

AN ANALYSIS OF PAROLE DECISIONS FOR LIFERS  
BY AGE AT TIME OF HEARING

PREPARED FOR  
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### 1) Introduction

A total of 897 decisions by the Massachusetts Parole Board between January 1, 2006 and January 1, 2016 for men and women serving second degree life sentences were analyzed based upon the ages of the lifers when they went before the Parole Board for their public hearings. The data was provided by the Parole Board pursuant to a public records request. Those serving second degree life sentences must serve fifteen years before appearing before the Parole Board at what is termed an Initial hearing. If denied, any subsequent appearances before the Parole Board are termed Review hearings.

The data was broken down for Initial hearings (254) and Review hearings (643). The total number of lifers approved for paroles was 252 or 28% ( 86 at Initial hearings and 166 at Review hearings). The number of lifers denied at their Initial hearings was 168 or 66%. Those who had been denied at their Initial hearings were then included in later Review hearings, if they had served the lengths of the Setbacks required by the Parole Board attendant to the denials. A Setback is the length of time a lifer must serve after a denial of parole until he/she is able to reappear before the Parole Board. The maximum length of a Setback is five years, but can vary from one to five years. Those who were denied at subsequent Review hearings and had served the length of their Setbacks would also be included in the total of the Review hearings. Thus, the data were not for 897 separate lifers. The critical point for this analysis is the age at the time of the hearing, not the number of times an individual lifer appeared before the Parole Board.

The data was broken down into six distinct age groups, i.e., 33-40, 40-45, 45-50, 50-55, 55-60, and age 60 and up. The oldest lifers (2) to appear before the Parole Board for an Initial hearing were age 73; both were denied paroles. The oldest lifers to appear for a Review hearing were two lifers aged 76 and one aged 81. All three were denied paroles.

### 2) Hypothesis

It has been demonstrated that those who are incarcerated generally age out of committing crimes, particularly after age 50. In addition, those over age 50 who have been released are least likely to be returned to prison after being convicted of a new crime.<sup>1</sup> The hypothesis for this analysis is that the Parole Board would approve for paroles those who were age 50 or older at the time of their hearings at a higher rate than those who were under age 50 at the time of their parole hearings. It is expected that this hypothesis would hold true particularly for Review hearings as those lifers would have served at least twenty years and been exposed to whatever programming the Department of Correction (DOC) had to offer to

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meet their individual areas of need, e.g., drug or alcohol abuse, aggression, violence, mental health. Assuming the Parole Board values DOC programming as being beneficial to rehabilitating lifers, it would seem logical that the older a lifer is, the better parole risk he/she would be. While each case must be decided on its own merits, generally one would expect, given the data indicating the aging out of criminal behavior for older lifers and the presumed benefits of DOC programming, that the hypothesis of this analysis would be proven true.

### 3) Results

#### a) Initial Hearings

Lifers age 33-40 at Initial hearings were approved at a rate of 46% (51 of 111). Lifers age 60 and over, by contrast, were approved at a rate of 16% (3 of 19). Lifers under age 50 were approved at a rate of 37% (74 of 201), while those age 50 and over were approved at a rate of 23% (12 of 53). This was a 38% decrease from the approval rate for those aged under 50.

#### b) Review Hearings

Lifers age 33-40 were approved at Review hearings at a rate of 48% (29 of 61); lifers age 60 and over were approved at a rate of 23% (31 of 133). The approval rate at Review hearings for all lifers age 33 to 50 was 32% (92 of 290); lifers age 50 and older were approved at a rate of 21% (74 of 353) - a 34% decrease from the approval rate for those under age 50.

Table 1 below presents the data for both types of hearings broken down by the age groupings.

TABLE 1

	<u>33-40</u>	<u>40-45</u>	<u>45-50</u>	<u>50-55</u>	<u>55-60</u>	<u>60+</u>	<u>Total</u>
Initial - App.	51	15	8	5	4	3	86
Initial - Den	60	34	33	16	9	16	168
Total	111	49	41	21	13	19	254
% Approved	46%	31%	20%	24%	31%	16%	
Review - App.	29	32	31	25	18	31	166
Review - Den	32	67	99	96	81	102	477
Total	61	99	130	121	99	133	643
% Approved	48%	32%	24%	21%	18%	23%	

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### c. Approval Rates for Both Types of Hearings Combined

Overall, lifers aged 33-40 were approved at a rate of 47%, nearly 1 in every 2, (80 of 172). Lifers aged 60 and over were approved at a rate of 22%, slightly over 1 in every 5, (34 of 152). Lifers aged 50 and under were approved at an overall rate of 34% (166 of 491). Lifers aged 50 and over were approved at a rate of 21% (86 of 406), a decrease of 38% from the approval rate of lifers under age 50.

Table 2 below presents the combined data for both types of hearings.

TABLE 2

	<u>33-40</u>	<u>40-45</u>	<u>45-50</u>	<u>50-55</u>	<u>55-60</u>	<u>60+</u>	<u>Total</u>
Approved	80	47	39	30	22	34	252
Denied	92	101	132	112	90	118	645
Totals	172	148	171	142	112	152	897
% Approved	47%	32%	23%	21%	20%	22%	28%

	<u># Approved</u>	<u># Denied</u>	<u>Total</u>	<u>% App.</u>
Age 50 & Under	166	325	491	34%
Age Over 50	86	320	406	21%

#### 4) Discussion

The data do not support the hypothesis of this analysis, i.e., that lifers age 50 and older would be paroled at a higher rate than lifers under age 50. In fact, the data demonstrates that for lifers, it is far better to be under age 50, particularly under age 40, than to be age 50 or older. There was nearly a 1 in 2 chance to be paroled if under age 40. That ratio decreased to 1 in 3 for lifers age 40-45, then to 1 in 4 for those age 45-50. Lifers aged 50 and over had a 1 in 5 chance to be paroled. These ratios are in clear contrast to the data regarding prisoners aging out of crime and prisoners released after age 50 having the lowest rate of returning to prison for committing new crimes.

The Parole Board is mandated by law to consider two factors when deciding whether to parole a lifer. First is to assess whether or not the lifer can be expected to commit a new crime if he/she is paroled. Second is whether or not it would be in the best interests of the welfare of society to release a lifer on parole. (M.G.L. c. 127, §130) The data from 2006 to 2016 clearly show that the Parole Board has been out-of-step with developments in the criminal justice field.

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As has been demonstrated in this report, recent studies have shown that prisoners, including lifers, generally age out of crime by age 50 and have the lowest recidivism rates for new crimes. By the legislative criteria imposed upon the Parole Board for granting paroles to lifers, those age 50 and over should be considered the best risks to be paroled because they can be expected to have aged out criminal activities and, therefore, be least likely to commit new crimes if released under supervision. In the best interests of society, therefore, the Parole Board needs to give lifers age 50 and older an equal opportunity to be paroled as the Parole Board has given those lifers under age 50.

The disparity between the approval rates for paroles for those under age 50 versus those over 50 is significant and shows a bias by the Parole Board against older lifers. In addition to being nonsensical, the lower parole rate for older lifers has resulted in clear age discrimination. If the same differences in approving paroles were found in favor of one race over another, a hue and cry would have been raised, and rightly so. Demands for the Parole Board to justify such disparate treatment would have rung out loud and clear. The same should occur regarding the Parole Board's discrimination by age. The actions by the Parole Board regarding older lifers being approved for paroles at a significantly lower rate than lifers under age 50 is neither fair nor just, if not downright illegal. Those concerned with a fair application of the criminal justice system and protecting public safety should confront the Parole Board on this issue and demand that the Parole Board correct the obvious bias the data in this report have shown against lifers age 50 and older who are seeking to be paroled.

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<sup>1</sup> "At America's Expense: The Mass Incarceration of the Elderly". New York, NY: ACLU - June 2012 as cited in Greineder, Dirk. *Massachusetts Incarceration of the Elderly*. Lifers' Group. April 2016. accessible at [www.realcostofprisons.org/writing](http://www.realcostofprisons.org/writing). See also: "The Impact of an Aging Inmate Population on the Federal Bureau of Prisons". Report by the Office of the Inspector General - U.S. Department of Justice. February 2016. Evaluation and Inspections Division 15-05, p. 38-41 and sources cited therein. This report can be accessed at [www.justice.gov/oig](http://www.justice.gov/oig).