests they are questions that ought to be asked.

APPENDIX A

LETTER TO JUDGES & SURVEY QUESTIONNAIRE

PRISONS AND CORRECTIONS SECTION

STATE BAR **OF MICHIGAN**

To All Current and Retired Circuit and Recorder's Court Judges:

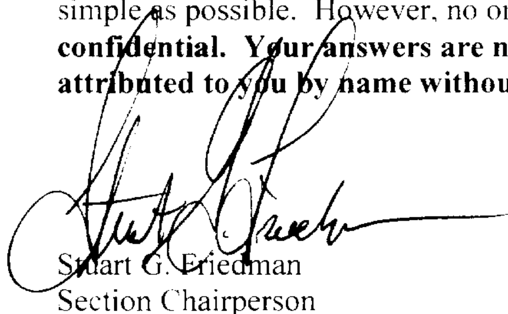
As you know, under Michigan's "Lifer Law" (MCL 791.234), defendants sentenced to non-mandatory life terms for crimes committed before October 1, 1992, come within the parole board's jurisdiction after serving 10 calendar years. However, under current parole board policies, almost no lifers are being released. The Prisons and Corrections Section is attempting to obtain an accurate understanding of what the Circuit and Recorder's Court judges had in mind when they imposed these sentences. To do this, we need your assistance.

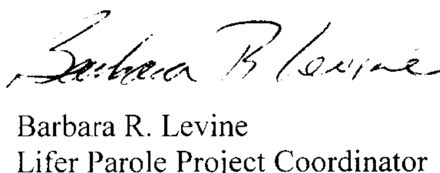
Roughly 800 parolable lifers have now served at least 15 years; many have served far longer. Many received life sentences as the result of negotiated pleas. And many were expressly told, by judges, probation officers, their own lawyers, or prior parole board members, that if they behaved appropriately they would actually serve 12, 14, or some other term of years. However, the current parole board insists "life means life." Board spokespersons say that if judges meant these defendants to serve 12 or 14 years, that's what the judges should have imposed.

Many of these lifers are first offenders or have minimal prior records. Many were very young when they were sentenced. Many have excellent prison records. All who have served more than 17 years lacked the benefit of sentencing guidelines and appellate review of sentence length.

The Prisons and Corrections Section is concerned about how the parole board's policy affects the individual prisoners who continue to be incarcerated and the taxpayers who must pay the cost. The Section is also concerned about the institutional roles of the legislators, judges, prosecutors, and defense attorneys who define, negotiate, and impose criminal penalties. We are collecting historical data to determine how the current policy relates to the sentencing practices of the people who filled these roles before the parole board was reconstituted in 1992. We will publish the results, along with data from such sources as MDOC reports and public records, in our Section newsletter and/or a separate publication. We hope those judges who were not on the bench before 1992, but were involved in felony sentencing in other capacities, will also choose to respond.

We appreciate that completing surveys is time-consuming. We have tried to keep this one as simple as possible. However, no one else can provide this information. **All responses will be confidential. Your answers are not subject to disclosure under the FOIA and will not be attributed to you by name without your express permission.** Thank you for your cooperation.





Stuart G. Friedman
Section Chairperson

Barbara R. Levine
Lifer Parole Project Coordinator

REPLY TO: P.O. BOX 12037, LANSING MI 48901-2037

Prisons & Corrections Section
State Bar of Michigan

JUDICIAL SURVEY REGARDING LIFER PAROLES

1. Please indicate the nature and years of all your experience with felony sentencing.

	From	To
Probation Officer………………………………	______	______
Prosecutor……………………………………...	______	______
Defense Attorney………………………………	______	______
Recorder's Court Judge………………………..	______	______
Circuit Judge: Circuit No._______…………… County/ies___________________________	______	______

2. Please explain the understanding you had of a parolable life sentence in the 1970's and 80's:

____

____

____

____

3. To your knowledge, did judges generally share that understanding? ____Yes ____No

4. Was the availability of parole a factor you considered in imposing/advocating a life term?
[please circle applicable choice(s)]

____Yes ____No

5. When you accept a *Cobbs* plea, or simply select an indeterminate term under sentencing guidelines, what do you understand, as a practical matter, to be the relationship between the actual time the defendant will serve and the:

a. minimum sentence ____

b. maximum sentence ____

6. Until 1978, generous credit for good behavior was available to all prisoners serving indeterminate terms. Then, a series of changes in the law narrowed or eliminated the opportunity of various prisoners to earn such credits. Since perceptions about the impact of credit on the amount of time a defendant will actually serve may affect judicial choices between an indeterminate and a life term, please answer the following.

a. Prior to 1978, did you believe a life term was more or less harsh than the following minimum terms of an indeterminate sentence:

	15 yrs.	20 yrs.	25 yrs.	30 yrs.	40 yrs.
life less harsh than	☐	☐	☐	☐	☐
life harsher than	☐	☐	☐	☐	☐

b. From 1978 - 1992, did you believe a life term was more or less harsh than the following minimum terms of an indeterminate sentence:

	15 yrs.	20 yrs.	25 yrs.	30 yrs.	40 yrs.
life less harsh than	☐	☐	☐	☐	☐
life harsher than	☐	☐	☐	☐	☐

7. Are you personally aware of cases in which defendants were purposefully given parolable life sentences instead of indeterminate terms on the rationale they would obtain release sooner?

____Yes ____No

8. Are you personally aware of defendants being advised that on a parolable life sentence they could expect to serve a specified number of years, assuming appropriate in-prison behavior?

____Yes ____No

8a. If yes, what number of years was specified? ____________

8b. If yes, would this advice necessarily appear on the record of a plea or sentence?

_____Yes ____No

9. When a defendant who was originally charged with first-degree murder pled guilty to second-degree murder and received a life sentence, what actual value did you think the bargain had for the defendant? ____

____

10. Did you ever personally advise a defendant you were sentencing to a parolable life term that he or she could earn release by demonstrating good conduct and accomplishments in prison?

_____Yes   ____No   If yes, what kind of accomplishments did you have in mind? _______

____

11. Do you believe the judicial objection provision of the lifer law provides adequate protection against the release of parolable lifers who the sentencing judge actually intended to incarcerate for life? _____Yes   _____No   If no, why not? ___________________________

____

12. Does the current parole board's position that lifers should not be released because "life means life" accurately reflect your intentions whenever you imposed parolable life terms?
_____Yes   _____No

If no, please explain. ____

____

13. Have you had any experience with the parole board when you had a difference of opinion regarding a lifer's parole? If so, please describe. _________________________________

____

14. 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 being denied release contrary to the actual intentions of the sentencing judge? _____Yes   _____No

15. Please provide any comments you wish to make regarding the parole board's policy of not releasing parolable lifers on the rationale that the trial judge chose to impose a life term.
____

____

____

____

Please complete this survey by January 28, 2002
and return it in the enclosed envelope.

____
Name (optional - please print)

APPENDIX B

SURVEY RESULTS

SUMMARY OF RESULTS

1a. Respondents' status

Currently sitting	47	49.5%
Retired	46	48.4%
Unknown	2	2.1%
Total	95	100.0%

1b. Respondents' criminal justice background

Former prosecutor	23	24.2%
Former defense attorney	19	20.0%

2. Respondents' understanding of a parolable life sentence in the 1970's and 80's (multiple responses were possible)

a. Fifty-nine respondents indicated the number of years in which they expected a defendant to be parole eligible.

10 years	39	41.1%
12 years	5	5.3%
13 years	1	1.1%
15 years	4	4.2%
16 years	1	1.1%
17 years	3	3.2%
18 years	1	1.1%
20 years	5	5.3%
No answer	36	37.9%

The average expectation was 12.0 years.

b. Twenty-four respondents indicated the number of years they expected a parolable lifer to actually serve.

10 yrs	5	5.3%
12 yrs	2	2.1%
15 yrs	7	7.4%
17 yrs	2	2.1%
18 yrs	1	1.1%
20 yrs	6	6.3%
23 yrs	1	1.1%
No answer	71	74.7%

The average expectation was 15.6 years.

c. Nine respondents indicated they thought it was possible the defendant might spend his or her entire life in prison.

d. Four respondents indicated they thought it was probable the defendant would spend his or her entire life in prison.

e. Seventeen respondents gave no answer of any kind.

3. Respondents' belief that other judges shared their understanding

Yes	80	84.2%
Don't know/no answer	15	15.8%

4. Whether availability of parole was a factor in selecting a life term

Yes	55	57.9%
Yes, if wanted to avoid parole would impose a long term of years	9	9.5%
No	16	16.8%
No answer	15	15.8%

5. What the practical effect of the maximum sentence is

Served only if prisoner has history of substantial misconduct	15	15.8%
Prisoners typically serve less	21	22.1%
Sets the outer limit on time prisoner may serve	21	22.1%
No answer	38	40.0%

6a. Prior to 1978, when generous good time credits were still available, a life sentence was less harsh than the following minimum terms of an indeterminate sentence:

15 years	22	23.2%
20 years	14	14.7%
25 years	21	22.1%
30 years	6	6.3%
40 years	3	3.2%
> 40 years	5	5.3%
No answer	24	25.3%

6b. From 1978-1992, when the availability of credit for good behavior was substantially reduced, a life sentence was less harsh than the following minimum terms of an indeterminate sentence:

15 years	21	22.1%
20 years	15	15.8%
25 years	14	14.7%
30 years	7	7.4%
40 years	5	5.3%
>40 years	5	5.3%
No answer	28	29.5%

7. Respondents personally aware of cases in which defendants were given parolable life instead of indeterminate terms on the rationale they would obtain release sooner

Yes	39	41.1%
No	50	52.6%
No answer	6	6.3%

8. Respondents personally aware of defendants being advised of specific number of years they could expect to serve on a parolable life term, assuming appropriate behavior

Yes	39	41.1%
No	49	51.6%
No answer	7	7.4%

8a. If yes to # 8, number of years specified

10 years	13	13.7%
12 years	3	3.2%
13 years	2	2.1%
14 years	1	1.1%
15 years	7	7.4%
17 years	1	1.1%
18 years	1	1.1%
20 years	2	2.1%
No answer	65	68.4%

For the 28 responses given, the average number of years specified was 12.9.

8b. If yes to # 8, would advice necessarily appear on the record of the plea or sentence?

Yes	7	7.4%
Sometimes/maybe	3	3.2%
No	29	32.6%
No answer	52	56.8%

9. See summary of narrative responses

10. Respondents ever advise defendants being sentenced to parolable life about ability to earn release through good conduct and accomplishments

Yes	18	19.0%
No	60	63.2%
No answer	17	17.9%

10a. If yes to #10, type of accomplishments respondent considered (multiple responses were possible)

Education	7	7.4%
Programs	5	5.3%
Good conduct	10	10.5%
Maturation, remorse	2	2.1%
Other	5	5.3%
No answer	77	81.1%

11. Whether judicial objection provision of lifer law adequately protects against release of lifers who the sentencing judge actually intended to incarcerate for life

Yes	55	57.9%
No, because successor does not have adeq. info	12	12.6%
No	10	10.5%
Other	1	1.1%
No answer	17	17.9%

12. Whether the current parole board's position that "life means life" accurately reflects respondents' intentions when imposing parolable life terms

Yes	16	16.8%
No	64	67.4%
No answer	15	15.8%

See also narrative responses

13. Whether respondents had differences of opinion with parole board regarding a lifer's parole

See narrative responses

14. Respondents would support a statute or court that permitted judges to resentence defendants eligible for parole who have good prison records but are being denied release contrary to the actual intentions of the sentencing judge

Yes	58	61.1%
No, solution is to change parole board practices	6	6.3%
No	25	26.3%
No answer	6	6.3%

15. Optional comments

See narrative responses

NARRATIVE RESPONSES TO JUDICIAL SURVEY QUESTIONS BY STATUS OF RESPONDENT AND CIRCUIT

CURRENT JUDGES

RESP.	CIRC.	COUNTY	QUESTION NO. AND RESPONSE
050	2nd	Berrien	9. Substantial 12b. I sentenced on the assumption that "life" meant at least a 10 year sentence. 15. The parole board should not apply "life means life" to sentences before 1993.
002	3rd	Wayne	9. That it was parolable 12b. If you wanted to give a long sentence, you gave them 60-90. That sentence would keep a prisoner for life. 15. For years everybody viewed parolable life term as a parolable sentence.
009	3rd Rec's	Wayne Detroit	9. That they could hope for parole. 12b. As stated, the general belief then was that parolable lifers would indeed be paroled. I believe that was part of what led to "basketball" sentences prior to *People v. Moore*. 14. But only if the sentencing judge is available.
016	3rd	Wayne	9. He would be paroled within 20-25 years. 12b. If they demonstrate exemplary behavior.
020	3rd Rec's	Wayne Detroit	5. Virtually never (has happened, or course) 9. Parole eligibility after 15 years. 12b. I intended parole eligibility and permanent confinement only if warranted.
033	3rd Rec's	Wayne Detroit	9. The defendant would be eligible for parole after 10 years. 15. Most judges understood that a possible life sentence meant serving approximately 10 years. The problem with that drug statutes are that they don't give judges enough discretion.
038	3rd Rec's	Wayne Detroit	9. That they would actually be released from prison soon after 10 years. 12b. It was meant to provide them with the discretion to parole or not based on objective criteria.
071	3rd Rec's	Wayne Detroit	9. "Consideration" for parole depending on the prisoners rehabilitation and behavior in prison. 12b. Some yes, some no. Note: Opening up judicial review of prior legal sentences would lead to every sentence (life or not) being reviewed with hearings, testimony, transportation, attorney fees as often as prisoners wish to seek hearings – maybe monthly!

082	3rd Rec's	Wayne Detroit	9. Good behavior could reduce the sentence and that it was parolable. 15. Life means life. I impose a term of years often because life might be parolable after 10 years.
084	3rd Rec's	Wayne Detroit	9. Parole possibility.
088	3rd	Wayne	12b. If is not to be paroled, I sentence him/her to life without parole. 15. I believe it is wrong.
090	3rd	Wayne	9. That the defendant would be paroled if he demonstrated good behavior and that he was rehabilitated. 15. It is obviously unfair for the parole board to become the sentencer, in fact, instead of the judge who heard the case.
095	3rd	Wayne	9. He/she would serve a minimum of 14 years plus credits and would be eligible for parole consideration thereafter. 12b. Because I expected a Defendant's accomplishments and rehabilitation in the institution to allow the parole board to release a worthy individual. 13. Not that I can recall. 15. 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.
014	4th	Jackson	
044	6th	Oakland	9. He would serve less time. 12b. The parole board never acted as if they would torpedo the judge's sentence. 13. Probably, but I don't recall. 15. 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.
080	6th	Oakland	9. Parolable at sometime in the future. 12b. I think the phrase should be: should not be released for an extremely long time. If I gave a life sentence after 1992, it was because I considered the defendant to be dangerous. I rarely gave them, by the by. 13. No. The difficulty I have had was in mandatory sentences in CSC 3rd degree. In some cases, the situation was not violent and statutory between boyfriend and girlfriend. Parole board was extremely unreasonable. 15. It is a legal fiction to assume that judges are unaware of the credit available for good time when a sentence is imposed or that parole is or is not available after a minimal period of time. Life means the defendant is so dangerous that he or she needs to be very old before released to society.
093	6th	Oakland	9. A plea bargain such as this would not occur in Oakland County. 12b. Ordinary life means at some time after defendant has served a substantial portion of his or her sentence and parole believes defendant is not a threat that he may be paroled. 15. If I impose a life sentence, it was done with serious consideration and with the understanding defendant would be released at some time in the future. When defendant would not be considered a threat to the community.

067	8th	Ionia & Montcalm	
006	10th	Saginaw	9. The possibility of parole. 12b. I felt the parole board was in a better position after many, many years to make "exception" to the presumption of life. 14. If the judge were around to express their intent or make it known 15. The presumption that life means life is sound but I am aware before truth in sentencing was enacted, it wasn't assumed that life meant life.
034	14th	Muskegon	9. The possibility of parole.
066	14th	Muskegon	
048	16th	Macomb	2. I understood that a person who pled to 2nd degree murder would serve about 20 years. Obviously any murder client that I had would have been advised of that understanding and would have pled figuring 20 years was better than mandatory life. Otherwise why would you plead to 2nd degree. 9. That the defendant would be released in 20 years. 12b. My understanding was they would be released in 20 years. 15. The parole board is ignoring the reality of the way those cases were handled under parole boards prior to Gov. Engler's appointments.
040	17th	Kent	2. I understood that defendants were eligible after 10 years and I considered that in sentencing. In at least one case, I sentenced someone to life because I thought the guidelines for a CSC were too high and said why I was doing it. Despite that the defendant is still in after 12 years. 9. Sometimes none – depends on the brutality of the crime and the in prison conduct. 12b. Because of the board's attitude I no longer impose life sentences but it took a few years to find out that they were not paroling life sentences. 15. The parole board's policy essentially vitiates the distinction between 1st and 2nd degree murder sentences which I am sure was <u>not</u> the legislature's intention. It is an extreme and misguided view.
052	17th	Kent	9. The defendant will actually become <u>eligible</u> for parole at some point. 12b. On a case by case basis, parole should at least be considered, after 15 years under current law. 13. Yes. The parole board actually wanted to parole a 2nd degree murder lifer at the 10 year mark, and I objected. This was in 2001! 15. Rather than what is suggested in #14 above, I would support a statute <u>directing</u> the parole board to consider parole for lifers after a set number of years (say 20 or 25).
027	18th	Bay	9. Parolable. 12b. If it is parolable, it can't mean "life is life", logically.
053	18th	Bay	2. Parole was a probability not just a possibility. 9. I think it would be of great value because of the possibility of parole. 12b. Depending on circumstances of the individual defendant, I believe they <u>will be</u> paroled.
073	23rd	Iosco, Oscoda	9. The offender obtained the <u>possibility</u> of convincing a parole board of parole qualification at some time in the distant

			future. (I also noted that such possibility was not available to victims of a murder.) 12b. I don't accept that question 12 accurately stated the parole board's position/policy. 15. Note that the Governor has the option of granting commutation of sentence to lifers who are in fact rehabilitated and merit consideration for release.
091	27th	Newaygo & Oceana	9. He could be out of prison some time in his lifetime. 15. The judge has his role in the indeterminate sentence law and the parole board, its role. The indeterminate sentence law in its pure form is a good law. It has been so tampered with by court decision and "good time" – no one knows what the hell is going on.
047	28th	Missaukee & Wexford	9. In the last 10 to 15 years, it has had little, if any, actual value to the defendant. 12b. I would expect that a parolable life term means that at the appropriate time, in the discretion of the parole board and the sentencing judge or his/her successor a defendant has the opportunity to obtain parole.
068	29th	Clinton & Gratiot	9. The possibility of parole is the only bargain. 12b. I have never imposed a life term that was not mandatory.
011	30th	Ingham	9. Defended on facts of case & defendant's history. 13. Yes – I have opposed relief on individuals whom I believed constituted a continuing threat.
058	31st	St. Clair	9. It gave the defendant a shot at parole after 15 to 20 years. 12b. I want the parole board to consider whether the defendant is ready to re-enter society after 20 years. 15. 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.
079	32nd	Gogebic & Ontonagon	9. "Possibility" of parole – only a possibility. Parole availability provides for release of senior citizens. 15. I believe society, its institutions and citizens benefit by "truth in sentencing". All of this supposed confusion is reduced, perhaps eliminated, when life means life, 20 means 20 and 20 to 40 years means at least 20 but not more than 40.
070	33rd	Charlevoix & Emmet	9. The possibility of parole. 12b. I think the "possibility of parole" requires the exercise of discretion. 15. I remember some judges sentencing to indeterminate terms thinking that the defendant would serve longer than if a life sentence had been imposed. However, the DOC always informed me that "life" was the more harsh sentence.
003	36th	Van Buren	9. Significant value
042	36th	Van Buren	9. Less than life with a reasonable chance of parole. 12b. Too harsh.
037	37th	Calhoun	9. The value was the possibility of someday being paroled. 12b. Mandatory life in prison is distinguishable from "life" and statute and case law do not support parole boards position.
049	40th	Lapeer Tuscola (visiting)	9. Great value – defendant would become eligible for parole in 18 years. 12b. I understood that a "life sentence" was subject to parole board discretion after a minimum number of years 15. Question 14 approval would open a can of worms for the circuit courts and appeals courts. The focus should be on correcting the parole board's action. I never considered that "parolable life" meant the same as mandatory life. I believe other judges of my time (1969-1992) would agree.

039	42nd	Midland	9. Some possibility of parole. 12b. I expected them to exercise parole discretion at some point. 15. I expected the parole board to make parole decisions independent of the life sentence.
074	43rd	Cass	9. Not much; kept open the possibility of parole.
023	49th	Mecosta & Osceola	9. Excellent. A term of years could be imposed and in "life" sentences the parole board at least has juris. 12b. Now.
081	56th	Eaton	9. Eligible for parole.
083	UK	UK	9. The possibility of parole. 13. I have objected on occasions.
061	UK	UK	9. Means simply that there is the possibility of parole at some time rather than no possibility of parole under a life sentence for 1st degree murder. 12b. You have not sufficiently demonstrated that the parole board's "position" that you quote is actually the official position of the parole board, if indeed, there is an official position. 15. Again, your premise is that such is the board's policy. You have failed to demonstrate that it is. A statute is a statute. If the board is refusing to exercise its discretion because of a "policy" or otherwise that is contrary to statute, I suggest legal action including possibly an action for mandamus to require the board to exercise its discretion.
078	UK	UK	9. That defendant had a possibility of parole. 1st degree is non-parolable.
089	UK	UK	12b. Yet 20 years is too early if the judge chooses life.
092	UK	UK	9. Defendant eligible for parole only. 12b. For what offense? Under life is life, drugs should be different. 15. In drug cases it may be too harsh and not serve legislative intent of apprehending major dealers.

RETIRED JUDGES

RESP.	CIRC.	COUNTY	QUESTION NO. AND RESPONSE
008	Rec's	Detroit	9. Cannot remember any case in which this happened. 12b. See answer #2. Parolable after 10 or 12 calendar years. Cannot remember which, since retired 9 years ago. However, I cannot remember ever sentencing to "life" non-mandatory life or any # of years case. 15. This is a matter for appellate court, on a case-by-case basis, if but only if a record can be made at the trial level.
015	Rec's	Detroit	9. Encouragement for educational skills and change of entire life. 12b. It is a repudiation of a useful project for meaningful reform of a person, and represents an attitude of an officious vengeful parole board not unlike the parole board in the 40's and 50's, which was a large factor in the prison riots of that era.

			13. Not directly with the board but I know of a prisoner I sentenced who is being denied parole.
018	Rec's	Detroit	9. Tremendous. 12b. I believed 10 years was minimum and may have advised as much. 13. No (retired) but there is a case at issue now. Atty. Robert Mitchell is handling it. 15. They don't know what judge intended if not on record. I have been requested to sign an affidavit regarding one case that fits perfectly. Robert Mitchell is the attorney.
022	Rec's	Detroit	9. He would get a lesser sentence. 12b. If defendants had good conduct they should be released in 15 years. 13. When the defendant's lifer parole was up, we had a difference of opinion.
051	Rec's	Detroit	9. That he would be eligible for parole after 12 years with a likelihood of parole after 15 years.
054	Rec's	Detroit	9. The receipt of good time credit and the potential for parole and whatever other credits the dept. might put in place. 12b. I don't like this question. It was not my intention that people be released. If they were, I hoped that they merited release. The most I can say is that I expected discretion would be exercised by the board, but just as today, they responded to pressure which made their course of conduct very uncertain. 13. Yes – they proposed to release people I learned on investigation had substantial records of misconduct. 15. I don't believe the rationale. I think it is a convenient way to avoid making very difficult release decisions. That rationale is the prop supporting one political choice. "Actual intention" is a prop supporting the other.
060	Rec's	Detroit	9. May serve 10 or more years.
017	3rd	Wayne	9. If he were a good candidate for rehabilitation, would be paroled after 15 to 20 years. 12b. Imposed no life terms.
021	3rd Rec's	Wayne Detroit	6. I believed the parole board had discretion that relied upon input from prison authorities that interacted with the prisoner. How the prisoner evolved while in custody as reflected by his institutional record would determine whether a life term was more or less harsh than an indeterminate sentence. 9. First-degree murder is not a parolable offense and governors rarely grant pardons. The possibility of parole is an extremely valuable commodity – particularly for a young man that has very little chance of winning his case. 12b I believe the legislature intended the parole board to have discretion and expected the parole board to exercise their discretion intelligently. 15. I believe that virtually every judge that presided over felony trials in the 60's, 70's, 80's and 90's perceived that there was a significant difference between the murder first mandatory life "in solitary confinement at hard labor" and a parolable life sentence. The parole board's policy is an indefensible rejection of their duty to exercise responsible discretion. The judicial objection provision provides adequate protection to ensure that the sentencing judge's intentions are preserved.

045	3rd	Wayne	9. To be eligible for parole in 10 years. 12b. I generally believed a defendant sentenced by me to nonmandatory life would serve between 15 and 20 years.
046	3rd	Wayne	9. I am not aware of any such plea. 12b. I thought a "lifer" could be paroled after 20 years.
055	3rd	Wayne	2.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. 9. At least 10 years. 15. In general in all paroles, I believe the board acts like a 2nd sentencing judge. It happens with lifers and indeterminate sentences, especially sex crimes.
057	3rd Rec's	Wayne Detroit	9. He/she could be paroled after a substantial period of time, 15-20 years. 15. A defendant should be paroled if he has been rehabilitated and has served a goodly amount of time.
063	3rd	Wayne	9. Possible parole after 20 years. 15. I'll leave it up to parole board.
024	3rd & 6th Rec's	Wayne & Oakland (visiting) Detroit	9. Defendant had possibility of parole rather than "natural life" i.e., no parole. 12b. 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. 13. Unfortunately, I was never directly informed of their decisions and my opinion was never solicited. 15. A policy of not releasing parolable lifers should only be applicable if the trial judge specifically states on the record that the imposition of a life term is meant to exclude the possibility of parole.
096	3rd	Wayne	9. He would be eligible for parole in about 13 years. 12b. The view of the criminal justice system historically was that parolable life terms meant an opportunity to be paroled, depending on the facts. 15. The extreme right wing attitude of the Engler administration and the appointees of John Engler has moved Michigan law far to the right of the general public of this state.
098	3rd	Wayne	12b. I understood that defendants would be paroled after a suitable number of years. 13. I did very little criminal while on circuit bench.
035	4th	Jackson	9. He would become eligible for parole in 10 years. 12b. Parolable meant parolable after 10 years.
004	6th	Oakland	9. He became eligible for parole after 17 years. 12b. Life did not mean life when I was sentencing except for murder one which stated life without possibility of parole. 15. As to sentences prior to '78 the board takes a position that does not accurately reflect my intention in sentencing.
012	6th	Oakland	9. Out in 15 years. 11. Always intent of prosecutor, defense and judge was for earlier release. 12b. Why would any reasonable person think the sentence for 1 & 2 should be the same. 15. No judge in his right mind would want murder one and murder two the same severity.

013	6th	Oakland	9. Gave opportunity for parole. 11. Prior to my retirement. 12b. That was not my opinion before I retired. 14. It would require my review of my personal cases. 13. Yes & we were always able to work it out. 15. I'm not currently informed on the Board's policy, current law & reason to comment.
062	6th	Oakland	9. That he would have benefit of parole. 12b. I have no opinion because I don't recall my state of mind at time.
001	7th	Genesee	9. He or she was lucky 12b. Because of the lifer law, I did not think life necessarily meant life. 13. No, but their were a few who I thought should never be out. 14. But I would rather have the lifer law fairly applied – this does not mean possible parole for all.
043	7th	Genesee	9. At some point the defendant would be eligible of parole. 15. Rather than guess at the judge's intent, the parole board should ask for and receive input from the retired judge if possible. Absent that input I think the parole board should then substitute its judgment for that of the original sentencing judge.
056	7th	Genessee	9. Defendant could be considered for parole after 10 years incarceration. 12b. Only mandatory life meant non-parolable. 15. The parole board should seek a sentencing judge's opinion and if a defendant has a good prison record, the board should follow the judge's opinion.
085	8th	Ionia & Montcalm	9. With good behavior, parole after 10 years. 12b. Because I was assuming the 10 year rule applied.
031	9th	Kalamazoo	15. Unless the offense required mandatory life such as 1st degree murder, I assume a good conduct would merit consideration after 20 years.
072	9th	Kalamazoo	9. Possibility of parole – dependency on parole board judgment. 12b. I assumed parole would be based on many factors – still a matter of parole board judgment. 15. How am I to know whether a prisoner has merited parole? If you do not like the parole board policies, seek to change the board. And who says you are right?
025	10th	Saginaw	9. He would have an opportunity to present his matter to the parole board for their consideration.
036	13th	Grand Traverse, Antrim, Leelanau	9. Substantially shortened time to be served. 12b. It was my expectation that a "life" sentence would result in parole shortly after 10 years; that an indeterminate sentence was necessary to assure longer incarceration. 13. No experience.
007	14th	Muskegon	12b. See answer to 2. (The only sentence I made had fixed years to life no "life sentence per se". My understanding of "life" was 20 years before you meet the parole board.) 15. I had an excellent parole department and kept track of the defendants in prison to a good degree and I visited incarcerated defendants quite often.

010	14th	Muskegon	9. Possible parole. 15. Too political, any decision should be based on inmate's conduct and potential risk to community.
097	16th	Macomb	9. Thought he or she would be eligible for parole. 12b. Thought they would be eligible for parole. 13. I believe Sheldon Halpern may have a case in front of me of this nature. 15. Seems to follow the attitudes of the governor in power.
087	17th	Kent	9. It gave defendant a chance for parole – at some point parole board would consider case and give parole. 12b. As long as legislature provided for parole, the parole board should at least consider parole. 15. As far as I know the parole board has not surveyed judges to see what the judges wanted. I do not think most judges agree with the policy of the parole board.
019	23rd	Iosco, Oscoda & Alcona	9. App. for parole after 10 years.
086	25th	Marquette	9. The possibility of parole, rather than a highly unlikely governor's commutation. 12b. Under the legislative scheme, "life means life" simply is not accurate. 13. Not as a sentencing judge. Under the former statute, I reviewed a few parole denials for Marquette Branch Prison inmates, and found some (2,3,4?) in which the parole board denials were not adequately explained. 15. I seldom felt sufficiently prescient to control a parole decision that would be made 15-20 (or more) years in the future, without any information about intervening conduct. The more time that passes, the less significant is the intent (whether severe or lenient) of the sentencing judge. By adopting such a policy, the parole board abdicates its discretionary duty, and attributes an intent to a sentencing judge which I, for one, did not have. Also, see #12 above.
026	31st	St. Clair	9. Definitely result in less prison time. 11. Each case should be based on the applicable facts pertaining to prisoner. 12b. I believe there are exceptions to every position taken at time of sentencing. 13. I have, but don't remember details. 15. Final decisions are made based on criminal record, probation reports and input from respective attorneys, none of which are infallible.
030	31st	St. Clair	9. Possible parole at some point in time. 2. That the lifer could be paroled after 10 years, depending on rehabilitation, behavior, attitude, suitability for release into society, etc., etc. – all within the discretion of parole board; however, at the time of sentencing, life meant life. 12b. See #2. If the defendant made no effort to change, or remained unremorseful, or had a poor prison record, etc. then life meant life. 15. I had always believed that the parole board had absolute discretion (subject to judicial objection exercised reasonably) with respect to early release – it has available the defendant's conduct, psychological evaluations, medical reports, a host of resources presumably that the judge would not have at sentencing in order to impose a fixed term of years.
064	32nd	Gogebic & Ontonagon	9. No experience. 12b. N/A – but would be "no". 15. Believe parole board should be able to make its own decision based on facts of each individual case.

041	34th	Arenac, Ogemaw, Roscommon	9. A possibility of parole after serving 10 years in prison. 12b. As stated, there was a greater possibility of parole after serving 10 years in prison. 13. Do not recall.
077	34th	Ogemaw, Arenac & Roscommon	9. Eligible for parole consideration. 12b. Not sure I did any. 15. Parole policy reflects executive branch policy and to a lesser degree legislative policy.
075	39th	Lenawee	9. Made him eligible for parole in a few years. I was never clear when he could expect parole. 12b. If I intended anything else, I put it in the sentencing record. If it isn't there I intended life. 13. I have had no experience with parole boards that I can recall. 15. Judges should do the sentencing. They should make a complete record of their reasons. It is subject to appellate [review]. Anybody should be able to reasonably behave in prison (see question 12). Unless the judge says life it should be life unless the judge or appellate court says otherwise.
094	40th	Lapeer & Tuscola	9. Real likelihood of parole if good behavior in custody. 15. Unfair – unreasonable
029	42nd	Midland	9. Sentence went from mandatory life (no parole) to probably being paroled after 15 to 20 years. 12b. A good prison record and proper attitude would probably get them paroled in 15 to 20 years. 15. Previous: completely contrary to my understanding when sentencing to a non-mandatory life term; e.g., 2nd degree murder. Now: Know life means life!!
032	56th	Eaton	9. It gave him reason to believe that the 10/15 year parole eligibility date was a goal to prove that he should be returned to society. 12b. If that was my position I would say it on the record, 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. Further, MDOC/parole board's claim (which is the subject of this survey) in my opinion, is for two reasons: 1) they are lazy bureaucrats who have discovered a false premise so as to avoid the work involved in assessing a lifer's parole eligibility. 2) They have taken a political stance beneficial to the current executive branch. "TOUGH ON CRIME".
076	UK	UK	9. The value of pleading to 2nd degree murder was that there was a very remote chance of parole after serving approximately 40-50 years if the prison conduct was exemplary. 15. When a convicted criminal is sentenced to life in prison, it should mean just that, i.e., life, except in very rare extraordinary circumstances. A life sentence replaced the death sentence with the express understanding that the convicted criminal would never be free again to prey on society. If life sentences are regularly reduced, this would be a tremendous fraud on the public.

STATUS UNKNOWN

RESP.	CIRC.	COUNTY	QUESTION NO. AND RESPONSE
005	3rd	Wayne	9. The defendant could request parole after 10 years.
028	27th	Oceana, Newaygo Mecosta	9. With good behavior, defendant would probably receive favorable consideration from the parole board. 12b. I don’t believe that judges represent perfection and that human behavior can change. 15. The parole board was established to use its discretion to recognize and reward change in the attitude of prisoners.