

AGING, CRIMINAL PROPENSITY AND LIFER PAROLES:
A Massachusetts Paradox

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Introduction

The propensity to commit criminal acts decreases as people age and this effect is clearly manifest before age 50^{1,2}. Data gathered by corrections experts and criminologists alike have established that by age 50 the likelihood that an aging prisoner will commit another crime has markedly diminished^{1,2,3} and this applies regardless of the original crime committed¹. Data obtained nationally and locally conclusively show that recidivism and reincarceration of released ex-prisoners decreases precipitously as prisoners age^{1,2,4,5,6}. Accordingly, individuals over 50 pose markedly lower threats to public safety, committing far fewer new crimes and much less likely to recidivate after a prior incarceration. Evidence also supports that even lifers convicted of murder can be released safely, with low rates of re-offending and virtually no likelihood of killing again^{7,8}.

On this background, the results obtained by the Lifers' Group Inc. when analyzing second degree lifer parole decisions rendered in Massachusetts between the years of 2006 and 2016 yielded surprising and inexplicable results⁹. Rather than documenting, as expected, that lifers were more likely to be paroled as they aged, the data showed the opposite: paroles were more likely to be denied as prisoners aged, whether upon initial or review hearings.

Results

Table 1 lists the six published reports which show 3-year reincarceration rates broken down by age for cohorts of prisoners released by the Massachusetts Department of Correction (MA-DOC) between 2002 and 2012. Since it requires a minimum of three years to gather these data, more recent studies are not available.

TABLE 1
3-YEAR REINCARCERATION RATES INCLUDING TECHNICAL VIOLATIONS

Age	2002	2004	2007	2008	2011	2012	6yr Average
<25	50%	47%	47%	42%	42%	39%	45%
25-29	46%	47%	44%	46%	40%	37%	43%
30-34	42%	50%	46%	41%	34%	36%	42%
35-39	40%	48%	46%	39%	38%	31%	40%
40-44	36%	38%	44%	41%	34%	32%	38%
45-49	25%	35%	38%	35%	32%	27%	32%
50-54	20%	23%	24%	26%	30%	20%	24%
55-59	20%	12%	16%	13%	24%	23%	18%
60+	11%	9%	15%	16%	8%	8%	11%
Total	40%	43%	43%	39%	35%	32%	39%

It is important to note that these recidivism data include technical violations. While age-adjusted data excluding technical violations are not published by the MA-DOC, during the last ten years subtracting an average of 7% from the overall rates has yielded the rate without technical violations. Even this lower rate represents new arrests, not necessarily convictions for new

crimes. The data for each of the six years in Table 1 show decreasing reincarceration rates as ages increase. The lowest rates occurred progressively from age 50 to 60+.

The total recidivism rate for prisoners released from the six cohorts who were under age 50 was 41% (5460 of 13,427 released) while for those 50 and older the rate was only 20% (261 of 1317 releases). These data also demonstrate that only 9% (1317 of 14,744) of total releases were aged 50 or older at the time of release although 24% of MA-DOC prisoners are 50 and over. This reflects the large number of older prisoners who are not eligible for release because they are serving life and very long sentences.

Additional data about new commitments for those incarcerated after being convicted of new crimes show a similar age-related pattern over 7 years from 2009 to 2015: 38% of new commitments are aged 20-29; 30% are aged 30-39; 20% are aged 40-49; 7% are aged 50-59; and only 2% are aged 60+¹⁰. These data are not surprising in light of the afore-mentioned and well-known decrease in criminal propensity as potential offenders age.

Table 2 shows the rates at which paroles for second degree lifers were denied, by age, for hearings conducted between 2006 and 2016. Note that the youngest age group tabulated is 33-39 years old at the time of their hearings. Since the statutory sentence requires second degree lifers to serve 15 years before parole eligibility, this eliminates those juveniles who were under age 18 at the time of their offense. This is done to eliminate the hypothetical consideration that the Parole Board

TABLE 2
LIFER PAROLE DENIAL RATES BY AGE & HEARING TYPE^a

Hearing	33-39	40-44	45-49	50-54	55-59	60+	Total
Initial	54%	69%	80%	76%	69%	84%	66%
Review	52%	68%	76%	79%	82%	77%	74%
Overall	53%	68%	77%	79%	80%	78%	72%

^a More complete data, including numbers of paroles approved and denied, are available in reference 9.

might have treated juvenile murderers more leniently than adults. What is apparent from these data is that paroles were denied at much greater rates as prisoners aged. Thus, almost half (47%) of those aged 33-39 were granted paroles while less than a quarter (22%) of those 60+ received paroles. The contrast is even more striking for initial hearings where the disparity is nearly three-fold (46% vs 16%). As shown in the Chart, this trend holds true across all age groups and for all hearing types; whether initial, review, or overall. Also shown in the Chart are the recidivism and new commitment rates by age group, which demonstrated the disparity between these results and the rising rate of parole denials. 34% of the prisoners under 50 received paroles while 66% (325 of 491) were denied, while for those 50 and older only 21% received paroles and 79% (320 of 406) were denied. The 60+ age group, with the lowest risk of committing new crimes or recidivating, fared no better, with 78% (118 of 152) being denied paroles.

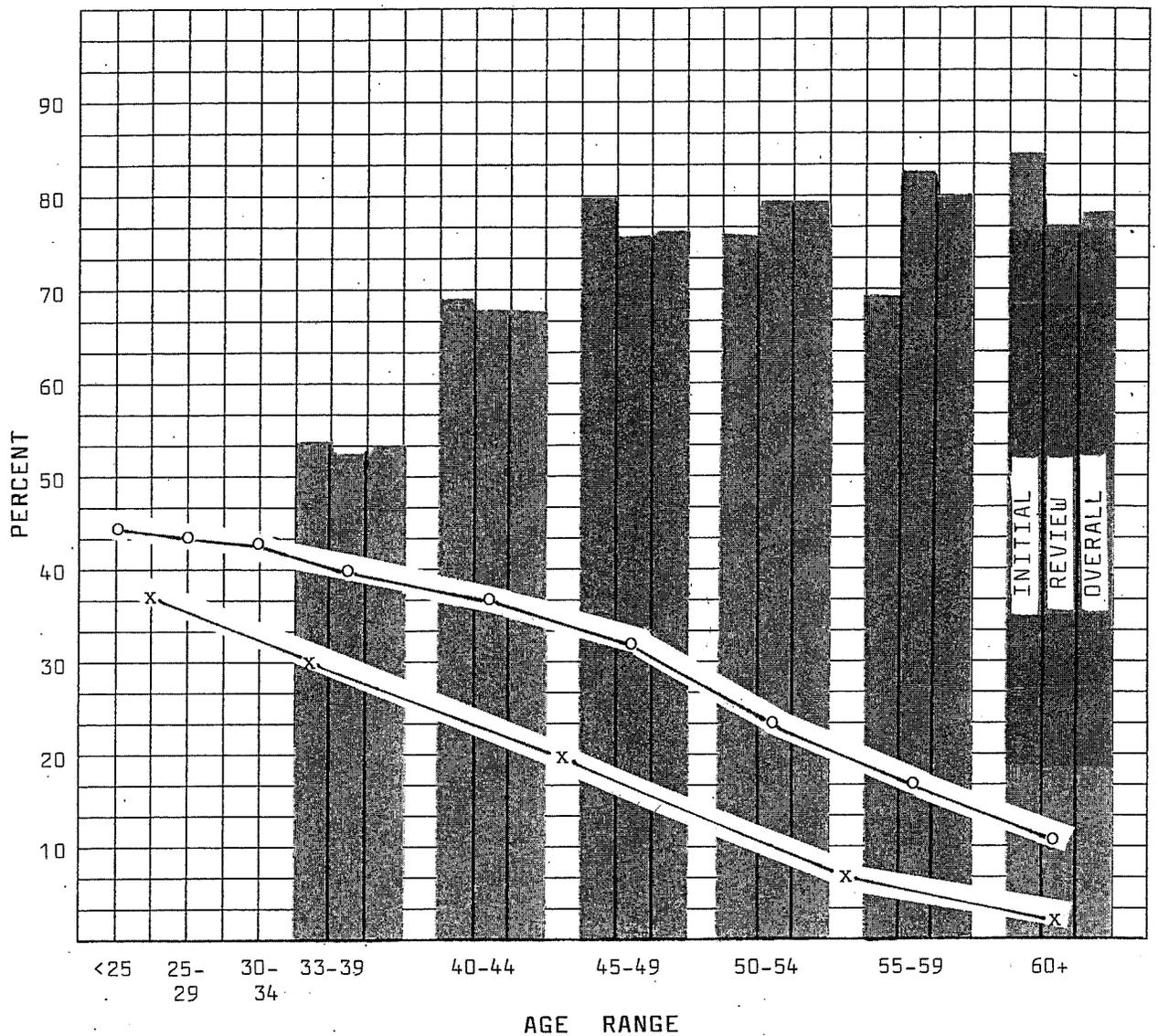


CHART: The bars show initial, review and overall second degree lifer parole denial rates. The circles show 3-year recidivism rates including technical violations. The x's show average 2009-2014 new commitment rates for new crimes.

the Parole Board. These benefits, when coupled with their naturally declining tendencies for aggression and criminal offenses would seem to make the older candidates more suited for parole and less of a risk to public safety. Nevertheless, the Parole Board does not seem to see it that way and is apparently content to ignore the evidence that older prisoners are undeniably better risks for release without endangering public safety. Perhaps it is time that the legislature needs to step in to demand better, more evidence-based performance. An example would be to mandate that parole eligible prisoners shall have a rebuttable (although not guaranteed) presumption for parole at first eligibility unless the Parole Board makes a determination, after documentation of an objective risk and needs assessment, that there is a reasonable expectation that the prisoner will not meet the conditions as specified in 120 CMR 300.04. Additionally, the Board, after individually considering each prisoner's suitability for parole, shall be required to memorialize its specific rationale for denying parole by providing a written explanation for its decision as well as recommendations for needed improvements.

References

1. ACLU, "At America's Expense: The Mass Incarceration of the Elderly" (ACLU, New York, NY, June 2012)
2. Greineder D, "MASS(achusetts) INCARCERATION OF THE ELDERLY: Morally Questionable, Costly and Unnecessary for Public Safety" (Norfolk Lifers Group, Norfolk, MA, April 2016) accessible at www.realcostofprisons.org/writing
3. Hersh T and Gottfredson M, "Age and the Explanation of Crime" Am J Soc 89:552(1983); as cited in reference 1

4. Lanigan PA and Levin DJ, "Recidivism of Prisoners Released in 1994" (Bureau of Justice Statistics, Washington, DC, 2002)
5. Office of Strategic Planning and Research, "Three-year Recidivism Rates" for 2002, 2004, 2007, 2008, 2011, 2012 (MA Department of Correction, Milford, MA, 2006-2016)
6. Durose MR, Cooper AD, and Snyder HN, "Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010" (Bureau of Justice Statistics, Washington, DC, April 2014)
7. Marquardt JW and Sorensen JR, "A National Study of the Furman-Commuted Inmates: Assessing the Threat to Society from Capital Offenders" (Loyola of Los Angeles Law Review, 23:5-28(1989-1990)
8. Weisberg R, Mukamal DA, and Segal J, "Life in Limbo: An Examination of Parole Release for Prisoners Serving Life Sentences with the Possibility of Parole in California" (Stanford Criminal Justice Center, Stanford, CA, Sept 2011)
9. Haas G, "An Analysis of Parole Decisions for Lifers by Age at the Time of Hearing" (Lifers' Group Inc., Norfolk, MA, August 2016) accessible at www.realcostofprisons.org/writing
10. Office of Strategic Planning and Research, "Prison Population Trends" for 2009, 2010, 2011, 2012, 2013, 2014, 2015 (MA Department of Correction, Milford, MA 2010-2016)
11. 120 Code of Massachusetts Regulations 300.00 et seq. (Massachusetts Parole Board, Natick, MA)