Michigan Lifers Association, Inc. and National Lifers of America, Inc.

### Michigan

# Lifers Report

JULY 2022

Newsletter

# THEY ASK: WHAT IS A COMMUTATION OF SENTENCE? (Things You Should Know)

Willis X. Harris

It's difficult to understand why some life without the possibility of parole (LWOP) prisoners, especially those who have served at least 10 years, do not know or understand what is meant by a "commutation of sentence." Likewise, many LWOP prisoners' loved ones call and write to me asking the same question.

Lifers hear one another discussing a commutation of their LWOP sentence or their life with the possibility of parole sentence, but when asked by fellow prisoners to explain what "commutation of sentence" means, there is convoluted information given. Some say it means discarding their LWOP sentence or life with the possibility of parole sentence to get a parole or release date. Are they right? NO!

A commutation of sentence is an act of substituting one thing for another. It is an exchange. In corrections, it means the changing of a prison sentence or other penalty to another less severe sentence.

A person who is serving a life sentence without the possibility of parole (Death-By-Incarceration) has a penalty of death (without parole) removed is a commutation of his or her sentence is granted. The Michigan Parole Board itself has no commutation authority or power, but when a lifer or another prisoner files an application for commutation of sentence, he or she is asking the Parole Board to review his or her reasons for requesting a commutation of sentence and to determine if the content in his or her request is supported with the facts and data in her or her case file in Central Office. If the case file information supports the lifer's reasons his ... (Cont. on p. 3)

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### MICHIGAN LIFERS REPORT NEWSLETTER

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### FROM THE EDITOR...

We are approaching our one-year anniversary (September 2022) since restarting the Michigan Lifers Report (MLR) Newsletter. This year has been an adventure and learning experience for me as the new editor. We would like to thank all our readers, writers, and contributors. It is because of you that the MLR Newsletter has grown from a complimentary issue to nearly 200 subscribers in less than a year.

If you have submitted an article and have not seen it in an issue, please don't think your article has been ignored or discarded. I try to plan issues but working with an archaic typewriter requires just finding the right articles to fit. Formatting an issue takes precision and sometimes an article I wanted to print gets left out. Please continue to submit your articles for publication.

I will be temporarily taking on the role as editor for the CURE: Lifelong Newsletter, so your articles are greatly needed. Remember, submissions can be sent directly to me through JPay.com by adding my name and number (232516) to your family's or friend's account.

In upcoming weeks and months, we will be focusing on the Michigan Parole Board and elected officials.

We want to give lifers, virtual lifers, and the general public opportunities to voice their opinions by answering some or all of the following questions:

- 1.) Are lifers judged on case-by-case merit or politics, prejudices, and biases of the Parole Board?
- 2.) Why do Parole Board members refuse to tell lifers and virtual lifers (whose minimum sentence is 50 years or more) why they have "No Interest" in considering their cases?
- 3.) Do Michigan lawmakers see the conflict between the Michigan Constitution, 1963, Article 4, Section 46, and Michigan Compiled Laws, Section 750.316? Do they care to see?
- 4.) Do our elected lawmakers (Senators and Representatives) really care about the concerns of their district constituents or are they better served by oil companies, corporate giants, personal friends, and other deep-pocket supporters? Do our elected lawmakers ensure no laws are passed that threaten the profits, which in turn, line their campaign coffers?
- 5.) The fact that Michigan's Parole Board is not required by state law nor correctional administrative policies to tell lifers the reason why they deny favorable commutation recommendations, how can a lifer ever meet the standard the Parole Board is looking for to seriously consider them? Or are the long-held archaic philosophies of "Do The Crime, Do The Time", "Life Means Life", and "Mass Incarceration" still reside in Michigan?

--Jamie Meade, Editor

(They Ask, from p. 1) ... or her application for commutation of sentence is viewed as having merit or meritorious.

As such, the case is discussed in Executive Session with all Parole Board members present or properly excused. A "for" or "against" vote is taken to proceed or stop further consideration. If six of the 10 members vote "for" moving forward, the Parole Board schedules a Public Hearing. The State Attorney General is notified who may attend. He or she may also have an assistant attend to represent the Attorney General's Office. The lifer is notified by Certified Mail of the date, time, and location where the Public Hearing will take place, at which time he or she can notify his or her supporters to attend and speak at the hearing. During the hearing, the relatives and loved ones of the victim(s) will have an opportunity to speak for or against releasing the lifer. Also, some corrections officials may attend who are interested in the hearing.

You will be asked by the chairperson of the Parole Board or designated member the very same questions you were asked and answered on the application you filed for commutation of sentence. Don't lie. Your verbal responses during your hearing will be compared with what you stated on your application. If you are viewed as a liar and were contradicted by the facts they possess against you, the Parole Board will recommend to the Governor your request for a commutation of sentence be denied. The Parole Board sends an official transcript to the Governor. The Attorney General's Office will also submit its own transcript and recommendation.

On the flip side, if the Public Hearing is successful in your favor, a favorable recommendation will be submitted with a hearing transcript to the Governor to grant your request for a commutation of sentence. When the Governor approves and signs the official state document granting the commutation of sentence, it states what the new minimum sentence is, less good time or disciplinary credit allowance for time

served. The original copy is sent to the Secretary of State for filing, a copy goes to the Parole Board, and the commuted LWOP prisoner gets an official copy signed by the Governor with his or her new minimum sentence, but the maximum sentence is still life.

Shortly thereafter, you will receive a Notice of Parole Board Action stating the length of your parole, which is four years, the name and location of your parole officer, and any special rules or instruction you are required to follow. Your parole officer may add more conditions to your parole, depending on your behavior and attitude.

Any violations of the conditions of your parole will cause your parole agent to warn you or have you sent back to prison, depending on what happens at your Parole Violation Hearing.

This is your second chance to prove you were worthy of release. If you commit a violent felony on parole and convicted, you will be returned to prison as a "Parole Violator With a New Sentence (PVNS).

This will be a negative political view against the Parole Board and a kick in the face for other LWOP prisoners seeking a second chance.

Your return to prison with another felony conviction shows that you were not qualified for release.

Since 1980, as a member of several correctional groups and organizations, and since 2016 in my articles in the Michigan Lifers Report Newsletters, I have repeatedly stated how the Michigan Parole Board operates. From 1971-1972, when I was clerking for the Parole Board at Region II Headquarters in Grayling, Michigan (Camp Lehman), I had multiple interactions with Parole Board members. On many occasions I sat and questioned key Parole Board members about lifers, what the Parole Board expects from lifers to earn attention and recommendation for clemency. Among those I thoroughly questioned were Dr. Donald Thurston, who was the Lifers Examiner; Leonard McConnell, Chair of the Parole Board; Edward Turner; Howard Grossman; Warden Charles E. Anderson, ... (Cont. on p. 7)

# THE TIME HAS COME TO REVISE THE MDOC'S 5-YEAR REVIEW POLICY (Part 3 of 3)

### Scott Wynne

This is the third in a series of 3 articles about the deficient and defective MDOC Policy governing the Parole Board's 5-year reviews, and what needs to be done to fix it.

To reiterate, despite the 'Lifer Interview' section (paragraphs M, N, & O) of PD 06.05.104 being amended 3 different times in 2021 to encourage greater consideration of interviews for worthy LWOP prisoners, the Parole Board continues its policy of summarily issuing rote denials. An efficient and effective solution to this problem exists, it needs only to be implemented.

Prisoners serving LWOP comprise a fairly unique class. Absent a reprieve, commutation, or pardon first being granted by the governor, the Parole Board does not have, and never obtains, the authority to release them from prison. Ironically, the governor typically will not grant these lifers such leniency unless the board recommends it, but the board is prohibited by law from issuing such recommendations unless interviews are held first, then public hearings, during both of which LWOP prisoners are afforded the opportunity to demonstrate their worthiness for leniency. So the solution lies in facilitating a greater number of interviews during the 5-year review process.

Accordingly, the language of PD 06.05.104 should be amended yet again to mandate that the Parole Board make only merit-based interview decisions using objective, germane, and evidence-based metrics rather than the often times subjective, nongermane, and illogical ones frequently employed now. Doing this would raise the rejection bar and make it much more difficult for the Parole Board to summarily deny interviews without substantial and compelling reasons for doing so. The result would thus be a greater number of interviews being granted to worthy LWOP prisoners.

At the same time, language should also be added to the policy that mandates the Parole Board consider a much broader range of recommendation possibilities when making decisions on whether or not to grant interviews. This would prevent the board from conducting 5-year reviews as though they are dichotomous, as is the case now, where most interviews are simply denied and the very few that are granted solely for the purpose of determining if release from prison is warranted. The problem with this approach is its inherently limiting nature as only the extremes of the outcome spectrum are incorporated. The entire mean, with its greater range or possibilities, is completely disregarded.

The board should instead be required to grant interviews to worthy LWOP prisoners for the expanded purpose of also determining if they warrant a recommendation for something less than release. This could include a sentence reduction to Life-With-Parole (LWP) or the removal of one or more sentences for those prisoners serving on multiple ones, just to name two options. Doing this would lower the recommendation bar and make it much easier for the Parole Board to issue favorable recommendations. The result would be a greater number of reprieves, commutations, and pardons being made possible.

The benefits of this solution are many and diverse. First, since COVID struck, the Parole Board began conducting the vast majority of its interviews (and public hearings) virtually, so an increase in interviews would not necessarily create any corresponding increase in expense. Second, for decades the MDOC has operated with only the 'stick' approach. While the Legislature continues to struggle to reinstate the 'carrot' through Good Time for all non-lifer prisoners, this solution would provide a similar 'carot' for LWOP prisoners who serve their time well and who make good use of it. Third, this solution mirrors the popular Second ... (Cont. on p. 5)

(The Time Has Come, from p. 4) ... Look Sentencing proposals, albeit without the added expense of new courts and judges, by simply making greater use of existing Parole Board processes and gubernatorial clemency powers. Fourth, when compared to the herculean task of enacting prison reform legislation through the Legislature or ballot initiatives, this solution only requires the amending of PD 06.05.104 which is internal to the MDOC and thus under the direct control and authority of the governor and director.

Fifth, this solution would inject some much needed transparency, accountability, and due process into the 5-year lifer review process. Sixth, this solution would enable the governor to make greater use of her broad clemency powers while avoiding any direct increase in potential political risk. This is because those LWOP prisoners who are granted sentence reductions and/or eliminations would remain in prison still subject to future Parole Board evaluations and proceedings. Seventh, this solution would save Michigan taxpayers untold millions of dollars. A few years ago, the governor of Wyoming commuted all 21 of his states' LWOP prisoners to LWP to obtain such saving (by contrast Michigan has approximately 4,837 LWOP prisoners). this solution has already been proven to be publicly acceptable. Former President Obama was praised for shaving approximately 17,000 years off of the sentences of about 1,300 federal prisoners (an action estimated to save the Bureau of Prisons roughly 450 million).

As simply and elegantly as this solution may be, LWOP prisoners lack any substantial means of participating in the narrative that shapes MDOC policies, defines us, and governs the most important aspect of our lives: the struggle to regain our freedom. Being that the problem this solution would resolve cuts across all racial, gender, and age, the question must be asked, "Will you take the initiative to champion its implementation on behalf of all of us?"

ABOUT THE AUTHOR: Scott Wynne #247226 is serving LWOP at the Thumb Correctional Facility, 3225 John Conley Drive, Lapeer, MI 48446-2987. Scott is a 2017 graduate of Adams State University's Distance Degree Program in the area of business.

# ROE VS. WADE BROADER IMPLICATIONS?

### Dwight Henley, MBA

With the Supreme Court of the United States (SCOTUS) recently overturning the 1973 case of Roe v. Wade, women's abortion rights are now in the hands of individual states. Pro-choice proponents focus on the loss of women's rights, while pro-life supporters praise the right to life. People on both sides of this highly emotional issue anxiously watch as states begin to enact pro-life laws. Although abortion is an important moral issue in our society, the Roe decision may have even broader implications.

Constitutional theorists are mainly of two cohorts: those who view the constitution as a static document and those who view it as an evolving document. The former group, labeled conservatives, seek strict adherence to the Constitution as originally written. The latter, labeled liberals, believe the Constitution should be seen as an evolving document meant to meet a changing society. Since the 1960s, liberal theorists have predominated Supreme Court interpretation of the Constitution. The liberal interpretations have led to many enumerated rights such as the right of marriage for gay and lesbian people and interracial couples.

The Roe decision demonstrates the conservative philosophy now guides the Supreme Court. In the Roe draft opinion, the Court wrote that because the Constitution fails to make any mention to abortion, no such right can be derived for ... (Cont. on p. 7)

# THE SENTENCING PROJECT RELEASES

# NOTHING BUT TIME: ELDERLY AMERICANS SERVING LIFE WITHOUT PAROLE By Ashley Nellis, Ph.D., (June 2022) 28 Pages

### EXECUTIVE SUMMARY AND RECOMMENDATIONS

Prisons are a particularly hazardous place to grow old. The carceral system is largely unprepared to handle the medical, social, physical, and mental health needs for older people in prison. Nearly half of prisons lack an established plan for the care of the elderly incarcerated. 1

Because of the disadvantages affecting people in prison prior to their incarceration and the health-suppressing effects of imprisonment, incarcerated people are considered elderly from the age of 50. Under current trends, as much as one third of people in U.S. prisons will be at least 50 years old by 2030, the predictable and predicted consequences of mass incarceration.

Warnings by corrections budget analysts of the crushing costs of incarcerating people who are older have gone almost entirely un-Indeed, sociologist and legal scholar Christopher Seeds accurately described a transformation of life without parole "from a rare sanction and marginal practice at last resort into a routine punishment in the United States" over the last four decades.3 And in contemporary moment of rising concerns around crime, there are reasons to be concerned that ineffective. racially disproportionate, and costly tough-on-crime measures such as increasing sentence lengths will proliferate, leading to even higher numbers of incarcerated people who will grow old in prison. this, as in many other aspects of its carceral system, the United States is an outlier; in many Western democracies those in their final decades of life are viewed as a protected class from the harsh prison climate.4

Older incarcerated people describe sentences of life without the possibility of parole (LWOP)--with the expectation that they will die in prison--as particularly

cruel, involving a devastating loss of human dignity. Considering the consistent observation across dozens of studies that people "age out" of criminal conduct, the dedication of resources toward a group that is of extremely low risk is a foolish investment. Yet people serving LWOP are a growing share of the overall life-sentenced population and the number of people in prison serving LWOP is at an all-time high. While LWOP sentences have been a sentencing component of the American punishment spectrum for much of its existence, recent mandatory and preferential imposition of life sentences with no chance for parole are a more prominent feature than ever. In 2020, The Sentencing Project produced a 50state survey of departments of corrections that revealed that more than 55,000 Americans are incarcerated in state and federal prisons with no chance of parole, reflecting a 66% rise in people serving LWOP since 2003.5

Because compassionate release, whether based on chronological age (geriatric parole) or diagnosis of a terminal illness (medical parole), typically excludes people serving life sentences by statute, the only option for an early release for people serving LWOP is executive clemency. While clemency was common for older people serving life sentences sixty years ago, it was nearly terminated by the 1970s, and is still rarely used today.

This report explores the features of the LWOP population in more detail, focusing on the aging demographic in particular. The data presented in this report reflect the patterns of 40,000 people serving LWOP sentences across 20 states. These 20 states reflect three quarters of the LWOP population nationwide. The main findings in this report are the following:

... (Cont. on p. 7)

(They Ask, from p. 3) ... who was a former Parole Board member. Post-release I communicated with former Director Perry Johnson, Deputy Director and Director Robert Brown Jr., and one of my former professors, Zolten Ferency, MSU, School of Criminal Justice, Barth Hall. I have had many positive experiences in corrections.

I worked in community corrections, state and federal corrections until I retired in 2004. I had almost forgotten then that I was 65.

During the late 1980s and early 1990s, former Governor William Milliken and I had both written and telephone conversations on/about pardons, reprieves, and commutations. He said there are two types of pardons. One is a full pardon and the other is a conditional pardon.

This article should provide Michigan lifers with enough information on a commutation of sentence, how their applications are processed, what a public hearing is, and what the process of being granted a commutation consists of after a public hearing.

(Roe Vs. Wade, from p. 5) ... abortion. Were the Court to follow this same line of reasoning, many of the enumerated rights granted over the past 50-60 years may be taken back. The Constitution does not mention marriage, or the more recent right to interracial marriage (granted in the 1960s) or same-sex marriage (granted in the last decade). The Constitution may provide a right against cruel and unusual punishment, but it does not specifically prohibit life sentences for juveniles. The Constitution does not specifically mention a right to privacy!

Conservatives attempt to differentiate abortion from other enumerated rights, in that, they say abortion involves another person. However, the Supreme Court's decision in Roe does not make this distinction. Even if the Supreme Court had made such a distinction, could the American people trust what the Court says? In Senate confirmation hearing for the Supreme Court, Justice Thomas, Gorsich, and Cavanaugh were questioned about Roe v. Wade, and they professed to be proponents of stare decisis (adherence to precedent) and acknowledged Roe v. Wade and Planned

Parenthood v. Casey were long-standing precedents upheld by subsequent Supreme Court majorities. Despite their Senate testimony, all three of these justices voted to overturn Roe.

The Supreme Court's recent decision in Roe hits at the root of our society, not necessarily because it nullifies a woman's right to abortion but because it evokes a conservative philosophy that could lead to the loss of number individual rights. Many of these enumerated rights are now deeply embedded in our society. Conservatives and Supreme Court justices say concerns about citizens losing more rights is a slippery slope fallacy promoted by fear mongering liberals. Yet in Senate confirmation hearings conservative justices professed to respect long-standing precedent and then overturned Roe v. Wade. Only time will tell whether the Supreme Court rolls back five decades of expansive rights. But the Court won't do so without the conservative justices losing their credibility as individuals and the Supreme Court as a whole losing its prestige and respect of the American people.

ABOUT THE AUTHOR: Dwight Henley (Prison No. 246521) is serving a LWOP sentence at Macomb Correctional Facility, 34625 26 Mile Rd., Lenox Township, MI 48048. While incarcerated Dwight earned a MBA from Adams State University and became educationally eligible to take the CPA exam.

### (The Sentencing Project, from p. 6) ...

- Almost half (47%) of the people serving LWOP are 50 years old or more and one in four is at least 60 years old.
- In ten years, even if no additional LWOP sentences were added in these states, 30,000 people currently serving LWOP will be 50 or older.
- 60% of the elderly imprisoned serving LWOP have already served at least 20 years.
  - >> In Arizona, Illinois, Louisiana, Michigan, Nebraska, and Pennsylvania, between 66% and 85% of the elderly population serving LWOP has already served at least 20 years.
- Half of aging people serving LWOP are Black and nearly 60% ... (Cont. on p. 8)

are people of color.

- >> Among those who were sentenced as young adults under 25 years old, the overrepresentation of elderly Black people serving LWOP is even more pronounced: two thirds of this segment is African American.
- The majority of people serving LWOP have been convicted of murder, but a growing share of the overall LWOP population has been convicted of less serious crimes, reflecting an over-expansion of LWOP.

We make a series of recommendations for reform based on the research presented in this report:

- Reinstate parole or resentencing opportunities for those currently ineligible.
- Give added weight to advanced age at review hearings. Advanced age considerations should begin at age 50 in light of the accelerating aging process that accompanies imprisonment.
- Allow immediate sentence review with presumption of release for people who are 50 and older and have served 10 years of their LWOP sentence.
- Revise medical parole release statutes to include all incarcerated people regardless of crime of conviction and age.
- Upon release, transition elderly persons, including those who have been convicted of a violent crime and those who are serving LWOP and other life sentences, to well-supported systems of community care if they are too frail to live independently.
- Require states to disclose the cost of incarcerating elderly people, including the cost of all medical care, as well as projections for future costs. Failing in such fiscal transparency keeps taxpayers in the dark about the true cost of mass incarceration.
- Expand clemency release opportunities to reflect their higher usage in earlier eras.

### ENDNOTES

<sup>1</sup>Forsyth, K. J. et al. (2013). Heath and social care services for older male adults in prison: The iden-

tification of current service provision and piloting of assessment and care planning model. Health Services and Delivery Research.

Williams, B. A., Goodwin, J. S., Baillargeon, C. A., & Walter, L. C. (2012). Addressing the aging crisis in U.S. health justice care. <u>Journal of American Geriatrics Society</u>, 60(6): 1150-6.

<sup>3</sup>Seeds, C. (2018). Disaggregating LWOP: Life without parole, capital punishment, and mass incarceration in Florida, 1972-1995. Law & Society Review, 52(1), 172.

4van Zyl Smit, D. & Appleton, C. (2019). <u>Life imprisonment</u>. Harvard University Press.

<sup>5</sup>Nellis, A. (2021). <u>No end in sight: America's enduring reliance on life imprisonment</u>. The Sentencing Project.

Seeds, C. (forthcoming). Death by prison: The emergence of Life without Parole and perpetual confinement. University of California Press.

<sup>7</sup>Please see the methodology section for a more complete description of the underlying data that were used in this analysis.

EDITOR'S NOTE: The Sentencing Project gave the Michigan Lifers Report Newsletter permission to print the Executive Summary and Recommendations from the Nothing But Time: Elderly Americans Serving Life Without Parole report. The full report can be found on The Sentencing Project's website at www.sentencingproject org

# SYMPATHY AND CONDOLENCES FOR THE TJAPKES FAMILY

We are sad to announce the passing of Marcia Tjapkes on April 16, 2022, following a lengthy illness. She passed away at the age of 84. Marcia was the wife of Doug and mother of Matt. Doug and Marcia had been married nearly 65 years. Doug is the founder of Humanity For Prisoners. Matt is the organizations president. Our hearts go out to them and their family. You have helped so many of us on the inside, we are deeply sorry for your loss of such a great woman.

# IN MEMORIAM MARCIA TJAPKES

You are with God in Heaven.

### THE POET'S CORNER...

"Letters"

Everyday is a struggle to get going, I used to be a go-getter, Now I got Letters.

I worked two jobs stacking my cheddar, Now I got Letters.

My soul is shattered, only my kids see me, I've been cast out of society,
My peers don't care for me,
I used to be a contender,
Now I got Letters.

I look out my window and stare, Freedom is a block away over there, The grass is greener on the other side of the razor fence, I go to Church and I repent.

I used to dream life would get better, Now I got Letters.

The highly addicted go home on tethers, I got Letters.

By: Carla Kay Cole #590438

Message Carla directly: JPay.com/CarlaKayCole590438
Women's Huron Valley Correctional Facility
3201 Bemis Road
Ypsilanti, MI 48197

### Victims

I was so young and sweet, polite well behaved.

Just one slip up and you become a victim.

No one believes you, They all think you lie, Until you meet another victim, And it all starts to make sense.

They do believe you, But nobody wants it to be true, Because then its all true.

The stories, All the other girls...

**VICTIMS** 

They all can't be lying, Can they?

But then the man you love doesn't look the same anymore.

He is distorted, He isn't that loving.

Do anything for the girls all the time anymore.

No he is a predator, But no one wants to admit it!

Only the Victims.

And all the while he is sick in the head.

Driving me crazy, He always looked at her, Didn't he?

He was always especially nice to her, Wasn't he?

> Now she is broken, Never to be the same, She will always be a Victim.

> > His Victim.

But no one really paid much attention...

Even in death, he still has power over her.

By: Ashton Paynter #608392
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### TO OUR READERS

We welcome letters to the editor. We would would like to hear what you think about the articles we publish in the MLR Newsletter. What do you think about the content and layout of the Newsletter? If you have any suggestions to make the Newsletter better or more inclusive to a specific group of people, we would like to hear your ideas.

-- Jamie Meade, Editor

HAPPY 4TH OF JULY!

GOD BLESS AND BE SAFE



### SUBSCRIPTION FORM

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The expressed purposes of the Michigan Lifers Association, Inc. and the National Lifers of America, Inc. to publish the "Michigan Lifers Report Newsletter" are to educate and uplift the lifer population, to seek changes in laws that restrict clemency and parole, to educate the general public, and to encourage criminal justice reform, especially in corrections.

**PRISONERS** 

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