CAPPS
CITIZENS ALLIANCE ON PRISONS & PUBLIC SPENDING

House Criminal Justice Committee
April 12, 2016

Successor Judge Vetoes of Lifer Paroles
HB 5273

Good morning, Chairman Heise and members of the Committee. My name is Barbara Levine; I'm the associate director of the Citizens Alliance on Prisons and Public Spending. The unique plight of Michigan's parolable lifers is an issue on which CAPPS has long focused. Objections to parole from successor judges are one of the multiple hurdles these lifers face. We are very grateful to Rep. Pagel for his leadership on this matter and to Rep. Heise for taking the bill up so promptly.

I'm going to focus my testimony on the total number of vetoed lifers and their characteristics as a group. But I'd like to begin by putting this issue in context.

Michigan has a pretty unique sentencing scheme. It makes the penalty for all the most serious offenses short of first-degree murder "life or any term." This gives the sentencing judge the discretion to set both the minimum and maximum sentences or, in the alternative, to impose a term of "parolable life." If they pick parolable life, the first parole eligibility date is set by statute, commonly known as the lifer law. Until 1992, the lifer law required service of a minimum of 10 years. In 1992, that was changed to 15 years.

Hundreds of people currently serving parolable life terms were sentenced in the 1960s, '70s and '80s. Their judges expected that, if they did their time well, they would be released if not exactly in 10 years, then in 12 or 15. Long indeterminate sentences, which at the time were subject to reduction by very generous good time credits, and lifer terms were treated as interchangeable. Judges even discussed with defense attorneys whether they would prefer to have their clients receive a long minimum sentence, such as 40 years that with good time could bring parole eligibility in 16, or a life term that could bring parole eligibility in 10. Not surprisingly, given the choice, defendants chose life. Judges routinely said to young defendants at sentencing: "I'm giving you life but if you behave and finish school, you can be released in 10."

But then parole policies tightened. Lifer paroles all but evaporated for over a decade and even now, relative to the backlog, are granted sparingly. As a result, people who judges thought would be released in 10 years have now served decades longer than that. The MDOC's most recent report to the legislature shows that 1,004 prisoners are currently eligible for parole on their life sentences. Of these, 632 have served more than 25 years; 273 have served more than 35 years. Most of their counterparts who committed similar offenses but received indeterminate sentences were released long ago.

The parolable lifers did not receive life sentences because they were the "worst of the worst." Back in the days before sentencing guidelines, whether you got life or a long term of years depended on who your sentencing judge was and what the judge believed a life sentence really meant. Now things have come full circle. Today, whether the board is permitted to grant

release almost always depends on the identity of a successor to the sentencing judge and what the successor believes his or her role in the process should be.

So now let's look at who we're talking about. Note that we are *not* talking about people serving parolable life for drug offenses. Their eligibility depends on different rules but they typically get released once they become eligible.

Attached to my testimony are two items. One is a summary that compares the whole group of lifers scheduled for public hearing with those who were vetoed. The other is a chart of all 61 lifers who have had their paroles vetoed in the last 10 years. It contains information about the individuals, their offenses and the identity of their objecting judges.

The chart also has a code that shows the basis of the objection. Judges do not have to give any reason and in fifteen cases they did not. Most often they refer to the seriousness of the offense or the effect on the victim, which, of course, never changes. If the facts of the offense are perpetually a basis for denying release, the objecting judge is effectively converting the original parolable life sentence to life without parole.

The vetoes include people who were bedridden or terminally ill, who were teenagers when they committed their crimes 35 and 40 years ago, and who are now in their sixties and seventies.

- Seven lifers died in prison after being vetoed.
- Six were ultimately released despite the initial objection.
- Six of the objections were from the original sentencing judge; 90% were from successors.
- Nine were vetoed twice, sometimes by the same successor, sometimes by different ones

Some broad observations:

The board has scheduled 318 lifers for public hearing over the last 10 years. Of these, 61 or 19 percent have been vetoed. Sixty-four percent, or 203, have actually been released. Of these, eight have been returned to prison, four for technical parole violations and four with new convictions. That is a recidivism rate of four percent. Of the new convictions, only 1 was assaultive.

There is no significant difference between the people who were and were not vetoed, other than the identity of the objecting judge. On average, they were in their mid-twenties at the time of the offense, over 60 by the time of parole consideration, and had served more than 30 years. A little over half had been convicted of murder.

The counties from which the lifers come reflect both their population and the propensity of their bench to impose life terms decades ago. What is particularly interesting is their proportion of objections. So Oakland, for instance, which had 28 cases to consider, had objections in four, while Saginaw, which had 20 cases total, had objections in seven. And Genesee, which had 11 cases, had objections in none.

Most interesting is Wayne County. Sixteen vetoes in 137 possible cases is about 12%, below the average. But then consider that 11 of those 16 were from a single judge. The remaining five are from five different judges. Thus, a single judge who happens to be the successor to judges who imposed life terms in the 1970s and '80s, is now in a position to prevent paroles contrary to his predecessors's intentions and out of all proportion to the members of his own bench and to circuit judges generally.

The exercise of lifer vetoes by successor judges has no principled rationale. It adds nothing to public safety or to the quality of the decision-making process. The board does not grant release without closely examining the lifer's history and conduct, interviewing the lifer extensively and receiving input from all interested parties. Veto authority burdens successor judges with the

responsibility of making critical decisions about cases with which they have no familiarity. As the support of the Michigan Judges Association for HB 5273 reflects, most would prefer to leave those decisions to the painstaking procedures of the parole board. The cases that are vetoed are so indistinguishable from those that are not as to appear arbitrary in comparison.

Lifers spend decades trying to earn their release. Successor judge vetoes are crushing to those who come so close to freedom only to lose it to the luck of the draw, frustrating to a parole board that is powerless to implement its own decisions, and costly to taxpayers. The veto power was originally granted only to the actual sentencing judge. Why that power was extended to successor judges in 1953 is lost to the mists of history. But it has proven to be an unfortunate choice that we urge you to rectify.