

PAROLE DECISIONS FOR LIFERS

FOR THE YEAR 2021

Prepared For The

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By

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Parole Decisions For Lifers

2021

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HIGHLIGHTS FOR PAROLES FOR LIFERS IN 2021

- 1) One hundred sixty-four Records of Decision are analyzed in this report Page 1
- 2) The overall Approval Rate was 56.1% Page 3
- 3) The Approval Rate for Initial Hearings was 20.0%. Page 3
- 4) The Approval Rate for all Review Hearings was 65.9%. Page 4
- 5) Active Program Participation was cited most often as an Approval Factor Page 7
- 6) Unaddressed Issues was cited most often as a Denial Factor. Page 8
- 7) 10% of denied lifers received five year Setbacks. Page 10
- 8) 17 approved lifers were released to home plans and 9 to Interstate Compacts Page 11
- 9) 67% of lifers assessed as Low Risk to reoffend were paroled. Page 12
- 10) 6 of 17 lifers serving life for crimes other than murder were paroled. Page 13
- 11) 215 days was the average time from Hearing Dates to Dates of Decision. Page 14
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- 14) The Approval Rate for lifers represented by counsel was 62%. Page 15
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Introduction

This is the Lifer's Group Inc.'s fifteenth report on parole decisions for lifers. The parole decisions included in this report are those for prisoners serving life sentences whose Records of Decision were provided by the Massachusetts Parole Board pursuant to public records requests after those decisions were posted online in 2021. The total number of the Records of Decisions analyzed in this report is 164.

Life sentences with parole reviews are predominantly for prisoners who had been convicted at trial or pled guilty to second degree murder which involved the actual taking of a life. Records of Decision are also included for juveniles who had previously been convicted of first degree murder, for which there was no parole, but had their sentences overturned by the Supreme Judicial Court under the *Diatchenko* decision. Lastly, also included in this report are for those serving second degree life sentences for crimes not including 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 years or a Review Hearing - for those who were denied a parole at a previous Initial or Review Hearing. Review Hearings are divided into two subsets - one for those who have never been approved for a parole, the other for lifers who had been approved previously for a parole and were released but were violated for any one or more of a variety of reasons, and subsequently, returned to prison.

In 2021, of the 164 Records of Decision, 126 or 77% of those decisions were unanimous, down from 82% in 2020. The remaining 38 decisions broke down as follows: eight 6-1 decisions, three 5-2 decisions, nine 5-1 decisions, five 4-3 decisions, six 4-2 decisions, one 4-1 decision, four 3-2 decisions, and one 3-1 decision.¹ Four Approvals at 4-2, one at 3-2, and one at 5-2 did not comply with the legislative mandate that a parole can be approved only with a minimum of a two-thirds majority. The Parole Board continues to adhere to the Supreme Judicial Court decision that the two-thirds mandate cannot be applied retroactively to lifers who had been sentenced prior to the legislative change from a simple majority.

In 2021, the Parole Board continued its practice of providing little or no specific guidance to denied lifers as to which program areas needed to be completed in order to address their needs before their next parole hearing. The Parole Board in 2021 continued its policy, instituted in 2020, of providing Abbreviated Records of Decision to reduce the time between Hearing Dates and Dates of Decision, ostensibly in response to the COVID-19 pandemic. In 2021, the Parole Board issued ninety-two Abbreviated Records of Decision of the 164 Records of Decision analyzed in this report. All were for Approvals. Each of the ninety-two

1. All calculations and tables presented in this report were calculated by the author based on the data extrapolated from the 164 Records of Decision published online by the Parole Board in 2021.

Abbreviated Records of Decision included: a Statement of the Case, Decision of the Board and any Special Conditions for those lifers who had been approved. The operative portion of the Decision of the Board concerning what the Board considered in approving a lifer for parole in each Abbreviated Record of Decision read precisely the same, thereby offering little or no useful information for analysis:

After careful consideration of all relevant facts, including the nature of the underlying offense, the age of the inmate at the time of offense, criminal record, institutional record, the inmate's testimony at the hearing, and the views of the public as expressed at the hearing or in written submissions to the Board, we conclude ... that the inmate is a suitable candidate for parole.

Note that there is no indication that the Parole Board members considered the result of a Risk Assessment tool as is required by the Legislature. In addition, missing in all of the Abbreviated Records of Decision was a description of the actual parole hearing which contains a significant amount of the information useful for preparing this report, including: the history of parole hearings, the specific program history of the lifer, the disciplinary history of the lifer, the age of the lifer at the time of the hearing, the parole history of those previously paroled and the reason(s) for their being brought back to prison, any dialogue between members of the Parole Board and the lifer, whether there was any opposition via public or written testimony, and whether or not the respective Office of the District Attorney for the county in which the crime had occurred had opposed the lifer receiving a parole in written or oral testimony or both.

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, by a two-thirds majority, is convinced that there is a reasonable probability that if paroled, the lifer would not violate the law and that the release would be compatible with the welfare of society. In addition to those standards, the Parole Board is to determine whether the four goals of sentencing have been met, namely punishment, public safety, deterrence, and rehabilitation in that order.

All Records of Decision are signed by the Parole Board's General Counsel. In fact, the Date of Decision noted on the first page of each Record of Decision is not, as one might suppose, the date the Parole Board members rendered the decision to approve or deny a parole. Rather, the Date of Decision is the date the Record of Decision was signed by the Parole Board's General Counsel.

We continue to be indebted to and thank Lois Ahrens, Founding Director of the Real Cost of Prisons Project in Northampton, for posting this report and many other Lifer's Group

Inc. reports on the Real Cost of Prisons website and then distributing the reports to a plethora of recipients including legislators and other interested parties involved with criminal justice reform. All of these reports can be accessed at: www.realcostofprisons.org/writing.

RESULTS

1) APPROVAL / DENIAL RATES

Of the 164 Records of Decision for 2021, 92 (56.1%) were approvals for parole; 72 (43.9%) were denials. Table 1 below presents the data for Approval / Denial rates from 2017 through 2021.

TABLE 1

Year	# of Hearings	Approvals		Denials	
		#	%	#	%
2021	164	92	56.1	72	43.9
2020	119	52	43.7	67	56.3
2019	113	44	38.9	69	61.1
2018	127	37	29.1	90	70.1
2017	<u>87</u>	<u>21</u>	24.1	<u>66</u>	75.9
Totals	610	246	40.3	364	59.7

Note that the approval percentage rate for 2021 continued the trend of increasing rates of Approvals. In fact, the Approval Rate for 2021 of 56.1% was the first time the Approval Rate exceeded 50% and the highest rate since 2003, the first year the Lifer's Group Inc. reported on Parole Decisions For Lifers.²

2) INITIAL HEARINGS

In 2021, thirty-five (35) lifers appeared before the Parole Board for the first time. Seven were approved for paroles. While the Approval Rate of 20.0% for Initial Hearings in 2021 was well below the overall Approval Rate indicated in Table 1 above, it was 36% higher than that for Initial Hearings for 2020.

² The Approval Rates for the years 2003 though 2021 as reported by the Lifer's Group Inc. were: 2021 - 56.1%, 2020 - 43.7%, 2019 - 38.9%, 2018 - 29.1%, 2017 - 24.1%, 2016 - 18.0%, 2015 - 29.1%, 2014 - 26.0%, 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%.

Table 2 below presents the data for Initial Hearings from 2017 through 2021.

TABLE 2

Year	# of Hearings	Approvals		Denials	
		#	%	#	%
2021	35	7	20.0	28	80.0
2020	34	5	14.7	29	85.3
2019	11	0	0.0	11	100.0
2018	27	2	7.4	25	92.6
2017	<u>9</u>	<u>0</u>	0.0	<u>9</u>	100.0
Totals	116	14	12.1	102	87.9

From 2017 through 2021, only 14 lifers out of 116 were approved for paroles after an Initial Hearing - a combined Approval Rate of 12.1% for the five year span. Indeed, one-half of those approvals came in 2021 alone. In comparison, for 2014 and 2015, seventy-two lifers had Initial Hearings with an Approval Rate of 31% (22 of 72).³ It continues to be difficult to comprehend why from 2017 through 2021, only 12.1% of lifers who had Initial Hearings were approved for paroles. The Legislature set a standard of fifteen years to be served prior to an Initial Hearing. But, the Parole Board, despite legislative mandated Risk Assessment results, appears to be requiring on average a higher number of years being served before members will give serious consideration to paroling lifers after Initial Hearings. If the Legislature had set a higher minimum length of imprisonment before meaningful consideration was to be given for granting a parole at an Initial Hearing, then the law would reflect that. It does not. The Parole Board, therefore, needs to justify the continued paucity of approvals after Initial Hearings, particularly for those lifers who are rated as Low Risks to reoffend on the Risk Assessment tool mandated by the Legislature for use by the Parole Board. Lifers who are rated as Low Risks to reoffend should be presumptively approved for paroles unless the Parole Board can specify detailed factors which would justify a denial of parole.

3. REVIEW HEARINGS

The Approval Rate for all Review Hearings held in 2021 was 65.9% (85 of 129), an increase from 55.3% in 2020 and 43.1% in 2019. Of the 129 Review Hearings, 107 were for lifers

³ See Parole Report For Lifers - 2019 published by the Lifer's Group Inc. in September 2020

who had never been previously paroled. The Approval Rate for this subset was 67.% (65 of 107), an increase from 52.9% in 2020 and 36.5% in 2019. The remaining twenty-two lifers had Review Hearings after having had a previous parole revoked. Of that subset, twenty were approved, an Approval Rate of 90.9%, an increase from 64.7% in 2020 and 60.7% in 2019. Table 3 below presents the Approval and Denial Rates for all Review Hearings for 2017 through 2021. In addition, Table 4 below presents the Approval Rate data for both subsets of Review Hearings for 2017 through 2021.

TABLE 3

Year	# of Hearings	Approvals		Denials	
		#	%	#	%
2021	129	85	65.9	44	34.1
2020	85	47	55.3	38	44.7
2019	102	44	43.1	58	56.9
2018	100	35	35.0	65	65.0
2017	<u>78</u>	<u>21</u>	26.9	<u>57</u>	73.1
Totals	494	232	47.0	262	53.0

TABLE 4

Year	Non-Revoked			Revoked		
	# of Hearings	# Approvals	%	# of Hearings	# Approvals	%
2021	107	65	60.7	22	20	90.9
2020	68	36	52.9	17	11	64.7
2019	74	27	36.5	28	17	60.7
2018	76	24	31.6	24	11	45.8
2017	<u>46</u>	<u>7</u>	15.2	<u>32</u>	<u>14</u>	43.8
Totals	371	159	42.9	123	73	59.3

4) APPROVAL RATES FOR THE THREE TYPES OF HEARINGS

Table 5 on page 6 presents the comparative Approval Rates for each type of hearing from 2017 through 2021.

TABLE 5

Year	Initial	Review - No Revocation	Review After A Revocation
2021	20.0%	60.7%	90.9%
2020	14.7%	52.9%	64.7%
2019	0.0%	36.5%	60.7%
2018	7.4%	31.6%	45.8%
2017	0.0%	15.2%	43.8%

5. REASONS FOR RETURNS FROM PRIOR LIFE PAROLES

As noted earlier, the reasons for lifers being returned from prior paroles were notably absent in the Abbreviated Records of Decision for the twenty of twenty-two lifers who had a Review Hearing after having been returned from a prior life parole for violating one or more conditions of parole, save for one approved lifer who was returned because the condition of his medical parole no longer applied. Of the two who were not approved, one was returned for a DUI arrest and the other for associating with known criminals. As a result, there are no data to be reported for this section.

6. APPROVAL FACTORS

The Approval Factors listed in Table 6 on page 7 have been utilized for all of the Lifer's Group Inc. Parole Reports. Given that the Records of Decision, particularly for Approvals, lack specificity, the number of factors are fewer in 2021 and concentrated for only five of the usual thirteen Approval Factors used in past reports. Table 6 lists those five factors and the frequency percentage for each factor for 2017 through 2021. The fact that the first and second factors appear in 95.7% and 76.1% of the ninety-two Approved decisions respectively renders those factors relatively meaningless in trying to determine what the Parole Board members use to decide to approve a lifer for a parole. This is particularly true for Active Program Participation. Without specifying which programs the Parole Board members found to provide the necessary skills training to merit a parole, simply stating that the lifer was an active participant in programs is unhelpful. In the same vein, noting in 76.1% of Approvals that a lifer had addressed his/her areas of need provides no insight without the Parole Board indicating which needs were addressed and by which programs.

The number in parentheses under the year is the number of approved lifers for that year.

TABLE 6

Factor	2021 (92)	2020 (52)	2019 (44)	2018 (37)	2017 (21)
Active Prog. Part.	95.7	94.0	79.5	91.9	90.5
Addressed Need Areas	76.1	90.0	84.1	89.2	90.5
Strong Community Support	31.5	25.0	38.6	37.8	61.9
Steady Employment	21.7	2.0	9.1	16.2	14.3
Minimal Disciplinary History	16.3	12.0	27.3	40.7	13.6

The Parole Board continued in 2021 the trend that began in 2016 of placing strong emphasis on program participation, while rarely naming any specific programs which Parole Board members encouraged lifers to complete successfully. What is clear, however, is that the actual number of certificates or other documentation attesting to the completion of a large number of programs does not impress Parole Board members as much as whether or not a lifer had engaged in programs which, in the Parole Board members' eyes at least, were designed to address whatever his/her areas of need were. Determining what those areas are or were appears to be up to each lifer to decide as the Parole Board consistently refuses, as the Lifer's Group Inc. has pointed out for several consecutive years, to identify specific areas of need or programs which would address said areas. Still, it is also clear that mere attendance in programs is considerably less important than what a lifer can communicate to Parole Board members what he/she learned and how that knowledge would be utilized if the lifer were to be paroled. Lifers who profess to engage in personal self-improvement plans or religious conversions, no matter how sincere, generally will not be paroled. Parole Board members, while not discounting such work, do not view those as adequate substitutes for meaningful participation in programs provided by the DOC, whether a lifer feels he/she needs the programs or not.

Accepting responsibility, expressing remorse, having a solid parole plan are minimum thresholds a lifer needs to pass over before the Parole Board members would seriously consider whether or not a parole was appropriate. The absence of one or more of those factors, however, is enough to cause the Parole Board members to deny a lifer a parole.

7) DENIAL FACTORS

In 2021, sixteen separate factors were cited for denying paroles. Most Records of Decision in which a lifer was denied a parole cited multiple factors. As with the Approval Factors, each Denial Factor was developed by the Lifer's Group Inc. and reflects the actual language contained in individual Records of Decision. The Denial Factors have been used consistently for reports on parole decisions for lifers.

Table 7 below presents the comparative percentage data for the frequencies of the 2021 Denial Factors from 2017 through 2021. The total number of denials for each year is noted in parentheses below the year.

TABLE 7

Factor	2021 (72)	2020 (67)	2019 (69)	2018 (90)	2017 (66)
Unaddressed Issues	56.9	69.0	29.0	55.6	40.9
Lack of Insight	50.0	34.0	27.5	47.8	24.2
Needs Longer Adj. Period	43.1	58.0	40.6	45.6	66.7
Serious Disc. History	31.9	28.0	14.5	13.3	15.2
Unresolved Sex Issues	26.4	18.0	13.0	8.9	27.3
Diminishes Responsibility	22.2	4.0	14.5	27.8	16.7
Mental Health Issues	19.4	10.0	15.9	7.8	6.1
Lack of Compassion	15.3	5.0	2.9	10.0	7.6
Limited Program Part.	12.5	25.0	0.0	23.3	7.6
Violent History in Prison	11.1	6.0	4.3	7.8	6.1
Factual Inconsistencies	9.7	3.0	2.9	3.3	12.1
Cont. Drug Addic. in Prison	9.7	4.0	2.9	2.2	3.0
Lying at the Hearing	8.3	10.0	17.4	13.3	15.2
Poor Parole Performance	2.8	3.0	1.5	8.9	18.2
Lack of a Parole Plan	1.4	1.0	2.9	0.0	12.1
Address Areas of Deceit	1.4	3.0	0.0	6.6	0.0

The Lifer's Group Inc. continues to emphasize that at parole hearings, lifers need to maintain control of their emotions, particularly when sensitive questions are raised by Parole Board members or if a Parole Board member challenges a lifer's truthfulness. Often such questions are posed precisely to gauge what, if any, negative reaction they may elicit. For instance, if a lifer states that he/she has learned various coping skills from programs such as

Alternatives to Violence or Anger Management, including what his or her individual triggers are, and then 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 denied and it will be indicated in the Record of Decision that he/she needs further time in prison to address the area(s) of concern.

Lifers need also remember that questions asked by 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 more concerned with, then simply handing out second chances.

Lastly, lifers need to be honest about their program participation. Lying about programs one has allegedly completed or even just participated in is a prescription for disaster. Parole Board members have a lifer's full history before them, including institutional programs and whether or not a lifer had served in the armed forces or graduated from a particular college. So, claiming to have attended programs like 12-Steps invites the question: Which step is your favorite? Being unable to name a favorite step or any step for that matter and why it is his/her favorite step to the satisfaction of the Parole Board members, only casts doubt on the lifer's truthfulness. Similarly, a lifer should never claim to be a veteran of the armed forces and have served honorably, particularly in an armed conflict, if none of that is true. Both scenarios - the 12-Step Program participation claim and that of service in the armed forces are not hypothetical. Both actually occurred and resulted in denials of parole. Parole Board members judge a lifer's program participation not just by the number of certificates a lifer can produce, but what the lifer has learned in those programs which addressed his/her needs and, more importantly, how the lifer will use that knowledge to be a productive citizen back in society should the Parole Board grant him/her a parole.

8. SETBACKS

In 2021, the Parole Board continued to assess Setbacks which are the number of years a denied lifer would have to serve before his/her next parole hearing. The Parole Board continued its policy of not offering any rationale for the length of any Setback, except for One Year Setbacks which are mandated if the vote of the Parole Board is tied. When there was disagreement among Parole Board members in the length of the Setback to be served, a footnote cited the lack of unanimity, giving the number of Parole Board members who had voted for each length, but no reasons were included to account for the differences.

Nor has the Parole Board ever issued any explanation as to what standards, if any,

exist for determining lengths of Setbacks or what Parole Board members may employ in making those decisions. This is particularly troubling when the Parole Board increases the length of a Setback from one denial to the next without any explanation as to why. The Parole Board needs to publish whatever standards or guidelines are utilized in determining the lengths of Setbacks given to lifers who have been denied paroles.

Table 8 below presents the comparative data for the numbers and percentages of the various lengths of Setbacks given by the Parole Board from 2017 through 2021. The numbers in parentheses denote the total number of denials for each year.

TABLE 8

Year	1 Year		2 Years		3 Years		4 Years		5 Years	
2021 (72)	2	2%	22	31%	22	31%	19	26%	7	10%
2020 (67)	1	1%	11	16%	20	30%	19	29%	16	24%
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%
Totals (364)	11	3%	60	17%	106	29%	85	23%	102	28%

In 2021, the Parole Board continued, without explanations, the trend begun in 2019 of decreasing the number of five-year Setbacks and increasing the number of two-year Setbacks. Three and four-year Setbacks have remained relatively constant during the last three years.

In Table 9 below, the Setback numbers and percentages for the seventy-two denials in 2021 are broken down by type of hearing: Initial, Review (*) with no prior parole, and Review (**) after a revoked parole.

TABLE 9

Year	1 Year		2 Years		3 Years		4 Years		5 Years	
Initial (28)	2	7%	4	14%	8	29%	10	36%	4	14%
Review* (42)	0	0%	16	38%	14	33%	9	22%	3	7%
Review** (2)	0	0%	2	100%	0	0%	0	0%	0	0%

In 2021, lifers who had Review Hearings without a prior parole having been revoked received significantly more two-year (16 vs 5) and three-year (14 vs 9) Setbacks than in 2020, while receiving a 70% decrease in the number of five-year Setbacks (3 vs 10). In 2021, lifers who had Review Hearings without a prior parole having been revoked received approximately the same number of four-year Setbacks (9 vs 8) than in 2020. For the first year that the Lifer's Group Inc. has been reporting data on Setbacks, the number of lifers receiving five-year

Setbacks after an Initial Hearing (4) exceeded the number receiving a five-year Setback after a Review Hearing (3). Table 10 below gives the combined data for 2019 through 2021.

TABLE 10

Year	1 Year		2 Years		3 Years		4 Years		5 Years	
Initial (69)	3	4%	8	12%	20	29%	24	35%	14	20%
Review* (121)	0	0%	28	23%	38	31%	31	26%	24	20%
Review** (18)	0	0%	5	28%	8	44%	1	6%	4	22%

9) APPROVED LIFER DESTINATIONS

Of the ninety-two lifers approved for paroles in 2021, seventeen were released to approved home plans, and nine to interstate transfers. Thirty-six were approved to go to a Long Term Residential Program (LTRP), twenty-six of which were required to serve six to twenty-four months in lower security. Twelve lifers were paroled to I.C.E. Fifteen lifers' destinations were Residential Care Facilities and two were paroled to federal detainees.

Table 11 below presents the data for the destinations of approved lifers from 2017 through 2020. Those destination entries with Mos. indicate how many months the lifer was to spend in lower security before transferring to a Long Term Residential Program.

TABLE 11

Destination	2021		2020		2019		2018		2017	
Home Plans	17	18%	8	16%	8	22%	7	21%	8	38%
LTRP - Direct	10	11%	5	10%	4	11%	4	13%	2	10%
LTRP - 6 Mo.	7	8%	5	10%	3	8%	5	15%	1	5%
LTRP - 9 Mo.	4	4%	0	0%	1	3%	0	0%	3	14%
LTRP - 12 Mo.	13	15%	6	12%	5	14%	7	21%	3	14%
LTRP - 18 Mo.	1	1%	4	8%	3	8%	1	3%	3	14%
LTRP - 24 Mo.	1	1%	0	0%	1	3%	0	0%	0	0%
Interstate	9	10%	9	18%	8	22%	3	9%	0	0%
I.C.E.	12	13%	3	6%	2	6%	6	18%	1	5%
Sober House	1	1%	2	4%	1	3%	0	0%	0	0%
Residential Care Fac.	15	16%	8	16%	0	0%	0	0%	0	0%
Federal Detainers	2	2%	0	0%	0	0%	0	0%	0	0%

The fifteen lifers paroled to Residential Care Facilities went to: Community Resources For Justice (8), Brooke House (4), Gavin House (2), and Mental Health Treatment Center (1).

10. RISK ASSESSMENTS

For each of the past five years, the Lifer's Group Inc. has sought via public records requests a breakdown of the risk assessments for lifers who had parole hearings. The Parole Board is required to administer a Risk Assessment Tool for every lifer who has a parole hearing. The Parole Board, however, does not note on Records of Decision what an individual lifer's risk assessment result is, i.e., Low⁴, Medium, High, Very High. Consequently, the Parole Board can avoid justifying why any specific lifer who scored as a Low Risk on the Risk Assessment Tool was not approved for a parole. Table 12 below contains the risk assessment data reported to the Lifer's Group Inc. by the Parole Board for 2021.⁵

TABLE 12

Risk Level	# Approved	# Denied	Total	% Approved
Low	18	9	27	67
Medium	65	39	104	62
High	14	20	34	41
Very High	0	4	4	0

The gap of only five percentage points in Table 12 above between the Approval Rates for Low Risk (67%) and Medium Risk (62%) lifers seems surprisingly small. Additionally, that one-third of Low Risk lifers were denied paroles is troubling. While an Approval Rate of 62% for Medium Risk lifers in 2021 seems reasonable, a corresponding Approval Rate of only 67% for Low Risk lifers begs for an explanation from the Parole Board. It seems clear that the Parole Board is not utilizing the Risk Assessment data as it was intended, at least for Low Risk lifers who, based on their Low Risk to reoffend should be considered to be presumptively paroled unless the Parole Board members can point to specific reasons why a parole should not be granted. The use of a Risk Assessment tool was intended to introduce a data based factor into the decision making process and, thus, less reliance on unexplained discretionary factors. Unfortunately, the Records of Decision do not explain with any specificity why a lifer was denied a parole or what steps he or she should take in order to be considered suitable for a parole at his or her next parole hearing. While all denied lifers deserve more detailed explanations as to why they were denied paroles, this applies especially to Low Risk lifers.

⁴ There is also a Very Low Risk level, but it is rarely found by the Risk Assessment tool, Very Low assessments have been, therefore, combined with Low Risk Assessments for these reports. For instance, in 2021, there was only lifer assessed as a Very Low Risk to reoffend.

⁵ The total number of decisions for the Risk Assessment data provided by the Parole Board for 2021 was 169, five more than the total number of Records of Decision analyzed in this report. It appears that there were five Records of Decision for lifers in 2021 which the Parole Board did not include in those sent to the Lifer's Group Inc.

Table 13 below presents the Risk Assessment data provided by the Parole Board for 2017 through 2021.

TABLE 13

Risk Level	# Approved	# Denied	Total	% Approved
Low	38	34	72	53
Medium	157	185	342	46
High	31	114	145	20
Very High	1	17	18	6

11) LIFERS SERVING LIFE FOR NON-HOMICIDES

Of the 164 Records of Decision for 2021, seventeen or 10% were for lifers who were serving life for crimes which did not include a loss of life, such as armed robbery or rape - an increase of 42% from 2020. Table 14 below presents the number for each category of crime and the number approved for a parole for the years 2017 through 2021.

TABLE 14

Crime	2021		2020		2019		2018		2017	
	#	App.	#	App.	#	App.	#	App.	#	App.
Rape	10	3	8	0	9	1	4	0	5	1
Armed Rob./ Assaults	4	1	3	2	3	1	1	0	0	0
Unarm. Rob.	2	2	1	1	2	1	0	0	0	0
Burglary	<u>1</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Totals	17	6	12	3	14	3	5	0	5	1
% App.	35		25		21		0		20	

12) TIME BETWEEN HEARING DATES AND DATES OF DECISION

Each Record of Decision notes both the date the public hearing was held and a date of decision. The Date of Decision is not, however, as one might expect, the date the Parole Board members rendered its decision. Rather, the Date of Decision is the date the General Counsel of the Parole Board signed the Record of Decision. The Parole Board's regulations require the members to meet in a regularly scheduled executive session after the public hearing had been held - 120 CMR 301.06(6). In addition, lifers who have been denied are to be so notified, again

per the Parole Board's regulations, of that denial "within 21 calendar days after the decision has been rendered." (120 CMR 301.08) For lifers who were denied paroles in 2021, the average length of time from the hearing date to the date of decision was 290 days, 50 days longer than in 2020. Two hundred and ninety days surely violates the Parole Board's own regulations. Clearly, it should not take nearly ten months for the members to meet in executive session, in these cases denials, and the Record of Decision written and communicated to the lifer. The Lifer's Group Inc. requested via the public records statutes and regulations for a schedule of when the Parole Board conducted executive sessions. That request was denied on the grounds that the dates of executive sessions were not subject to the public records statutes or regulations. The average time between Hearing Dates and Dates of Decision in 2021 was 215 days, which was 10 fewer days than the average for 2020. In 2021, the shortest length of time between the two dates was 77 days; the longest was 478 days.

As has been noted earlier in this report, the Parole Board continued in 2021 to publish Abbreviated Records of Decision as a response to the COVID-19 pandemic, i.e., as an effort to reduce the time some lifers had to wait to receive their Records of Decision. In 2021, Abbreviated Records of Decision were used only for those who were approved for paroles. Lifers who were denied did not receive an Abbreviated Record of Decision. Thus, in 2021, there were ninety-two Abbreviated Records of Decision and the average length of time between Hearing Dates and Dates of Decision for those ninety-two Abbreviated Records of Decision was 156 days, down from 180 days in 2020. As noted above, the average length of time between Hearing Dates and Dates of Decision for denials, i.e., non-Abbreviated Records of Decision in 2021, was 290, an increase of 50 days from 2020.

Table 15 below presents the data for the average lengths of delay between Hearing Dates and Dates of Decision for the 164 Records of Decision analyzed in this report.

TABLE 15

Lengths in Days	2021		2020		2019		2018		2017	
1 - 100	10	6%	7	6%	0	0%	4	3%	2	2%
101 - 200	79	48%	39	33%	1	1%	2	2%	63	72%
201 - 300	42	26%	47	39%	73	65%	31	24%	21	24%
300 +	<u>33</u>	20%	<u>26</u>	22%	<u>39</u>	34%	<u>90</u>	71%	<u>1</u>	1%
Total # of Decisions	164		119		113		127		87	
Ave. Lengths of Delay	215		225		290		310		182	

While the average time interval between Hearing Dates and Dates of Decision for Approvals, i.e., Abbreviated Records of Decision, decreased by 13% (twenty-four days), the length of time for those who were denied increased 21% (from 240 days to 290 days). For five lifers, the wait for their denials was in excess of 400 days (413, 418, 427, 443, and 478 days respectively). In addition, six other denied lifers waited over one year for their decisions. The Parole Board needs to either explain these long delays or change whatever procedure they now are employing for processing all Records of Decision. Waiting over one year for a decision is simply unacceptable.

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 2021, seven juveniles formerly serving LWOP and who had completed at least fifteen years of incarceration appeared before the Parole Board. Six were approved for paroles - a parole rate of 80%. Since 2014, sixty-six parole hearings have been held for juveniles formerly serving LWOP sentences and for which the Lifer's Group Inc. has reviewed their respective Records of Decision. Of those sixty-six hearings, twenty-eight juveniles at the time of their crime(s) and serving LWOP were paroled, a parole rate of 42%.

In 2021, eighteen juveniles who were serving second degree life sentences, i.e., with the possibility of parole, appeared before the Parole Board after having served at least the requisite fifteen years of incarceration. Fourteen or 78% were approved for a parole.

In 2021, a total of twenty-five lifers who had committed their crimes before the age of 18 had parole hearings. Five had Initial Hearings - two were approved, one originally having served LWOP and the other a second degree life sentence. Twenty had Review Hearings, eighteen or 90% were approved - four of those eighteen juveniles had formerly been serving LWOP.

14) ATTORNEY REPRESENTATION

Of the 164 Records of Decision analyzed by the Lifer's Group Inc. for 2021, it was noted that the lifer had been represented by counsel in 114 or 70% and said counsel was named. Seventy-one lifers represented by counsel were approved for parole - an Approval Rate of 62%, an increase from 57% in 2020. Of the fifty lifers who were not represented by counsel, twenty-one or 42% were approved for paroles, an increase from 24% in 2020.

Student attorneys from Harvard (PLAP), Northeastern, and Boston College represented lifers at forty-five hearings in 2021 - ten, nineteen, and sixteen respectively. Of those forty-five lifers represented by student attorneys in 2021, 30 or 67% were approved for paroles - 5 of 10 for Harvard, 15 of 19 for Northeastern, and 10 of 16 for Boston College. In contrast, the overall Approval Rate for lifers represented at hearings by practicing attorneys was 62%.

Twenty-two separate practicing attorneys represented lifers at the parole hearings analyzed in this report. Eleven represented one lifer each. The remaining eleven represented multiple lifers. The number each represented and the number of approvals were as follows:

Attorney	# Represented	# of Approvals
John Rull	11	4
Jason Benzaken	4	2
Michael Bourham	3	3
Merritt Schnipper	3	3
Richard Goldman	2	2
Lisa Newman-Polk	2	1
Melissa Celli	2	1
Michael Nom-Kane	2	1
Russell Sobelman	2	1
Stephen Weymouth	2	1
Justin Brescheler	2	0

Table 16 below contains the data for approvals and denials for the 164 Records of Decision analyzed in this report broken down by whether an attorney represented a lifer or no attorney was present at the hearing and the combined data for 2015 through 2021.

TABLE 16

	# 2021 App.	# 2021 Den.	# 2015 - 2021 - App..	# 2015 - 2021 - Den.	Overall App. %
Attorney	71	43	196	272	42
No Attorney	<u>21</u>	<u>29</u>	<u>102</u>	<u>257</u>	26
Totals	92	72	298	529	36

The total number of Records of Decision for 2021 was 164. The total number of Records of Decision for 2015 through 2021 was 827.

Whether or not to engage representation at a parole hearing is a difficult and personal

decision. Certainly for those who are preparing for an Initial Hearing, particularly those with no one to assist them, careful consideration needs to be given to obtaining representation. What a lifer presents in his/her parole package and how a lifer conducts him or herself at the hearing will set a foundation for future Review hearings if a lifer is denied at an Initial hearing. It is also important to note that in 2021, student attorneys from Harvard, Northeastern, and Boston College provided excellent assistance to lifers.

15) Analysis Of Parole Decisions By Race

Since 2013, reports of the parole decisions for lifers have contained a racial breakdown of the Records of Decision for each year and the totals. Each lifer's racial designation, however, had been determined by the personal knowledge of members of the Lifer's Group Inc. Board of Directors. Over the years, this method of designation has been questioned as to its continued reliability as many new lifers have entered the prison system who may not have been known to members of the Board of Directors.

One page in the 2020 Annual Report published by the Parole Board was dedicated to lifers and included a racial breakdown for lifer decisions in 2020. The Lifer's Group Inc., therefore, submitted a public records request for a racial breakdown for lifer decisions in 2021. The Parole Board responded with the relevant data. Thus, for this report on parole decisions for lifers and subsequent reports, we will present the racial breakdown data as provided by the Parole Board, which we consider to be more reliable than the procedure we had utilized in the past. Table 17 below presents the racial breakdown data for 2020;

TABLE 17

	Approvals	Denials	Total	% App.	% Den.
Caucasian	22	26	48	46	54
African/Amer.	22	26	48	46	54
Latino	15	12	27	56	44
Asian	2	0	2	100	0
Nat. Amer.	1	0	1	100	0
Not Reported	<u>0</u>	<u>1</u>	<u>1</u>	0	100
Totals	62	65	127*	49	51

* Note: the total of 127 exceeds the total analyzed in the Lifer's Group Inc. report on parole decisions for lifers in 2020 (119). Thus, eight Records of Decision for 2020 were not provided to the Lifer's Group Inc. by the Parole Board.

Table 18 below presents the racial breakdown data for lifer parole decisions in 2021.

TABLE 18

	Approvals	Denials	Total	% App.	% Den.
Caucasian	30	30	60	50	50
African/Amer.	36	24	60	60	40
Latino	22	17	39	56	44
Asian	7	0	7	100	0
Nat. Amer.	2	0	2	100	0
Not Reported	<u>0</u>	<u>2</u>	<u>2</u>	0	100
Totals	97	73	170**	57	43

** Note: the total of 170 exceeds the total analyzed in the Lifer's Group Inc. report on parole decisions for lifers in 2021 (164). Thus, six Records of Decision for 2021 were not provided to the Lifer's Group Inc. by the Parole Board.

Table 19 below presents the combined data for the racial breakdown of decisions for lifers in 2020 and 2021.

TABLE 19

	Approvals	Denials	Total	% App.	% Den.
Caucasian	52	56	108	48	52
African/Amer.	58	50	108	54	46
Latino	37	29	66	56	44
Asian	9	0	9	100	0
Nat. Amer.	3	0	3	100	0
Not Reported	<u>0</u>	<u>3</u>	<u>3</u>	0	100
Totals	159	138	297**	54	46

16) Ages At The Time Of The Parole Hearing

As previously noted, ninety-two of the 164 Records of Decision for 2021, i.e., 56%, were Abbreviated Decisions. Unfortunately, Abbreviated Decisions did not include the ages of the lifers at the time of the public hearing. As a consequence of the Parole Board's not reporting the necessary data on a majority of the Records of Decision, we are unable to continue presenting data for this section.

17) Opposition Or Support By District Attorney Offices

As with the data on ages at the time of the public hearings, the ninety-two Abbreviated Decisions, while noting that the Parole Board members had considered responses from the public and district attorney offices, no specifics were given as to whether a particular district attorney office had opposed by oral testimony and/or a written response or supported the lifer for a parole. Thus, we do not have sufficient data to complete this section.

Opposition from district attorney offices was noted in fifty-six denials, however. In sixteen of those denials, no response was noted from a District Attorney's office - all sixteen from Suffolk County.

18) Female Lifers

A question was raised after the publication of our 2020 report on parole decisions for lifers as to why a section was not included for female lifers. We appreciate that this question was raised and we regret our oversight in past reports. We will begin including a section on female lifers with this report for 2021.

The number of females serving a life sentence and eligible for parole as of July 2021 was twenty-three. We have reviewed our worksheets for 2018 through 2021. The results are as follows.

In 2021, of the 164 Records of Decision analyzed for this report, only one female lifer went before the Parole Board for a Review Hearing and she was Denied. It was her fourth hearing and she was given a three year Setback.

In 2020, three female lifers went before the Parole Board, two for Initial Hearings and one for a Review Hearing. All three were Denied and given four year Setbacks.

In 2019, one female lifer went before the Parole Board for a Review Hearing, her third hearing and she was Approved for a parole.

In 2018, four female lifers went before the Parole Board, one for an Initial Hearing and three for Review Hearings. All four were Denied. The female lifer who had the Initial Hearing and one who had a Review Hearing were given five year Setbacks. One female lifer who had a Review Hearing received a four year Setback and the other a three year Setback.

In total for the four years, nine female lifers went before the Parole Board - three for Initial Hearings and six for Review Hearings. Only one female lifer was granted a parole - an Approval Rate of 11%. For the eight who were denied: two received three year Setbacks, four received four year Setbacks, and two received five year Setbacks,

Although the data is scant, an 11% Approval Rate over four years is clearly low, as

compared to the overall Approval Rate of 43% for 2018 through 2021. And, six of eight female lifers who had been denied received a four or five year Setback - 75%. This is a higher percentage than for males who received four or five year Setbacks - 50%. The Lifer's Group Inc. will continue to track and to report on parole decisions for female lifers.

DISCUSSION AND RECOMMENDATIONS

A. Abbreviated Decisions

In 2021, the Parole Board continued its use of Abbreviated Decisions for all ninety-two Approvals. Unfortunately, the Abbreviated Decisions eliminated significant data which described the actual hearing and gave age, reason why a paroled lifer had been returned to prison, reasons why a lifer was approved, and any opposition or support from district attorney offices. These omissions eliminated vital information relied upon the Lifer's Group Inc. for analyzing parole decisions.

Recommendation #1 - While the reduction of 134 days between Hearing Dates and Dates of Decision for Abbreviated Decision as compared to non-Abbreviated Decisions was welcome, in the interests of transparency, the Parole Board needs resume including in Abbreviated Decisions the data which have been eliminated as indicated above.

B. Risk Assessments

The Parole Board continues to discount Risk Assessment ratings of Low Risk lifers. In 2021, one-third of Low Risk lifers were denied paroles. From 2017 through 2021, the Approval Rate for Low Risk lifers was only 53%, a mere seven percentage points higher than for Medium Risk lifers.

Recommendation #2 - Those assessed as Low Risks to offend should be presumed to be paroled unless the Parole Board can provide specific reasons why the parole is to be denied and specifically what the lifer needs to address before the next parole hearing.

C. More Specificity In Records Of Decision

The Parole Board continues to eschew giving specific reasons for approving or denying paroles as well as indicating any deficient areas a lifer needs to address and relevant programs. In addition, the Parole Board does not provide reasons or any standards for

assigning any length of Setbacks. The General Counsel of the Parole Board who signs off on each Record of Decision may be trying to shield the Parole Board from law suits by using general language. But, by doing so only provides a disservice to lifers trying to rehabilitate themselves and seeking guidance on what areas they may need to address.

In a Suffolk Superior Court Decision (*Rolando Jimenez v. Massachusetts Parole Board*, Civil No. 20-1946-H, December 23, 2021) Justice Peter B. Krupp found that the Parole Board provided "only one non-boilerplate reason for denying parole." That reason was "lacks candor as it relates to the offense" and the Parole Board was "concerned as to the varying versions that have been presented at prior hearings." Justice Krupp found that "reason is confusing, applies the wrong legal standard, and does not appear to be supported by the evidence. It is also a troubling justification which would equally support never granting parole." (p. 3)

Justice Krupp continued with: "If the fact that a prisoner gave 'varying reasons .. at prior hearings' was a sufficient reason to deny a prisoner parole, then anyone who protested his innocence, or gave a different version of events at an earlier time (however long ago), would be ineligible for parole. This cannot be the law ... People change. The question before the Parole Board is not whether a prisoner has given other versions of events at an earlier time, but whether in the present, given all the relevant factors including the prisoner's 'acknowledgment of guilt' ... 'there is a reasonable probability that ... the prisoner will live and remain at liberty without violating the law and that release is not incompatible with the welfare of society.'"

Justice Krupp concluded that: "because there is no valid explanation of the Parole Board's rationale or factual basis for its decision, there is nothing that allows plaintiff to know or for the court reasonably to evaluate, whether the Parole Board abused its discretion. Due process requires a more complete explanation of the Parole Board's decision." (p. 7)

It is interesting also that the Parole Board noted opposition from various parties including law enforcement sources. To that Judge Krupp opined that: "their desire to see a prisoner remain in custody does not change the standard the Parole Board must apply in deciding whether to grant parole, nor may the Parole Board defer to widespread opposition to a prisoner's release. (p. 7, n. 6)

Justice Krupp reversed the decision to deny the parole and remanded the case back to the Parole Board "for a further hearing..." (p. 8)

Recommendation #3 - The Parole Board should follow Justice Peter Krupp's admonition to provide less boilerplate language and more specificity in its Records of Decision.

Recommendation #4 - 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 complete during incarceration. The Parole Board should also indicate what standards, if any, members use to determine lengths of Setbacks.

EXCERPTS FROM 2021 RECORDS OF DECISION

The following five excerpts from the 2021 Records of Decision are quoted directly from those Records of Decision. The names of the lifers and the victims have been deleted. The Lifer's Group Inc. has no intent to embarrass nor to ridicule any lifer, hence the deletion of identifying names. Rather, the intent is to offer insight into the decision making parameters employed by Parole Board members in order to assist lifers in preparing for parole hearings. Unfortunately, there are far fewer excerpts in 2021 than had been presented in past reports. All of the 2021 excerpts are from Denials as the Abbreviated Decisions for Approvals did not include any dialogue between Parole Board members and a lifer during those hearings.

1) Board members questioned _____ as to his various appeal attempts. _____ indicated that his appeals were not an attempt to minimize his culpability, but rather, an attempt to reduce his sentence. The Board noted, however, that _____'s actions appear contradictory. His testimony at this hearing assured the Board that he takes full responsibility for the murder, but his argument on appeal minimized his role. In response, _____ stated that his objective in appealing his conviction was to assert self-defense, as he believed his conviction should be reduced to manslaughter. Board members questioned the likelihood of _____'s self-defense theory since he fired his gun several times. Further, the Board noted that witness testimony does not support his version of the facts. When asked to address the discrepancies, _____ could not provide any insight, aside from indicating that if he had additional experts testify at trial, the jury would have found he was acting in self-defense. Upon questioning, _____ told the Board that he does not feel the need to address any other areas of programming, as he is now able to 'transform anger into non-violent communication.'" The Board pointed out, however, that his disciplinary record indicates otherwise.

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

2) Upon Board Members questioning, _____ admitted to struggling with substance abuse prior to his incarceration. However, he stated that he attends AA/NA meetings. Nonetheless, the Board noted that _____ has incurred numerous disciplinary reports related to substance abuse in the institution. At the hearing, _____ took no responsibility for the more serious of these reports, which involved the import of controlled substances into the institution. He claimed not to remember others, characterizing many of his disciplinary reports as 'frivolous.' _____ expressed no interest in participating in the Correction Recovery Academy.

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

3) Although _____ informed the Board that he was not looking for parole and he conceded he is not ready and doubts he will ever be, the Board is of the opinion that his assertions were disingenuous and self-serving. At times he appeared to be grandstanding, which appeared to be an attempt to further victimize the family.

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

4) The Board remains concerned that _____ is minimizing his role in the governing offense and is not being honest and forthright. _____ needs to establish a support system and to engage in substance abuse treatment in order to better prepare himself for reentry.

This lifer was denied after an Initial Hearing and given a one year Setback. He received the one year Setback because the vote was tied - 3 for parole 3 for Denial. His Initial Hearing was held on April 1, 2021 and the Date of Decision was November 1, 2021, allowing him only six months to address issues raised by those who voted against parole.

5) _____ presented defensive[ly] and often made excuses for his criminal culpability / behavior. He remains a risk until he completes the SOTP. _____ has offered information that has resulted in conflicting expert opinions. Thus indicating a lack of candor.

Board Members explained that they did not understand _____'s account of (victim's name) death. Although he claimed to take full responsibility for the murder, he seemingly suggested at the same time, that her death was accidental. _____ acknowledged that an attorney submitted a recommendation request to the Board in 2020, on his behalf, that characterized him as an 'innocent man wrongfully convicted.' The Board repeatedly questioned _____ as to whether the governing offense was an accident or an intentional murder. _____ answered that while he did not intend to kill _____, he is responsible for her murder nonetheless. Board Members did not find his account of the incident credible. The Board expressed its concern that _____ minimized his culpability in _____'s death.

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

