

RECIDIVISM OF MASSACHUSETTS LIFE-SENTENCED PRISONERS:
Re-Offending at Minimal Rates

A Lifers' Group Report
by
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August 2019

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ABSTRACT

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by Dirk Greineder, Lifers' Group Inc., August 2019

All available recidivism data for the cohorts of Massachusetts juvenile first degree (formerly LWOP) and second degree life-sentenced prisoners released on parole 2000-2015 is reviewed. For the first time, data from Parole Board revocation hearings are integrated with the re-incarceration data, providing insight into the causes and offenses leading to returns to prison. Linking the two sources of data allows an up to date assessment of the 2007-2015 release cohorts' three-year recidivism outcomes through 2018. During that period overall re-offense rates were extremely low at only 6% over three years, with a very low rate of offenses likely to endanger public safety. A call for reform of mandatory Life Without Parole (LWOP) sentences is justified.

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Dirk Greineder, for Lifers' Group Inc., MCI-Norfolk, August 2019
accessible at www.realcostofprisons.org/writing and www.lifersgroup.org

INTRODUCTION

Many consider recidivism rates of released prisoners one of the most important measures of effective rehabilitation. Recidivism rates are most commonly reported as the rate of re-incarceration during the three years following release. By that measure, paroled Massachusetts life-sentenced prisoners are doing exceptionally well, re-offending at an average rate of only 6% over three years.

In Massachusetts, second degree life sentences are most commonly imposed after conviction for homicides committed without premeditation but under conditions where the killing involved a disregard for the possibility that death or grievous bodily harm might result. A smaller number of such sentences may be imposed for select or repetitive violent crimes that do not involve a death. Juvenile offenders under the age of 18 found guilty of first degree murder who were formerly sentenced to mandatory Life Without Parole (LWOP) sentences, have become eligible for parole following a decision by the Supreme Judicial Court.¹ These juvenile first degree prisoners are now eligible for parole after serving 15 years. They are routinely classed with second degree lifers by the Departments of Parole and Correction.

Newly sentenced second degree life-sentenced prisoners currently sentenced become eligible for discretionary parole after serving a minimum of 15 to 25 years² while juvenile first degree lifers are eligible after 15 to 30 years. If parole is granted, such prisoners are released on life-long parole supervision typically involving a variety of restrictive conditions of parole.

Structure of Parole Violations

Re-incarceration of paroled ex-prisoners typically occurs for two reasons. The first, called technical violations, are simply the result of violating the conditions or rules of parole and do not involve illegal acts. The second reason results from committing a new offense. Even relatively minor offenses may trigger re-incarceration because of the intense scrutiny under which parolees live. Nevertheless, once re-incarcerated, the parolee will need

to await a revocation hearing to determine if he or she may once again be released. And, because the rules of evidence are substantially weakened for parolees, even if the parolee is never charged with or is subsequently acquitted of the presumed offense, a sometimes lengthy or indefinite incarceration may result.

Consequences of Parole Violations

The majority of returns, whether including or excluding technical violations, occur during the first year after release and substantially taper off during the second and third years. By that time, most parolees have reacclimated and, most importantly, solved the difficult challenges of establishing reasonably secure housing and employment. However, re-incarceration, even if only for a brief period, catastrophically disrupts these critical achievements. Consequently, whether re-incarceration results from a new crime or merely from a technical violation, the outcome is frequently especially troublesome, seriously handicapping re-integration into society and the community.

It is important, however, to remember that for parolees in Massachusetts the mere suspicion or report that an offense has been committed may be sufficient to result in re-incarceration even if such suspicions or reports are not affirmed upon further investigation. A major reason is that the Parole Board continues to apply out-dated policies that reflexively re-incarcerate parolees following every incident involving a violation, no matter if serious or reliably reported. Other agencies and states have adopted more measured responses, imposing graduated, community-based sanctions rather than imprisonment for incidents of lesser severity, reserving re-incarceration for those situations that pose a risk to public safety.

PRIOR REPORTS

The Haas-Fillion Report

The Lifers' Group has previously reported that second degree lifers have very low rates of committing new crimes after release.³ Unfortunately, Massachusetts agencies have never tracked or reported the specific causes that result in re-incarceration of parolees, beyond simply categorizing them as including or excluding technical violations of parole. In 2010, in a joint

collaborative effort between the Criminal Justice Policy Coalition (CJPC) and the Lifers' Group Inc., data was acquired for the 161 second degree lifers released between 2000-2006. This unique, one-time collection of data was acquired only after complex and contentious negotiations. The results, unusually detailed and complete, are reported in a joint publication.⁴ These data reveal that 97 (60%) of the second degree parolees were never returned to prison for any reason. An added 19 (12%) who were initially re-incarcerated were eventually released without being charged with a parole revocation, making clear that they had committed neither verifiable technical violations nor crimes. A further 23 (14%) had their paroles revoked and were re-incarcerated only for technical violations. The final 22 (14%) were re-incarcerated for a presumed crime, although only 6 (4%) were eventually convicted.* The remaining 16 (10%) were arrested and re-incarcerated but never criminally charged or tried.**

The Lifers' Group Recidivism Reports

In 2017 the Lifers' Group separately reported on the recidivism of paroled second degree lifers released between 2006-2012.⁵ The present report adds three more years of data for 2013-2015 to the 2017 report but deletes the 2006 data because it is redundant with the more comprehensive data included in the 2010 report. For the first time the parolees in this report include 17 juvenile first degree lifers originally sentenced to LWOP but newly eligible for parole after 2013, subsequent to a change in the law.⁶

No state agency tracks or reports the specific nature or severity of the offenses leading to parole revocations for any of these lifers. Therefore, the present report also summarizes data included in the Parole Board's revocation hearings for the juvenile parolees and all paroled second degree lifers drawn from the Lifers' Group second degree lifer parole reports.

The Lifers' Group Parole Reports

The Lifers' Group has reviewed all the parole hearings for parole eligible lifers during the last 10 years and published reports about the outcomes.⁷ Among the detailed collection of data are complete listings of the

* The convictions were for drug trafficking(2), drug possession(1), domestic assault & battery(1), breaking & entering(1), and possession of a firearm(1).

** 8 were arrested for non-violent offenses including gun possession(1), breaking & entering(1), DUI(2), drug possession(3) and drug trafficking(1). 8 were accused of violent offenses: simple assault(1), assault & battery(6), and armed robbery(1).

reasons for the revocations for all those parolees having a review hearing following parole revocations. Cumulatively, these data provide a complete summary of the violations triggering the revocations and re-incarcerations. However, the Board's hearing records do not always provide details regarding the procedural consequences of individual violations, i.e. details such as arrests, criminal charges filed, or convictions obtained, so these data are not available here. Additionally, because actual parole releases are typically delayed after the granting of paroles, often for years after the hearings, it is not possible to link individual hearing results with specific years of release. A final and important caveat is that the majority of revoked parolees are not granted parole at their first hearing following revocation. Consequently, the same cause for the violation will be counted again at any subsequent parole hearings for the same reason. This means that the enumeration of the number of violations listed by the Parole Board's hearing reports represents an inflated, repetitive compilation of specific violations. Nevertheless, these reports do provide considerable insight into the causes of parole revocations for paroled lifers as well as the procedures of the Parole Board and Department.

RESULTS

Table 1 (p5) summarizes the 3-year recidivism data for second degree lifers, 2007-2015, and also includes, for comparison, the recidivism data for all prisoners released during the same years, whether on parole, probation or released without supervision. It is apparent that almost all the returns for second degree lifers are due to technical violations (i.e. violations of the conditions of parole) rather than for new offenses. Over the reported 9 years, only 18 of 292 (6%) of parolees were returned for reasons excluding technical violations. 98 (34%) were returned for technical violations, a 5.4:1 ratio compared to those without technical violations.

By contrast, overall recidivism rates for the cohorts of all released prisoners average 37% including technical violations and 30% excluding them. For this group, the ratio of technical violations to those without is 0.2:1, a 27 fold difference from the results for lifers! This possibly reflects a surplus of challenging or onerous parole conditions and/or more aggressive levels of supervision for life-sentenced parolees.

Table 2 (p6) summarizes the data collected by the Lifers' Group for 10

TABLE 1
THREE-YEAR RECIDIVISM (RE-INCARCERATION) 2007 - 2015

Year	All Released Prisoners ^a			Released Second Degree Lifers		
	# Rel'd	(+)Tech ^b	(-)Tech ^c	# Rel'd	(+)Tech ^b	(-)Tech ^c
	#	%	#	#	%	#
2007	2536	43%	893	41	37%	4
2008	2718	39%	875	37	41%	3
2009	2758	41%	844	48	58%	2
2010	2725	39%	NA ^d	36	53%	3
2011	2276	35%	688	7	0%	0
2012	2346	32%	637	16	38%	0
2013	2518	32%	671	27	30%	2
2014	2436	32%	666	38	24%	1
2015	NA ^d	NA ^d	NA ^d	42	38%	3
Total	20313	37%	5274	292	40%	18

^a All Released Prisoners include all prisoners released, whether on parole, probation or without supervision.

^b Reincarcerations including technical violations.

^c Reincarcerations excluding technical violations.

^d NA = Not available (recidivism report not published that year).

^e Percentage based on 17588 total releases (excluding 2010 for which data (-)Tech not available).

[Source: DOC Research & Planning Division, Public Records Requests, 2017 and 2019]

TABLE 2
SECOND DEGREE LIFER PAROLE REVOCATION HEARINGS 2009-2018

<----- Revocation Offenses & Re-Parole Approvals ----->						
Year	Total Hearings	Substance Abuse ^a	Non-Violent ^b	Domestic Issues ^c	Violent Offense ^d	Felony Arrest ^e
	#	#Revoked/ #Reparoled	#Revoked/ #Reparoled	#Revoked/ #Reparoled	#Revoked/ #Reparoled	#Revoked/ #Reparoled
2009	19	10/8	4/2	5/2	0/0	0/0
2010	26	14/4	10/3	2/0	0/0	0/0
2011/12 ^f	39	17/9	18/8	4/0	0/0	0/0
2013	48	25/2	16/5	4/1	1/0	2/1
2014	40	16/13	17/10	3/1	2/0	2/1
2015	22	12/9	3/2	5/2	1/0	1/0
2016	23	8/1	11/5	2/1	0/0	2/2
2017	32	13/6	13/7	3/1	1/0	2/0
2018	24	12/6	8/3	1/0	2/1	1/1
Total	273	127/58	100/45	29/8	7/1	10/5
Approved	43%	46%	45%	28%	14%	50%
Denied	57%	54%	55%	72%	86%	50%

^a Substance Abuse includes alcohol (if a condition of parole) and/or use or possession of illegal drugs.

^b Non-Violent Offenses are mostly technical violations of parole conditions (e.g. failing to report or lying to parole officer, absconding, associating with known ex-prisoners, etc.) plus a scattering of lesser offenses (e.g. larceny, motor vehicle offenses, DUI, mental health issues, gun possession, etc.).

^c Domestic Issues include a wide range of problems, from serious disagreements to anger and hostility or threats.

^d Violent Offenses include: armed robbery(4); assault & battery(2); and rape(1).

^e Felony Arrests include: receiving stolen property(1); threatening to kill(1); with the remainder unspecified.

^f Because of a drastic reduction in the number of hearings and paroles in 2011 & 2012, the Lifers' Group parole reports consolidate those two years.

[Data according to Gordon Haas, "Parole Decisions for Lifers", 2013 & 2018].

years, 2009-2018, based on comprehensive review of all second degree lifer parole hearing reports.⁸ These data have been grouped into five categories: Substance Abuse, Non-violent Offenses, Domestic Issues, Violent Offenses, and Felony Arrests. The specific nature of offenses in the Domestic and Felony Arrest categories are not precisely defined by the reports. However, despite the ominous-sounding title, the felony arrest category is notable for having the highest rates of re-paroling (50%) following the hearings, suggesting that many of the offenses likely did not represent a danger to public safety. Furthermore, similarly to the CJPC data, the number of violent offenses listed for these revoked parolees is very low, only 7 of 273 hearings (2.6%). Because so few of these revoked parolees were immediately re-paroled, it is possible that these numbers may be inflated due to recounting in subsequent hearings over the 10 year span.

DISCUSSION

Neither the Parole nor the Corrections Departments track the specific causes for re-incarceration of second degree or general population parolees. Consequently, the data collected by the Lifers' Group in Table 2 provides the only view into the causes of second degree (and juvenile first degree) lifer parole revocations. It is important to remember that these data cannot be exactly matched to annual re-incarcerations because parole hearings are often delayed and may fall into years subsequent to the re-incarceration. Since the majority of revocation hearings result in denials, the prisoner will remain incarcerated until a

HIDDEN CONSEQUENCES OF LOWERED PAROLING RATES

Paroling rates for all released prisoners precipitously decreased after 2010, resulting in a dramatic drop in the overall numbers and fraction of parole eligible prisoners who were paroled (Table 1). This change exactly coincided with the abrupt media and politically incited firing of the entire Parole Board and its subsequent restructuring with mostly law enforcement personnel. This followed a rare and tragic killing of a police officer by a parolee during a robbery. An unexpected result of the decreased paroling rates is an artificially reduced rate of recidivism documented for general release prisoners. The apparent recidivism rates are reduced because parolees are the group of prisoners most likely to be re-incarcerated. An important and generally ignored corollary of the arbitrarily reduced paroling rate is that prisoners who were formerly safely released early now stay in prison at high cost. Careful independent analysis has revealed that between 2011 and 2016 this change cost the Commonwealth over 100 million dollars.

For a discussion how lower numbers of paroled general release prisoners cause an artificial reduction in recidivism rates and for data about increased costs, see references in note 12.

subsequent hearing or hearings, often years later, because denials are issued with setback delays of 1 to 5 years before the next hearing. The offense that triggered the original revocation will then be counted each time that individual is re-evaluated for parole. And, in the course of the 10 year span reviewed in Table 2, that may lead to 2 or 3 iterations for the same offense.

This is the likely explanation why, between 2009-2015, only 86 revocations are documented (Table 1) while 194 parole revocation hearings were held (Table 2). It is also important to remember that the same repetitive pattern mentioned above applies to revoked parolees from the previous years before the intervals reported in the tables.

Nevertheless, the data in Table 2 does provide substantial insight into the kinds of "offenses" (including and excluding technical violations) that cause life-sentenced parolees to return to prison following an initial release on parole. It also behooves us to revisit the unique data set provided by the CJPC for the period 2000-2006. To date, this is the only data set that identifies the individual outcomes of the second degree lifers paroled. As detailed above, 60% never returned for any reason and 12% were unreasonably re-incarcerated without any violations. The remaining 28% were evenly split with 14% returning for technical violations and 14% for offenses (i.e. excluding technical violations--although more than half of these were non-violent offenses).

Notably, the data in Table 1 shows that since 2007, second and juvenile first degree life-sentence parolees are doing even better than the earlier, CJPC cohorts, recidivating at only 6% when excluding technical violations. Based on the data shown in Table 2 it is clear that these non-technical violations are mostly in non-violent categories. Although, as mentioned, it is impossible to correlate the annual offenses in the two tables, in the interval between 2009 to 2015 only 9 of 194 re-incarcerated parolees are listed in the violent and felony arrest categories. Two of these were immediately re-paroled at the revocation hearings, suggesting that their offenses were unlikely to have endangered the public. Consequently, there seems little doubt that over the last 9 years studied (2007 to 2015), life-sentenced parolees are achieving remarkable success and re-offending at extremely low rates, with minimal consequences for endangering public safety.

17 of the 80 (21%) lifers released on parole in the 2014 and 2015 cohorts are the juvenile first degree murderers who became eligible for parole

based on the Supreme Judicial Court's decision in late 2013.⁹ Overall, these juvenile first degree lifers are younger than the average second degree lifer, which might suggest that they would be at a higher risk of re-offending,¹⁰ but this has not occurred. Only one of the 17 has been re-incarcerated. This parolee's "offense" was participating in a peaceful group demonstration outside his former prison concerning tainted drinking water in the prison. Subsequent to his participation and an out of state trip for a cousin's funeral in Maine, he was singled out and failed a breathalyzer test, thereby violating one of the conditions of his parole. Now, 14 months later, he remains in prison awaiting the result of his recent revocation hearing.

It has long been known that homicide offenders overall have the lowest rates of recidivism if released.¹¹ The extremely low rates of re-offense, including violent offenses, documented for the recently paroled first and second degree life-sentenced prisoners in this study are entirely concordant with such earlier data, and strongly suggest that the time has come to reconsider current practices. Currently in Massachusetts, a first degree murder conviction requires a mandatory sentence of Life Without the possibility of Parole (LWOP). This has made Massachusetts the state with the second highest percentage of LWOP prisoners in the United States. Currently there are almost 1100 LWOP sentenced prisoners in the Commonwealth, constituting 13% of the state prison population. Under current laws, all these prisoners are destined to die in prison, no matter how much they have changed or whether they have become rehabilitated. That rehabilitation and successful re-integration of life-sentenced prisoners into society without endangering public safety is possible, is amply demonstrated by the data presented in this report.

The Massachusetts legislature is currently considering two bills that would eliminate mandatory LWOP sentences, making such prisoners eligible for parole after 25 years provided they demonstrate, through their conduct in prison and their successfully completed rehabilitation, that they may live in society without violating the law or endangering public safety. Enacting such legislation is long overdue.

I thank Gordon Haas, long-time chairman of the MCI-Norfolk Lifers' Group Inc for his many years tirelessly reviewing Lifer parole reports and producing the invaluable annual "Parole Reports for Lifers". His insight and suggestions regarding the manuscript are also greatly appreciated.

ENDNOTES

1. Diatchenko v District Attorney for the Suffolk District, 466 Mass 655 (2013) and Commonwealth v Brown, 466 Mass 676 (2013)
2. Massachusetts General Laws. "Acts of 2012" c. 192 (Boston, MA; August 2012).
3. Haas G and Fillion L. "Life Without Parole: A Reconsideration" 2nd Ed. (Criminal Justice Policy Coalition, Boston, MA & Lifers' Group Inc., Norfolk, MA; 2016) at 15-16; and Greineder D. "Recidivism of Second Degree Lifers: Minimal Rates of Re-Offense" (Lifers' Group Inc., Norfolk, MA; September 2017).
4. Haas & Fillion, Ibid.
5. Greineder, Ibid.
6. Diatchenko and Brown, note 1.
7. Haas G. "Parole Decisions for Lifers", each year 2009 to 2018 (Lifers' Group Inc., Norfolk, MA)
8. Ibid
- 9 Diatchenko and Brown, note 1.
10. Greineder D. "Mass(achusetts) Incarceration of the Elderly: Morally Questionable, Costly and Unnecessary for Public Safety", J. of Prisoners on Prisons, vol 27(1):17-54;2018 (Univ of Ottawa Press, Ottawa, Ont. Canada); and ACLU. "At America's Expense: The Mass Incarceration of the Elderly" (ACLU, New York, NY; June 2012).
11. Greineder, "Mass(achusetts) Incarceration of the Elderly, pp31-33; ACLU, "At America's Expense"; Weisberg R, Mukamal DA and Segall 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; September 2011); 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; 1989-90); 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, No. 244205, Washington, DC; April 2014).
12. Greineder D. "Lowered Redidivism Rates Are Artifacts of a Changed Parole Policy" (Lifers' Group Inc., Norfolk, MA; October 2016); and Greineder D. "Parole and Recidivism: Progress or Failure of Leadership?" (Lifers' Group Inc., Norfolk, MA; October 2017).

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To partner with families and other stakeholders to create solutions for sentencing reform, promote meaningful parole opportunities for all lifers, and assist lifers and long-termers to live positive lives both inside and outside of prison

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Improve rehabilitation, self-respect, and the quality of life for all men and women in Massachusetts prisons

Advocate

Coordinate with any organization striving for similar goals in order to provide an effective use of penal and rehabilitative resources

Inform

Operate under sound ethical and democratic principles and share our knowledge with our members and those on the outside on criminal justice and prison reform issues, such as reducing recidivism, improving public safety, and building peaceful and productive relationships with family members, fellow prisoners, supporters, and the community

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