

Summary of Foster-Bey, et al. v. Sampson case

A federal class action law suit filed in 2005, *Foster-Bey, et al v Sampson*, et al. resulted in the requirement that the Michigan parole board systematically review all the parolable lifers sentenced before Nov. 1992.

District Judge Marianne Battani agreed with the prisoner class that it violated the ex post facto clause of the U. S. Constitution to treat lifers who became eligible for parole after serving 10 years as if "life means life." In 2008, she ordered the board to re-interview all members of the class, using the pre-1992 review standards.

However, the Sixth Circuit Court of Appeals reversed Judge Battani's decision and, on Oct. 4, 2010, the U.S. Supreme Court declined to review the case. Attorney Paul Reingold of the University of Michigan Clinical Law Program, who represented the prisoner-plaintiffs since 2005, had to advise his clients that the case is now over.

There is no question that the Foster-Bey litigation helped kick-start the recent movement to parole more lifers. The interviews the board was required to conduct, the reporting Judge Battani required and the persuasive historical data that Reingold and his students amassed all led to the release of dozens of nondrug lifers who would not otherwise have been paroled and dozens more are apparently under active review.

However, the board has canceled scheduled interviews for the fourth quartile of the class – those whose offenses occurred from March 1988-Oct. 1992. These lifers will be considered on the regular schedule, five years from their last routine review.

The demise of Foster-Bey may be offset by the legislature's interest in ensuring that the release of parolable lifers continues. In Section 615 of Senate Bill 1153, the corrections appropriations bill for Fiscal Year 2011, the legislature stated:

After the parole and commutation board has reviewed the cases of all inmates sentenced to life with the possibility of parole who have good institutional records and pose low risk to the community, the parole and commutations board shall provide the legislature with a detailed explanation of why an inmate who scores "high probability of release" is not being paroled.