

## Michigan's Parolable Lifers: The Cost of a Broken Process

In August 1987, the Michigan Department of Corrections (MDOC) responded to an inquiry from the Legislative Corrections Ombudsman regarding delays in reviewing prisoners serving parolable life terms. The Department said: “...everyone knows the Board is so far behind on lifer interviews they will never catch up.”<sup>1</sup> At the time, fewer than 200 lifers had served enough time to be eligible for parole.<sup>2</sup>

By May 2003, 811 Michigan prisoners with life sentences for other than drug offenses were eligible for release.

Ten years later, some had been released and some had died, but more had served the time necessary to become eligible. As of May 2013, the number of non-drug lifers who could be paroled had increased to 863.<sup>3</sup>

Michigan's parolable lifers are expensive to keep, low risk to release and uniquely affected by changes in politics, policies and parole board practices. Although the vast majority became eligible for parole after serving 10 years, they have now served, on average, 29 years. Their median age is 56 – 20 years greater than the median age of prisoners generally. Each year they are warehoused costs taxpayers, on average, \$40, 000 per prisoner. Unless substantial efforts are made to address this population once and for all, hundreds of lives and tens of millions of dollars will continue to be wasted with no demonstrable benefit to public safety.

### The Context

For virtually all serious crimes other than first-degree murder, Michigan judges have the option of imposing a life sentence or a term of years. A life term makes the person eligible for parole after serving either 10 or 15 years, depending on whether the offense occurred before or after Oct. 1, 1992.

In previous decades, the parole board reviewed parolable lifers by the same criteria as any other prisoner who had served a long minimum sentence. From 1942, when the Lifer Law first took effect, through 1984, a substantial portion of the lifers eligible for parole each year were released. In those days, the lifer population was much smaller, so even a handful of paroles could be a significant percentage of the total. For instance, in 1973, when 71 lifers were eligible, 26.8% were paroled. In 1974, the release rate was 32.1%. By 1975, the eligibility pool had dwindled to 39.<sup>4</sup>

<sup>1</sup> Memo dated 8-26-87 from Dick McKeon, MDOC Executive Office to Clay Burch re: Lifer Law Interviews.

<sup>2</sup> See CAPPS, *The high cost of denying parole: an analysis of prisoners eligible for release* (Lansing, Nov. 2003), at pp 30-34.

<sup>3</sup> Data regarding all prisoners serving life terms as of May 1, 2012 was provided by the MDOC. Parole eligibility as of May 1, 2013 was calculated by CAPPS. The small number of people serving parolable life terms for drug offenses was excluded from this analysis. Their eligibility for parole is determined by different rules and when they do become eligible, they are commonly released.

<sup>4</sup> CAPPS, *When “life” did not mean life: A Historical Analysis of Life Sentences Imposed in Michigan Since 1900*, (Lansing, Sept. 2006).

By the 1980s, the pool had begun to grow. For one thing, more people had received parolable life terms. In addition, numerous changes in the law had caused the entire prison population to explode. With a pressing need for beds, the parole board focused on people with relatively short minimum sentences who could be released quickly. Lifers were put on the back burner. Many had routine interviews delayed for years. Dozens whom the board had decided to schedule for public hearings never had their cases processed.

The decline in lifer paroles during the mid to late 1980s was situational, not philosophical. In the early '80s the parole board began using "Commutation and Long Term Release Guidelines" that awarded points based on the prisoner's prior record and the details of the offense. Placement of the points on a grid suggested when parole or commutation would be appropriate. For a parolable lifer serving on his or her first offense, 14 years was a typical result. Although these "grid scores" were not binding, they reflected a common understanding of how much time it was appropriate for a parolable lifer to serve.

After 1992, when the parole board's composition changed, so did its policies. By the late '90s, the board had adopted the position that "life means life." That position was used to justify statutory and policy changes that helped ensure relatively few lifers would be released. The interval between reviews was lengthened to five years. Board members are now permitted to just review files instead of interviewing the lifer personally. Parole guidelines scores are not even calculated for lifers so there is no objective assessment of risk. The board can simply decide, for whatever reason it chooses, that it has "no interest" in a lifer. Its decision does not have to be explained and cannot be appealed.

In the 12 years from 1995-2006, the number of non-drug lifers paroled was two or three a year. The pool of aging prisoners grew steadily. Then a combination of litigation, budget pressures and parole board leadership combined to stimulate a modest but marked increase in lifer paroles. From Jan. 2007 through May 2013, 115 non-drug lifers were released. The peak year was 2009, with 44.

Because their medical needs are increasing, the parolable lifers are more expensive to care for as they age. Every decision not to consider a lifer for another five years costs taxpayers an average of \$200,000.

## The Lifers

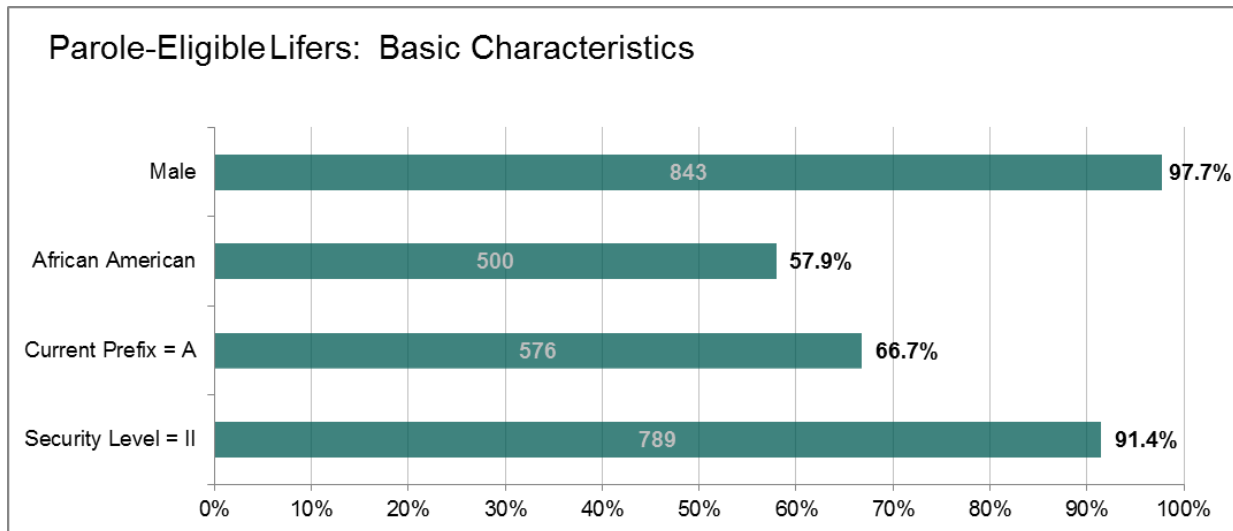
### Basic characteristics

The parole-eligible lifers are overwhelmingly male and disproportionately African-American, mirroring the prisoner population as a whole.<sup>5</sup> Many have little or no prior criminal record. As their "A" prefix indicates, two-thirds are serving their first sentence in a Michigan prison. A first serious crime is often the result of impulse or circumstances.

Lifers typically have good institutional records, especially after they have matured and adjusted to prison life. Many of the currently parole-eligible lifers have not had a major misconduct citation in decades. More than 90% are housed at Level II facilities – the lowest security classification the MDOC will permit for lifers.

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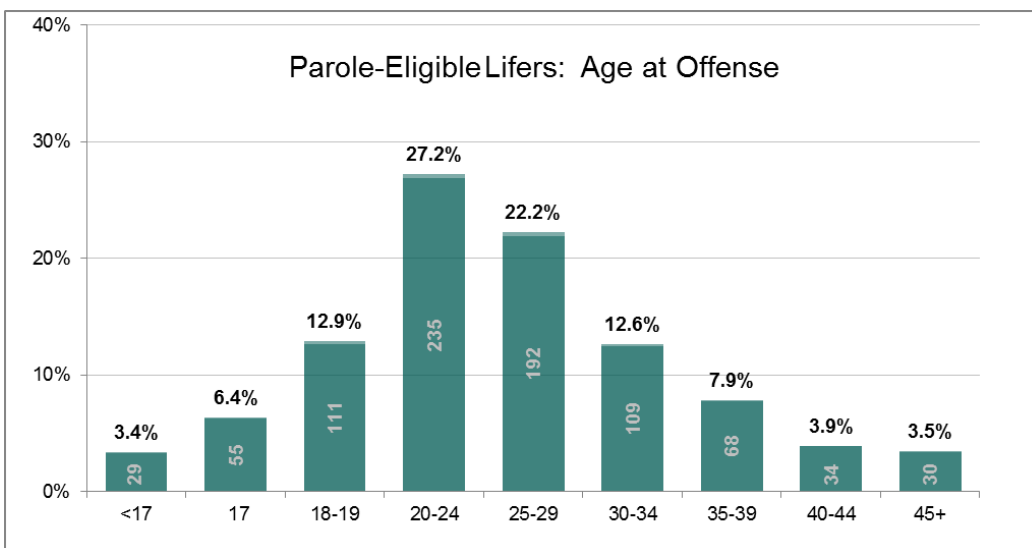
<sup>5</sup> The MDOC typically codes Hispanics as white, so accurate counts of both whites and Hispanics are not available.



Two-thirds of the parole-eligible lifers were sentenced in just six counties: Wayne (38.6%), Oakland (6.6%), Genesee (5.7%), Saginaw (5.7%), Kent (5.0%) and Berrien (4.5%).

### Age at offense

The lifers currently eligible for parole were young when they committed their crimes. **Ten percent were under 18.** (This does not include 360 people who received mandatory sentences of life without parole for murders committed when they were less than 18 and who may be resentenced because of the U.S. Supreme Court’s decision in *Miller v Alabama*.)



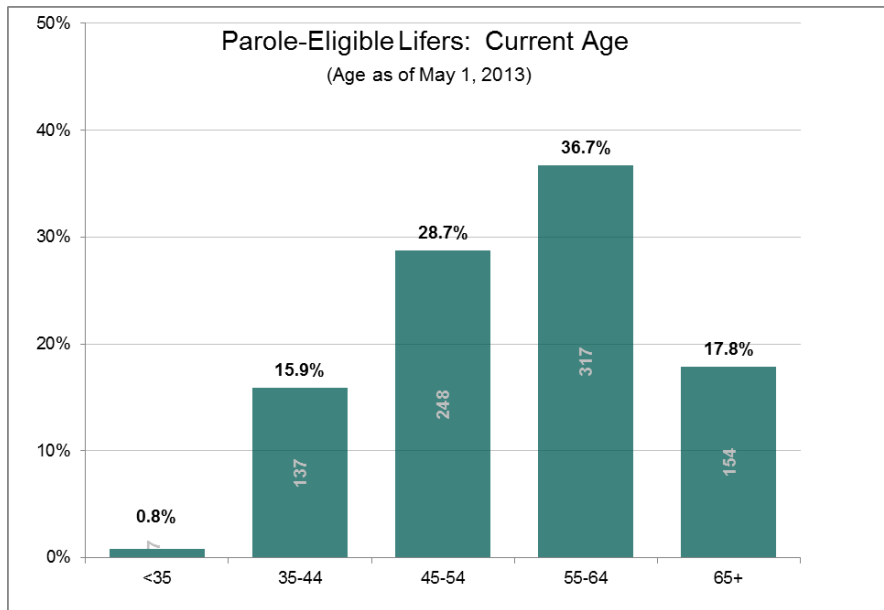
Nearly a quarter were younger than 20.

Half were under 25.

At the other extreme, only 30 of the 863 eligible lifers were 45 or older at the time of offense.

## Current Age

Decades later, these young offenders have become middle-aged.



More than 80% of the currently eligible lifers are 45 or older.

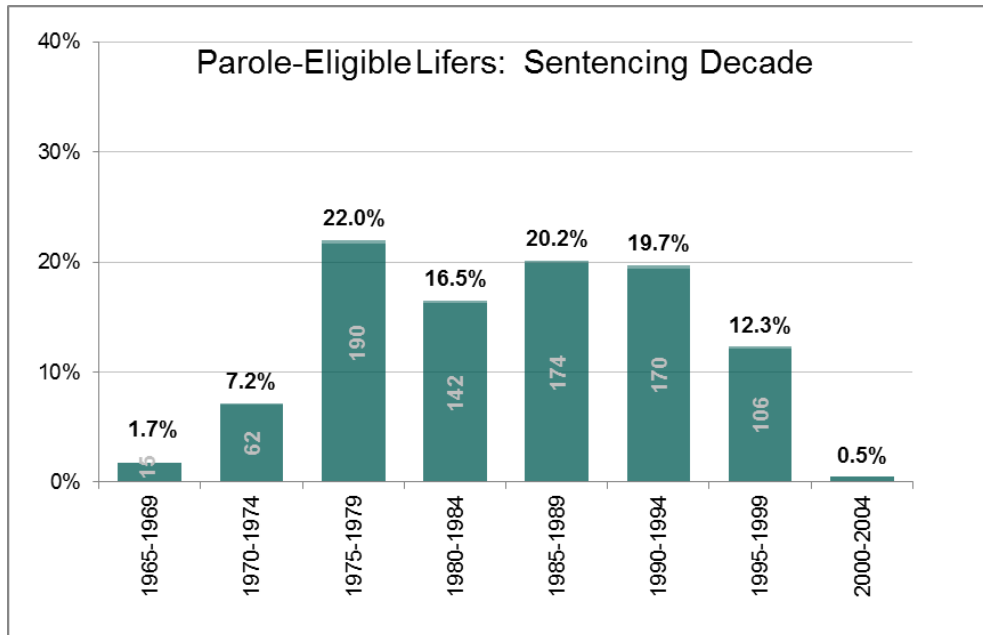
More than a third are between the ages of 55 and 64.

More than 150 (about 18%) are 65 or older. In fact, more eligible lifers are 65 or older than are younger than 45.

By comparison, the average age of all prisoners in 2010 was 38. About 17% of the total population was over age 50.

## Sentencing Decade

More than 80% of the currently eligible lifers were sentenced before the laws regarding lifers began to change in late 1992. In fact, two-thirds received their sentences before 1990. Nearly 270 were sentenced before 1980; 77 have been incarcerated since the mid-1970s. The vast



majority of these lifers were therefore required to serve only 10 calendar years before becoming eligible for parole.

In the 1960s, '70s and '80s, judges believed parolable lifers who lacked extensive prior records and did well in prison would be out, as a practical matter, in 12, 14 or

perhaps 16 years. This belief was grounded in both parole board practices and the norms of the times. In those decades, before sentences became increasingly punitive, 10 years in prison was

	<i>Proportion of minimum sentences that were 10 years or less</i>		
	<b>Murder 2</b>	<b>CSC 1</b>	<b>Armed Robbery</b>
<b>1970s</b>	47%	74%	84%
<b>1980s</b>	33%	62%	86%
<b>1990s</b>	20%	54%	87%

viewed as a significant punishment. Among those people not sentenced to parolable life, minimum sentences of 10 years or less for the most serious offenses were common. In those decades judges were also well aware that even much longer minimum terms were routinely diminished by many years of good time.

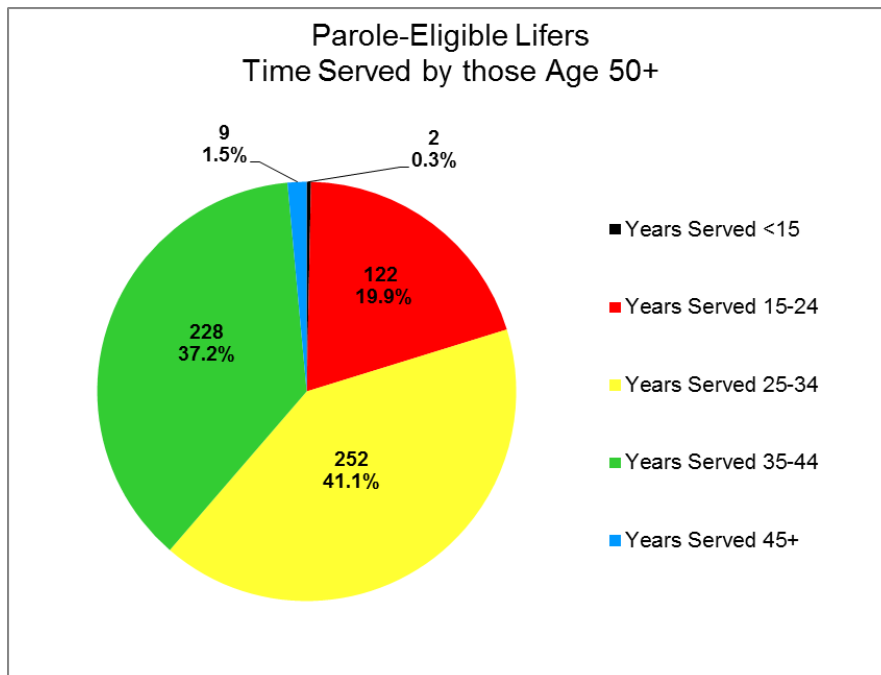
**When most of today’s parole-eligible lifers were sentenced, it was by judges who believed both a life sentence and a 40-year minimum term meant release within 16 years.**

As public attitudes changed, the proportion of sentences imposed for murder and sex offenses that were 10 years or less gradually declined. On the release side of the equation, the intentions of judges at the time of sentencing were displaced by new parole board policies. A 2006 study found that nearly 73% of people sentenced to parolable life terms from 1900-1969 were released after serving, on average, 15.8 years.<sup>6</sup> But of the lifers sentenced from 1970-1985, only 8% had been released. Those who were sentenced before attitudes hardened but considered for parole afterward had essentially become prisoners of politics.

## Age and Time Served

Hundreds of older lifers have now served decades past the time they became eligible for parole.

**Nearly 500 of the currently eligible lifers are age 50 or older and have served at least 25 years; nearly 240 have served 35 years or more.**



More than 64% of **all** currently eligible lifers have served 25 years or more.

### Juveniles

Of the currently eligible lifers, 84 were juveniles when they committed their crimes.

Two-thirds of these prisoners have served 25 years or more.

One-third have served at least 35 years.

<sup>6</sup> See note 4, above.

## Past crimes and current risk

The vast majority of the eligible lifers committed serious crimes. A little over half of the currently eligible lifers are serving for second-degree murder. When attempts, assaults with intent and conspiracies are included, 62% were convicted of either committing or intending a murder. Nearly a quarter were convicted of sex offenses; 10% committed or attempted to commit armed robbery. A small group received life for habitually committing nonviolent offenses.

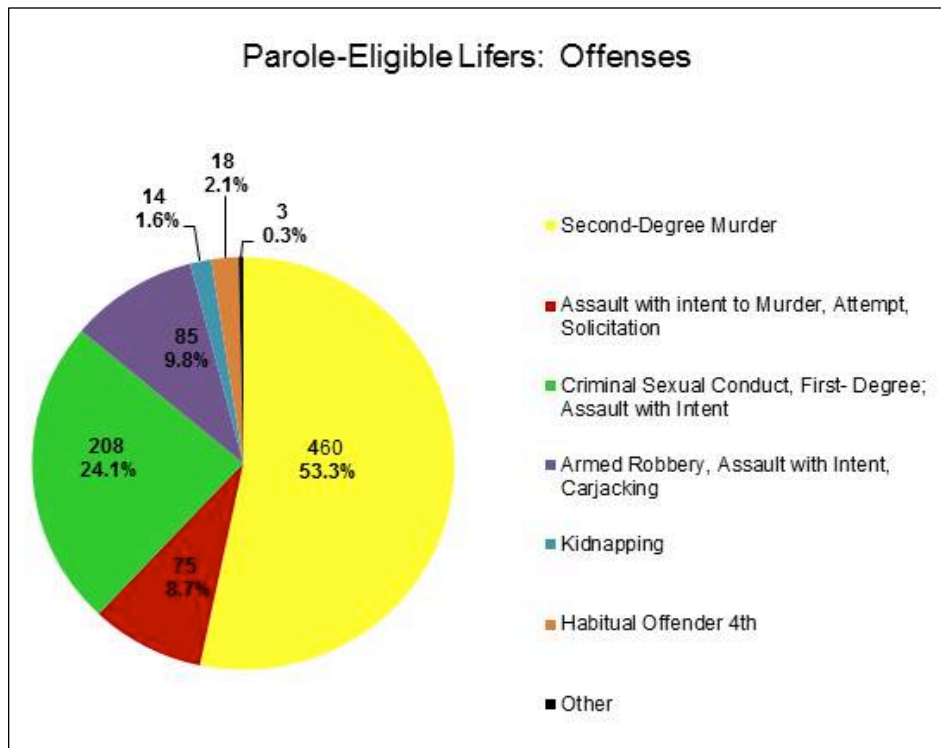
However, having committed a serious crime in the past and currently being a risk to the public are very different matters. People convicted of the most serious offenses are actually the least

likely to repeat their crimes.

**Research shows that homicide and sex offenders have the lowest re-offense rates of any group.**

Numerous studies place the rate at which released sex offenders are convicted of new sex offenses at about 3%.

In a Michigan study, only 2.7% of 2,558 homicide offenders released over a period of 14



years were returned for any new crime against a person and just 0.5% were returned for another homicide.<sup>7</sup>

Their age, prior records, institutional histories and the nature of their offenses all indicate the parole-eligible lifers are at low risk for re-offending. Of 688 parolable lifers released from 1900-2003, only 15 were returned to prison with new sentences. Of 121 lifers who were paroled from January 2005-May 2013, just five have been returned to prison for parole violations. Of these, only three had been sentenced for committing new crimes. Just one had committed a new assaultive offense.

<sup>7</sup> CAPPS, *Denying parole at first eligibility: How much public safety does it actually buy?* (Lansing, Aug. 2009).

## Two More Barriers to Parole

### Judicial objections

By statute, before the parole board can decide whether to release a lifer, it must conduct a public hearing at which anyone who supports or opposes parole can testify. When it sets the date for a public hearing, the board must notify the sentencing judge or that judge's successor. If the judge objects in writing within 30 days, the board loses its authority to grant parole and the scheduled public hearing is canceled.

There are no procedural safeguards. The judge is not required to hold a hearing or solicit input from the prisoner but can speak off the record to the prosecutor, the victim or anyone else. The judge does not have to state any reason for objecting and the decision cannot be appealed.

Since 2007, judicial objections have affected at least 47 prisoners, causing about one-quarter of all scheduled hearings to be cancelled. The majority of objections are based on the offense or its effect on the victim, not on current information about the prisoner. Some judges give no reason at all. At least six objections were in cases where the board's interest in proceeding was based on medical problems that left the prisoner wholly incapacitated. Nearly all were by a successor judge who had no personal knowledge of the offense or the offender.

Whether someone is vetoed depends entirely on what the successor judge sees as his or her role in the parole process. The extent to which judges exercise their veto power varies widely across and even within counties. All parolable lifers are intensively reviewed by the parole board before a public hearing is scheduled. Those whose hearings have been cancelled because of objections are not worse candidates for release; they are simply less fortunate in the identity of their successor judges.

### Consecutive sentences

Another 90 lifers would be eligible for parole but for a quirk in the way the MDOC calculates time. By practice, if a lifer also has a consecutive term to serve for an offense committed in prison, the MDOC's method of calculating time effectively prohibits parole. Normally, when people have consecutive sentences, the minimums of each term are added together to determine the earliest release date. Lifers do not have a minimum sentence set by a judge. Although the statute sets either 10 or 15 years as the date of first parole eligibility, the MDOC does not use that eligibility date as the minimum for purposes of time calculation. Instead, it takes the position that lifers have no minimum to which the new minimum can be added. Therefore these lifers never become eligible for parole. They can only be released if the governor grants commutation.

Broad assumptions about lifers with consecutive sentences are not justified by the facts. While some cases are quite serious, many involve people who were very young when they entered prison and got into trouble by continuing to buck authority. The consecutive sentences involved are often quite short, such as 1-4 years for an assault, 1-5 for possessing drugs or a homemade weapon, or a 6-month minimum for attempting escape. In these situations the lifer may have long ago served the time required for parole eligibility on both the life and the consecutive sentences, but is considered ineligible because the MDOC will not add the terms together.

If a consecutive sentence is a long one for a serious crime, calculating parole eligibility in the usual way will still result in the prisoner serving many additional years before even being considered for release. But when someone received a short sentence for in-prison conduct

decades ago and has had no problems since, there is no principled reason to allow a short consecutive sentence to turn a parolable life term into a non-parolable one.

## Solutions

Michigan's process for reviewing parolable lifers is broken. The legacy of the last 25 years is an ever-growing pool of aging prisoners who have served decades longer than their sentences require. Although the parole board now conducts about four public hearings a month, there is good reason to fear they may still never catch up. These time-consuming cases must be handled while making 16,000 other decisions annually. If just half the current pool of parole-eligible lifers are good candidates for release, at the current rate it could take nine years to consider them all.

The changes that stemmed from the old "life means life" philosophy have become self-fulfilling prophecies. Although the board is more willing to consider lifers, the process inhibits favorable decisions rather than promoting them. For instance, some lifers have received repeated five-year file reviews and have not been seen by a parole board member in 15 or 20 years. Not having to articulate reasons or review parole guidelines scores encourages board members to make no interest decisions without carefully assessing the merits of each case. And judicial vetoes and arcane time calculation methods prevent the board from acting in some cases even when it wants to.

In combination, the following proposals could greatly increase the likelihood that lifers who have earned their freedom and pose no current risk would be paroled:

- ✦ Require the board to consider lifers based on the same criteria that are applied to any other prisoner who is eligible for parole, including the calculation of parole guidelines and other risk assessment scores.
- ✦ Require the board to interview lifers when they first become eligible for parole and every two years thereafter.
- ✦ Define a decision of "no interest" in proceeding to public hearing as a parole denial so that reasons must be given to the prisoner along with any recommendations for the prisoner to follow to make future release more likely.
- ✦ Permit prisoners to appeal parole board decisions, just as prosecutors and victims can.
- ✦ Permit successor judges to give input when public hearings are scheduled but eliminate their authority to veto paroles.
- ✦ Use the date of first eligibility on the life term as set by statute to calculate parole eligibility for lifers with consecutive sentences.
- ✦ Establish a special lifer review board, at least temporarily, that has the capacity, staff and authority to work through the current pool of eligible lifers.
- ✦ Change the penal code to state that the minimum of a parolable life sentence is 15 years.

Improving the lifer review process would *not* dictate the results in any particular case. But it *would* remove arbitrary barriers and ensure that all parolable lifers get thorough consideration and a meaningful opportunity for release.