

PAROLE DECISIONS FOR LIFERS

FOR THE YEAR 2019

Prepared For The

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Parole Decisions For Lifers

2019

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HIGHLIGHTS FOR PAROLES FOR LIFERS IN 2019

- 1) One hundred thirteen Records of Decision were posted online. Page 1
- 2) The Approval Rate was 38.9%. Page 2
- 3) The Approval Rate for Initial Hearings was 0%. Page 3
- 4) The Approval Rate for Review Hearings was 43.1%. Page 4
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Introduction

This is the Lifers' Group's thirteenth report on parole decisions for lifers. In this report, as in the twelve previous ones, the only decisions included are for prisoners serving life sentences published online by the Parole Board in 2019. The total of Records of Decision published online was 113. Life sentences are predominantly for prisoners who had been convicted or pled guilty to second degree murder and involved an actual taking of a life. Records of Decision were also included for juveniles who had previously been convicted of first degree murder, for which there is no parole, but had their sentences overturned by the Supreme Judicial Court under the *Diatcochenko* decision, as well as for those serving second degree life sentences but for crimes which did not involve the taking of a life, e.g., rape or armed robbery.

Parole hearings are either an Initial Hearing - for those who appear before the Parole Board for the first time after having served the statutorily mandated fifteen (15) years or a Review Hearing - for those who were denied a parole at a previous Initial Hearing or Review Hearing. Review Hearings are also subdivided into two categories - for those who have never been approved for a parole and those who had been approved for a parole, were released but were violated for any one or more of a variety of reasons and, subsequently, returned to prison.

In 2019, of the 113 decisions, 92 or 81% of the decisions were unanimous, a percentage consistent with 2017 and 2018. The remaining 21 decisions broke down as follows: eight 6-1 decisions (4 approved/ 4 denied), seven 5-2 decisions (6 approved/ 1 denied), two 4-3 decisions and four 4-2 decisions - all approvals. It is interesting to note that the two 4-3 approvals did not comport with the legislative mandate that at least a two-thirds majority is necessary for approving a parole. The Parole Board, instead, continues to adhere to the Supreme Judicial Court decision that the two-thirds majority could not be applied retroactively.¹

In 2019, as in 2017 and 2018, the Parole Board continued its practice of providing little or no specific guidance to denied lifers as to what program areas needed to be addressed before the next parole hearing. The Parole Board rarely suggested any programs from which a denied lifer could benefit and, therefore, be better prepared for his/her next appearance before the Board. In only five of 89 denials were any programs recommended - 2 for Correctional Recovery Academy (CRA), 2 for Restorative Justice, and 1 for the Sex Offender Treatment Program.

Massachusetts General law, c. 127, section 130, stipulates that no prisoner is to be

¹ Note that all calculations presented above and in the remainder of this report were calculated by the author based on the data extrapolated from the 113 Records of Decision published online by the Parole Board in 2019.

paroled solely due to good conduct or program involvement while incarcerated. Rather, a parole is to be granted only when the Parole Board, by a two-thirds majority, is convinced that there is a reasonable probability that if paroled, the prisoner would not violate the law and that the release would be compatible with the welfare of society. In addition to those legislative standards, the Parole Board is to determine whether the four goals of sentencing have been met, i.e., punishment, public safety, deterrence, and rehabilitation. Given the unwillingness of the Parole Board to stipulate what specific areas a lifer needs to address to be considered a suitable candidate for parole, it is not unreasonable to speculate that the Parole Board considers the importance of those four goals in the order listed above. As all Records of Decision are reviewed and/or signed primarily by the Parole Board's General Counsel, it also is not unreasonable to speculate that the Parole Board's legal department ensures that no Record of Decision contains any guidance which could result in a legal action by a lifer who has completed the programs stipulated as need areas by the Parole Board in a previous denial.

We continue to be indebted to and thank Lois Ahrens, Founding Director of the Real Cost Of Prisons Project, for posting this report and many other Lifers' Group Inc. reports on the Real Cost of Prisons Project website. All of these reports can be accessed at www.realcostofprisons.org/writings.

RESULTS

1) Approval / DENIAL RATES

Of the 113 records of Decision for 2019, 44 (38.9%) were approvals for a parole; 69 (61.1%) were denials. Table 1 below presents the data for Approval / Denial rates from 2015 through 2019.

TABLE 1

Year	# of Hearings	Approvals		Denials	
		#	%	#	%
2019	113	44	38.9	69	61.1
2018	127	37	29.1	90	70.1
2017	87	21	24.1	66	75.9
2016	100	18	18.0	82	82.0
2015	<u>117</u>	<u>34</u>	29.1	<u>83</u>	70.9
Totals	544	154	28.2	390	71.7

Note that the approval percentage rate for 2019 was significantly higher than the 29.1% in 2018. In fact, the 38.9% Approval Rate in 2019 equaled that of 2009 and was surpassed only in 2014 (46.6%) as reported by the Lifers' Group Inc. in their respective annual reports on parole rates for lifers.²

2) Initial Hearings

In 2019, eleven (11) lifers appeared before the Parole Board for the first time. Not one was approved for a parole. In 2017 and 2018 combined, only two (2) lifers, both in 2018, were approved after an Initial Hearing. Table 2 below presents the data for Initial Hearings from 2015 through 2019.

TABLE 2

Year	# of Hearings	Approvals		Denials	
		#	%	#	%
2019	11	0	0.0	11	100.0
2018	27	2	7.4	25	92.6
2017	9	0	0.0	9	100.0
2016	28	4	14.3	24	85.7
2015	40	9	22.5	31	77.5
2014	<u>32</u>	<u>13</u>	40.6	<u>19</u>	59.4
Totals	147	28	19.1	119	80.9

The total number of lifers who received Initial Hearings in the year 2017 through 2019 was 47. With only two (2) of those 47 having been approved, the combined Initial Hearing Approval Rate was 4.3%. In comparison, from 2014 through 2016, 100 lifers had Initial Hearings with a 26% Approval Rate. It is difficult to comprehend why from 2017 through 2019, only two of 47 lifers were deemed fit for a parole at Initial Hearings. The Legislature set a minimum of fifteen (15) years to be served prior to a meaningful Initial Hearing. But, the Parole Board appears to be utilizing a higher standard before serious consideration is given to paroling lifers after Initial Hearings, not withstanding whatever an individual lifer had accomplished in his/her path to rehabilitation during the intervening fifteen years. Certainly, if the Legislature had

² The Approval rates for the years 2003 through 2019 as reported by the Lifers' Group Inc. were: 2019 - 38.9%, 2018 - 29.1%, 2017 - 24.1%, 2016 - 18.0%, 2015 - 29.1%, 2014 - 36.0%, 2013 - 15.3%, 2012/2011 - 18.4%, 2010 - 34.1%, 2009 - 38.9%, 2008 - 31.3%, 2007 - 28.5%, 2006 - 29.6, 2005 - 33.3%, 2004 - 46.6%, and 2003 - 37.8%.

contemplated a minimum length of imprisonment to be higher than fifteen years, the law would reflect that. But, it does not. The Parole Board, therefore, needs to justify the dramatic decrease in the Approval Rates for Initial Hearings beginning in 2017.

3) Review Hearings

The Approval Rate for all Review Hearings held in 2019 was 43.1% (44 of 102), an increase from 35% in 2018. Of the 102 Review Hearings, 74 were for lifers who had never previously been paroled. The Approval Rate for this subset was 37% (27 of 74), an increase from 32% in 2018. The remaining 28 lifers had Review Hearings after having had a previous parole revoked. Of this subset, 17 were approved, an Approval Rate of 61%, an increase from 46% in 2018. Table 3 below presents the Approval and Denial Rates for all Review Hearings for 2015 through 2019. Table 4 presents the Approval Rate data for both subsets of Review Hearings for 2015 through 2019.

TABLE 3

Year	# of Hearings	Approvals		Denials	
		#	%	#	%
2019	102	44	43.1	58	56.9
2018	100	35	35.0	65	65.0
2017	78	21	26.9	57	73.1
2016	72	14	19.4	58	80.6
2015	<u>77</u>	<u>25</u>	32.5	<u>52</u>	67.5
Totals	429	139	32.4	290	67.6

TABLE 4

Year	Non-Revoked			# of Hearings	Revoked	
	# of Hearings	Approvals #	%		Approvals #	%
2019	74	27	36.5	28	17	60.7
2018	76	24	31.6	24	11	45.8
2017	46	7	15.2	32	14	43.8
2016	49	5	10.2	23	9	39.1
2015	<u>55</u>	<u>12</u>	21.8	<u>22</u>	<u>13</u>	40.9
Totals	300	75	25.0	419	64	49.0

4) Comparing Approval Rates For The Three Types of Hearings

Table 5 below presents comparative Approval Rates for each type of hearing from 2015 through 2019.

TABLE 5

Year	Initial	Review - No Revocation	Review After A Revocation
2019	0.0%	36.5%	60.7%
2018	7.4%	31.6%	45.8%
2017	0.0%	15.2%	43.8%
2016	14.3%	10.2%	39.1%
2015	22.5%	21.8%	59.1%

As indicated above, Approval Rates for Initial Hearings have decreased appreciably, to nonexistence for 2017 and 2019, over the five year period. That is the bad news. The good news is that Approval Rates for each of the subsets of Review Hearings have increased each year from 2017 through 2019 and that the Approval Rate for 2019 even exceeded 2015.

5) Reasons For Returns From Prior Life Paroles

In 2019, there were 28 Review Hearings for lifers who had been returned to prison from a prior parole for violating one or more stipulations to remain on parole. 2019 was no different from any other year the Lifers' Group has reported reasons for returns. Parolees were violated for Substance Abuse (alcohol and/or drug use or possession) at a significantly higher rate than for any other reason - 12 of the 28 or 43%. The Approval Rate in 2019 for those returned for Substance Abuse was 83%, a substantial increase from 2018 (41.7%) and 2017 (46.2%).

The average length of incarceration since the latest return to custody for 10 of the 12 lifers approved for paroles for substance abuse violations was 7 years; the shortest being 2 and the longest being 18 years. The medium length of incarceration since the ten lifers had been returned to prison was 6 years.

Of the 28 returnees who had Review Hearings in 2019, 10 were for non-technical violations, i.e., arrests on new charges or convictions of new crimes. Even though six of the ten non-technical violations did not result in new convictions, the lifers were violated nonetheless. Thus, 18 of the returnees (64%) were technical violations.

The reasons for returns to prison from paroles for those who had Review Hearings and

the number paroled for each reason from 2015 through 2019 are listed in Table 6 below:

TABLE 6

Reason	2019		2018		2017		2016		2015	
	#	App.	#	App.	#	App.	#	App.	#	App.
Substance Abuse	12	10	12	6	13	6	8	1	12	9
Domestic Viol.	4	2	1	0	3	1	2	1	5	2
Lying to P.O.	3	3	1	1	3	1	0	0	0	0
Associations	2	0	2	1	5	2	8	2	1	1
Indecent Assault	2	0	0	0	0	0	0	0	1	0
Assault & Battery	1	0	2	1	0	0	0	0	0	0
Fighting	1	1	0	0	0	0	0	0	0	0
Larceny	1	0	0	0	2	2	0	0	0	0
Escape	1	0	0	0	2	1	0	0	1	1
Felony Arrests	0	0	1	1	2	0	2	2	1	0
Mental Health	0	0	1	0	1	1	0	0	0	0
Armed Robbery	0	0	0	0	1	0	0	0	0	0
DUI	0	0	0	0	0	0	1	1	1	0
Stalking	0	0	0	0	0	0	1	1	0	0
Failure To Pay Fee	<u>1</u>	<u>1</u>	<u>4</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>1</u>	<u>1</u>	<u>0</u>	<u>0</u>
Totals	28	17	24	11	32	14	23	9	22	13
%	60.7		45.8		43.5		39.1		59.1	

6) Approval Factors

The Approval Factors listed in Table 7 on the following page were extrapolated by the Lifers' Group from the actual language in the Records of Decision. These factors have been consistently utilized for our studies of parole hearings for lifers since 2003. The Parole Board is rarely specific as to why a lifer was approved, e.g., what programs were completed. Rather, the Parole Board usually employs boilerplate language which is related to any individual lifers.

The Parole Board continued the trend begun in 2016 to place strong emphasis in program participation. The actual number of certificates or other documentation attesting to the

completion of a large number of programs did not impress the members of the Parole Board as much as whether or not a lifer had engaged in programs designed to address whatever his/her areas of concern were. More important than mere attendance in programs was what the lifer learned and how the lifer would utilize that knowledge if paroled.

In Table 7 below, the number of approval decisions is noted in parentheses below that year and the date are presented as percentages of frequency.

TABLE 7

Factor	2019 (44)	2018 (37)	2017 (21)	2016 (18)	2015 (34)
Addressed Areas of Need	84.1	89.2	90.5	66.7	88.2
Active Prog. Part.	79.5	91.9	90.5	94.4	67.6
Community Support	38.6	37.8	61.9	33.3	52.9
Minimal Disc. Hist.	27.3	40.7	13.6	38.9	23.5
Steady Employment	9.1	16.2	14.3	16.7	11.8
4 Goals of Sent. Met	9.1	18.9	28.6	5.5	8.8
Successful Parole Hist.	2.3	0.0	0.0	0.0	17.6
No Relapse on Parole	2.3	0.0	0.0	0.0	0.0
No New Crime on Parole	2.3	3.7	0.0	0.0	0.0
No Risk of Violence	0.0	16.2	9.5	0.0	0.0
Support From Vic. Fam.	0.0	0.0	4.8	0.0	0.0
Juv. 1st Degree	0.0	3.7	0.0	11.1	11.8
Non-Shooter	0.0	3.7	0.0	0.0	5.9

As in past years, merely working a prison job or engaging in personal self-improvement plans or religious conversions alone, no matter how well intentioned did not prove to be pathways to being approved for a parole. The Parole Board, while not discounting steady employment in prison, remaining free, or following a self-imposed religious faith, did not view these as adequate substitutes for meaningful program participation and completion which addresses specific need areas such as violence reduction, drug alcohol use, or understanding the effects criminal activity has on victims and communities. Similarly accepting responsibility,

expressing remorse, or having a solid parole plan all were minimum thresholds the lifer must pass before the Parole Board would consider whether a parole was appropriate or not. The absence of one or more of these factors was enough to cause the Parole Board to deny a lifer for a parole.

7) Denial Factors

In 2019, fifteen separate factors were cited for denying paroles. As with Approval Factors, most records of Decision denying a parole to a lifer cited multiple factors. It is important to note that the Approval and Denial factors were developed by the Lifers' Group and have been used consistently for reports on parole decisions for lifers. Each Approval or Denial Factor reflects the actual language contained in the Records of Decision.

Table 8 below continued on the following page presents the comparative percentage data for the frequency of Denial Factors from 2015 through 2019. The number of denials for each year is noted in parentheses.

TABLE 8

Factor	2019 (69)	2018 (90)	2017 (66)	2016 (82)	2015 (83)
Release Incompatible to Welfare of Society	95.7	83.3	37.9	48.8	60.0
Needs Longer Period of Adjustment	40.6	45.6	66.7	61.0	33.7
Unaddressed Issues	29.0	55.6	40.9	20.7	60.2
Lack of Insight	27.5	47.8	24.2	6.1	26.5
Lying At Hearing	17.4	13.3	27.3	4.9	15.7
Mental Health Issues	15.9	7.8	6.1	11.0	10.8
Serious Disc. Hist.	14.5	13.3	15.2	11.0	16.9
Diminishes Resp.	14.5	27.8	16.7	7.4	20.5
Unresolved Sex Issues	13.0	8.9	7.6	6.1	19.3
Violent Hist. In Prison	4.3	7.8	6.1	2.4	14.5
Factual Inconsis.	2.9	3.3	12.1	0.0	4.8
Lack of Parole Plan	2.9	0.0	12.1	0.0	4.8

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Lack of Compassion	2.9	10.0	7.6	0.0	2.4
Cont. Drug Addic.	2.9	2.2	3.0	0.0	4.8
Poor Parole Perform.	1.5	8.9	18.2	3.6	3.6
Limited Prog. Partic.	0.0	23.3	7.6	13.4	26.5
Address Areas of Deceit.	0.0	6.6	0.0	1.2	6.0
No Supporters Present	0.0	2.2	9.0	11.0	7.2

The Lifers' Group continues to emphasize that at parole hearings, lifers need to maintain control of their emotions, particularly when sensitive questions are asked by parole Board members or if a Parole Board member challenges a lifer's truthfulness. Often, such questions are posed precisely to see what, if any, reaction they elicit. For instance, if a lifer states he/she has learned various coping skills from programs such as Alternative to Violence, or Anger Management, including what his/her individual triggers are and then the lifer reacts with hostility, the result will be a denial as the lifer has simply demonstrated that he/she has not learned the lessons well enough. The lifer will be told that he/she needs further time in prison to address such hostility.

Lifers need to remember that questions asked by the Parole Board members are not to be taken personally, especially when such questions are designed to test whether a lifer is able to return to society with the necessary skills to live a productive and crime-free life. It is the welfare of society which the Parole Board is most concerned about, not handing out second chances.

8) Setbacks

In 2019, the Parole Board continued to assess Setbacks, i.e., the length of years a lifer would have to serve before his/her next parole hearing, but failed to offer any reasons or rationale for the length determined by the members. When there was a disagreement in the length of a Setback, a footnote noted any lack of consensus, but no reasons were given. Nor has the Parole Board ever issued any information as to how lengths of Setbacks are determined or what standards Parole Board members employ in making those decisions. As has been noted in previous reports on Parole Decisions For Lifers, the Parole Board needs to publish whatever standards or guidelines are utilized in determining the length of Setbacks.

Understanding the rationale for a given Setback is particularly important for those lifers who received a Setback of, say three years and then returned to the Parole Board after the

three years have passed. Are then they are denied again, but this time receiving a longer Setback of four or five years, with no reason given as to why the Setback was increased.

Table 9 below presents the comparative data for the numbers and percentages of the various Setbacks determined by the Parole Board from 2015 through 2019. The numbers in parentheses denote the total number of denials in each year.

TABLE 9

Year	1 Year	2 Years	3 Years	4 Years	5 Years
2019 (69)	0 0%	8 11%	24 35%	18 26%	19 28%
2018 (90)	4 4%	9 10%	24 27%	15 17%	38 42%
2017 (66)	4 6%	10 15%	16 24%	14 21%	22 33%
2016 (82)	6 7%	14 17%	18 22%	13 16%	31 38%
2015 (83)	<u>2</u> 2%	<u>16</u> 19%	<u>16</u> 19%	<u>11</u> 13%	<u>38</u> 46%
Totals (390)	16 4%	57 15%	98 25%	71 18%	148 38%

In Table 10 below, the number of Setbacks for denials in 2019 (69) is broken down by type of hearing: Initial, Review with no prior parole, and Review with a revoked prior parole.

TABLE 10

Type	1 Year	2 Years	3 Years	4 Years	5 Years
Initial	0	0	4	4	4
Review - No Prior	0	7	15	14	11
Review - With Prior	0	1	5	0	4

9) Approved Lifers' Destinations

Of the 44 lifers approved for paroles in 2019, eight were released directly to approved home plans and eight to interstate transfers. Seventeen were approved for a Long Term Residential Program (LTRP) after serving a specified amount of time in lower security, ranging from six months to twenty-four months. Seven lifers were paroled to From & After Sentences to be served consecutively from the life sentence. One lifer was approved to a Soldiers Home, but died before being notified of the decision. Table 11 on page 11 presents the data for destinations of approved lifers from 2015 through 2019.

TABLE 11

Destination	2019	2018	2017	2016	2015
To Home Plan	8 19%	7 19%	8 38%	3 17%	3 9%
LTRP - 6 Mon.	3 7%	5 14%	1 5%	2 11%	3 9%
LTRP - 9 Mon.	1 2%	0 0%	3 14%	1 6%	1 3%
LTRP - 12 Mon.	5 11%	7 19%	3 14%	5 28%	2 6%
LTRP - 18 Mon.	3 7%	1 3%	3 14%	2 11%	1 3%
LTRP - 24 Mon.	1 2%	0 0%	0 0%	1 6%	0 0%
LTRP - Direct	4 8%	4 11%	2 10%	1 6%	15 18%
Interstate Compact	8 19%	3 8%	0 0%	2 11%	2 6%
I.C.E.	2 5%	6 16%	1 5%	1 6%	5 15%
Sober House	1 2%	0 0%	0 0%	0 0%	0 0%
Soldier's Home	1 2%	0 0%	0 0%	0 0%	0 0%

10) Risk Assessments

For the past four years, on each Record of Decision, the Parole Board has noted it employed a risk assessment tool to determine the lifer's risk for reoffending. The Parole Board does not note what an individual lifer's risk assessment result was, i.e., low, medium, high, or very high. Thus, the Parole Board does not indicate what actual risk any individual lifer may pose to public safety if released on a supervised lifetime parole. Pursuant to a public records request, the Parole Board provided data for twenty-eight lifers in 2019 without identifying any particular lifer and was restricted to only those lifers who had a hearing in 2019 and received a decision in 2019. Table 12 below contains the risk data reported by the Parole Board for 2019.

TABLE 12

Risk Level	Approved	Denied	Total	% Approved
Low	2	0	2	100%
Medium	6	9	15	40%
High	1	8	9	11%
Very High	0	2	2	0%

Table 13 below presents the combined Risk Assessment data provided by the Parole Board pursuant to public records requests for 2017 through 2019.

TABLE 13

Risk Level	Approved	Denied	Total	% Approved
Low	13	20	33	40%
Medium	44	94	138	32%
High	13	65	78	17%
Very High	0	9	9	0%

11) Lifers Serving Life For Non-Homicides

Of the 113 Records of Decision for 2019, fourteen or 13% were for lifers who were serving a life sentence with the possibility of a parole for crimes other than second degree murder. That percentage exceeded 2018 (4%), 2017 (6%), and 2016 (9%), but equaled that of 2015 for this cohort of lifers. Table 14 below presents the number and approvals for each category of crime for the years 2015 through 2019.

TABLE 14

Crime	2019		2018		2017		2016		2015	
	#	App.	#	App.	#	App.	#	App.	#	App.
Rape	9	1	4	0	5	1	3	0	9	2
Armed Rob./Assaults	3	1	1	0	0	0	3	1	4	1
Unarm. Rob.	2	1	0	0	0	0	2	1	1	0
Burglary	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>0</u>
Totals	14	3	5	0	5	1	9	3	15	3
% App.	21%		0%		20%		33%		20%	

12) Time Between Hearing Dates And Dates Of Decision

Each Record of Decision notes both the date the public hearing was held and the date of decision. As in past years, what precisely the Date of Decision represents remains

undefined by the Parole Board. It is improbable that the date means the actual date the decision was rendered as the date closely aligns with the date a lifer received his/her Record of Decision. The improbability arises because in the Parole Board's own regulations, the Board members are required to meet and to render a decision on any parole at the next regularly scheduled executive session after the public hearing - 120 CMR 301.06(6). Since in 2019 the average length of time between the hearing dates and the dates of decision was 290 days, it seems highly unlikely that the Board members did not meet on average in executive sessions until nearly ten months after any public hearing. In addition, 120 CMR 301.08 requires that lifers who are denied paroles be so informed with a written summary "within 21 calendar days after the decision has been rendered. As the specific dates the Parole Board members met in executive session are not noted on any individual Record of Decision, no lifer who has been denied can determine whether or not the 21 day notification requirement had been met.

While the average length of time between hearing dates and dates of decision in 2019 was 20 days shorter than in 2018, waiting nearly ten months is unconscionable.

In comparison, the average length of delay in 2019 was 108 days longer than 2017, 146 days longer than 2016 and 203 days longer than 2015 when the average length of delay was less than three months. It is certainly a fair question to ask of the Parole Board, what has changed in five years to account for such a significant increase in days from 2015 to 2019? Other than a fluctuation in membership and the chairpersons, nothing has changed relative to the task before the Parole Board. The inordinate long delay between hearing dates and dates of decision caused one lifer to never learn of his approval as he died while waiting for his decision. The Parole Board, however, appears to have decided posthumously to approve him for a parole to a Soldiers Home. But, as noted in the Record of Decision, he died in February of 2019. The Date of Decision was August 16, 2019 and was the only one of the 113 for 2019 which was unsigned. The lifer was 77 at the time of his sixth hearing before the Parole Board.

While there is no required time of notification for those approved for paroles, the long length of delay between hearing dates and dates of decision only serves to lengthen any time required to be served in lower security before being released on parole. As noted in Table 11 *supra*, waiting on average 290 days for a decision means that those approved for release to lower security still have to wait for the Department of Correction to effect that transfer. If, for instance, a lifer is required to spend 6 or 9 or even 12 months in lower security, that time would have elapsed before he/she is even considered for a transfer to lower security. In 2019, the average length of time between the Hearing Dates and the Dates of Decision for the forty-four Approvals was 272 days, a mere 18 days below the average.

In 2019, the shortest length of time between the two dates was 132 days; the longest was 501 days. Two other decisions had lengths of time which exceeded 400 days - 421 and

474 respectively. Table 15 on page 14 presents the data for the lengths of delay between Hearing Dates and Dates of Decision with frequency percentages for 2015 through 2019. Note the precipitous drop in the 1 - 100 day category from 2015 and the substantial increase in 201 - 300 and 300+ categories since 2017.

TABLE 15

Length In Days	2019		2018		2017		2016		2015	
1 - 100	0	0%	4	3%	2	2%	16	16%	91	78%
101 - 200	1	1%	2	2%	63	72%	75	7%	21	18%
201 - 300	73	65%	31	24%	21	24%	5	5%	5	4%
300 +	<u>39</u>	34%	<u>90</u>	71%	<u>1</u>	1%	<u>4</u>	4%	<u>0</u>	0%
Total # of Decisions	113		127		87		100		117	
Ave. Length of Delay	290		310		182		144		87	

13) Juveniles At Time Of The Crime

Those under the age of 18 at the time of the commission of their crimes and were serving Life-Without-Parole (LWOP) sentences became eligible for parole hearings after the *Diatchenko* decision by the Supreme Judicial Court (SJC) in 2014.

In 2019, five juveniles formerly serving LWOP and who had completed at least fifteen years of incarceration appeared before the Parole Board. One was approved for a parole. Since 2014, forty-nine (49) parole hearings have been held for juveniles formerly serving LWOP sentences and for which the Lifers' group has reviewed their respective Records of Decision. Of those 49 hearings, 18 juveniles at the time of their crime(s) and serving LWOP were paroled, a parole rate of 37%.

In 2019, fifteen juveniles who were serving second degree life sentences, i.e., already with the possibility of a parole, appeared before the Parole Board after having served at least the requisite fifteen years of incarceration. Eleven or 73% were approved for a parole.

In total in 2019, twenty lifers who had committed their crimes before the age of 18 had parole hearings. Two had Initial Hearings, both were denied. Eighteen had Review Hearings, twelve or 67% were approved.

14) Attorney Representation

Of the 113 Records of Decision posted online in 2019, in 58 or 51% the notation was made that the lifer had been represented by counsel and said counsel was named. Of those represented by counsel, 26 were approved for parole at an Approval Rate of 45% - an increase from 35% in 2018. Of the 55 lifers who were not represented by counsel, 18 or 33% were approved for paroles.

Student attorneys from Harvard (PLAP) and Northeastern represented lifers at 16 hearings - 5 and 11 respectively. Of those 16 lifers represented by student attorneys, 7 or 44% were approved for paroles. The Approval Rate for lifers represented at hearings by licensed attorneys, i.e., not students from PLAP or Northeastern, was 45%.

Not counting the student attorneys, 27 different licensed attorneys represented lifers at parole hearings in 2019. Twenty of those represented only one each in separate hearings. Of the remaining 7 licensed attorneys representing lifers, the number of lifers represented and the number of approvals were as follows:

Attorney	# of Lifers Represented	# of Approvals
John Rull	10	4
Lisa Newman-Polk	4	2
Jason Benzaken	4	3
Russell Sobelman	3	1
Amy Belger	2	1
Robert Hennessy	2	2
Emma Quinn-Judge	2	2

Table 16 below contains the data for approvals and denials for 113 Records of Decision posted online in 2019 as well as the combined data for 2015 through 2019.

TABLE 16

	2019 App.	2019 Den.	2015 - 2019 App.	2015 - 2019 Den.	Overall App. %
Attorney	26	32	85	199	30%
No Attorney	<u>18</u>	<u>37</u>	<u>69</u>	<u>191</u>	27%
Totals	44	69	154	390	28%

The total number of Records of Decision for 2019 was 113. The total number of Records of Decision for 2015 through 2019 was 544.

It is important to note that the SJC in its decision to allow juvenile first-degree lifers a parole hearing also noted that juveniles should be represented by counsel, either private or provided by the Committee For Public Counsel Services (CPCS).

15) Analysis Of Parole Decisions By Race

From 2013, the Lifers' Group Inc., based on requests from our members, has calculated Approval Rates for four racial categories - Caucasian, African-American, Latino, and Asian.

Racial designations, however, are not provided by the Parole Board in Records of Decision. As a result, as in past years, the Lifers' Group Inc. has relied on members familiar with the races of lifers who were approved or denied a parole in 2019 and for whom a Record of Decision was published online.

The Lifers' Group Inc. acknowledges this is not the optimum method for determining racial affiliations and that, therefore, mistakes may have been made. But, the Lifers' Group Inc. believes that the number of those mistakes are minimal and have not significantly altered the results, particularly for the gross totals and percentages for the years 2013 through 2019. The number of approvals amassed since 2013 should have served to have mitigated the effects of a few incorrect designations.

Table 17 below provides the racial data for 2019.

TABLE 17

	Caucasian		African/Amer.		Latino		Asian	
	App. #	Den. #	App. #	Den. #	App. #	Den. #	App. #	Den. #
	17	40	13	15	9	9	5	5
% of Total # for 2019	39%	58%	30%	22%	20%	13%	11%	7%
% for Racial Category	49%	51%	46%	54%	50%	50%	50%	50%

Table 18 on page 17 presents the combined data for the 204 Approvals for lifers from 2013 through 2019.

TABLE 18

	Approvals	Total # of Dec.	% of Total Approvals	% Approvals For Category
Caucasian	79	324	39%	31%
African-American	65	195	32%	33%
Latino	49	137	24%	36%
Asian	<u>11</u>	<u>27</u>	5%	41%
Totals	204	683	30%	

16) Ages At The Time Of The Parole Hearing

The ages of lifers at the time of their parole hearings is provided by the Parole Board in the individual Records of Decision. In 2019, the Approval Rate for lifers age 50 and younger was 45%. The bulk of the approvals (21 of 24) were for lifers age 41 through 50. This Approval Rate exceeded that of 2018 which was 33%. The Approval Rate for lifers age 51 and over in 2019 was 33%, also an increase from the Approval rate of 26% for this age subset in 2018.

The age groupings have remained the same as in previous Lifers' Group Inc. reporting on age at the time of the parole hearings which began in 2006 (31 - 40, 41 - 50, 51 - 60, and 61+). In 2019, twenty-six lifers were age 61 or higher at the time of their parole hearings. Six were approved for paroles, an Approval Rate of 23% - equal to the 2018 Approval rate for this subset. The ages of the approved 61+ lifers were one each for: 61, 62, 65, 72, 73, and 77 (who died prior to receiving his approval). Of the twenty-seven denied lifers in this subset, two were 61, two were 63, four were 64, one was 65, four were 67, one was 71, one was 72, two were 73, and three were 79.

Table 19 below presents the data for 2019.

TABLE 19

	31 - 40		41 - 50		51 - 60		61+		Totals
	#	%	#	%	#	%	#	%	#
Approvals	3	27%	21	50%	14	41%	6	23%	44
Denials	<u>8</u>	73%	<u>21</u>	50%	<u>20</u>	59%	<u>20</u>	77%	<u>69</u>
Totals	11		42		34		26		113

Table 20 below presents the combined data for 2006 through 2019, and Table 21 presents the combined data by subsets of Age 50 and Under and Age 51 and Over for the same time period.

TABLE 20

	31 - 40		41 - 50		51 - 60		61+		Totals	
	#		#		#		#			
Approvals	94	40%	130	29%	88	23%	60	23%	372	28%
Denials	<u>143</u>	73%	<u>313</u>	71%	<u>297</u>	77%	<u>197</u>	77%	<u>950</u>	72%
Totals	237		443		385		257		1322	

TABLE 21

	Age 50 & Under		Age 51 & Over		Totals	
	#		#		#	
Approvals	224	33%	148	23%	372	28%
Denials	<u>456</u>	67%	<u>494</u>	77%	<u>950</u>	72%
Totals	680		642		1322	

17) Opposition Or Support By District Attorney Offices

The Lifers' Group Inc. has added an additional category of date for analysis regarding the parole decisions for lifers in 2019. The addition emanated from a question raised by the Suffolk County District Attorney before MCI-Norfolk's African American Coalition Committee (AACC) as to the rate of oppositions raised by the various District Attorney Offices during parole hearings. The Lifers' Group Inc. is indebted to the AACC for passing this question along to us.

In 2019, only two Records of Decision of the 113 did not note whether or not one or more representatives from the relevant District Attorney's Office testified or submitted written responses or both for or against a lifer being approved for a parole.

In 2019, District Attorney Offices opposed lifers at parole hearings at a rate of 95%. Only once did a District Attorney's Office support a lifer and he was subsequently denied by the Parole Board. Of the 44 Approvals in 2019, 43 were opposed by a District Attorney's Office,

even those in which the same District Attorney's Office had proposed a deal for a guilty plea which was then accepted by the lifer.

The results for 2019 are presented in Table 22 below.

TABLE 22

County	Opposed	Supported	Did Not Oppose	Total
Suffolk	31	0	1	32
Essex	15	0	0	15
Hampden	13	1	1	15
Middlesex	13	0	0	13
Norfolk	8	0	1	9
Worcester	6	0	1	7
Plymouth	7	0	0	7
Bristol	5	0	1	6
Berkshire	3	0	0	3
Hampshire	2	0	0	2
Cape & Islands	<u>2</u>	<u>0</u>	<u>0</u>	<u>2</u>
Totals	105	1	5	111

DISCUSSION AND RECOMMENDATIONS

A. Approval Rates

In 2019, the Approval Rate increased significantly from 29% in 2018 to 39% in 2019, an increase of 34%. The Parole Board in 2019 continued the trend of past years of increasing overall Approval Rates.

On the other hand, not approving even one lifer for the eleven Initial Hearings continues the troubling trend begun in 2017 when no lifer was approved after an Initial Hearing. In 2018, only two of twenty-seven lifers were approved after Initial Hearings, an approval rate of 7.4%. Overall for the past three years (2017 - 2019), only two of forty-seven lifers were approved after Initial Hearings - a minuscule Approval Rate of 4.3%. In contrast, from 2014 through 2016, 100 lifers had Initial Hearings. Twenty-six were approved - an Approval Rate of 26%.

Lifers at Review Hearings, however, fared much better as they were paroled in 2019 at a rate of 43.1%, eight percentage points higher than 2018 and nine percentage points over the

Average Approval Rate or Review Hearings from 2015 through 2019. In addition, lifers who had Review Hearings without having had a prior parole revoked continued to be paroled at an increasing rate: 15.2% in 2017, 31.6% in 2018, and 35.5% in 2019. Similarly, lifers who had Review Hearings after having had a prior parole revoked also continued an upward trend of Approval Rates: 39.1% in 2016, 43.8% in 2017, 45.8% in 2018, and 60.7% in 2019.

Recommendation #1 - Parole Board members need to consider whether or not the continuing low Approval Rates for Initial Hearings has resulted from members requiring lifers to serve more than the statutory mandated fifteen years before meaningful consideration will be given for paroling a lifer. If that is how the Parole Board members view those who come before them at Initial Hearings, then that position runs counter to the intent of the legislature who set the standard of a minimum of fifteen years of incarceration before a meaningful parole hearing for those serving second degree life sentences.

Prison advocates need to begin to press the Parole Board members on this issue. Lifers who have accepted plea bargains to second degree with the carrot of a parole after fifteen years dangled before them as an incentive by district attorneys are being disserved by the Parole Board if lifers are not given meaningful hearings and chances for parole after fifteen years of incarceration. Of course, a parole is not guaranteed after fifteen years. But, a meaningful hearing and concomitant chance for a parole if a lifer is rehabilitated is a legitimate expectation and one which the Parole Board is failing to meet.

A parole rate of 4.7% - two approvals in three years and forty-seven Initial Hearings - leaves no impression other than that the Parole Board members are utilizing a different standard than is mandated by the legislature. The Parole Board members need to be held accountable for the exceedingly low Approval Rate after Initial Hearings for the past three years.

B. Make-Up Of The Parole Board

The concerns raised in the Lifers' Group Inc.'s Parole Report for 2018, as well as by numerous local criminal justice organizations regarding the make-up of the Parole Board, were further exacerbated in 2019. The chairperson, Paul Treseler, left the Parole Board to become a judge, following in the footsteps of former chairperson Josh Wall. In Treseler's place to chair the Parole Board, Governor Baker named member Gloriann Moroney who had served as General Counsel to the Parole Board after fourteen years as an Assistant District Attorney for Suffolk County. To fill the vacancy caused by Treseler's leaving, Governor Baker appointed Karen McCarthy, an Assistant District Attorney for Hampden County.

As a result, nothing has improved regarding the make-up of the Parole Board. Five of the present seven members have either prosecutorial or corrections backgrounds. Of the remaining two, one has experience as a defense attorney and the other, Dr. Charlene Bonner, a former chairperson until replaced by Governor Baker in that position by Paul Treseler, is a forensic scientist and addictive behavior specialist.

Recommendation #2 - Given that the Parole Board remains heavily skewed in favor of those who prosecute and/or incarcerate rather than those who defend and/or work to rehabilitate prisoners, Governor Baker and the Governor's Council should begin to replace those with prosecutorial or corrections backgrounds with members who have at least five years of experience working in the areas of drug and alcohol addiction; mental health; sexual, physical; or emotional abuse, or gang cultures. The Parole Board needs to be balanced to reflect the needs of society beyond those of prosecutors and/or incarcerating prisoners.

C. Risk Assessments

The combined Approval Rate for the Low Risk data supplied by the Parole Board from 2017 through 2019 is only eight percentage points above that for Medium Risks - 40% to 32%. The fact that 60% of Low Risk lifers were denied paroles seems counterintuitive. If a lifer is a Low Risk to reoffend, why would he/she not be paroled?

Recommendation #3 - The Parole Board notes on each Record of Decision that it had "considered a risk and needs assessment." What is missing from the Records of Decision is what the lifers' level of risk was found to be. The Parole Board should indicate on each Record of Decision the results of the risk and needs assessment.

Recommendation #4 - That those assessed as Low Risks to offend be presumed to be paroled unless the Parole Board articulates specific reasons why the parole was denied and what the lifer needs to address for his/her next parole hearing.

D. Number Of Days Between Hearing Dates And Dates Of Decision

It is difficult to address this issue adequately without knowing exactly to what the Date of Decision listed on each Record of Decision actually refers. It cannot be assumed that this date is the day that the decision was made to approve or deny a parole.

First, the time frame between the Date of Decision and the date the lifer is notified is normally only one or two days. Obviously, that does not give the Parole Board sufficient time to

decide the case, write up the Record of Decision, and communicate the result to the lifer. Thus, the decision to parole or not must be made weeks, if not months, before the listed Date of Decision. This brings to the fore the Parole Board's regulations requiring timely notification to lifers who have been denied. Parole Board regulations require that a denied lifer be informed of that decision within 21 working days. While lifers may be notified one or two days after the noted Date of Decision, that is not, as it cannot be, the date the actual decision was made after the next executive session subsequent to the hearing itself. Thus, the Parole Board is obviously in violation of its own regulations. An interesting place for the Parole Board to be as it insists that paroled lifers and those seeking a parole must follow rules and regulations. It should, at the very least, do the same.

Second, The Dates of Decision correspond exactly to the dates the Records of Decision are signed by the Parole Board's General Counsel. This begs the question: What is the legal basis for decisions of the Parole Board members not to be put into effect until signed off by the General Counsel? Empowering the Legal Division to write and to have final approval on parole decisions is questionably legal since no statute or regulation confers such responsibility on the Legal Division or the General Counsel.

In addition, the lengthy delays caused by this procedure involving the Legal Division, on average nearly ten months in 2019, adversely affected lifers who had been denied paroles and were waiting for their decision. Certainly, those lifers lost months of time when they could have been working on areas of deficiency had they been made aware of them via the Record of Decision.

For one lifer, the time between his hearing and his "Date of Decision" was so long that he died while waiting for his decision. To add insult to injury, the Parole Board issued the decision six months after the lifer had died, a fact which the Parole Board was aware of prior to rendering its decision. One can only wonder why the Parole Board even bothered?

Recommendation #5 - The Parole Board needs to study why it takes so long after hearings to notify lifers of the results. While the length of time did decrease from 310 days in 2018 to 290 days in 2019, that is not nearly enough. In 2015, given a similar number of Records of Decision (117 in 2015 as compared to 113 in 2019), the average length of delay was 87 days. That is a 70% decrease from 2019. If the Parole Board could render decisions on average in 87 days in 2015, why could the Parole Board today not do the same? It seems to be a simple question of management and priorities. The newly appointed chairperson - Gloriann Moroney - should make significantly reducing the times between Hearing Dates and Dates of Decision a top objective for 2020 and beyond.

E. More Specificity In Records Of Decision

As in 2018, the Parole Board continued its practice of using general language when addressing why a lifer had been approved or denied. Such language particularly renders a disservice to lifers who have been denied and need to know what areas and/or programs they should address to improve themselves for their next hearing. Informing lifers that their release is "not compatible with the welfare of society" and that the lifer "needs a longer period of adjustment" are of no help to any lifer seeking to improve him or herself.

The Lifers' Group Inc. believes that it is reasonable to speculate that the continued use of such "boilerplate language" is solely for the purpose for the Parole Board not to be exposed to being sued. If a lifer is not given any specifics as to what areas he/she is lacking and what programs he/she should complete successfully, then he/she cannot bring a legal cause of action against the Parole Board when it denies that lifer in the next hearing even when he/she has completed all that the Parole Board has recommended. Therein may lie the reason that the Parole Board's Legal Department is tasked with writing and signing off on every Record of Decision.

Recommendation #6 - That the Parole Board be required to provide lifers who have been denied paroles specific reasons as to why and what the lifer needs to accomplish before his/her next hearing. In the spirit of disclosure, the Parole Board should also give reasons why the members decided on a specific length of a Setback, particularly when the Parole Board hands out a longer Setback than it had at the prior denial.

Recommendation #7 - As directed by the 2018 Criminal Justice Reinvestment Act, the Parole Board should assess a lifer immediately following his/her conviction to outline specific programs he/she should engage in during their incarceration.

Recommendation #8 - The Parole Board should regularly re-assess lifers during their sentences to help guide them through a path that will better prepare lifers to be successful on parole.

EXCERPTS FROM 2019 RECORDS OF DECISION

The following fourteen excerpts are quoted directly from Records of Decision for 2019. The names of the lifers and victims have been deleted. The excerpts have been selected as examples of positive and negative feedback from Parole Board members to presentations by

lifers at public hearings. There is no intent to embarrass nor to ridicule any lifer. Rather, the intent is to offer insight into the decision making parameters employed by Parole Board members and, as a result, to assist lifers to prepare themselves for their parole hearings and/or to gain insight into what areas they may need to address while incarcerated before their next parole hearing.

The excerpts are divided into two categories - Approvals (8) and Denials (6). Whether the hearing was an Initial Hearing or a Review Hearing, the length of the Setback, if appropriate, and the number of prior parole hearings the lifer may have had are included after each excerpt.

A. Excerpts From Approvals For Parole

1) *The Board discussed _____'s prior parole history and how, if granted parole, his behavior would change. _____ said that he previously "dropped the ball" after being given a good opportunity. He stated that he takes full responsibility for his prior parole failure because he was a poor communicator and did not use his support system to cope with the stressors that accompany reentry. He admitted that instead of relying upon his parole officer in times of hardship, he attempted to deal with stress by using marijuana. The Board asked _____ about his current attitude toward marijuana usage, to which he responded that it was an unproductive coping mechanism in which he is no longer interested.*

The lifer was paroled after his fourth hearing after having a prior parole revoked.

2) *_____ said his biggest concern about re-entry was building a broad support network and not being ashamed to ask for help when he needs it. _____ explained that he has been working to broaden his support network over the past year.*

This lifer was paroled after a Review Hearing which was his third hearing.

3) *A Board member questioned _____ as to any challenges he could face, if granted parole. He stated that his challenge would be to not "relapse." He has since learned that addiction never ends, but rather, it is an "ongoing problem." He explained, however, that he now recognizes his triggers.*

The lifer was paroled after a Review Hearing after having a prior parole revoked.
The hearing was his sixth.

4) *The Board questioned _____ as to how he could do better on parole, if released again. _____ answered that, through the Alternatives to Violence Program, he has now learned to pause when faced with conflict. He thinks ahead as to which choices would end in a positive rather than negative outcome.*

This lifer was paroled after a Review Hearing after a prior parole had been revoked.
This was his fourth hearing.

5) When questioned as to what has changed since his reincarceration, _____ said he now fully understands that a life sentence means that rules will always apply to him. He detailed the steps he took to repair the trust he broke, including the rebuilding of relationships with his supporters from the Bethany House Ministry. He has become program involved and has remained disciplinary report free. _____ expressed his desire to use his history to help others and become a productive member of society.

This lifer was paroled after a third Review Hearing after a revoked prior parole.

6) The Board acknowledged _____'s completion of a significant amount of rehabilitative programming and questioned him as to which program was most beneficial. _____ reported that Restorative Justice allowed him to understand the impact his crimes had on his victims' friends and family and how they had to live with the pain of his crimes each day. When the Board asked him how he has matured since his last hearing, _____ said that he now engages in "active thinking" and "active listening." He contemplates how he wants to spend the rest of his life.

This lifer was paroled after a Review Hearing which had been his fifth.

7) Board Members questioned _____ as to which of the 17 rehabilitative programs he completed were most helpful. _____ said that Emotional Awareness helped him identify how feelings of frustration and indignation triggered him to react violently. He now understands that he needs to properly deal with emotions that stem from traumatic events. _____ shared his experience in speaking with the mother of a murder victim at Restorative Justice, when he expressed his sorrow for the victims' families for lying about the shooting, and for fleeing.

This lifer was paroled after a Review Hearing which was his second.

8) The Board noted that _____ examined his behavior as a batterer by seeking out an external domestic violence course, since one was not offered in the prison in which he was incarcerated. _____ explained that this program, among others like Anger Management, Violence Reduction, Alternatives To Violence, and the Graduate Maintenance Program, taught him that he was not the victim and that he, alone, was responsible for his actions.

This lifer was paroled after a Review Hearing which was his third.

B. Excerpts From Denials For Parole

1) In discussing the governing offense, _____'s version remains inconsistent with the trial testimony, the physical evidence, and the verdict. _____ maintained his innocence for approximately 23 years, deflecting the culpability in two murders toward one of his dealers and the juvenile who had identified him as the shooter. The Board remains concerned as to _____'s lack of candor, since he continues to maintain that he was not issued the Records of Decision from his 2008 and 2013 parole hearings. The Parole Board has documentation that contradicts these statements.

This lifer was denied after a Review Hearing, his fourth, and given a four year Setback.

2) *Board Members were concerned about _____'s sporadic attendance at Alcoholics Anonymous meetings. Board Members questioned _____ as to why it appears he has not attended many rehabilitative programs since his last hearing. _____ explained that he was working overtime and that work conflicted with the meetings. The Board remains concerned as to _____'s motive to murder the victim. For decades, he perpetuated lies and defamed the victim.*

This lifer was denied after a Review Hearing, his fifth, and given a five year Setback.

3) *A Board Member pointed out that _____ has told the Board four different stories about what happened the night of the murder, including falsely accusing [the victim] of molesting a child. When asked if continuously lying to the Board, as well as falsely accusing the victim of despicable acts, could be two other reasons that he has been denied parole, _____ simply said. "Yes."*

This lifer was denied after a Review Hearing, his eighth, and given a five year Setback.

4) *_____ stated that he has served approximately 22 years on this sentence. However, when Board Members questioned _____ as to his lack of programming, he admitted that he hasn't completed any rehabilitative programs during his incarceration. _____ claims that he has observed various programs, but programs seem like a "farce" to him.*

This lifer was denied after an Initial Hearing and given a five year Setback.

5) *The Board expressed concern as to the behavior that led to _____'s incarceration and the revocation of his parole. _____ farther complicated his hearings history, as he admitted to sexually assaulting a 76-year-old woman during his 2008 hearing, and then recanting such statements at this hearing.*

This lifer was denied after a Review Hearing, his fifth, and given a five year Setback.

6) *_____ participated in a brutal double murder. His versions of the offense continue to evolve. He must be forthright with the Board. _____ has yet to demonstrate that he has benefited from participation in treatment and programming.*

This lifer was denied after a Review Hearing, his fifth, and given a three year Setback.