

STATE OF MICHIGAN
IN THE SUPREME COURT
Appeal from the Michigan Court of Appeals

PEOPLE OF THE STATE OF MICHIGAN, Supreme Court No 162425
Plaintiff-Appellee,

Court of Appeals No 342440

v

Wayne CC: 92-000334-FC

MONTEZ STOVALL,

Defendant-Appellant.

BRIEF OF AMICUS CURIAE
MICHIGAN DEPARTMENT OF ATTORNEY GENERAL

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Dated: February 8, 2022

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INTEREST OF AMICUS CURIAE AND INTRODUCTION

Among the five issues that this Court identified, the third relates to what the Court describes as the Parole Board's "life means life policy." See Order, dated April 20, 2021. The state courts have referred to this as a policy in which a criminal defendant given a life sentence with the opportunity for parole will, in fact, serve a life sentence. See *People v Hill*, 267 Mich App 345, 349 (2005). Stovall relies on the federal courts' review of the policy of the Parole Board from many years ago to contend that the "Board's 'life means life' approach renders the chance of parole extremely remote." See Stovall's Br, p 28, citing *Foster v Booker*, 595 F3d 353, 360–364 (CA 6, 2010). The Sixth Circuit was reviewing the number of Parole Board grants from 1995 to 2004 as noted in the federal district court's analysis. See *Bey v Rubitschun*, 2007 WL 7705668, at *21 (ED Mich, 2007) ("The new Board [in this period] paroled two lifers per year at a rate of .15%."). In their response, the People note that the number of parole grants for parolable lifers has increased significantly between 2011 and 2016, reaching the average rate of 7.0% over that time-period. See Wayne Co's Br, p 62. That brief also noted that it had hoped to include more updated statistics, but they were not available at the time of filing. *Id.* at 62, n 119.

This amicus brief seeks to provide the additional information regarding the Parole Board and the parole rate for parolable lifers from 2016 through 2021. The graphs will appear in the body of the brief, but the short answer is that over the last six years, the average grant of parole is now 16.67% for those reviewed or 82 lifers per year on average for this time period. As a practical matter, "life means life" is no longer in place, and it has not been for many years.

ARGUMENT

I. The Parole Board does not currently apply a “life means life” policy.

This amicus brief aims to ensure that this Court has the best factual information with which to evaluate the questions that it is reviewing. One of the questions implicates the issue of the practical opportunity that a criminal defendant sentenced to a parolable life sentence has for parole.

As a statistical matter, the number of total parole grants that occur each year has increased forty-fold from the period of 1995-2004 to 2016-2021 (from two paroles to 82 paroles per year on average).¹ The Department of Attorney has previously published the updated numbers of parole interviews/reviews as against parole grants for the period of 2011 to 2016 in assisting Genesee County in a brief in opposition to a petition for certiorari in the U.S. Supreme Court, see *People v Kinney* (USSC No. 15-5442). In that brief, according to the Department of Corrections’ statistics over that six-year period, the number of parolable lifers granted parole and those subject to interview or review, were as follows:

<u>Year</u>	<u>Paroled</u>	<u>Interviewed/Reviewed</u>	<u>Percent Paroled</u>
2011	27	424	6.4%
2012	15	519	2.9%
2013	30	388	7.8%
2014	25	385	6.5%
2015	38	357	10.6%
2016	<u>35</u> (thru Oct.)	<u>343</u> (thru Oct.)	<u>10.2%</u>
Total =	170	2416	7.0%

¹ The 0.15% figure from *Foster* for 1995-2004 appears to be the percentage of paroles divided by the entire universe of lifers, e.g., 2 paroles out of approximately 1300 total lifers, as contrasted with the number of grants each year of those reviewed, 16.67%, for the 2016-2021 period, where those reviews occur every five years after the criminal defendant becomes eligible for parole. See MCL 791.234(7), (8).

The People’s brief reflected these same numbers, see Wayne County’s Brief, p 62, and so this amicus brief will not comment on them further.

But the statistics regarding the last six years (including all of 2016) are now available, and these numbers provide as follows regarding parolable lifers interviewed or reviewed and those paroled:

<u>Year</u>	<u>Paroled</u>	<u>Interviewed/Reviewed</u>	<u>Percent Paroled</u>
2016	48	434	11.1% ²
2017	108	725	14.9%
2018	93	426	21.8%
2019	71	346	20.5%
2020	82	445	18.4%
2021	<u>89</u>	<u>570</u>	<u>15.6%</u>
Total =	491	2946	16.67%

If the juvenile parolable lifers are considered alone, the percentage is *even higher* for this six-year period for those prisoners: (20.6%) (118 paroles of 573 interviews or reviews for this duration of 2016 through 2021). There are currently 201 juvenile parolable lifers as of January 1, 2022, under the jurisdiction of the Michigan Department of Corrections.

As noted above, the numbers show that the Parole Board does not enforce a “life means life” policy and has not done so for many years.

² The previous 2016 parolable life parole reviews grew from 343 (through October 2016) to 434 in this table, and the 2016 parolable life grants grew from 35 (through October 2016) to 48 in this table, which raised the 2016 percent paroled from 10.2% (through October 2016) to 11.1% in this table.

CONCLUSION AND RELIEF REQUESTED

This Court should conclude that the Parole Board does not currently employ a “life means life” policy in its determination of parole.

Respectfully submitted,

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