

# PAROLE DECISIONS FOR LIFERS - 2015

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## HIGHLIGHTS

- 1) 117 Records of Decision were posted online in 2015. (page 1)
- 2) Paul Treseler was appointed to replace Dr. Charlene Bonner as chairperson. (page 2)
- 3) The Approval Rate for 2015 was 29.1%, a decrease from 36% in 2014. (page 3)
- 4) The Approval Rate for Initial Hearings dropped to 22.5% in 2015. (page 4)
- 5) The Approval Rate for Review Hearings remained above 32%. (page 5)
- 6) Returns to custody for Substance Abuse remained the highest number for all returns who had Review Hearings in 2015 (12 of 24). (page 7)
- 7) The most frequently cited factor in Approvals was Addressed Areas Needed For Rehabilitation - 88%. (page 8)
- 8) The most frequently cited factor in Denials was Unaddressed Issues (60%). (page 10)
- 9) The percentage of five year Setbacks given out dropped from 67% in 2014 to 46% in 2015. (page 12)
- 10) In 2015, the average time lapse from Hearing Dates to Dates of Decision dropped by 55% to 87 days from 193 days in 2014. (page 14)
- 11) The parole rate for juveniles in 2015 was 31%, a 64% decrease from 2014. (page 15)
- 12) The approval rate for lifers who had been represented by counsel in 2015 was 53%; the approval rate for lifers who had not been represented by counsel was 29%. (page 17)

## PAROLE DECISIONS FOR LIFERS - 2015

### A. INTRODUCTION

This is the ninth report prepared by the Norfolk Lifers Group studying parole decisions for lifers. The MA Parole Board published 117 Records of Decision for lifers in 2015. Those Records of Decision comprise the raw data for this report. See: [www.mass.gov/parole](http://www.mass.gov/parole) for the Records of Decision published monthly by the Parole Board. Previous reports on lifer parole decisions published by the Norfolk Lifers Group can be found at: [www.realcostofprisons.org](http://www.realcostofprisons.org). Please address any feedback about this or any previous report to: Norfolk Lifers Group, MCI-Norfolk, P.O. Box 43, Norfolk, MA 02056. Comments, questions, or suggestions are welcome.

Only parole decisions for prisoners serving life sentences for second degree murder, or any other crime which carries a life sentence with an eligibility for parole, e.g, armed robbery, are included in this report. Parole hearings for lifers are either Initial, for lifers who have served the legislatively mandated minimum of fifteen years, or Review, for lifers who were denied a parole at a previous hearing, or were returned to prison after having a prior life parole revoked due to violating one or more stipulations imposed by the Parole Board as a condition(s) for remaining on parole. Every lifer who is denied a parole is then given a prescribed number of years, known as a setback, to be served until the next parole hearing. Setbacks may be from one to five years. If a vote of the Parole Board is evenly divided or a majority less than two-thirds of the voting members vote in favor of parole, the parole is denied. Typically in such situations, the setback is one year. There were no tie votes in 2015. Two lifers received 4-3 votes - one in favor of parole and the other against a parole.

Of the 117 Records of Decision for 2015, 105 (89.7%) were unanimous votes. The remaining twelve votes were: three at 5-2, three at 4-1, two at 4-3, and one each at 6-1, 5-1, 4-2, and 3-1. In case of dissenting votes, the Records of Decision note which member(s) dissented and why. All voting member are identified for each Record of Decision.

For lifers approved for paroles, particularly if they had not been returned after a prior life parole had been revoked, the typical destination is not directly to the street. Rather, the Parole Board conditions the release on a prescribed period of time to be spent successfully in lower security (usually one year or more) and then the completion of a Long Term Residential Program (LTRP). The intent is to allow paroled lifers to reenter society gradually, with time to adjust to being transferred, after many years, from higher security. Lifers eligible for parole are required by the Department of Correction (DOC) to be housed no lower than medium security until, and unless, the Parole Board has approved a parole.

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As in 2013 and 2014, the Records of Decision for lifers published in 2015 were tailored specifically to individual cases. Each Record of Decision was divided into four sections: the Parole Board's version of the facts of the case, the lifer's Institutional Conduct, Parole History (where appropriate), and the Decision. The Decision section often provided guidance concerning specific areas requiring attention and/or improvement for lifers who had been denied.

Massachusetts General Law c. 127, §130 stipulates that no prisoner is to be paroled solely due to good conduct or program involvement while incarcerated. Rather, a parole is to be granted only when the Parole Board is convinced that there is a reasonable probability that if paroled, the prisoner will 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 determines whether four goals of sentencing have been met, i.e., punishment, public safety, deterrence, and rehabilitation.

Early in September 2015, Paul M. Treseler was confirmed by the Governor's Council to replace Dr. Charlene Bonner. Treseler had been nominated by Governor Charles Baker with no explanation as to why he had decided that such a change was necessary. Dr. Bonner's term had not expired and she remains a member of the Parole Board. As a result, Lee Gartenburg, who had been appointed to finish Josh Wall's term, was not renominated and, therefore, was dropped from the Parole Board.

Paul Treseler's background was a carbon copy of Josh Wall's. Treseler had served as an Assistant District Attorney for Suffolk County for nearly twenty years and, not unlike Wall, had no demonstrable experience with the parole process. Why Governor Charles Baker chose to remove a chairperson who had performed her responsibilities fairly and professionally is anyone's guess. The loss of Mr. Gartenburg was also troubling as he had over 30 years experience working with prisoners, something distinctly lacking in the overall makeup of the present Parole Board

It is too early to assess Chairman Treseler's impact on the parole rates for lifers. In the Records of Decision published in 2015, he participated in only twelve hearings. Of those twelve, only one lifer was approved with the condition that he be turned over to I.C.E. and ultimately deported. That is an approval rate of 8.5%. A sample of only twelve Records of Decision is clearly too limited to make any valid conclusions at this time regarding the performance of the Parole Board under Treseler's leadership. Such conclusions will have to wait for the results of the Records of Decision for lifers in 2016.

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**B. RESULTS**

1) Approval / Denial Rates

Of the 117 Records of Decision for 2015, 34 (29%) were approved for a parole, while 83 (71%) were denied. That 29% approval rate was 19% lower than the same rate for 2014. The 2015 approval rate also dropped below the average approval rate of 31.8% for the years 2003 - 2014.<sup>1</sup> Denial rates of 70% or higher occurred only four other times in the years 2003 - 2015, i.e., 2013, 2011 - 2012, 2007, and 2006. (See Footnote 1 below.)

The approval rate for the Records of Decision in 2015 prior to Paul Treseler becoming chairman was 33.3%, a rate below that of 2014. If Governor Baker effected the change in the Parole Board because he had assumed that under Dr. Charlene Bonner's leadership lifers were being paroled at a higher rate, than under Josh Wall, then Governor Baker was wrong as the data do not support that assumption. The cost of a significant drop in the approval rate and the resultant housing of more lifers in medium and/or maximum institutions, however, would be substantial with very little increase in public safety as lifers traditionally have one of the lowest recidivism rates of all released offenders. Of course, it is possible that Governor Baker might view the paroling of any lifers as being problematic. If so, that does not bode well for 2016.

Table 1 below presents the data for the Approval/Denial rates from 2010 through 2015. Note: the "Wall" years, i.e., with Josh Wall as chairman, were 2011/2012, 2013, and for approximately nine months in 2014.

TABLE 1

<u>Year</u>	<u># Hearings</u>	<u>Approvals</u>		<u>Denials</u>	
		<u>#</u>	<u>%</u>	<u>#</u>	<u>%</u>
2015	117	34	29.1	83	70.9
2014	139	50	36.0	89	64.0
2013	137	21	15.3	116	84.7
2011/2012	125	23	18.4	102	81.6
2010	123	42	34.1	81	65.9
Totals	641	170	26.7	471	73.5
Average	128	34	26.6	94	73.4

1. Approval rates for the years 2003 through 2015 averaged 31.8%, based on the reports compiled for those years by the Norfolk Lifers Group. The specific approval rates by year were:

2015 - 29.1%	2014 - 36.0%	2013 - 15.3%	2011/2012 - 18.4%	2010 - 34.1%	2009 - 38.9%
2008 - 31.3%	2007 - 28.5%	2006 - 29.6%	2005 - 33.3%	2004 - 46.6%	2003 - 37.8%

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### 2) Initial Hearings

In 2015, forty lifers appeared before the Parole Board for the first time. Sixteen of those lifers had been serving life-without-parole sentences (LWOP) for crimes committed while they were juveniles. Their sentences had been reduced to second degree life sentences with the option for parole due to a Supreme Judicial Court decision in 2014. Thus, those sixteen lifers were parole eligible as they had served at least fifteen years.

Overall, the approval rate for lifers who had Initial Hearings was 22.5% (9 of 40) - a 45% decrease from 2014. Notably, five of the nine approvals were for lifers who had been serving LWOP for crimes committed as juveniles. Discounting those lifers, the 2015 approval rate for non-juvenile lifers having Initial Hearings decreased to 13% (4 of 31). Table 2 below presents the data for Initial Hearings from 2010 through 2015.

TABLE 2

<u>Year</u>	<u># Hearings</u>	<u>Approvals</u>		<u>Denials</u>	
		<u>#</u>	<u>%</u>	<u>#</u>	<u>%</u>
2015	40	9	22.5	31	77.5
2014	32	13	40.6	19	59.4
2013	31	6	19.3	25	80.7
2011/2012	32	5	15.6	27	84.4
2010	44	22	50.0	22	50.0
Totals	179	55	30.7	124	69.3
Average	36	11	30.6	25	69.4

### 3) Review Hearings

Review Hearings are conducted for one of two reasons. First, for lifers who had been denied a parole at a previous hearing and had served the assessed Setback, i.e., the number of years denied lifers have to serve before their next parole hearing. Those who were denied parole at their Initial Hearing would have a Review Hearing at each subsequent appearance before the Parole Board. The second reason for a Review Hearing is for lifers who had been granted paroles, but, whose parole had been revoked and the lifers returned to prison.

There were a total of seventy-seven Review Hearings held in 2015, comprising 66% of all the Records of Decision. The number of Review Hearings held in 2015 (77) was significantly below those held in 2014 (107) or in 2013 (106). The number of Review Hearings held in 2015

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was the lowest for the years 2010 - 205. The approval rate in 2015 was 32.5%, a decrease of 6% from 2014. Table 3 below presents the data for approval and denial rates for all Review Hearings for the years 2010 through 2015.

TABLE 3

<u>Year</u>	<u># Review Hearings</u>	<u>Approvals</u>		<u>Denials</u>	
		<u>#</u>	<u>%</u>	<u>#</u>	<u>%</u>
2015	77	25	32.5	52	67.5
2014	107	37	34.6	70	65.4
2013	106	15	14.2	91	85.8
2011/2012	93	18	19.3	75	80.7
2010	79	20	25.3	59	74.7
Totals	462	115	24.9	347	75.1
Average	92	23	25.0	69	75.0

In 2015, fifty-five lifers had Review Hearings without having had a prior parole revoked, while twenty-two lifers had Review Hearings after having been returned to prison due to a revocation of a prior parole. In 2014, the number of hearings for each subset of Review Hearings was sixty-seven and twenty-two respectively.

Twelve of the fifty-five lifers in 2015 who had Review Hearings without having had a prior parole revoked were approved for paroles - an approval rate of 21.8% [a 21% increase from 2014 (17.9% approval rate)]. Overall, those twelve approvals accounted for 48% of all approvals for both subsets of Review Hearings. There were, however, only a total of twenty-five approvals for all Review Hearings in 2015, as opposed to thirty-seven in 2014, a decrease of 32%.

The approval rate for the parole revoked subset was 59.1% (13 of 22). This approval rate was slightly below its counterpart in 2014 (62.5%). Once again, in 2015, as in 2014, the number of approvals for this subset exceeded the number of denials (13 as compared to 9). In each of the past five years, the approval rate for lifers who had Review Hearings after a prior parole had been revoked was significantly higher than the approval rate for lifers who had Review Hearings without a prior parole having been revoked.

Table 4 on page 6 presents the data for both subsets of Review Hearings.



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TABLE 4

<u>Year</u>	<u>Non-Revoked</u>				<u>Revoked</u>			
	App.	%	Den.	%	App.	%	Den.	%
2015	12	21.8	43	78.2	13	59.1	9	40.9
2014	12	17.9	55	82.1	25	62.5	15	37.5
2013	6	10.3	52	89.7	9	18.8	39	81.2
2011/2012	1	1.9	53	98.1	17	43.6	22	56.4
2010	11	20.8	42	79.2	9	34.6	17	65.4
Totals	42	14.6	245	85.4	73	41.7	102	58.3
Average	8	14.0	49	86.0	15	42.9	20	57.1

4) Comparing Approval Rates For All Hearing Types

The Approval rate for all hearing types decreased by 19% in 2015 (from 36.0% in 2014 to 29.1% in 2015). (See Table 1 on page 3.) Approval rates for Initial Hearings decreased precipitously from 40.6% to 22.5% ( a drop of 44.6%). The Approval rate for all Review Hearings decreased from 34.6% in 2014 to 32.5% in 2015. (See Table 3 on page 5.) The Approval rate for Review Hearings without a previous parole being revoked increased slightly from 17.9% in 2014 to 21.8% in 2015. The Approval rate for this subset was the highest since 2009. The Approval rate for lifers who did have a prior parole revoked, however, decreased from 62.5% to 59.1%.

Table 5 below presents the comparative Approval rates for each type of hearing.

TABLE 5

<u>Year</u>	<u>Initial</u>	<u>Review No Revocation</u>	<u>Review With Revocation</u>
2015	22.5%	21.8%	59.1%
2014	40.6%	17.9%	62.5%
2013	19.3%	10.3%	18.8%
2011/2012	15.6%	1.9%	43.6%
2010	<u>50.0%</u>	<u>20.8%</u>	<u>34.2%</u>
Overall	30.7%	14.6%	41.7%

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5) Reasons For Returns From Prior Life Paroles

In 2015, there was a significant decrease in the number of Review Hearings for lifers who had been returned from a prior parole - from forty in 2014 to twenty-four in 2015, a 40% decrease. This was the lowest number for this subset of Review Hearings since 2009 when only nineteen such hearings were held.

As in previous years, the most frequent reason in 2015 for a lifer having a parole revoked and returned to prison was substance abuse, i.e., use of and/or possession of either drugs or alcohol. In 2015, 50% of lifers (12 of 24) who had Review Hearings after a prior life parole had been revoked were returned to prison for this reason. This was an increase from 40% in 2014 and slightly below 2013 (52%). The approval rate for those returned for this factor in 2015 was 75%, equal to 2014, the highest approval rate since 2009 (73%).

In 2015, the next highest reason for returns was for Domestic Violence (5) and then Assault & Battery With A Dangerous Weapon (2). Of the five returned for Domestic Violence, two were approved for paroles. The reasons for returns from paroles and the number paroled for each reason for the years 2010 through 2015 are listed in Table 6 below.

TABLE 6

Reason	2015		2014		2013		2011/12		2010	
	#	App.	#	App.	#	App.	#	App.	#	App.
Substance Abuse	12	9	16	12	25	2	17	9	14	4
Assault & Battery	2	0	7	4	0	0	0	0	3	2
Associating With Known Criminals	1	1	1	1	3	1	7	4	3	1
Domestic Viol.	5	2	1	0	4	1	4	0	2	0
DUI	0	0	2	1	2	1	1	0	1	0
Larceny	0	0	4	1	1	0	0	0	1	0
Absconding	1	1	1	0	1	0	4	2	0	0
Failing To Pay Fees	0	0	2	2	0	0	0	0	0	0
Lying To P.O.	0	0	4	3	4	1	4	2	0	0
Failing To Participate In Mental Health	0	0	1	0	1	0	0	0	1	0
Indecent Exposure	0	0	1	1	0	0	0	0	0	0
Requested Return	0	0	0	0	0	0	0	0	1	0

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TABLE 6 (cont.)

Reason	2015		2014		2013		2011/12		2010	
	#	App.	#	App.	#	App.	#	App.	#	App.
Motor Veh. Viol.	0	0	0	0	1	1	0	0	0	0
Felony Arrests/ Weapons Viol.	1	0	0	0	6	2	2	0	0	0
Rape	1	0	0	0	0	0	0	0	0	0
Armed Robbery	1	0	0	0	0	0	0	0	0	0
Totals	24	13	40	25	48	9	39	17	26	7
% App.		54.2		62.5		18.8		43.6		26.9

6. Approval Factors

Reviewing the factors indicated by the Parole Board in its Records of Decision for approving lifers for paroles can be informative, but remains resistant to making any sweeping conclusions as to which factors are the most important. What continues to occur is that the Records of Decision are tailored to individual lifers' cases. Consistent with previous years, multiple factors were cited in each Record of Decision. Unlike 2014 when thirteen approval factors were noted, in 2015 only ten were cited at least once..

Of those ten approval factors, eight were cited in at least 10% of the 2015 Records of Decision which resulted in a parole for a lifer. Those factors were, in order of frequency: Addressed Areas Needed For Rehabilitation (88%), Active Program Participation (68%), Community Support (53%), Minimal Disciplinary History (24%), No Present Risk of Violence (21%), Previous Successful Parole History (18%), Steady Employment While Incarcerated (12%), and Juvenile Former First Degree Sentence (12%). The category cited with the highest frequency differential increase as compared to 2014 was: Addressed Areas Needed For Rehabilitation - a 47% increase; the category cited with highest frequency differential decrease, of those cited in at least 10% of the 2015 Records of Decision for approvals was: Minimal Disciplinary History - a 54% decrease.

As in 2014, what can be concluded is a continuing strong emphasis in 2015 on program participation, but for programs which address an individual lifer's specific areas of recognized need, particularly if a prior Parole Board had indicated that certain areas needed to be addressed. The Parole Board was not, therefore, seeking a massive number of programs to be completed. Rather, the Parole Board continued, at least in 2015, to parole lifers who, in the eyes of the Parole Board members, had correctly determined which areas needed to be

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addressed, i.e., drug and/or alcohol abuse, violence, aggression, poor problem solving, etc., and then successfully have completed programs which specifically dealt with those areas of need. What is also critical is that lifers seeking paroles must be able to explain how and why those programs positively affected them. It is simply not enough, for instance, to work at a prison job, however successfully. While steady employment and remaining discipline free are certainly positives, they are no substitute for meaningful program participation. Lifers who eschew program participation, even without incurring disciplinary reports, can expect to be denied paroles. The only real question would be how long a Setback would be handed out by the Parole Board in order to provide the time to complete needed programs.

Table 7 below presents the comparative percentages for the frequencies of the thirteen Approval factors from 2010 through 2015.

**TABLE 7**

**Frequency Percentages of Approval Factors**  
**# of Approvals for Each Year are in ( )**

<u>Factor</u>	<u>2015 (34)</u>	<u>2014 (50)</u>	<u>2013 (21)</u>	<u>2011/ 2012 (23)</u>	<u>2010 (42)</u>
Addressed Areas Needed For Rehabilitation	88.2	60.0	47.6	0	0
Active Program Participation	67.6	66.0	71.4	39.1	69.0
Community Support	52.9	52.0	47.6	56.5	23.8
Minimal Discipline History	23.5	32.0	23.8	17.4	52.4
No Present Risk Of Violence	20.6	46.0	47.6	78.3	0
Successful Parole History	17.6	4.0	33.3	39.1	0
Steady Employment	11.8	22.0	47.6	17.4	0
Juvenile Former First Degree	11.8	14.0	0	0	0
Four Goals Of Sentencing Met	8.8	22.0	52.4	17.4	0
Non-Shooter In Felony Murder	5.9	16.0	9.5	0	2.4
No New Crime	0	8.0	19.0	0	0
Support From Victim's Family	0	4.0	4.8	0	0
No Relapse On Parole	0	2.0	4.8	0	0

The following factors - Accepts Responsibility, Expresses Remorse, Family Support, Solid Parole Plan, and Understands Causative Factors of Criminal Behavior - were not cited as factors for approving a parole. In fact, none of these factors have been cited since 2010. That, however, is not to say that they are unimportant. It appears that since Josh Wall assumed the chairmanship and continuing through 2015, the Parole Board considers that all lifers are

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expected to address these factors as a minimum threshold and they need not be cited as individual reasons why a parole is approved. While the absence of one or more of these factors may result in a denial; their presence is required to generate positive consideration.

### 7. Denial Factors

In the 2015 Records of Decision, twenty factors were cited for denying paroles. As with Approvals, multiple factors were noted in each Record of Decision for denials. The most frequently cited factor for denials was that the lifer had not addressed the issue(s) needed for the Parole Board to deem the lifer an adequate risk to be paroled. In 2015, this factor was cited in 60% of the denials, a decrease from 70% in 2014. In many Records of Decision in 2015, as in 2014, the Parole Board found that the lifer had failed to explain credibly not only how and why specific programs had changed him/her in positive ways, but also how the lifer would use the acquired skills to be a productive citizen if paroled..

The following eleven factors occurred in at least 10% of the eighty-three Records of Decision for denials: Unaddressed Issues (60.2%), Needs A Longer Period Of Positive Adjustment (54.2% - an increase of 47% over 2014), Limited Program Participation (26.5%), Lacks Insight Into Causative Factors Of Criminal Behavior (26.5%), Diminishes Responsibility (20.5%), Unresolved Sex Offender Issues (19.3%), Serious Disciplinary History (16.9%), Lying Or Not Being Credible (15.7%), Violent History In Prison (14.5%), Inconsistencies Between Lifer's Version And The Facts Of the Crime (12.0%), and Mental Health Issues (10.8%).

The Parole Board continued in most cases of denials to explain why and what the denied lifers should address before their next parole hearing. Lifers who were denied at a prior hearing and did not use the Setback period to address areas the Parole Board had indicated as lacking, were again denied in 2015. The 46% increase in the frequency for the Approval Factor of Addressed Areas Needed For Rehabilitation (see page 8) is ample proof that lifers who fail to address areas suggested by the Parole Board are making a major mistake.

Several lifers who did complete needed programs hurt themselves because they failed to explain or demonstrate what they had learned or how their attitudes, problem solving skills, and lives had positively changed. It is critically important that lifers be able to display the proper tools for dealing with personal or difficult questions from Parole Board members. For instance, stating that one has learned coping and interpersonal skills in various programs such as Anger Management and then reacting with hostility to seemingly intrusive questions only tells the Parole Board that the lessons were not learned well if the lifer cannot apply them when needed.

Table 8 on the next page presents the comparative percentage data for the frequency of Denial Factors from 2010 through 2015.

TABLE 8

Frequency Percentages Of Denial Factors  
# of Denials For Each Year are in ( )

<u>Factor</u>	<u>2015 (83)</u>	<u>2014 (89)</u>	<u>2013 (116)</u>	<u>2011/ 2012 (102)</u>	<u>2010 (81)</u>
Unaddressed Issues	60.2	69.7	38.8	15.7	7.4
Needs Longer Adj. Per.	54.2	33.7	29.3	37.3	37.0
Lack Of Insight	26.5	40.5	28.4	27.5	28.4
Limited Prog. Part.	26.5	31.5	31.0	11.8	23.4
Diminishes Respon.	20.5	19.1	15.5	21.6	19.8
Unresolved Sex Issues	19.3	16.9	6.0	0	0
Serious Discip. History	16.9	24.7	18.1	20.6	24.7
Lying	15.7	20.2	19.8	26.5	11.1
Viol. Hist. In Prison	14.5	14.6	14.6	0	12.3
Inconsis. Facts & Off. Ver.	12.0	11.2	6.7	0	0
Mental Health Issues	10.8	10.1	14.6	0	4.9
No Supporters Present	7.2	18.0	9.5	0	2.5
Lack Of Remorse	6.0	12.4	2.6	0	3.7
Address Issues Of Deceit	6.0	10.1	14.6	0	0
Release Incompatible With Welfare Of Society	6.0	0	80.2	76.5	60.5
Lack Of Solid Parole Plan	4.8	5.6	12.1	0	4.9
Cont. Drug Addiction	4.8	2.3	6.7	10.8	17.3
Poor Parole Performance	3.6	13.5	26.7	0	12.3
Lack Of Compassion	2.4	10.1	2.6	0	0
Likely To Reoffend	2.4	9.0	79.3	71.6	13.6

**8. Setbacks**

An area in which the Parole Board remains remarkably consistent over the years, and one in which the Lifers Group has reported on, is that reasons, standards, or rationale continue not to be published regarding how the Parole Board determines how long an individual lifer's Setback, if denied a parole, will be. This is particularly frustrating when a certain length of a Setback has been served, the lifer has a Review Hearing, is again denied, and then receives a longer Setback than what he/she had been given at the earlier hearing, with no reasons why. The Parole Board needs to publish what standards, if any, the members use for determining how long a lifer must serve before his/her next parole hearing after a denial.

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In 2015, the number and percentage of five year Setbacks dropped by 37% - from 60 (67%) in 2014 to 38 (46%) in 2015. This is the lowest percentage of five year Setbacks in the past seven years and the first time the percentage was below 50%. Conversely, the combined number and percentage of Setbacks of one, two, and three years increased by 62% - from 21 (24%) in 2014 to 34 (41%) in 2015.

Table 9 below presents the comparative data for the numbers and percentages of the various lengths of Setbacks from 2010 through 2015. The number of total denials is noted in ( ) next to each year.

**TABLE 9**

Setbacks In Years

	1		2		3		4		5	
2015 (83)	2	2%	16	19%	16	19%	11	13%	38	46%
2014 (89)	0	---	4	5%	16	18%	8	9%	60	67%
2013 (116)	1	1%	14	12%	14	12%	10	9%	78	67%
2011/2012 (102)	1	1%	7	7%	12	12%	11	11%	71	69%
2010 (81)	0	---	14	17%	19	23%	2	3%	46	57%
Totals (471)	4	.9%	55	11.7%	77	16.3%	42	8.9%	293	62.2%

**9. Destinations Of Approved Lifers**

Of the thirty-four lifers approved for paroles in 2015, three (9%) were released directly to an approved home plan - a 67% decrease from 2014. Twenty-two (65%) of the lifers who were approved for paroles in 2015 were given their paroles conditioned on serving anywhere from six to eighteen months in lower security and then a Long Term Residential Program (LTRP) or directly to a LTRP. All of these lifers were required to avoid receiving any disciplinary tickets, whether in minimum, pre-release, or a LTRP as a stipulation for remaining on parole. Five lifers (15%) of those approved for paroles were sent directly to I.C.E. Two lifers were paroled to From & After sentences, and two were paroled to other states.

Table 10 on page 13 presents the data for the destinations of approved lifers from 2011 - 2015.

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TABLE 10

<u>Destinations</u>	<u>2015</u>		<u>2014</u>		<u>2013</u>		<u>2011/2012</u>	
Approved Home Plan	3	9%	9	18%	6	28%	4	17%
Lower Sec. (6 Mon.)	3	9%	5	10%	2	10%	3	13%
Lower Sec. (9 Mon.)	1	3%	3	6%	0	----	1	4.5%
Lower Sec. (12 Mon.)	2	6%	17	34%	6	28%	5	22%
Lower Sec. (18 Mon.)	1	3%	0	----	1	5%	4	17%
Interstate Compact	2	6%	1	2%	3	14%	0	----
I.C.E.	5	15%	3	6%	2	10%	2	9%
To From & After	2	6%	2	4%	0	----	1	4.5%
LTRP	15	43%	9	18%	1	5%	3	13%
Died Before Dec.	0	0%	1	2%	0	----	0	----
Totals	34		50		21		23	

10. Lifers Not Convicted Of Second Degree

Of the 117 Records of Decision for 2015, fifteen (13%) were for lifers who had been convicted of crimes carrying a life sentence with the possibility of a parole, other than for second degree murder. That percentage remained consistent with 2014 (14%) and 2013 (12%) for this cohort of lifers. Of the fifteen in 2015, three (20%) were approved for paroles, the same percentage as in 2014.

From 2010 through 2015, forty-eight lifers serving life sentences for sexual assaults, e.g., aggravated rape or rape of a child, appeared for parole hearings. Three (6.3%) in those years were approved for paroles, two of whom were paroled in 2015 - both had been returned to custody after a prior parole had been revoked. In contrast, in the same period, three of five lifers (60%) serving life for unarmed robbery were paroled, as were four of nineteen (21%) serving life for armed robbery. Overall, from 2010 through 2015, only 18% of lifers serving life for a crime other than second degree murder were paroled (13 of 73).

Table 11 below presents the data for Lifers Not Convicted of Second Degree Murder from 2010 through 2015.

TABLE 11

<u>Crime</u>	<u>2015</u>		<u>2014</u>		<u>2013</u>		<u>2011/2012</u>		<u>2010</u>	
	#	App.	#	App.	#	App.	#	App.	#	App.
Sexual Assaults	9	2	12	0	9	1	7	0	7	0
Burglary	1	0	2	1	2	0	0	0	0	0
Armed Robbery	4	1	3	0	4	2	1	0	6	2



Parole Decisions For Lifers - 2015

TABLE 11 (cont.)

Crime	2015		2014		2013		2011/ 2012		2010	
	#	App	#	App.	#	App.	#	App.	#	App.
Unarmed Rob	1	0	3	0	2	2	1	1	0	0
Home Invas.	0	0	1	1	0	0	0	0	0	0
Totals	34	3	20	4	16	3	9	1	13	2
% App.		9		20		19		11		15

12. Time Between Hearing Dates And Dates Of Decisions

Each Record of Decision notes the dates of the public hearing and of the decision. The Parole Board's promulgated regulations require that parole decisions are to be rendered at the next regularly scheduled executive session after public hearings have been conducted. [120 CMR 301.06(6)] In addition, 120 CMR 301.08 requires that lifers who are denied paroles are to be informed with a written summary, presumably the Record of Decision, "within 21 calendar days after a decision has been rendered." What is not reported in each Record of Decision is when the executive session had been held. Consequently, lifers who are denied paroles have no indication as to whether the Parole Board has met the 21 day notification requirement. In addition, the Records of Decision do not show when a lifer actually receives notification of the results of his/her hearing. Thus, the only calculation which can be made from the Records of Decision is the length of time between the Hearing Dates and the Dates of Decision.

The average length of time between the Hearing Dates and the Dates of Decision for Records of Decision has been decreasing significantly each year for the past four years. In 2015, the average length of time dropped below ninety days for the first time. From 2014 to 2015, the average length of time decreased 55% - from 193 days to 87 days.

It has been reported that under the new chairman, Paul Treseler, Records of Decision are being referred for review to the Parole Board's Legal Department. The impact this new step may have on delays in notifying lifers of the results of their hearings, as well as the reason why this change has been instituted, can only be speculated. Assuming this referral is occurring for all Records of Decision for lifers, it is troubling for it may indicate that the new chairman is more interested in legal correctness than in meeting the needs of lifers to be notified of their decisions in a timely manner or the obligation of the Parole Board to follow its own regulations.

What role the Parole Board's Legal Department may play in the actual decision making process is unknown. What is known, however, is that there is neither statutory nor regulatory

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authorization for the Parole Board's Legal Department to affect parole decisions.

Table 12 below presents the data for the lengths of time between Hearing Dates and Decision Dates as noted in the Records of Decision for 2015 as well as the frequency percentages for each cohort.

TABLE 12

<u>Lengths of Delay In Days</u>	<u>2015</u>	<u>2014</u>	<u>2013</u>	<u>2011/ 2012</u>
1 - 100	91 (78%)	35 (25%)	35 (26%)	21 (17%)
101 - 200	21 (18%)	43 (31%)	18 (13%)	17 (13%)
201 - 300	5 ( 4%)	34 (25%)	29 (21%)	25 (20%)
300 +	0 ( 0%)	27 (19%)	55 (40%)	62 (50%)
Total Decisions	117	139	137	125
Ave. Length	87	193	257	261

13. Juveniles At Time Of Crime

Those under age 18 at the time of the commission of their crime(s) and were serving Life-Without-Parole (LWOP) sentences received relief from the Supreme Judicial (SJC) in 2014. The SJC ruled that no juvenile could receive a mandatory LWOP sentence and applied that decision retroactively. The result was that juveniles at the time of their crime(s) and now serving LWOP were to be eligible for parole after having served fifteen years. Sixteen such lifers were given Initial Hearings in 2015. Of those sixteen, only five (31%) were granted paroles, with time to be served in lower security. This was a dramatic decrease in percentage from 2014 of 64% (86% in 2014 to 31% in 2015). In addition, three lifers serving second degree life sentences for crime(s) committed while juveniles also saw the Parole Board in 2015. Of those three, only one (33%) was granted a parole.

The age breakdown for the nineteen juvenile lifers who went before the Parole Board in 2015 was: age 15 - 2, age 16 - 4, age 17 - 13. Both lifers who were age 15 at the time of their crimes had been serving LWOP and were paroled. Of the lifers who were age 16 at the time of their crimes, also serving LWOP, only one was paroled. One other lifer who was age 16 at the time of his crime received a 4-3 vote for parole. He was denied since he had not received a two-thirds majority required for parole. Of the thirteen lifers who were age 17 at the time of their crimes, only three received paroles. Two of those lifers were serving LWOP and the other was serving second degree life and had been returned after a prior parole had been revoked.

Since the 2014 Supreme Judicial Court's decision to allow juveniles serving LWOP to have parole hearings, twenty-three such hearings have been held. Of those twenty-three,

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eleven (48%) received paroles. As noted on the previous page, there was a precipitous decline in the parole rate for juveniles serving LWOP from 2014 to 2015 - 86% to 31%.

14. Attorney Representations

The Records of Decision posted online for 2015 indicated that in sixty-one of the 117 (52%) of the hearings for lifers, an attorney was noted as being present and participating in some fashion in the hearing. In eighteen of those sixty-one hearings - 29% - the parole was approved. In addition, of those sixty-one hearings, twenty-three were Initial Hearings, twenty-five were Review Hearings, and thirteen were Review Hearings held after a prior life parole had been revoked. The Approval Rate for the Initial Hearings was 26% (6 of 23), for the Review Hearings where no prior parole had been revoked was 12% (3 of 25), and 69% (9 of 13) for Review Hearings held for a lifer whose prior parole had been revoked.

Attorney John Rull was identified as representing seven lifers - one was approved. Attorneys Patti Garin, Amy Belcher, and Russell Sobelman each represented two lifers. The lifers represented by Patti Garin and Amy Belcher were all approved for paroles. The two lifers represented by Russell Sobelman were both denied paroles. In one Record of Decision, it was noted that the lifer was represented by an attorney, but the name of that attorney was not given. Law students represented twenty-two lifers, three of whom were approved for paroles. Twenty-five attorneys represented one lifer each in separate hearings, nine of those lifers were approved for paroles.

Table 13 below presents the data for the sixty-one hearings in 2015 in which attorneys were present and represented lifers.

TABLE 13

	Approvals			Denials		
	Initial	Review	Review*	Initial	Review	Review*
Law Students (22)	0	2	1	5	12	2
John Rull (7)	0	0	1	0	4	2
Patti Garin (2)	1	0	1	0	0	0
Amy Belcher (2)	0	0	2	0	0	0
Russell Sobelman(2)	0	0	0	1	1	0
Other Attorneys (25)	5	1	3	11	5	0
Unknown (1)	0	0	1	0	0	0
Totals (61)	6	3	9	17	22	4

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In contrast, of the fifty-six Records of Decisions posted online for 2015 in which an attorney was not present, sixteen (29%) of the lifers were approved for paroles and forty (71%) were denied. Thus, of the thirty-four approvals in 2015, 53% were for lifers who had an attorney present. Table 14 below compares the number of Approvals and Denials for each cohort, broken down according to type of hearing.

TABLE 14

	Approvals			Denials		
	Initial	Review	Review*	Initial	Review	Review*
Attorney Present	6	3	9	17	22	4
No Attorney	<u>3</u>	<u>9</u>	<u>4</u>	<u>14</u>	<u>21</u>	<u>5</u>
Totals (117)	9	12	13	31	43	9

\* For Table 13 (page 16) and Table 14 above indicates Review Hearings after a prior parole had been revoked.

### 15. Analysis Of Parole Decisions By Race

The question of possible racial bias in the Approval / Denial Rates for parole decisions for lifers has been raised since 2013. Racial breakdowns were first reported in the 2014 report on parole decisions for lifers. It must be stated again that any conclusions based upon race should be made only after a statistically significant number of Records of Decision over a range of years have been studied. The 139 Records of Decision for 2014 and the 117 Records of Decisions for 2015 fall short of that criterion, but do provide starting points. Yearly comparisons will also be included in the 2016 report on parole decisions for lifers.

The raw data is presented in the following tables with no commentary nor conclusions, given the continued small sample. It should be noted that the assignments of racial affiliations, i.e., Caucasian (Cau.), African American (A/A), Latino (L), or Asian (A) were determined by members of the Norfolk Lifers Group, but only with firsthand, personal knowledge of the individual lifer whose Record of Decision was included in this study of parole decisions for lifers in 2015. This less than optimum method was employed because no racial affiliation was indicated on any Record of Decision. Of the 117 Records of Decision included in this 2015 study, fifty-seven (48.7) were noted as Caucasian, thirty-nine (33.3%) were noted as African American, twenty (17.1%) were noted as Latino, and one (.9%) was noted as Asian. Table 15 on page 18 presents the data regarding the racial breakdowns for the Records of Decision published online in 2015.

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TABLE 15

	Cau.		A/A		Latino		Asian	
	App.	Den.	App.	Den.	App.	Den.	App.	Den.
#	12	45	14	25	7	13	1	0
% of Total # of Dec.	10	38	12	21	6	11	.8	---
% of Racial Cat.	21	79	36	64	35	65	100	---

Table 16 below presents the combined data for the eighty-four Approvals of parole for lifers in 2014 and 2015 combined, broken down by racial category.

TABLE 16

<u>Race</u>	<u>App.</u>	<u>Total #</u>	<u>% of App.</u>	<u>% App. For Racial Category</u>
Caucasian	29	121	35%	24%
African Amer.	35	83	42%	42%
Latino	18	48	21%	38%
Asian	2	4	2%	50%
Totals	84	256		33%

C. SELECTED EXCERPTS FROM 2015 RECORDS OF DECISION

The following eighteen excerpts are quoted directly from Records of Decision for 2015. The names of the lifers and victims have been deleted by the author of this report. The excerpts have been selected as examples of positive or negative feedback from Parole Board members to presentations by lifers at individual public hearings or to offer insight into the decision making parameters employed by Parole Board members. In offering these excerpts, there is no intent to embarrass or ridicule any lifer or Parole Board member. Rather, the intent is to assist lifers to better prepare themselves for their parole hearings and/or to gain insight into what areas they may have to address while incarcerated before they have a parole hearing.

The excerpts are divided into two categories - Approvals (7) and Denials (11). The excerpts from Denials highlight the lack of meaningful program involvement (#8 - #12), disciplinary histories (#13 - #14), lack of candor (#15), lack of insight and remorse (#16), inadequate parole plan (#17), and variation between lifer's version of the facts of the crime and the official version (#18). In addition, the result of each hearing, whether the hearing had been

## Parole Decisions For Lifers - 2015

an Initial Hearing or a Review Hearing, the length of the Setback in cases of Denials, and whether the lifer had been returned to prison after a prior parole had been revoked are indicated in brackets following each excerpt.

### Approval Excerpts

- 1) \_\_\_\_\_ stated that he now weighs the consequences of his actions and he takes (and looks for) positive interactions. He also provided examples of situations where he could have responded negatively, but instead, chose to practice conflict resolution. He has either walked away from a confrontation or de-escalated the confrontation through calm discussion. In addition, \_\_\_\_\_ took the initiative to seek out and participate in counseling where (he says) he learned problem solving. Consistent with the positive direction he seems to have chosen, the record indicates that he has only four disciplinary reports during his incarceration.  
(This lifer was approved at an Initial Hearing.)
- 2) Throughout the hearing, the Board came to understand more about \_\_\_\_\_'s motivation, good work, intentions, and new insights into his treatment needs. \_\_\_\_\_ was able to articulate his issues, and specifically, how he will address them going forward. \_\_\_\_\_ has the support of SPAN Inc., his church, and other community advocates who are not only invested in his treatment, but who are invested in \_\_\_\_\_'s efforts to maintain a successful and productive life in the community.  
(This lifer was approved at a Review Hearing after a prior parole had been revoked.)
- 3) \_\_\_\_\_ was involved in violence early in his incarceration, with his last disciplinary report in 2006. However, he has since been engaged in programs that address substance abuse and non-violent conflict resolution including CRA, several phases of Alternatives To Violence, and Problem Solving. He explained the positive benefits of these programs to the Board and his learned ability to use the tools he has gained when dealing with conflict resolution. He admitted his need for personal growth and is motivated to pursue the necessary counseling.  
(This lifer was approved at a Review Hearing.)
- 4) During his 15 years of incarceration, \_\_\_\_\_ chose a path of rehabilitation and has made sincere strides toward reforming his criminal thinking. He has engaged in numerous programs, managed a positive adjustment, and has maintained steady employment. He has used his time wisely: committing himself to religion; pursuing an education; gaining vocational skills; learning about self-improvement; and attempting to give back to the community.  
(This lifer was approved at an Initial Hearing.)
- 5) \_\_\_\_\_ has invested in rehabilitation and has benefited from such investment. During his 15 years of incarceration, \_\_\_\_\_ chose a path of rehabilitation and has made sincere strides in reforming his criminal thinking by learning about his anger issues and adopting non-violent conflict resolution strategies.  
(This lifer was approved at an Initial Hearing.)
- 6) The Parole Board regards \_\_\_\_\_ efforts in his rehabilitation to be genuine and beneficial. \_\_\_\_\_ had demonstrated through his conduct, insight, and positive support that he has acquired the necessary foundations for a successful transition into society.  
(This juvenile lifer was approved at an Initial Hearing)

Approval Excerpts (cont.)

- 7) At his 2014 hearing, \_\_\_\_\_ was urged by Board members to complete programming designed to address his anger issues, to engage further in programming and to be prepared to address the Board's questions and offer more insight in a more forth-right manner. He did so, detailing his program involvement orally and in writing and in his written materials, detailing the insight he gained from each program. In addition, \_\_\_\_\_ continues to maintain a strong support system to assist him with a positive re-entry into the community. \_\_\_\_\_ addressed the concerns that were outlined by specific Parole Board Members in his previous hearing.  
(This lifer was approved at a Review Hearing.)

Denial Excerpts

- 8) \_\_\_\_\_ committed the murder while under the influence of drugs and alcohol and has an admitted and demonstrated history of drug abuse and dealing. While he has participated in a number of programs to address drug and alcohol issues, he is not currently involved in substance abuse programming. This is a significant concern of the Board given the long standing nature of his substance abuse and its relationship to his violent crimes. Casting further doubt upon his rehabilitation is \_\_\_\_\_'s claim at the hearing that AA has been a strong part of his release plan, yet he has not attended the program since 2010.  
(This lifer was denied at an Initial Hearing and given a two year Setback.)
- 9) The Board questioned \_\_\_\_\_ as to why he has not completed more programming that is specifically geared towards anger and violence issues. He responded that he has addressed his anger issues through other programs, even if the programming was not specifically for anger issues.  
(This juvenile lifer was denied at an Initial Hearing and given a two year Setback.)
- 10) A Board Member asked \_\_\_\_\_ why he has not advocated to attend other rehabilitative programs such as CRA, Emotional Awareness, Jericho Circle, and so forth. \_\_\_\_\_ suggested that there was no need to do so because he obtains knowledge from these programs through other inmates that have attended them.  
(This lifer was denied at a Review Hearing and given a five year Setback.)
- 11) The timing of most of the program involvement was subsequent to his return. This leads to the question of whether his motivation was to address his issues or to just make things "look good" for his next parole hearing. This concern is reinforced by his repeated use of catch-phrases where he seems to go out of his way to repeatedly say the right things including: "I own everything I did," "I'm an addict and will always be one," "I got complacent," "I focused on everyone else and not on \_\_\_\_\_." The responses sounded formulaic and appeared to be geared more toward external perception than internal re-examination.  
(This lifer was denied at a Review Hearing held after a prior parole had been revoked.  
The lifer was given a two year Setback.)
- 12) \_\_\_\_\_ Admitted that after completing the program [SOTP], he "needed a break" and stopped attending all programs for almost three years. \_\_\_\_\_ could not refer to any specific class or program in which he had participated that addressed his social skills or his care for other people. Instead, he said he used his job to work on these issues... He needs to further understand that his sex offender treatment will never end and that there is no time to "take a break."  
(This lifer was denied at a Review Hearing and given a five year Setback.)

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Denial Excerpts (cont.)

- 13) The Board is of the opinion that his willingness to violate institutional rules is indicative of continued criminal thinking and remains a source of concern to the Parole Board. [D-Report was for collaborating with a staff employee to introduce contraband.]

(This lifer was denied at a Review Hearing and given a five year Setback.)

- 14) Although \_\_\_ has made progress in his rehabilitation, his antisocial behavior during his incarceration has shown that he is not ready to be a contributing member to society. He continues to receive disciplinary reports despite involvement in rehabilitative programming and continues to provide a string of excuses for his behavior. \_\_\_ needs to address the underlying and unresolved concerns of his violence, anger, and substance abuse and remain disciplinary report free.

(This lifer was denied at a Review Hearing and was given a three year Setback.)

- 15) \_\_\_ must demonstrate greater candor concerning his crime and should address what appears to be a lack of empathy for the victim. Indeed, suggesting that this victim bears any responsibility for the extreme atrocity that \_\_\_ inflicted upon her indicates a lack of empathy and thus, a lack of rehabilitation sufficient to merit parole.

(This lifer was denied at an Initial Hearing and given a three year Setback.)

- 16) He lacks insight into the impact of his crimes on the victims and he lacks acknowledgement of the harm he caused to the community.

(This lifer was denied at a Review Hearing and given a five year Setback.)

- 17) If granted a parole, \_\_\_ presented a plan remarkably similar to those that had failed twice before.

(This lifer was denied at a Review Hearing after a prior parole had been revoked. The lifer was given a two year Setback.)

- 18) \_\_\_ gave an opening statement to the Board in which he apologized for his actions. During the course of the hearing, he spoke about the day of the murder. The Board notes that portions of \_\_\_'s testimony differ greatly from the facts gathered during the criminal investigation into the murder.

(This lifer was denied at an Initial Hearing and given a four year Setback.)

- End of Report -