Amicus Curiae to the Grand Chamber of the European Court of Human Rights

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Application no. *20863/21 – McCallum v. Italy*

The *McCallum* case – communicated to the Italian Government on 28 May 2021 – was relinquished in favour of the Grand Chamber on 7 September 2021. This *amicus curiae* intervention develops arguments advanced in the a*micus curiae* intervention by the same authors that was introduced to the First Section on 2 August 2021.

List of documents attached

1. Michigan Legislative Corrections Ombudsman (email re. Michigan life without parole statistics)
2. MDOC/Parole Board Commutation Data (for prisoners serving life without parole) (1969-2001)
3. Chart Summarizing MDOC/Parole Board Data from 1969-2021

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§ 1. Article 3 of the ECHR absolutely prohibits the infliction of torture and inhuman or degrading treatment or punishment. In a series of major decisions since 2013, the Grand Chamber of the ECtHR has spelt out the criteria according to which sentences of life imprisonment must be implemented to ensure that Article 3 is not infringed. If life sentences meet these criteria, they can be imposed and implemented consistently with Article 3.

Article 3 also governs extradition from member states. When a member state receives an extradition request, it has a duty to assess prospectively whether allowing extradition may result in a life sentence in the requesting state that would infringe Article 3, as interpreted by the ECtHR. This does not impose a burden on a non-member state seeking extradition, but on the member state from which extradition is sought. Such member state must ensure that its actions in allowing extradition do not foreseeably result in the Article 3 rights of a person in its jurisdiction later being infringed by a non-member state.

The amici curiae submit in this intervention that the criteria developed by the ECtHR in respect of life imprisonment should be applied when deciding whether Italy is justified in extraditing McCallum to stand trial in Michigan, where she will be sentenced mandatorily to Life Without Parole (LWOP) if she is convicted of first-degree murder.

PART I – RECENT ECtHR GRAND CHAMBER CASE LAW ON LIFE IMPRISONMENT

§ 2. Since 2013, the case law of the Grand Chamber of the ECtHR has spelt out in considerable detail the requirements of Article 3 of the ECHR in respect of life sentences. It did so against the background of earlier cases. For example, on 12 February 2008 in *Kafkaris v Cyprus* (21906/04), the Grand Chamber recognised that for a life sentence to be compatible with Article 3, it had to be reducible; but the Court did not spell out in detail how such reducibility should be determined, or how the fitness of a prisoner for release should be reviewed. Three decisions of the Grand Chamber were key in specifying these new criteria: *Vinter and Others v. the United Kingdom* [GC], 66069/09, §§ 119-122; *Murray v. the Netherlands* [GC], 10511/10, §§ 99-104; and *Hutchinson v. the United Kingdom* [GC], 57592/08, §§ 42-45.

§ 3. The most important developments came on 9 July 2013, when in *Vinter and others* (cited above) the Grand Chamber re-examined how to determine whether, in a given case, a life sentence could be regarded as reducible, so that it could be served in a way compatible with human dignity and therefore with Article 3.[1] Life sentenced prisoners had to have a prospect of release, but as long as such prospect existed *de jure* and *de facto*, life sentences could, for example, if necessary for the protection of the public, be enforced by detaining such prisoners until they died in prison. The Grand Chamber stressed the importance of having appropriate procedures in place, holding that "Article 3 must be interpreted as requiring reducibility of the sentence, in the sense of a review which allows the domestic authorities to consider whether any changes in the life prisoner are so significant, and such progress towards rehabilitation has been made in the course of the sentence, as to mean that continued detention can no longer be justified on legitimate penological grounds" (§ 119). The Grand Chamber emphasised that, as a matter of fundamental human rights, life sentenced prisoners, like all other sentenced prisoners, had to be offered opportunities for rehabilitation. For this reason, as a matter of law and practice, life sentenced prisoners were entitled to know, at the outset of their sentences, what they had to do to be considered for release, and under what conditions, including when a review of the sentence would take place or could be sought.

In the words of the *Vinter* Court: "Consequently, where domestic law does not provide any mechanism or possibility for review of a whole life sentence, the incompatibility with Article 3 on this ground already arises at the moment of the imposition of the whole life sentence and not at a later stage

[1] The Grand Chamber in *Vinter* relies heavily on German law, and also on Italian law, for its finding that it would be incompatible with human dignity forcefully to deprive a person of his freedom without at least providing him with the chance to someday regain that freedom. German law also holds that the prison authorities have the duty to strive towards a life sentenced prisoner's rehabilitation and that rehabilitation was constitutionally required in any community that established human dignity as its centrepiece. The Grand Chamber states at § 113 that "similar considerations must apply under the Convention system."

of incarceration" (§ 122). The *Vinter* Court made it clear that "compassionate release for the terminally ill or physically incapacitated" was not sufficient to meet the requirements of Article 3 (§ 127). The prospect of release had to include the prospect of returning to community as an active member of society and not merely being allowed to die at home or in a hospice rather than in prison.

§ 4. On 26 April 2016, in *Murray v. the Netherlands* (cited above), the Grand Chamber unanimously endorsed the developments of life imprisonment jurisprudence in *Vinter*. At §§ 99-100, it summarised comprehensively the criteria that had emerged to date from the decision of the Grand Chamber in *Vinter* and in related decisions of various sections of the ECtHR. It observed that "the comparative and international law materials before [the *Vinter* court] showed clear support for the institution of a dedicated mechanism guaranteeing a review no later than twenty-five years after the imposition of a life sentence, with further periodic reviews thereafter" (§ 99), but noted that the form of this review mechanism was not prescribed. In particular, the *Murray* judgment emphasised the provision of opportunities for rehabilitation for all life sentenced prisoners, for without such opportunities they would not have a prospect of release (§ 104).

§ **5.** On 17 January 2017, in *Hutchinson v. the United Kingdom* (cited above), the Grand Chamber reaffirmed the criteria it had established in *Vinter* and in *Murray* (while accepting that the English courts had found that English law for considering release from life imprisonment would now be implemented according to the criteria set forth in *Vinter*). For this intervention, it is particularly significant that the Grand Chamber, in finding that English law met the new Article 3 criteria, emphasised the fact that release decisions were fully reasoned, and decisions on the release of life-sentenced prisoners (taken by the Secretary of State for Justice) were subject to judicial review.

§ 6. On 15 June 2017, the evolutionary development of the life imprisonment jurisprudence of ECtHR was recognized by the Grand Chamber in its admissibility decision in *Harkins v. United Kingdom* (71537/14). In this decision, the Grand Chamber declared the application inadmissible on the ground that it did not contain relevant new information, but that there had been significant developments in the ECtHR jurisprudence laying down criteria for the implementation of life sentences, since 17 January 2012, when an earlier case involving Harkins (the decision of the Fourth Section in *Harkins and Edwards v United Kingdom* (9146/07 and 32650/07) had been decided.

PART II – LAW GOVERNING LIFE IMPRISONMENT IN EUROPE

§ 7. The criteria that life sentences must meet have continued to evolve as they have been applied by various sections of the ECtHR, other than the Grand Chamber, to the specific legislative frameworks in European countries. Thus, on 23 May 2017, in *Matiošaitis and others v. Lithuania* (22662/13, 51059/13, 58823/13, 59692/13, 59700/13, 60115/13, 69425/13 and 72824/13), the former Second Section of the ECtHR stressed that Lithuanian law, which did not permit life sentenced prisoners to be released on parole, did not offer such prisoners a "prospect of release" by allowing for the commutation of their sentences due to terminal illness. Concerning presidential pardon, the Court observed that the Lithuanian system had procedural shortcomings. In the words of the Court: "In Lithuania the presidential power of pardon is a modern-day equivalent of the royal prerogative of mercy, based on the principle of humanity …, rather than a mechanism, with adequate procedural safeguards, for review of the prisoners' situation so that the adjustment of their life sentences could be obtained." (§ 173.) The critical point was that in Lithuania neither the president nor the pardon commission that advised the president was required to give reasons if a pardon was refused. The president's pardon decrees were not subject to judicial review and could not be challenged by the prisoners directly, so the impression of arbitrariness could not be avoided. In response to the decision in *Matiošaitis and others*, Lithuania enacted new legislation on the release of life prisoners (Amendment to Article 51 of the Criminal Code of Lithuania adopted on 19 March 2019). On 18 June 2019, the ECtHR explicitly confirmed that the amendment meets the *Vinter* and *Murray* standards (*Dardanskis v. Lithuania,* 74452/13, §§ 27 and 28). Life prisoners in Lithuania will now be entitled to consideration for release after a prescribed period, by a fairer procedure than before.

§ 8. On 22 March 2018, a civil court in Malta exercising its constitutional competence and relying on the case law of the ECtHR rather than a specific decision against Malta, found a violation of Article 3 of

the Convention in so far as Maltese law did not allow life sentenced prisoners to seek a review of their sentences. As a remedy, it ordered that life sentenced prisoners could apply to the parole board for conditional release, after they had served 25 years. The court considered that a presidential pardon (the conditions for the grant of which could not be known to the applicant at the time of his incarceration) did not fulfil the relevant requirements of an effective review. (See *Vella v. Malta*, 14612/19, Third Section decision, 12 December 2019.)

§ 9. On 12 March 2019, in *Petukhov v. Ukraine no. 2* (41216/13), the Fourth Section of the ECtHR found that life sentenced prisoners in Ukraine could expect to regain their liberty only in two instances: in case of serious illness preventing their further imprisonment, or if they were granted presidential clemency. Both of these procedures were held to be inadequate on similar grounds to those in *Matiošaitis and others v. Lithuania* (cited above). In particular, the Court noted that the Ukrainian clemency procedure regulations state that persons convicted of serious or particularly serious crimes, or with two or more previous convictions for premeditated crimes, may be granted clemency in exceptional cases and subject to extraordinary circumstances. All life sentenced prisoners in Ukraine fell within these categories. It was not clear what was meant by exceptional cases and extraordinary circumstances, and there was nothing to suggest that the penological grounds for continuing to keep someone in prison were of relevance for the interpretation of those notions. The Court's conclusion was that life-sentenced prisoners do not know clearly from the outset of their sentences what they must do in order to be considered for release. In addition, the Court observed that the procedure in Ukraine required neither the clemency commission nor the president to give reasons for their decisions regarding requests for clemency. On 16 September 2021, the Second Senate of the Constitutional Court of Ukraine (No 6-p (2)/2021), relying on *Petukhov v. Ukraine no. 2*, declared that provisions in the Ukrainian Criminal Code dealing with the release of life sentenced prisoners were unconstitutional because they violated Article 3 of the ECHR.

§ 10. The decision of the First Section on 13 June 2019, in *Viola v. Italy no. 2* (77633/16), is also relevant to our arguments. There the ECtHR, relying on its well-established jurisprudence, declared a violation of Article 3 in the case of a specific type of life sentence, the so-called "ergastolo ostativo", which prohibits conditional release of a life sentenced prisoner who does not collaborate with the judicial authorities. The Court found the violation for lack of a concrete, and not an abstract, life sentence review, which meant that a prisoner could not be excluded from consideration because he failed to meet a single standard. The *Viola v. Italy no. 2* judgment has been implemented in sentence no. 253/2019 and especially in the ordinance ("ordinanza") no. 97/2021 of the Italian Constitutional Court.

§ 11. Finally, the ECtHR principles governing release from life imprisonment have been refined further in a series of cases involving Hungary, the only European country that has sought to perpetuate life without parole sentences by making provisions for them in its national constitution.[2] In *Murray* (cited above) the Grand Chamber referred to the 2014 decision of the Second Section in *László Magyar v. Hungary* (73593/10) in support of the proposition that the assessment of a life sentenced prisoner for release must be based on rules having a sufficient degree of clarity and certainty, which was not the case in Hungarian law as it then stood. Hungarian law was amended, but on 4 October 2016, it was again found to be inadequate by the First Section in *T.P. and A.T. v. Hungary* (37871/14 and 73986/14).

Most recently, on 7 June 2021, in *Sándor Varga and others v. Hungary* (9734/15 and 2 others), the First Section of the ECtHR was confronted with the fact that the procedures that it had rejected in *T.P. and A.T.* were still being followed. In *Sándor Varga and others* the Court emphasised that the Hungarian legislation did not offer *de facto* reducibility of the applicants' whole life sentences because release was considered, in the form of the mandatory pardon procedure, only after forty years. That factor, coupled with the lack of sufficient procedural safeguards, led the Court to find a violation of Article 3. In *T.P. and A.T*, confirmed in *Sándor Varga and others*, the Court had noted that the general criteria to be taken into account by the clemency board in deciding on whether or not to recommend a life prisoner for

[2] Miklós Lévay, "Constitutionalising Life Imprisonment without Parole: The Case of Hungary", in D. van Zyl Smit and C. Appleton (eds.), *Life Imprisonment and Human Rights*, (Hart, Oxford, 2016) 167-188.

presidential pardon were now clearly set out in the new legislation, which satisfied the requirement that any such assessment is based on objective, pre-established criteria. These criteria did not apply to the decision made by the president of the republic, however, who had the last word in every individual case. In other words, the new legislation did not oblige the president to assess whether continued imprisonment is justified on legitimate penological grounds. Moreover, the new legislation failed to set a timeframe within which the president had to decide on a clemency application, and it did not oblige the president to give reasons for his decision, even if it deviated from the recommendation of the clemency board.

PART III – EXTRADITION IN ECtHR CASE LAW

§ 12. The 4 September 2014 decision of the former Fifth Section in *Trabelsi v. Belgium* (140/10) is the leading judgment of the ECtHR on the extradition of people who could face LWOP in the receiving country to which they are extradited. This is because the *Trabelsi* decision recognised, explicitly and for the first time in the context of extradition (at § 130), the "new criteria" on the implementation of life imprisonment, which had been established by the Grand Chamber in *Vinter* (discussed at § 2 above), which had been decided shortly before. *Trabelsi* held that these criteria must be applied to ensure protections against infringements of Article 3 when deciding whether to extradite someone from a member state.[3] The new criteria set under Article 3 in *Vinter* were absolute (*Trabelsi* at § 120). Taken together, they provided protection against life sentences that are incompatible with Article 3.

§ 13. The absolute nature of the full set of criteria defining torture and inhuman or degrading treatment or punishment in any case of expulsion from a country (under which category extradition is included) had been stressed by the Grand Chamber as early as 2009 in *Saadi v. Italy* (37201/06 at §126). It is also noteworthy *Trabelsi* is cited in subsequent cases as a source for the proposition of the absolute nature of Article 3. Thus, for example, on 7 June 2016, in *Findikoglu v. Germany* (20672/15), the Fifth Section of the ECtHR reiterated "that, under its well-established case-law, protection against the treatment prohibited under Article 3 is absolute. As a result, the extradition of a person by a Contracting State can raise problems under this provision and therefore engage the responsibility of the State in question under the Convention. This can be the case where there are serious grounds to believe that if the person is extradited to the requesting country, he would run a real risk of being subjected to treatment contrary to Article 3 (see *Trabelsi v. Belgium*, no. 140/10, § 116, ECHR 2014 (extracts)). In such cases, Article 3 implies an obligation not to remove the person in question to the said country, even if it is a non-Convention State."[4]

§ 14. On 17 January 2012, in *Harkins and Edwards v. The United Kingdom* (9146/07 and 32650/07), predating both *Vinter* and *Trabelsi*, the Fourth Section of the ECtHR held that violations would not be established so readily in cases involving an "extra-territorial context" (at §126). However, this decision was handed down before the full criteria for what was required for a life sentence (in order not to contravene Article 3) had been established by the ECtHR in *Vinter* and other post 2013 decisions. In the light of the judgment in *Trabelsi* and its confirmation in other decisions, *Harkins and Edwards* can no longer be regarded as good law on the standard to be applied in cases involving extradition. In addition, in *Harkins and Edwards* the Court focussed on the restrictions that allegedly were being put on the power of a non-European state to impose life imprisonment of its choice, rather than – as it should have

[3] For further explication of the key criteria for the implementation of life imprisonment in the context of extradition, including what a life sentenced prisoner would need to know at the start of a life sentence, see *Trabelsi* at §§ 115 and 137.

[4] At § 28. See also the decision on 12 December 2017in *López Elorza v Spain* (30614/15) (ECHR) at § 102. Both *Findikoglu* and *López Elorza* are extradition cases. On the facts, extradition was allowed in that it was not proven that the applicants faced LWOP sentences. However, this does not diminish their importance of their exposition of the relevant law. *Trabelsi* was also referred to with approval in a number of non-extradition cases, *Murray v. the Netherlands* (cited above) § 99; *X v. the Netherlands* (14319/17, Third Section, 10 July 2018, § 71) and *G.S. v. Bulgaria* (36538/17, Fifth Section, 4 April 2019, § 79). For an overview, see Lewis Graham, "Extradition, Life Sentences and the European Convention" 2020 *Judicial Review* 25(3), 228-23. https://doi.org/10.1080/10854681.2020.1813007 .

done – on the duty of the extraditing state to ensure a punishment consistent with the ECHR if extradition were allowed.[5]

§ 15. The decision in *Trabelsi* (cited above) is also clear authority for the proposition that the risk incurred by the applicant under Article 3 must be assessed *ex ante* (at § 130) – that is to say, the impact of the possible conviction of the applicant in the state seeking extradition. The *Trabelsi* decision explains (at § 120) that: "It is a matter of ensuring the effectiveness of the safeguard provided by Article 3 in view of the serious and irreparable nature of the alleged suffering risked." This reasoning cannot be faulted, for if a potential extraditee is to be protected from being treated in a way that would infringe Article 3, the risk assessment cannot be done after extradition has taken place. That would be too late: the person would have left the jurisdiction of the extraditing state, and indeed of the ECtHR.

PART IV – SENTENCING/PUNISHMENT FOR A MICHIGAN MURDER CONVICTION

§ 16. If the applicant is extradited to Michigan, she is likely to be charged with first-degree murder (M-1) under Michigan Compiled Laws 750.316(a), or felony murder under MCL 750.316(b). If she is convicted of M-1 or felony murder, an LWOP sentence is mandatory. If the applicant is charged and convicted of second-degree murder (M-2) under MCL 750.317, then the sentence would be life with parole (LWP) or a long term-of-years sentence. The latter would include a mandatory minimum that must be served in its entirety, and a maximum after which the prisoner must be discharged. An M-2 conviction, therefore, does not raise the issues presented by an LWOP sentence. Because there is a real prospect that the applicant will be convicted and sentenced to LWOP, the analysis below will focus on the law and procedures regarding Michigan prisoners serving M-1 LWOP sentences.

§ 17. Michigan prisoners serving LWOP sentences are categorically different from prisoners serving LWP sentences. LWOP prisoners are never eligible for parole and can only be released via executive clemency (reprieve, commutation, or pardon) by the governor. Compare MCL 791.234(6) with MCL 791.234(7). LWP prisoners become parole-eligible after 10, 15, 17.5, or 20 years, depending on when they committed their crime and what crime they committed. They get one interview with a parole board member after ten years, regardless of whether or not they are parole-eligible at that time. Thereafter, the board must conduct a file review every five years. See MCL 791.234(8)(a) & (b). In contrast, LWOP prisoners also get one interview with a parole board member at ten years – but no further parole review by the board is *mandated* at any time thereafter unless "determined appropriate by the parole board." MCL 791.244(1). There are no written standards as to what would make parole review "appropriate" at a later time, and the board is not required to self-initiate such an action within 25 years, or indeed ever.

§ 18. The Michigan Constitution, Art V, § 14 (1963), bestows on the governor the power "to grant reprieves, commutations, and pardons after convictions for all offenses…, subject to procedures and regulations prescribed by law." The limiting language "subject to procedures and regulations prescribed by law" pertains only to the process by which commutations move forward, not to the decision itself. That process assigns to the parole board the task of responding to prisoner-initiated applications for clemency, and it requires that the steps in moving such applications forward be accomplished within statutory deadlines. MCL 791.244. If the board chooses to move a clemency petition forward to a public hearing – which is required for the board to recommend commutation – then the board does not make a final recommendation until after the hearing. MCL 791.244(2)(f). The vote to recommend or not recommend a commutation is by a majority of the 10-person parole board. Commutation (as opposed to reprieve or pardon) of the sentence from LWOP to "time-served to life" is the form of clemency almost universally used in LWOP cases, because it results in a longer-than-usual 4-year period of parole.

§ 19. In *Makowski v. Governor*, 495 Mich. 465, 476 (Mich. Supreme Court, June 3, 2014), the words of the Court could not be clearer: "The Constitution indeed grants the Governor **absolute discretion** regarding whether to grant or deny a commutation. … We do not review the merits underlying the Governor's discretionary exercise of judgment but rather the extent of the Governor's powers." *Id.* at 10, 15, (bold added). In that case, the question was whether the governor could revoke a commutation once

[5] For an extended critique of the judgment in *Harkins and Edwards*, see Natasa Mavronicola, *Torture, Inhumanity and Degradation under Article 3 of the ECHR: Absolute Rights and Absolute Wrongs* (Hart 2021) pp. 167-171.

granted. The Court held that the issuance of the commutation was a completed executive act, and that the governor had the constitutional power only to "grant" commutations, not to rescind them. The governor's decision to grant or deny a commutation is not reviewable by any court or other agency. The courts' only role in clemency cases is to determine if (a) the prescribed procedures were followed, and (b) the governor exceeded his or her constitutional power. *Id*. (Such challenges are exceedingly rare because the procedures are detailed and easy to follow, and governors rarely exceed the scope of their constitutional powers – clemency or otherwise.) Therefore, it is impossible to avoid the risk of arbitrariness.

§ 20. Because LWOP prisoners are never parole-eligible (unless or until their LWOP sentence is commuted), they do not fall within Mich. Admin. Code R 791.7716 (factors considered in granting or denying parole). Therefore, LWOP prisoners are not assigned a parole guideline score (and they could not be *paroled* even if they were, unless or until their LWOP sentence were commuted). While the parole board may use the R 791.7716 factors in recommending that the governor grant or deny a commutation, the factors are for purposes of *parole*, and are not binding on the governor's *commutation* decision. An expedited commutation process for medical reasons is also possible, primarily for terminally ill or incapacitated prisoners. MCL 791.44a. But that procedure, as noted above, has no bearing on M-1 LWOP prisoners' true "prospect of release" – that is, a prospect based upon rehabilitation or other showing that continued detention is no longer justified on penological grounds.

§ 21. The board's recommendation to the governor is not binding, and the governor has complete discretion to accept or reject the board's recommendation, for any reason. Other than as to process, there are no other laws or rules that cabin the governor's discretion to grant or deny clemency. The governor need not give any reason for a commutation denial, to the prisoner, to the parole board, or to the public. The Constitution does require the governor to "inform the legislature annually of each reprieve, commutation and pardon granted, stating the reasons therefor." Constitution, Art V, § 14. But that report is not available to prisoners (who are prohibited from using the state Freedom of Information Act, MCL 15.232(c)), so even in the case of a commutation granted to an LWOP prisoner, other LWOP prisoners are unlikely to know why the commutation was granted.

§ 22. If the governor commutes the LWOP sentence to time-served to life, the prisoner becomes immediately parole-eligible. But the parole board can still decline to parole the prisoner. See *Makowski v. Governor,* 317 Mich. App. 434 (2016), leave denied, 500 Mich. 988 (2017) (holding that the board can deny parole post-commutation). If the board votes to grant the parole post-commutation, the prosecutor and the victim (or the victim's family) can appeal the proposed parole to court. MCL 791.234(11). The prisoner is not provided assigned counsel at state expense. Prisoners cannot appeal a parole denial.

§ 23. As shown above, the standards for parole that govern the board in making its recommendations are applicable only to the parole board and are not applicable to or binding upon the governor. The chief executive has the absolute power to decide when and how to use the clemency power. There is no time limit to accept or reject the recommendation of the parole board. There are no established criteria that the governor must observe. There is nothing related to the continuation of detention on penological grounds. If a commutation is granted by the governor, no substantive reasons need be given to justify the choice. If a commutation is denied, no one knows the reasons. Perhaps most importantly, there is no judicial (or comparable) review of the governor's commutation decisions.

PART V – ADDITIONAL LAW AND FACTS ABOUT MICHIGAN'S LWOP REGIME

§ 24. As of the end of 2019 (just before COVID-induced reductions), the Michigan prison population comprised about 38,000 prisoners. Mich. Dept. of Corrections (MDOC) 2020 Statistical Report, at C-12.[6] Of that number 5,001 people were serving life sentences; 3,875 people (10 percent of the total prison population and 77 percent of all lifers) were serving M-1 LWOP sentences. (The other 1,126 people were serving LWP sentences for lesser crimes.) See Attachment 1, Legislative Corrections Ombudsman Email (reporting M-1 LWOP data from March 2020). Although prison commitments were

[6] https://www.michigan.gov/documents/corrections/2020_Statistical_Report_730065_7.pdf

down for all crimes in 2020 due to COVID, commitments of people entering prison on M-1 LWOP sentences have averaged 65-75 per year. *See e.g.*, MDOC 2020 Statistical Report, *supra*, at C-70-71 (showing 70 new convictions that carry mandatory M-1 LWOP sentences in 2020).

§ 25. The Michigan data on commutations are opaque because they do not reveal which commutations are "medical mercy" commutations (for illness, disability, or age), and which are true merit-based LWOP commutations. The former are irrelevant for purposes of Article 3. The latter are granted only after merit-based review and a determination by the parole board that the prisoner no longer poses any risk to public safety.

§ 26. To the extent that the data include commutations of "drug lifers" who are serving LWOP sentences, the statistics are misleading. Comparing "drug lifers" with lifers who are serving LWOP sentences for violent offences (like murder I and felony murder) is like comparing apples and oranges. A 1978 drug law that imposed mandatory LWOP sentences for some drug *possession* crimes was struck down by the Michigan Supreme Court in 1992. *People v. Bullock,* 440 Mich. 15 (1992). Other drug laws that imposed mandatory life sentences were amended in 1998 and 2018. *See* MCL 791.234 and MCL 333.7401 and 7401a (1998); and MCL 791.234 and MCL 333.7413 (2018). During that time drug lifers were granted commutations far more liberally than M-1 lifers because they had not committed crimes of violence and their life sentences came to be viewed as disproportionate. See MDOC/Parole Board Commutation Data (2003-2021), Annex 14 to Observations of the Italian Government, ECtHR First Section (10/06/21); see also [Governor] Engler Shortens Prison Sentences (mostly drug lifer cases).[7] Accordingly, drug lifer commutations should not be counted in assessing whether prisoners serving M-1 LWOP sentences are likely to be released

§ 27. The use of M-1 commutation over the years shows that it is haphazard and unpredictable. See Attachment 2, MDOC/Parole Board [M-1 LWOP] Commutation Data (1969-2001), and Attachment 3, Chart Summarizing MDOC/Parole Board Data from 1969-2021. Governor Blanchard (1983 to 1990) commuted only 6 (non-drug) M-1 LWOP sentences (and we don't know how many of those were true "merit" commutations as opposed to medical "frailty" cases). That is an average of .75 a year. And five of those came in the last week of the governor's second term, which as a practical matter meant that prisoners had to wait up to *eight years longer* than they might have had to wait if the system operated like a normal assessment process, with regular reviews and ongoing decision-making.

§ 28. But the system does not operate in this way. Governors fear political fallout from commutation decisions, and thus many wait until late in their term to issue commutations. When that occurs, the "every two years" commutation application window becomes illusory, because if the governor has not signalled a willingness to grant commutations, the parole board is wasting its time making favourable recommendations, to no purpose. Such long lapses in decision-making is one result of a process that does not bind the governor and that places no time limit on when the decision to commute must be made.

§ 29. Governor Engler (1991-2002) was elected on a "law-and-order" platform. Early in his term the legislature amended the parole laws, including the parts governing the parole board. For decades the board members had been appointed by an apolitical Corrections Commission, and they had Civil Service status, which gave board members life tenure "but for cause" to shield them from political influence or interference. *See* When Life Did Not Mean Life, CAPPS Report (2006), at 7-8.[8] The new law eliminated the Commission, made board members appointees of the governor serving at the governor's pleasure, and limited the role of corrections professionals (who had historically served on the board because they had the most knowledge about prisoners and parole). The governor packed the board with former prosecutors and law enforcement. The mantra of the new board was "life means life." *Id.* Parole rates for *parolable* lifers fell to historic lows. Governor Engler commuted the sentences of only eight M-1 LWOP prisoners during his three 4-year terms – .66 per year on average. Again, we don't know how many of those were medical cases.

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[7] http://www.mapinc.org/drugnews/v02/n1921/a01.html
[8] https://www.safeandjustmi.org/wp-content/uploads/2006/09/When_life_did_not_mean_life.pdf

§ 30. In every "merit" case in which the parole board makes a favourable recommendation, its Official Recommendation includes a finding that "after careful review of all material(s) presented, the Michigan Parole Board has determined that [Prisoner X] is not a risk to the public safety." (Emphasis added.) See e.g., *Makowski v. Governor,* 495 Mich. 465 (2014), Official Recommendation, Joint Appendix, at 31a. If the governor denies the commutation, the prisoner will nevertheless remain imprisoned for life on the LWOP sentence, *despite having been found to be worthy of and ready for parole, and to no longer be a danger to anyone*. No reason for the denial is given, leaving the denied prisoner clueless as to what might make the application stronger the next time around. For each calendar year, the governor must advise the state legislature of the commutations granted, and the reasons therefor. *See* Mich. Const'n (1963), Art. V, § 14. But that report states only, "that I granted the following commutations during [this calendar year] … based on the affirmative recommendation of the Michigan Parole Board." No other explanation is given, nor, as noted above, do prisoners have access to that document.[9]

§ 31. The population of Michigan is just under 10 million people. The current prison population has declined (due to COVID) to around 33,500 people. MDOC 2020 Statistical Report, *supra*, at C-12. As noted above, about 3,900 people are serving M-1 LWOP sentences, with some 70 additions to the pool every year. **On average, from 1975 to 2021, fewer than two M-1 LWOP commutations were granted per year, *including* "medical mercy" commutations.**[10] See Attachment 3, Chart of Michigan Murder I Commutations 1969-2021**.** The Michigan numbers are orders of magnitude different from most other jurisdictions: with merit-based commutation grants averaging fewer than two a year since 1975 (and possibly closer to one a year if we take out the medical cases), the odds of a person getting an M-1 LWOP sentence commuted are around .0005 to .00026 a year. Because the governor is not bound by the standards that the parole board employs, and because there is no judicial or comparable review, the system as it operates in practice is most like the royal prerogative of centuries past.

PART VI - CONCLUSIONS

§ 32. The Grand Chamber of the ECtHR has found domestic legislation governing the release of LWOP prisoners should be sufficiently clear and certain. Such clarity must apply to all stages of the process, including the procedures followed by the head of state if the final decision is made by the chief executive rather than by a court or a court-like tribunal.[11] (See the ECtHR's findings in the cases involving Lithuania, Ukraine, and Hungary, discussed in §§ 7-10 above, as examples of instances where the role of the head of state as decision-maker was not sufficiently defined or restrained in law.) In Michigan the governor employs the clemency power with absolute discretion and with no binding rules laying down how, when, and according to what criteria the power must be exercised. We submit, there-

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[9] In an official letter to the Secretary of the Senate dated 22 December 2020, the governor in office fulfilled her constitutional duty in this way: "*In accordance with section 14 of article 5 of the Michigan Constitution of 1963, I write to advise the Michigan State Senate that I granted the following commutations during 2020. Mr. (omissis), whose sentence I commuted on December 22, 2020 based on the affirmative recommendation of the Michigan Parole Board. Mr. (omissis), whose sentence I commuted on December 22, 2020 based on the affirmative recommendation of the Michigan Parole Board. Mr. (omissis), whose sentence I commuted on December 22, 2020 based on the affirmative recommendation of the Michigan Parole Board. Mr. (omissis), whose sentence I commuted on December 22, 2020 based on the affirmative recommendation of the Michigan Parole Board*." We have omitted the names.

[10] Before 1975, governors used commutation much more frequently, in part because parole was not formalized until the 1940s. As in the U.S. federal system, that meant everyone sentenced to life was sentenced to life without parole. So release by gubernatorial action was much more common, until the mid-1970s. When Life Did Not Mean Life, CAPPS Report, *supra*, at 6. Today there are far fewer M-1 commutations than in the 1960s and 1970s, while the pool of M-1 LWOP prisoners is vastly larger, and increasing every year. Moreover, because the grounds for commutation are not stated, we cannot know which ones are (non-merit) medical cases. Some medical cases are easy to spot – people who are very old when their sentence is commuted, or (likely) people who die before, or soon after, their release. But anecdotally we know that some commutations of younger people are also medical/mercy commutations – sometimes granted because the person is terminally ill, or too disabled to be dangerous, and sometimes because the extraordinary cost of their medical care will not have to be borne by the state upon their release.

[11] In *Weeks v. United Kingdom* (no. 9787/82, § 61, 2 March 1987) the ECtHR explained what characteristics a parole board must have in order to serve as the functional equivalent of a court.

fore, that the applicant faces a risk of being subject to a release process that would infringe Article 3 of the ECHR, if she were to be extradited to Michigan and sentenced to LWOP.

§ 33. A further general requirement is that an assessment of the penological grounds or necessity for continued incarceration of any prisoner serving an LWOP sentence must be based on objective, pre-established criteria. Prisoners are entitled to know at the outset of their sentence what the criteria are that will determine their prospect of release. This aspect was further emphasized in the context of extradition in *Trabelsi v. Belgium* (citied above), which held that such prisoners must be given "precise cognisance at the time of imposition of the life sentence" (*id.* § 137) about their prospects for release. In Michigan, while the parole board has standards that it applies in making parole decisions, and which it is free to use in making its recommendation to the governor as to whose sentences should be commuted, the *governor is not bound by them*. The governor can deviate from them at will and therefore need not act on the basis of pre-established criteria.[12] We submit, therefore, that the applicant faces a risk, if she were to be extradited to Michigan and sentenced to LWOP, of being subject to a release process that would infringe Article 3 of the ECHR by failing to specify penological criteria that will be used by the governor to justify the applicant's continued detention.

§ 34. Assessment for possible release of LWOP prisoners within a pre-established time frame should occur not later than 25 years after the imposition of the sentence and thereafter should be subject to a periodic review. It is clear that in Michigan there is no provision that requires the board to make such an assessment on its own (other than after the 10th year) or indeed to make further board-initiated regular reassessments after the 25th year or at any specified time thereafter. The assessment after 10 years is manifestly insufficient to meet the objective of a well-structured process for considering release. Accordingly, we submit that the applicant faces a risk, if she were to be extradited to Michigan and sentenced to LWOP, of not being given the opportunity of having her release considered within a time frame that meets the standards laid down by the ECtHR, and that therefore Article 3 of the ECHR would be infringed.

§ 35. Fair procedural guarantees that are inherent to Article 3 of the ECHR require that those who make the decision as to the continued imprisonment of LWOP prisoners must give reasons for denying release. In Michigan, such reasons are not given by the governor, who makes the decision to commute the sentence that otherwise bars parole for LWOP prisoners. Indeed, in every case in which the parole board recommends commutation, but the governor denies it, the board is effectively telling the governor that the prisoner *meets the standards* for parole and *does not pose a risk to the community*. Accordingly, we submit that the applicant faces a risk, if she were to be extradited to Michigan and sentenced to LWOP, of being subject to a release process that does not have sufficient procedural guarantees and, in particular, will not provide her with reasons for denials leading to her continued detention. The current procedure in Michigan does not meet the standards laid down by the ECtHR in this regard, and therefore Article 3 of the ECHR would be infringed if the applicant were subjected to it.

§ 36. The whole process of deciding whether or not to grant release to a life sentenced prisoner should be reviewed judicially. In *Hutchinson* (cited above) the Grand Chamber of the ECtHR placed particular emphasis on judicial review when such a decision was taken by the executive. Subsequent ECtHR case law has underlined the importance of judicial review when the final decision is taken by the head of state in an executive capacity. In Michigan, the crucial final decision taken by the governor as head of state is not subject to judicial review. The Michigan Supreme Court made clear that its role is limited to review of the governor's power to act, not the substantive decision to grant or deny the

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[12] In *Trabelsi, supra,* the Fifth Section said that the U.S. federal clemency procedures contained a similar flaw. While federal clemency petitions are reviewed by a White House pardon attorney pursuant to Department of Justice procedures – which are designed to promote fairness and consistency – the President is free to accept or reject the recommendations of the pardon attorney. The court found that the federal clemency process did not meet the legal standard of Article 3 because none of the procedures provided for amounted to "a review mechanism requiring the national authorities to ascertain, on the basis of *objective, pre-established criteria* of which the prisoner had *precise cognisance* at the time of imposition of the life sentence, whether, while serving his sentence, the prisoner has changed and progressed to such an extent that continued detention can no longer be justified on *legitimate penological grounds*." Nor did the federal clemency process permit judicial or comparable review.

commutation: "We do not review the merits underlying the governor's discretionary exercise of judgment but rather the extent of the governor's powers." *Makowsky v. Governor*, 495 Mich. at 481 (2014). We submit that the absence of judicial review of this key aspect of the release procedure in Michigan does not meet the standards laid down by the ECtHR, and therefore Article 3 of the ECHR would be infringed if the applicant were subject to this procedure.

§ 37. Finally, as a matter of public policy: there is no reason to fear that not allowing extradition that is likely to result in life imprisonment of a kind that manifestly contravenes Article 3 will undermine international cooperation in criminal matters. The prohibition on extradition to face the death penalty was based on the incompatibility of capital punishment with Article 3 of the ECHR established by the jurisprudence of the ECtHR in *Soering v. the United Kingdom* (14038/88, 7 July 1989). This newly established prohibition did not undermine international co-operation. Article 3, as interpreted by the ECtHR, does not outlaw life imprisonment completely, but establishes what needs to be done in law and in fact to ensure that its use does not contravene Article 3 of the ECHR.[13] It should therefore be quite possible for arrangements to be made between states that would *guarantee* that, if someone were to be extradited and could be sentenced to life imprisonment, such a life sentence would be of a kind that would be compatible with Article 3, as it is now interpreted by the ECtHR.

§ 38. For the reasons stated above, intervenors submit that the Court should find that applicant's extradition by Italy to Michigan would violate Article 3 of the ECHR, unless Michigan guarantees that the applicant will not be charged with an offense that carries a LWOP sentence.

Professor Davide Galliani	*Professor Dirk van Zyl Smit*	*Professor Paul D. Reingold*
Milan, Italy	Nottingham, UK	Ann Arbor, Michigan USA

26 October 2021

List of documents attached

1. Michigan Legislative Corrections Ombudsman (email re. Michigan life without parole statistics)
2. MDOC/Parole Board Commutation Data (for prisoners serving life without parole) (1969-2001)
3. Chart Summarizing MDOC/Parole Board Data from 1969-2021

[13] On the wider role of extradition in setting standards for the treatment and release of life sentenced prisoners, see D. van Zyl Smit and C. Appleton, *Life Imprisonment: a Global Human Rights Analysis* (Harvard University Press, 2019) 320-325.

Documents attached

1. Michigan Legislative Corrections Ombudsman (email re. Michigan life without parole statistics)

Current Lifer Stats

1 message

Keith Barber <KBarber@legislature.mi.gov> Tue, Oct 19, 2021 at 3:05 PM
To: "pdr@umich.edu" <pdr@umich.edu>

Mr. Reingold:

You asked for Murder I Life Without Parole data from the Michigan Legislative Corrections Ombudsman's Office. By chance I made a similar request to the Michigan Department of Corrections in February of last year (just before COVID). I got the following response in early March 2020, which I think is the information you are looking for, and may be most useful to you, as it is before any COVID-created distortions in the numbers.

At that time there were 5,001 prisoners serving life sentences. The statistics are broken down by non-parolable (Murder 1-type) sentences versus parolable life sentences. Since you want the former, I have left in the charts applicable to those prisoners, and only listed the *number* of parolable lifers (who were convicted of lesser crimes). These are the statistics from the MDOC as of March 2020:

Non-Parolable Lifers: Total offenders = 3,875

Crime Category:

Offense Description	Frequency	Percent
Criminal Sexual Conduct, 1st Deg	1	.0
CSC-1st Degree (Person u/13, Defendant 17 Or Older)-2nd Off.	11	.3
CSC-1st Degree (Person u/13, Defendant 18 or Older)-2nd Off	3	.1
Homicide - Felony Murder	1038	26.8
Homicide - Murder First Degree-Premeditated	1328	34.3
Homicide - Murder Of Peace/Corrections Officer	3	.1
Homicide - Open Murder - Statutory Short Form	283	7.3
Murder, First Degree	1208	31.2
Total	3875	100.0

Range of Years Incarcerated:

	Frequency	Percent
0-10 YEARS	918	23.7
11-21 YEARS	1173	30.3
22-32 YEARS	1116	28.8
33-43 YEARS	510	13.2
44-54 YEARS	154	4.0
55-65 YEARS	4	.1
Total	3875	100.0

Range of Years Incarcerated and Offense:

	YEARS_INCARCERATED_RANGE						
LIFE_OFFENSE_DESC	0-10 YEARS	11-21 YEARS	22-32 YEARS	33-43 YEARS	44-54 YEARS	55-65 YEARS	Total
Criminal Sexual Conduct, 1st Deg	0	0	1	0	0	0	1
CSC-1st Degree (Person u/13, Defendant 17 Or Older)-2nd Off.	9	2	0	0	0	0	11
CSC-1st Degree (Person u/13, Defendant 18 or Older)-2nd Off	3	0	0	0	0	0	3
Homicide - Felony Murder	341	394	292	11	0	0	1038
Homicide - Murder First Degree-Premeditated	403	606	311	7	1	0	1328
Homicide - Murder Of Peace/Corrections Officer	2	1	0	0	0	0	3
Homicide - Open Murder - Statutory Short Form	86	111	82	4	0	0	283
Murder, First Degree	74	59	430	488	153	4	1208
Total	918	1173	1116	510	154	4	3875

Parolable Lifers: Total Offenders = 1,126

I hope this is helpful. Please feel free to let me know if this does not fit your request.

Keith Barber

Ombudsman

Documents attached

2. MDOC/Parole Board Commutation Data (for prisoners serving life without parole) (1969-2001)

OFFICE OF THE PAROLE BOARD

COMMUTATIONS APPROVED BY GOVERNOR
1969 -2001*

	NAME	TYPE	OFFENSE	SENTENCE DATE	SENTENCE	SENTENCE COUNTY	COMMUTATION DATE	TIME SERVED
01	WILLIAMS, Joe	COMMUTATION	Murder 1st Degree	04/19/1940	LIFE	JACKSON	04/02/1969	
02	MINOR, Leonard	COMMUTATION	Murder 1st Degree	03/31/1932	LIFE	IONIA	06/27/1969	
03	HENDERSHOT, Gerald	COMMUTATION	Murder 1st Degree	05/27/1948	LIFE	JACKSON	06/27/1969	
04	FORTUNE, Rosetta	COMMUTATION	Murder 1st Degree	02/11/1953	LIFE	WAYNE	06/27/1969	
05	KIESEL, Walter	COMMUTATION	Murder 2nd Degree	04/12/1948	LIFE	JACKSON	06/27/1969	
06	SHAVER, A.	COMMUTATION	Murder 1st Degree	04/23/1925	LIFE	JACKSON	06/27/1969	
07	CHERRY, William	COMMUTATION	Murder 1st Degree	07/30/1934	LIFE	JACKSON	09/04/1969	
08	CLARK, Aaron	COMMUTATION	Murder 1st Degree	07/21/1950	LIFE	JACKSON	04/04/1969	
09	BASHA, Kenneth	COMMUTATION	Murder 1st Degree	02/14/1949	LIFE	WASHTENAW	09/04/1969	
10	MOSS, Floyd	COMMUTATION	Murder 1st Degree	04/23/1954	LIFE	JACKSON	09/04/1969	
11	LOVE, Ivan	COMMUTATION	Murder 1st Degree	10/24/1949	LIFE	JACKSON	09/05/1969	
12	CASTRONOVA, Nicola	COMMUTATION	Murder 1st Degree	02/16/1914	LIFE	WAYNE	12/09/1969	
13	SALVA, Sylvestter	COMMUTATION	Murder 1st Degree	07/15/1952	LIFE	WASHTENAW	12/10/1969	
14	ROSENBERG, Sanford	COMMUTATION	Murder 1st Degree	04/10/1942	LIFE	JACKSON	03/13/1970	
15	OHLERT, Charles P.	COMMUTATION	Murder 1st Degree	06/04/1947	LIFE	WAYNE	03/16/1970	
16	SMITH, Robert	COMMUTATION	Murder 1st Degree	08/20/1946	LIFE	JACKSON	08/04/1970	
17	SPIVEY, James	COMMUTATION	Murder 1st Degree	08/10/1934	LIFE	JACKSON	08/06/1970	
18	HOLLENBECK, Charles	COMMUTATION	Murder 1st Degree	07/05/1949	LIFE	WAYNE	08/05/1970	
19	FORGEY, Ross M.	COMMUTATION	Murder 1st Degree	07/08/1949	LIFE	JACKSON	08/04/1970	

COMMUTATIONS APPROVED BY GOVERNOR
1969 -2001*

	NAME	TYPE	OFFENSE	SENTENCE DATE	SENTENCE	SENTENCE COUNTY	COMMUTATION DATE	TIME SERVED
20	KAYNE, Eddie	COMMUTATION	Murder 1st Degree	02/13/1934	LIFE	WAYNE	08/04/1970	
21	RODDY, William	COMMUTATION	Murder 1st Degree	02/24/1950	LIFE	IONIA	08/06/1970	
22	BENSON, John H.	COMMUTATION	Murder 1st Degree	10/29/1954	LIFE	WAYNE	08/06/1970	
23	MOREY, William	COMMUTATION	Murder 1st Degree	11/23/1951	LIFE	WASHTENAW	11/24/1970	
24	MCDONALD, J.C.	COMMUTATION	Murder 1st Degree	01/26/1948	LIFE	MUSKEGON	02/28/1971	
25	DAVIS, Robert	COMMUTATION	Murder 1st Degree	10/19/1948	LIFE	WAYNE	08/24/1971	
26	SMOKE, Elton	COMMUTATION	Murder 1st Degree	02/11/1952	LIFE	LENAWEE	08/12/1971	
27	HALL, Theodore	COMMUTATION	Murder 1st Degree	12/10/1947	LIFE	OAKLAND	11/12/1971	
28	MCRAE, John R.	COMMUTATION	Murder 1st Degree	02/28/1951	LIFE	MACOMB	12/27/1971	
29	TERRY, L.	COMMUTATION	Murder 1st Degree	01/10/1952	LIFE	WAYNE	03/02/1972	
30	THOMAS, Garfield	COMMUTATION	Murder 1st Degree	12/28/1955	LIFE	WAYNE	03/13/1972	
31	JOLES, William Jr.	COMMUTATION	Murder 1st Degree	07/14/1955	LIFE	LIVINGSTON	06/16/1972	
32	MARR, Robert	COMMUTATION	Murder 1st Degree	10/30/1952	LIFE	WAYNE	06/21/1972	
33	LAWSON, R.	COMMUTATION	Murder	06/30/1948	LIFE	WAYNE	07/11/1972	
34	SMITH, Bennie	COMMUTATION	Murder 1st Degree	04/03/1947	LIFE	WAYNE	07/31/1972	
35	GILLEO, Eugene	COMMUTATION	Murder 1st Degree	11/06/1953	LIFE	OAKLAND	08/26/1972	
36	ROBERTS, Jack	COMMUTATION	Murder 1st Degree	02/24/1950	LIFE	MACOMB	11/10/1972	
37	WILLIAMS, Arthur	COMMUTATION	Murder 1st Degree	10/23/1941	LIFE	WAYNE	03/13/1973	
38	GUTOWSKI, Frank	COMMUTATION	Murder 1st Degree	04/14/1948	LIFE	WAYNE	03/13/1973	
39	KIMBLE, Eddie	COMMUTATION	Murder 1st Degree	03/01/1948	LIFE	WAYNE	03/13/1973	
40	STERLING, Glory	COMMUTATION	Murder 1st Degree	10/01/1934	LIFE	WAYNE	03/13/1973	

COMMUTATIONS APPROVED BY GOVERNOR
1969 -2001*

	NAME	TYPE	OFFENSE	SENTENCE DATE	SENTENCE	SENTENCE COUNTY	COMMUTATION DATE	TIME SERVED
41	SCHWEITZER, William	COMMUTATION	Murder 1st Degree	08/15/1935	LIFE	WAYNE	03/13/1973	
42	GRAMES, Ralph	COMMUTATION	Murder 1st Degree	04/29/1947	LIFE	JACKSON	03/23/1973	
43	WILLIAMS, John	COMMUTATION	Murder 1st Degree	10/03/1941	LIFE	WAYNE	03/23/1973	
44	SCHULTZ, L.	COMMUTATION	Murder 1st Degree	04/22/1952	LIFE	OSCEOLA	03/23/1973	
45	HOWARD, Armond	COMMUTATION	Murder 1st Degree	07/15/1952	LIFE	WASHTENAW	03/23/1973	
46	HAWKINS, Clarence	COMMUTATION	Murder 1st Degree	12/11/1956	LIFE	WASHTENAW	03/23/1973	
47	PICHETTE, Laura	COMMUTATION	Murder 1st Degree	11/17/1938	LIFE	HOUGHTON	03/23/1973	
48	HARRIS, William	COMMUTATION	Murder 1st Degree	09/17/1954	LIFE	WASHTENAW	03/23/1973	
49	DAVIS, A.	COMMUTATION	Murder 1st Degree	03/16/1950	LIFE	WAYNE	03/23/1973	
50	TURNER, Robert	COMMUTATION	Murder 1st Degree	01/15/1945	LIFE	WAYNE	03/23/1973	
51	MATHEWS, Ray	COMMUTATION	Murder 1st Degree	10/23/1941	LIFE	WAYNE	03/23/1973	
52	CASTRONOVA, Sam	COMMUTATION	Murder 1st Degree	01/23/1922	LIFE	WAYNE	03/23/1973	
53	MITCHELL, L.	COMMUTATION	Murder 1st Degree	06/15/1949	LIFE	WAYNE	03/23/1973	
54	BUTLER, Bennie	COMMUTATION	Murder 1st Degree	07/11/1957	LIFE	WAYNE	03/23/1973	
55	NEWTON, Percy	COMMUTATION	Murder 1st Degree	06/22/1950	LIFE	WAYNE	03/23/1973	
56	MYCHE, Thomas	COMMUTATION	Murder 1st Degree	01/21/1958	LIFE	WAYNE	03/23/1973	
57	DANIELSON, Carl	COMMUTATION	Murder 1st Degree		LIFE	CHIPPEWA	12/19/1973	
58	ELLIS, James	COMMUTATION	Murder 1st Degree	11/09/1951	LIFE	LAKE	04/23/1974	
59	FARMER, Burton	COMMUTATION	Murder 1st Degree	05/08/1958	LIFE	WAYNE	04/23/1974	
60	ROSS, Roy	COMMUTATION	Murder 1st Degree	03/20/1957	LIFE	MARQUETTE	04/23/1974	
61	TYSON, Theopolis	COMMUTATION	Murder 1st Degree	05/26/1954	LIFE	WAYNE	05/01/1974	

COMMUTATIONS APPROVED BY GOVERNOR
1969 -2001*

	NAME	TYPE	OFFENSE	SENTENCE DATE	SENTENCE	SENTENCE COUNTY	COMMUTATION DATE	TIME SERVED
62	SEAY, Gordon	COMMUTATION	Murder 1st Degree	06/03/1946	LIFE	OAKLAND	05/17/1974	
63	SCOTT, John	COMMUTATION	Murder 1st Degree	11/15/1935	LIFE	MONROE	05/29/1974	
64	HENDERSON, Michael	COMMUTATION	Murder 1st Degree	04/07/1933	LIFE	WAYNE	05/29/1974	
65	HAND, Aaron	COMMUTATION	Murder 1st Degree	12/16/1948	LIFE	WAYNE	06/12/1974	
66	MCWILLIAMS, Donald	COMMUTATION	Murder 1st Degree	07/29/1953	LIFE	TUSCOLA	09/27/1974	
67	OLEZNICZK, Roman	COMMUTATION	Murder	02/03/1921	LIFE	BAY	03/20/1975	
68	MULLIGAN, Thomas	COMMUTATION	Murder 1st Degree	07/01/1959	LIFE	WAYNE	04/09/1975	
69	MADISON, Turner	COMMUATION	Murder 1st Degree	05/08/1958	LIFE	WAYNE	11/23/1975	
70	LOONEY, Cleon	COMMUTATION	Murder 1st Degree	03/10/1955	LIFE	WAYNE	05/16/1976	
71	FREEMAN, Leroy	COMMUTATION	Murder 1st Degree	07/24/1958	LIFE	MONROE	05/25/1976	
72	LUNDBERG, Leonard	COMMUTATION	Murder 1st Degree	06/20/1956	LIFE	SCHOOLCRAFT	11/30/1977	
73	INGLE, Arthur E.	COMMUTATION	Murder 1st Degree	09/28/1960	LIFE	BERRIEN	03/08/1979	
74	MOROLEY, Stanley	COMMUTATION	Murder 1st Degree	04/23/1962	LIFE	OAKLAND	03/19/1979	
75	SPELLS, Benny	COMMUTATION	Murder 1st Degree	01/09/1963	LIFE	OAKLAND	04/23/1979	
76	BERGEN, Robert	COMMUTATION	Murder 1st Degree	02/21/1967	LIFE	KENT	04/23/1979	
77	HOFFMAN, Robert	COMMUTATION	Murder 1st Degree	05/22/1964	LIFE	INGHAM	12/17/1979	
78	HARRIS, Willis X.	COMMUTATION	Murder 1st Degree	10/05/1956	LIFE	WAYNE	04/29/1980	
79	WEATHERFORD, Gladis	COMMUTATION	Murder 1st Degree	12/02/1958	LIFE	WASHTENAW	08/11/1980	
80	PICKRELL, Thomas	COMMUTATION	Murder 1st Degree	04/29/1947	LIFE	JACKSON	08/11/1980	
81	YOUNGER, Lewis D.	COMMUTATION	Murder 1st Degree	11/12/1963	LIFE	GENESEE	11/06/1980	
82	MADISON, Andrew	COMMUTATION	Murder 1st Degree	05/08/1958	LIFE	WAYNE	11/13/1980	

COMMUTATIONS APPROVED BY GOVERNOR
1969 -2001*

	NAME	TYPE	OFFENSE	SENTENCE DATE	SENTENCE	SENTENCE COUNTY	COMMUTATION DATE	TIME SERVED
83	PULLEN, Louise	COMMUTATION	Murder 1st Degree	04/21/1967	LIFE	WASHTENAW	02/05/1981	
84	KIVELA, Raymond	COMMUTATION	Murder 1st Degree	12/12/1936	LIFE	MARQUETTE	02/13/1981	
85	WILLIAMS, Robert	COMMUTATION	Murder 1st Degree	12/27/1957	LIFE	INGHAM	03/02/1981	
86	SPINNER, Paul	COMMUTATION	Murder 1st Degree	12/16/1954	LIFE	EATON	10/14/1981	
87	CORNER, Frank	COMMUTATION	Murder 1st Degree	10/13/1959	LIFE	LENAWEE	10/29/1981	
88	ALEXANDER, Bee	COMMUTATION	Murder 1st Degree	05/28/1945	LIFE	GENESEE	07/15/1982	
89	PORTER, Clifford	COMMUTATION	Murder 1st Degree	12/09/1960	LIFE	BARRY	06/23/1982	
90	PERRY, James L.	COMMUTATION	Murder 1st Degree	10/04/1962	LIFE	WAYNE	08/10/1982	
91	TURNER, William	COMMUTATION	Murder 1st Degree	01/05/1959	LIFE	WAYNE	08/12/1982	
92	ANDERSON, Willard	COMMUTATION	Murder 1st Degree	10/31/1961	LIFE	INGHAM	08/23/1982	
93	ADAMS, Jack	COMMUTATION	Murder 1st Degree	12/27/1973	LIFE	WASHTENAW	12/21/1982	
94	MOSS, Quenton	COMMUTATION	Murder 1st Degree	04/19/1967	LIFE	WAYNE	12/27/1982	
95	KELLEY, Joseph	COMMUTATION	Murder 1st Degree	11/26/1962	LIFE	WAYNE	12/27/1982	
96	ROLAND, Joseph	COMMUTATION	Murder 1st Degree	10/10/1966	LIFE	WAYNE	01/25/1984	
98	CHAMBERLAIN, Fred	COMMUTATION	Murder 1st Degree	12/14/1962	LIFE	MACOMB	12/27/1990	28.0
99	HOLLEY, John E.	COMMUTATION	Murder 1st Degree	05/08/1961	LIFE	SAGINAW	12/27/1990	29.5
100	NUNN, Harold	COMMUTATION	Murder 1st Degree	07/14/1967	LIFE	GENESEE	12/27/1990	23.3
101	VELASQUEZ, Marcelo	COMMUTATION	Murder 1st Degree	11/23/1951	LIFE	WASH	12/27/1990	39.1
102	HENAGAN, Johnnie	COMMUTATION	Murder 1st Degree	07/11/1967	LIFE	GENESEE	12/27/1990	23.3
103	ZOLLA, Marie	COMMUTATION	Manslaughter	01/29/1987	10 - 15	MONROE	10/30/1991	4.6
104	IRWIN, Ronald	COMMUTATION	Murder 1st Degree	09/23/1971	LIFE	WAYNE	11/05/1992	12.2
105	MATTHEWS, Tyrone	COMMUTATION	Armed Robbery/ CSC 1st Deg	08/03/1984	171/2 -30	WAYNE	06/03/1993	9.0

COMMUTATIONS APPROVED BY GOVERNOR
1969 -2001*

	NAME	TYPE	OFFENSE	SENTENCE DATE	SENTENCE	SENTENCE COUNTY	COMMUTATION DATE	TIME SERVED
106	BROWN, Wesley	COMMUTATION	Murder 1st Degree	02/24/1970	LIFE	CALHOUN	03/26/1996	26.1
107	MONROE, James	COMMUTATION	Murder 1st Degree	05/27/1968	LIFE	WAYNE	04/02/1996	28.0
108	MCKENZIE, Marcy	COMMUTATION	Murder 1st Degree	11/13/1991	LIFE	INGHAM	03/07/1996	5.2
109	CORTEZ, Herman	COMMUTATION	650 Drug Law Lifer	5/21/82	LIFE	WAYNE	12/1/1998	16.5
110	SMITH, Guy	COMMUTATION	650 Drug Law Lifer	7/14/1988	LIFE	WAYNE	12/9/1998	10.3
111	CARMOS, John	COMMUTATION	Conspiracy to Deliver 225 0 650 Grams	5/29/92	20 - 30	MACOMB	3/15/2000	7.9
112	BOMMARITO, John	COMMUTATION	Conspiracy to Violate Drug Law	10/16/92	10 - 20	MACOMB	3/15/2000	7.9
113**	TARANTO, Richard	COMMUTATION	Murder 1st Degree	01/10/86	LIFE	INGHAM	02/14/2001	18.2
114**	McDOUGAL, Laverne	COMMUTATION	Assault Less Murder/ Retail Fraud	04/07/2001	1 - 20 3 - 15	WAYNE	03/27/2001	11 months
115**	CAMPBELL, Ernestine	COMMUTATION	Murder 1st Degree	07/11/67	LIFE	GENESSEE	03/02/2001	34.5
116**	BOOKER, William	COMMUTATION	Assault Less Murder Felony Firearm	06/20/2000	2-12	WAYNE	06/09/2001	1 .1

* Commutation of sentence before parole is required under three circumstances.

1. Prisoner is serving for first degree murder. In these cases, commutation is the only mechanism that provides parole board with jurisdiction to parole.

2. Prisoner is serving life for other than first degree murder and has not served the number of years the statute requires before the parole board obtains jurisdiction to parole (10, 15, 171/2, or 20 years, depending on the offense).

3. Prisoner is serving a sentence with a set minimum and maximum sentences (i.e. 10-20 years) and prisoner has not served the minimum sentence.

** Indicates that medical considerations were significant factor in decision to parole.

Documents attached

3. Chart Summarizing MDOC/Parole Board Data from 1969-2021

CHART OF MICHIGAN COMMUTATIONS 1969-2021
FOR MANDATORY LIFE WITHOUT PAROLE MURDER CRIMES [1]

Year	Commutations
1969	13
1970	10
1971	5
1972	7
1973	21
1974	9
1975	2
1976	2
1977	1
1978	0
1979	5
1980	5
1981	5
1982	8
1983	0
1984	1
1985	0
1986	0
1987	0
1988	0
1989	0
1990	5
1991	0
1992	1
1993	0
1994	0
1995	0
1996	3
1997	0
1998	0
1999	0

Year	Commutations
2000	0
2001	2
2002	? (no data)
2003	0
2004	0
2005	0
2006	0
2007	2
2008	15
2009	16
2010	6
2011	0
2012	0
2013	0
2014	0
2015	0
2016	0
2017	0
2018	12
2019	0
2020	0
2021	0
Total	156
Average (all)	**2.9**
Average Since 1975	**1.9**
Averages *include* medical mercy cases, so merit averages are lower; pool of *c.* 3,900 LWOPs is rising by 65-75 per year	

[1] Chart compiled by amici counsel summarizing data from Attachment 2, MDOC/Parole Board M-1 Commutation Data (1969-2001), and MDOC/Parole Board Commutation Data (2003-2021), Annex 14 to Observations of the Italian Government, ECtHR First Section (10/06/21).