

PAROLE DECISIONS FOR LIFERS FOR 2011/2012

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MARCH 2013

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EXECUTIVE SUMMARY

The Parole Board, in 2012, published 125 Records of Decision for parole hearings for lifers held in 2011 and 2012. The following are highlights from this report on those 125 Records of Decision:

- * 23 lifers were approved for paroles at an approval rate of 18.4%, 55% lower than the average for the past five years.
- * 5 lifers were approved after Initial hearings; 18 were approved after Review hearings.
- * The approval rate (15.6%) for Initial hearings was nearly half of the lowest approval rate in the last five years - 31.9% in 2007.
- * The approval rate for Review hearings was 19.3%.
- * 17 of those approved after Review hearings were lifers who had been returned to prison after having had a prior life parole revoked.
- * Of 39 lifers who had Review hearings after having had a prior life parole revoked: 17 were returned for substance abuse, 7 for associating with known felons, 3 for domestic issues, 4 for absconding, 2 each for poor parole performance, lying to a parole officer, and purchasing weapons, and 1 each for DUI and stalking.
- * Only 1 of 54 lifers who had a Review hearing, but had not been paroled before on a life sentence, was approved for a parole.
- * 71 of 102 lifers denied paroles for 2011/2012 received 5 year setbacks, 11 received 4 year setbacks, 12 received 3 year setbacks, 7 received 2 year setbacks, and 1 received a one year setback.
- * 94% (117) of the decisions published in 2011/2012 were by unanimous votes; five were votes of 6-1; one was 5-2; two were 4-3.
- * Of the 23 approved for paroles, 4 were paroled to home, 13 were required to spend from six to twenty-four months of continued incarceration in lower security, 2 were paroled to immigration to be deported, 1 was paroled to a "From & After" sentence, and 3 were paroled to Long Term Residential Programs - one of whom died while still incarcerated waiting to be sent to the long term facility.
- * The average length of delay between a parole hearing and the Record of Decision being signed was 261 days; the longest was 452 days and the shortest was 6 days. The average number of days for the prior Parole Board in 2010 was 58 days.

PAROLE DECISIONS FOR LIFERS - 2011/2012

A. INTRODUCTION

This report, the sixth by the Norfolk Lifers Group analyzing parole decisions for lifers, addresses Records of Decision published for hearings held in 2011 and 2012. Previous reports covered parole decisions for lifers from 2003 through 2010. For information on any of the previous reports contact: Norfolk Lifers Group, MCI-Norfolk, P.O. Box 43, Norfolk, MA 02056.

While prisoners serving non-life sentences may be eligible for parole, only those serving life for second degree murder, or any other crime which carries a life sentence, are included in this report. Parole hearings for lifers are either Initial hearings for those who have served the mandatory fifteen years, or Review hearings for lifers who were denied a parole at a previous hearing or who were returned due to a violation of a previous life parole. Every lifer who is denied a parole is given a prescribed number of years, a setback, which have to be served before the lifer can reappear before the Parole Board. The maximum setback that can be handed down is five years. Alternatively, the Parole Board can give setbacks of one, two, three, or four years. If the Parole Board vote is evenly divided, the parole is denied and a one year setback is automatically imposed. There were no tie votes in 2011/2012.

In 2010, massive changes occurred in the membership of the Parole Board. Five members resigned in the wake of the killing of a Woburn police officer in December 2010 by a paroled lifer. Josh Wall was appointed as Chairman and four others filled the remaining vacancies. Parole decisions were, as a result, delayed during the reorganization of the Parole Board, including training the new members.

As of February 1, 2013, 76% (73 of 96) of the parole decisions for lifers held from January through August 2011 had yet to be rendered. Of the 125 Records of Decision for 2011/2012, the earliest hearing date was January 4, 2011 (date of decision - August 25, 2011) and the latest hearing date was November 6, 2012 (date of decision - December 3, 2012).

In 2012, Governor Deval Patrick's Crime Bill was enacted. One section of that legislation impacted parole decisions for lifers. Prior to the implementation of the Crime Bill, a simple majority, i.e., four of the seven members, was needed to approve a parole for a lifer. Presently, that has been raised to a two-thirds majority, i.e., five members of the seven member board. For decisions rendered in 2011 - 2012, this change had a minimal impact since 94% of those decisions were unanimous, as compared to 91% in 2010. The remaining eight decisions were decided as follows: five with votes of 6-1, one with a vote of 5-2, and two with votes of 4-3. Thus, under the new two-thirds majority requirement, only two of the 125 lifer decisions in 2011/2012 would have had their paroles denied had the Crime Bill been in effect when those decisions had been approved.

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Chairman Wall introduced other changes as well. Now, members who vote in the minority are identified by name in the Record of Decision as well as their reasons for not agreeing with the majority. In addition, beginning in 2012, lifer parole decisions have been published online at: www.mass.gov/parole.

The Records of Decision for lifers in 2012 were tailored specifically to each individual lifer and divided into four distinct parts: the Parole Board's version of the Statement of the Case, Institutional Conduct, Parole Hearing and/or Parole History, and the Decision. The four parts were not equal in length. The Statement of the Case is normally the longest and typically the dominant section of the entire Record of Decision. By contrast, the Decision part is usually the shortest, providing scant details and, importantly, little guidance concerning specific areas requiring improvement for those prisoners being denied parole. The Institutional Conduct section typically emphasizes negative disciplinary records at the expense, particularly for those who were denied parole, of assessing a prisoner's program and/or work participation and achievements. The present Parole Board appears to look for reasons to deny lifers as opposed to affording lifers the opportunity to rejoin society under supervision.

Massachusetts General Law c. 127, §130 remains clear that no prisoner should be paroled solely due to good conduct or program involvement while incarcerated. Rather, a parole is to be granted only when the Parole Board is convinced that there is a reasonable probability that if paroled, he/she will not violate the law and that the prisoner's release would be compatible with the welfare of society. In addition to those legislated standards, however, the current Parole Board now considers whether a prisoner has been adequately punished for his/her crime. The introduction of this punishment factor is particularly problematic because it is so subjective. The Parole Board offers no standards that members should use to determine whether or not a particular prisoner has been sufficiently punished. The Parole Board also now considers whether or not a prisoner's length of incarceration - once again a version of sufficient punishment - would deter others from committing a similar crime. These changes in emphasis appear to be a result of the make-up of the current Parole Board. The chairman is a former long-time Suffolk County Assistant District Attorney and several other members come from prosecutorial backgrounds.

B. RESULTS

1) Approval / Denial Rates

Of the 125 Records of Decision included in this study, 23 paroles were granted, an approval rate of 18.4%; 102 or 81.6% of the decisions were denied. A comparison of approval and denial rates for 2007 - 2011/2012 is contained in Table 1 below:

TABLE 1

| <u>Year</u> | <u>Approval %</u> | <u>Denial %</u> |
|-------------|-------------------|-----------------|
| 2011/2012 | 18.4 | 81.6 |
| 2010 | 34.1 | 65.9 |
| 2009 | 38.9 | 61.1 |
| 2008 | 31.3 | 68.7 |
| 2007 | 28.5 | 71.5 |

The approval rate for paroles for lifers in 2011/2012 was the lowest in the years presented in Table 1 above and is a mere 55% of the average approval rate (33.2%) for the preceding four years. This reduction in paroles for lifers has a significant impact on incarceration costs. Lifers are normally housed in medium security or higher. The average cost of incarcerating a prisoner in medium security is approximately \$45,000 per year. Denying paroles to lifers who may have been approved in previous years also serves to increase the number of elderly prisoners who generally cost more to incarcerate than younger prisoners, particularly due to increased health costs. This is not to say that lifers who are not ready to rejoin society successfully should be paroled. But, one prior mistake by one offender should not close out opportunities for lifers who are able to demonstrate that they are acceptable risks not to offend.

2) Initial / Review Hearings

In 2011/2012, 32 lifers appeared before the Parole Board for Initial hearings, which represented 26% of the total number of hearings for which decisions were rendered in 2011/2012, a decrease of 36% from 2010. For lifers having had Initial hearings, only five (16%) were approved; 27 (84%) were denied. 93 lifers appeared for Review hearings in 2011/2012. 18 (19%) were approved and 75 (81%) were denied. Comparisons of percentage rates for Initial and Review hearings from 2007 are presented in Table 2 below:

TABLE 2

| <u>Year</u> | <u>Initial Hearings</u> | | <u>Review Hearings</u> | |
|-------------|-------------------------|-----------------|------------------------|-----------------|
| | <u>Approval %</u> | <u>Denial %</u> | <u>Approval %</u> | <u>Denial %</u> |
| 2011/2012 | 15.6 | 84.4 | 19.3 | 80.7 |
| 2010 | 50.0 | 50.0 | 25.3 | 74.7 |
| 2009 | 30.0 | 70.0 | 43.3 | 56.7 |
| 2008 | 35.1 | 64.9 | 29.3 | 70.7 |
| 2007 | 31.9 | 68.1 | 26.7 | 73.3 |

The approval percentage rate for Initial hearings in 2011/2012 decreased precipitously to a mere 43% of the average approval rate for the prior four years, i.e., 15.6% as compared to 36.7%. The decrease in the approval rate for Review hearings, on the surface, seems not as severe - 62% of the average for the prior four years, i.e., 19.3% as compared to 31.2%. Of the 18 lifers, however, who were approved for a parole, after a Review hearing in 2011/2012, no less than 17 (94%) had a Review hearing after having been released on a prior life parole but then having had those paroles revoked. Thus, only 1 lifer was approved for a parole who had a Review hearing in 2011/2012 without having been granted a prior parole. That yielded a 2% approval rate, based on the total of 54 lifers in 2011/ 2012 who had Review hearings, but had not previously been granted a parole which had been revoked. In other words, if a lifer at a Review hearing in 2011/2012 had not been out on a life parole previously, there was a 98% chance that lifer would be denied. The one lifer who was approved for a parole after a Review hearing in 2011/2012 without having had a prior life parole revoked had been incarcerated as an habitual offender due to a series of unarmed bank robberies which had not involved a loss of life. Giving lifers a second chance is certainly commendable, however, essentially eliminating other lifers who had Review hearings from having a realistic chance for a parole, regardless of what they had achieved in terms of rehabilitation, is unacceptable and insupportable. Where is the motivation for a lifer to turn his/her life around in prison if those efforts are essentially ignored by the Parole Board?

3. Parole Revocations

In 2011/2012, a total of 39 lifers (31%) had Review hearings after having had a prior life parole revoked. Of those 39, 17 (44%) were approved; 22 (56%) were denied. Both of 4-3

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split votes in 2011/2012 were for approving paroles for lifers who had had a prior life parole. Under the present law, neither would have been granted a parole, even though each had received a majority of the votes. In 2010, of those who had Review hearings after having a prior life parole revoked, 35% (9 of 26) were approved.

It is clear that the present Parole Board is significantly skewed in favor of lifers who had prior life paroles revoked, as 74% of all those approved for paroles in 2011/2012 (17 of 23) were those who had prior life paroles revoked. This imbalance again raises the question of how fair the decisions by the present Parole Board are for those having Review hearings without prior releases and subsequent parole revocations. Obviously, those having Review hearings who had not been returned to prison after a parole revocation might just as well have waived the hearings and accepted the inevitable denial. Table 3 below presents the Approval and Denial data with the results separated for Review hearings for those who had prior life paroles revoked and those who had not.

TABLE 3

| <u>Hearing Type</u> | <u>Approved</u> | | <u>Denied</u> | | <u>Total #</u> |
|-------------------------|-----------------|----------|---------------|----------|----------------|
| | <u>#</u> | <u>%</u> | <u>#</u> | <u>%</u> | |
| Initial | 5 | 22 | 27 | 23 | 32 |
| Review | | | | | |
| No Prior Parole Revoked | 1 | 4 | 53 | 52 | 54 |
| Prior Parole Revoked | <u>17</u> | 74 | <u>22</u> | 22 | <u>39</u> |
| Totals | 23 | | 102 | | 125 |

In contrast, for all Review hearings in 2010, the percentage of approvals for those who had had paroles revoked was 21% (9 of 42); while the approval rate for those who had not had prior parole revoked was 26% (11 of 42). In 2009, for all Review hearings, the percentage of approvals for those lifers who had had paroles revoked was 34% (12 of 35); while the approval rate for those who had not had prior parole revoked was 40% (14 of 35).

4) Reasons For Returns From Prior Life Paroles

In 2011/2012, 39 Review hearings were held for lifers who had been returned to prison due to having been violated while on a life parole. The reasons for those returns are presented in Table 4, along with similar data for 2010 and 2009.

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TABLE 4

| <u>Reasons</u> | <u>2012 (N=39)</u> | | | | <u>2010 (N=26)</u> | | | | <u>2009 (N=19)</u> | | | |
|--------------------------------|--------------------|----------|----------|----------|--------------------|----------|----------|----------|--------------------|----------|----------|----------|
| | <u>#</u> | <u>%</u> | <u>#</u> | <u>%</u> | <u>#</u> | <u>%</u> | <u>#</u> | <u>%</u> | <u>#</u> | <u>%</u> | <u>#</u> | <u>%</u> |
| Substance Abuse | 17 | 44% | 9 | 53% | 14 | 54% | 4 | 29% | 10 | 53% | 8 | 80% |
| Assault | 0 | --- | 0 | --- | 3 | 11% | 2 | 67% | 0 | --- | 0 | --- |
| Associations | 7 | 18% | 4 | 57% | 3 | 11% | 1 | 33% | 0 | --- | 0 | --- |
| Domestic Issues | 3 | 7% | 0 | --- | 2 | 8% | 0 | --- | 5 | 27% | 2 | 40% |
| DUI | 1 | 3% | 0 | --- | 1 | 4% | 0 | --- | 0 | --- | 0 | --- |
| Larceny | 0 | --- | 0 | --- | 1 | 4% | 0 | --- | 1 | 5% | 1 | 100% |
| Requested To Return | 0 | --- | 0 | --- | 1 | 4% | 0 | --- | 0 | --- | 0 | --- |
| Failure To Go To Mental Health | 0 | --- | 0 | --- | 1 | 4% | 0 | --- | 0 | --- | 0 | --- |
| Obtaining A Hunting License | 0 | --- | 0 | --- | 0 | --- | 0 | --- | 1 | 5% | 0 | --- |
| Absconding | 4 | 10% | 2 | 50% | 0 | --- | 0 | --- | 1 | 5% | 0 | --- |
| Motor Veh. Viol. | 0 | --- | 0 | --- | 0 | --- | 0 | --- | 1 | 5% | 1 | 100% |
| Poor Parole Performance | 2 | 5% | 1 | 50% | 0 | --- | 0 | --- | 0 | --- | 0 | --- |
| Purchase of Weapons | 2 | 5% | 0 | --- | 0 | --- | 0 | --- | 0 | --- | 0 | --- |
| Stalking | 1 | 3% | 0 | --- | 0 | --- | 0 | --- | 0 | --- | 0 | --- |
| Lying To Parole Officer | 2 | 5% | 1 | 50% | 0 | --- | 0 | --- | 0 | --- | 0 | --- |
| Totals | 39 | | 17 | | 26 | | 7 | | 19 | | 12 | |

Of the 39 returnees who had Review hearings in 2011/2012, 62% (24) had been violated for either substance abuse (44%) or associating with known felons (18%). This combined percentage was similar to the 65% for 2010 and the 53% for 2009. Of those 24 returnees, 13

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returnees who had Review hearings in 2011/2012, 4 had been returned for absconding, 3 for domestic issues, 2 each for poor parole performance, purchase of weapons, and lying to parole officers, and 1 for stalking. Of those 15 returnees, 4 (27%) were re-paroled: 2 of those who had absconded, 1 of the 2 returned for poor performance, and 1 of the 2 returned for lying to a parole officer.

It is notable that no life parolees who had received Records of Decision after Review hearings held during 2009 through 2012 after having been returned to prison due to parole violations had been returned for committing a violent offense. The question then which needs to be answered by the Parole Board is: What was the necessity to return those lifers to medium or maximum security prisons at a cost of at least \$45,000 per year of reincarceration? The total annual cost of reincarcerating those 84 returnees was \$3,780,000!! There is no question that some sanctions are needed to address misbehavior while on parole. But, hauling prisoners back to secure prisons for anything short of a serious criminal offense is fiscally wasteful and counterproductive. Once that step has been taken, the parolee's family relationships and his/her employment may be irreparably severed, further complicating a successful reentry if the parolee is re-paroled. Graduated sanctions such as GPS monitors or periods of week night or weekend detention in halfway house type facilities offering appropriate programs to help curb unacceptable behavior, or other community based programs would be more appropriate and which have been used successfully in other states. Reincarceration should be the last, not the first, step.

5) Approval Factors

In previous studies of parole decisions for lifers, sixteen Approval factors were compared. These factors were taken from the Records of Decision and frequency distributions were tabulated, along with percentages of each factor being cited as a reason for approving a parole. Often, multiple factors were listed for each case. In 2011/2012, however, only the following ten Approval factors were noted at a frequency rate of 10% or greater:

| | |
|--|----------------|
| Reasonably Probable Not To Reoffend | 78% (18 of 23) |
| Strong Community Support | 57% (13 of 23) |
| Release Compatible With Welfare Of Society | 52% (12 of 23) |
| Lived Peaceful And Productive Life While On Parole | 39% (9 of 23) |
| Show Solid And Meaningful Rehabilitation | 39% (9 of 23) |

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| | |
|---|----------------|
| Very Program Involved | 39% (9 of 23) |
| Sufficient Period Of Incarceration | 39% (9 of 23) |
| Goals Of Punishment And Deterrence Attained | 17% (4 of 23) |
| Solid Work History | 17% (4 of 23) |
| Minimal Disciplinary Report History | 17% (4 of 23) |

One question begging to be answered is: If nine parolees were living "peaceful and productive lives while on parole, why then were they returned to prison and not have had a lesser degree of sanctions applied? Table 5 below presents a comparison of Approval factors with at least a 10% frequency rate for the years 2007 through 2010 that are also mentioned in 2011/2012.

TABLE 5

| <u>Factor</u> | <u>2011/ 2012</u> | <u>2010</u> | <u>2009</u> | <u>2008</u> | <u>2007</u> |
|--|-----------------------|-------------|-------------|-------------|-------------|
| Very Program Involved | 39.1 | 69.0 | 45.7 | 71.9 | 76.8 |
| Accepts Responsibility | 0 | 42.9 | 54.3 | 31.3 | 46.1 |
| Expresses Remorse | 0 | 50.0 | 51.4 | 21.9 | 46.1 |
| Strong Community Support | 56.5 | 23.8 | 45.7 | 53.1 | 12.8 |
| Family Support | 0 | 30.9 | 57.1 | 46.9 | 25.6 |
| Understands Causative Factors of Criminal Behavior | 0 | 33.3 | 20.0 | 6.2 | 17.9 |
| Minimal Disciplinary History | 17.4 | 52.4 | 14.3 | 28.1 | 25.6 |
| Solid Parole Plan | 0 | 28.6 | 57.1 | 21.9 | 23.1 |
| To Immigration | 8.7 | 11.9 | 8.6 | 6.3 | 12.8 |

Reviewing these results suggests that accepting responsibility, expressing remorse, having family support, a solid parole plan, and understanding the causative factors for criminal behavior are either unimportant for the present Parole Board or, more probably, are expected to be an integral part of each parolee's presentation and, therefore, need not be given any special recognition. One can only presume that the absence of any or all of these factors would result in the denial of a parole.

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6) Denial Factors

Eleven factors for denying paroles were cited in at least 10% of the Records of Decision for cases in which paroles were denied in 2011/2012. Table 6 below lists the frequency percentages for those eleven factors as well as comparisons with the years 2007 through 2012.

TABLE 6

| <u>Factor</u> | <u>2011/ 2012</u> | <u>2010</u> | <u>2009</u> | <u>2008</u> | <u>2007</u> |
|---|-----------------------|-------------|-------------|-------------|-------------|
| Release Incompatible With Welfare Of Society | 76.5 | 60.5 | 7.3 | 44.3 | 23.5 |
| Poses A Danger To The Community | 71.6 | 13.6 | 0 | 28.6 | 49.0 |
| Needs Longer Period Of Adjustment | 37.3 | 37.0 | 27.3 | 14.3 | 8.2 |
| Lacks Insight Into Causative Factors Of Criminal Behavior | 27.5 | 28.4 | 34.5 | 47.1 | 43.9 |
| Untruthful | 26.5 | 11.1 | 25.4 | 11.4 | 15.3 |
| Minimizes Criminal Behavior | 21.6 | 4.9 | 10.9 | 10.0 | 5.1 |
| Serious Disciplinary History | 20.6 | 24.7 | 25.4 | 28.6 | 17.3 |
| Unresolved Anger Issues | 15.7 | 7.4 | 16.4 | 24.3 | 5.1 |
| Does Not Take Responsibility For Actions | 14.7 | 19.8 | 58.2 | 27.1 | 23.5 |
| Lack Of Program Involvement | 11.8 | 23.4 | 40.0 | 52.9 | 32.6 |
| Substance Abuse Issues | 10.8 | 17.3 | 21.8 | 17.1 | 17.3 |

For 2011/2012, the two most frequently cited denial factors merely parrot the legislative requirements which are to be met in order to be granted a parole, i.e., that the prisoner be expected not to commit a new crime and that the release would not be incompatible with the welfare of society. Implicit in the denial of every parole is that the Parole Board followed the law and judged that the lifer's release would be incompatible with the welfare of society and/or that the Parole Board was convinced, by whatever reasoning, that the lifer was apt to

commit new crimes if released. Having the Parole Board merely copy the legal requirements, particularly at the rate this Parole Board cites those factors, renders their reasoning for denying paroles essentially useless. The last four factors are the ones which most offer a denied lifer some insight into what he/she should address before their next parole hearing. But, the frequency percentages for those four factors range from a low of 10.8% to only 15.7%, providing scant assistance for 84% of those denied parole in 2011/2012.

Nor do the frequency percentages of the denial factors for 2011/2012 provide much data for anyone seeking to assess how effectively the Parole Board is making parole decisions for lifers. It is telling, as shown in Table 6, that the Parole Board cites issues with Lack of Program Involvement and Substance Abuse at the lowest frequency rate for those factors cited. If the Parole Board were concerned at all with assisting lifers in the parole process, the members need to be more specific about why paroles are denied and where and how denied lifers need to change to become potentially successful candidates for parole. It is just too easy to cite the factors of incompatibility and posing a danger to the candidate. Relying on those two factors may be simple, but it provides little direction to prospective parolees.

7) Setbacks

When a parole is denied to a lifer, the Parole Board also assigns a specific number of years, known as a setback, before the lifer may appear again before the Parole Board. The setbacks may range from one to five years. Past Parole Boards had levied setbacks in a seemingly random fashion. That is, no reasons were given as to what may have motivated the choice of a length of the setback, particularly when a setback of less than five years was given. Nor, did past Parole Boards note any standards that they utilized for determining whether a lifer would receive a five year setback or something less. The 2011/2012 Parole Board, on the other hand, seemed to use setbacks as an incentive for a minority of denied lifers to continue positive adjustments. Thus, if the 2011/2012 Parole Board felt that a lifer was progressing in addressing his/her issues, then the Parole Board might offer a setback of less than five years as an incentive to maintain a positive path. That being said, however, the 2011/2012 Parole Board was not generous in giving setbacks less than five years in length. Five year setbacks comprised nearly 70% of the 102 denials in 2011/2012, the second highest percentage of setbacks in the past five years. Table 7 below lists the lengths and percentages of setbacks for 2011/2012 and comparisons with 2007 through 2010.

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TABLE 7

| <u>Setbacks In Years</u> | <u>2011/ 2012</u> | | <u>2010</u> | | <u>2009</u> | | <u>2008</u> | | <u>2007</u> | |
|------------------------------|-----------------------|----------|-------------|----------|-------------|----------|-------------|----------|-------------|----------|
| | <u>#</u> | <u>%</u> | <u>#</u> | <u>%</u> | <u>#</u> | <u>%</u> | <u>#</u> | <u>%</u> | <u>#</u> | <u>%</u> |
| 1 | 1 | 1 | 0 | 0 | 1 | 2 | 4 | 6 | 6 | 6 |
| 2 | 7 | 7 | 14 | 17 | 3 | 5 | 2 | 3 | 6 | 6 |
| 3 | 12 | 12 | 19 | 23 | 11 | 20 | 5 | 7 | 14 | 14 |
| 4 | 11 | 11 | 2 | 3 | 2 | 4 | 0 | 0 | 6 | 6 |
| 5 | <u>71</u> | 46 | <u>46</u> | 51 | <u>38</u> | 69 | <u>59</u> | 84 | <u>66</u> | 68 |
| Totals | 102 | | 81 | | 55 | | 70 | | 98 | |

8) Destinations of Approved Lifer Parolees

Of the twenty-three lifers who were approved for paroles in 2011/2012, four were released to go home. Thirteen were required to remain incarcerated, but at lower security, in an effort to step them down to provide time to acclimate to rejoining society. Three others were paroled to Long Term Residential Programs (LTRP), and one to a "From & After" sentence, and the remaining two were paroled to immigration to be deported. The destinations for all approved parolees in 2011/2012 are listed below:

| | |
|---|----------|
| Release to Home | 4 |
| Twelve More Months in Lower Security | 4 |
| To A Long Term Residential Program | 3 |
| Eighteen More Months In Lower Security | 3 |
| Six More Months In Lower Security | 3 |
| To Immigration For Deportation | 2 |
| Nine More Months In Lower Security | 1 |
| Twenty-Four More Months In Lower Security | 1 |
| To A "From & After" Sentence | <u>1</u> |
| Total | 23 |

The thirteen approved parolees who were required to remain incarcerated at lower security, then had to wait for the Department of Correction to transfer them to minimum security where bed space is limited. Thus, an approved lifer often remained in medium for up to six months

after he/she had been approved for a parole before he/she could begin to serve the length of time in lower security mandated by the Parole Board as a condition before being released back into society. The required time in lower security includes time both in minimum security and then in pre-release, often entailing another wait for a transfer as bed space in pre-release facilities is even more scarce than in minimum security. The Parole Board cannot be faulted for stepping parolees down through lower security as a precursor to rejoining society. But, the Parole Board, if it is going to continue in this vein, should ensure that the Department of Correction transfers approved parolees to lower security in a timely manner.

The four who were released to home all had prior paroles revoked, as had the ten ordered to spend more time in lower security and the three destined for LTRPs. One of the three approved for parole and waiting to go to a LTRP died before he was transferred. He had been terminally ill which was the primary reason he had been paroled.

9) Lifers Not Convicted of Second Degree Murder

In the 125 hearings for lifers for which Records of Decision were published in 2011/2012, nine were for prisoners who had been sentenced to life with the possibility of a parole for crimes other than second degree murder. A life sentence with the possibility of parole can be imposed as the maximum penalty for many varied crimes in Massachusetts. Only one of the nine not convicted of second degree murder, but serving a life sentence, was approved for a parole. Table 8 below lists the offenses and the approval or denial results.

TABLE 8

| <u>Offense</u> | <u>#</u> | <u># Approved</u> | <u># Denied</u> |
|-----------------|----------|-------------------|-----------------|
| Rape Of A Child | 5 | 0 | 5 |
| Aggravated Rape | 2 | 0 | 2 |
| Armed Robbery | 1 | 0 | 1 |
| Unarmed Robbery | <u>1</u> | <u>1</u> | <u>0</u> |
| Totals | 9 | 1 | 8 |

Eight of these lifers had Review hearings. One of those convicted of raping a child had an Initial hearing. All eight lifers who were denied paroles were given five year setbacks.

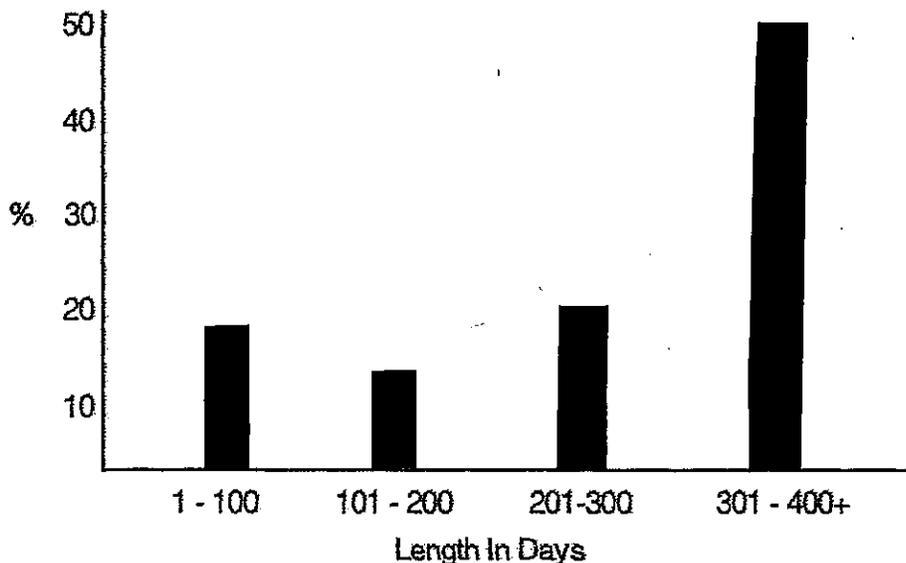
Parole Decisions For Lifers 2011/2012

10) Delays Between Hearing Dates And The Dates The Records Of Decision Were Signed

Beginning with parole hearings held on January 4, 2011, the longest delay between the hearing date and when the Record of Decision was signed was 452 days, in excess of one and a half years. The shortest length was six days. The average length of delay was 261 days or nearly nine months. In contrast, the average length of delay for the Parole Board in 2010, prior to Josh Wall's becoming chairman, was 58 days. Thus, the average length of delay under Josh Wall's chairmanship increased nearly fivefold. The frequency distribution for the lengths of delays in 2011/2012 is as follows:

| <u>Length In Days</u> | <u># Of Decisions</u> | <u>%</u> |
|-----------------------|-----------------------|----------|
| 1 - 100 | 21 | 17 |
| 101 - 200 | 17 | 13 |
| 201 - 300 | 25 | 20 |
| 300 - 400+ | <u>62</u> | 50 |
| Total | 125 | |

Twenty-eight lifers (22%) waited over one year for their decisions, while sixteen (13%) waited between 355 and 364 days. In addition, as of February 1, 2012, seventy-nine lifers were still waiting for Records of Decision for their hearings which had been held from January to October 2012. The graph below depicts the frequency distribution of the length of days for Records of Decision to be signed for 2011/2012:



C. EXCERPTS FROM 2011/2012 RECORDS OF DECISION

The following excerpts are quoted directly from Records of Decision for 2011/2012. The names of the lifers and victims have been redacted by the author of this report. The excerpts have been selected as examples of positive and negative feedback from Parole Board members to the presentations by lifers at individual hearings or to offer insights into the decision making parameters employed by the Parole Board members in 2011/2012. The result of each hearing, whether an Initial or Review hearing, the length of the setback in cases of denials, and whether the lifer had returned to prison after a parole revocation are indicated in brackets at the end of each excerpt.

#1: He was a difficult inmate to question at the hearing because he was evasive, argumentative, and deceptive. He presented at his hearing as dishonest, manipulative, controlling, argumentative, and narcissistic. He refuses to accept the seriousness of his failures on parole and blames others for his actions.

[This lifer was denied parole and given a five year setback after a Review hearing held because the lifer's prior life parole had been revoked.]

#2 ... this is his first incarceration of any kind. Further, the inmate enjoys unusually strong community support, both from family members and friends. Such support, in the Board's experience, is often a decisive factor in reducing recidivism. We note in particular that a number of the inmate's supporters spoke in very specific terms about the types of assistance they could provide, including help in finding housing and employment. Also, as noted already, the inmate has worked hard in prison to further both his rehabilitation and his education. He has also proved - especially in recent years - his ability to abide by the rules. Finally, a major consideration for the Board is the inmate's age at the time of the offense: seventeen years. It is the Board's hope that the inmate has acquired significant incremental maturity and restraint as he has matured into adulthood. Such qualities were amply displayed by the inmate at his hearing.

[This lifer was approved for a parole at an Initial hearing.]

#3 _____ took an assertive approach at his parole hearing. He described no faults or mistakes that he made. Tested positive but had taken Tylenol 3. The electronic monitoring device malfunctioned when it recorded multiple nights of curfew violations. Not at fault for missing anger management classes because his counselor said he did not need to attend.

[This lifer was denied parole and given a five year setback after a Review hearing held because the lifer's prior life parole had been revoked.]

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#4: The period of review will be shortened to three years in recognition of the progress _____ has made. _____ needs to continue his productive activity in prison and establish a longer track record of good conduct and rehabilitative programs to develop insight and address issues of anger, violence, criminal thinking, and substance abuse.

[This lifer was denied parole and given a three year setback at an Initial hearing.]

#5: He does not attend AA because he says "it goes against my grain; it does not help me; God is my strength.

[This lifer was denied a parole and given a five year setback at a Review hearing after a prior life parole had been revoked.]

#6: At his hearing, _____ stated that a denial with a five year setback "would be a slap in my face and my family's face." _____ is unrealistic about his prospects for parole and appears to be in active denial about his conduct as it relates to parole suitability.

[This lifer was denied parole and given a five year setback at a Review hearing.]

#7: Your answers are so vague; it is difficult to elicit information from you. You minimize your involvement in the murder, your level of responsibility is not coming across. You showed a lot of anger and violence and ...; you need to work harder to determine the cause of your anger and violence.

[The above were comments by unidentified Parole Board members during the hearing. This lifer was denied parole and given a five year setback at a Review hearing.]

#8: The Board noted _____'s limited ability to describe his institutional programming, particularly in the area of violence reduction.

[This lifer was denied parole and given a five year setback at an Initial hearing.]

#9: The inmate's false statements made at his parole hearing did not assist the Parole Board in understanding the facts of the crime but those false statements do assist the Board in evaluating the inmate's suitability for parole. By lying about his involvement in the murder ..., _____ made it clear that he is not remorseful or rehabilitated. The manipulation he used the night of the crime to cause a murder was on display at his parole hearing as he used lies in an attempt to manipulate the parole decision.

[This lifer was denied parole and given a five year setback at an Initial hearing.]

#10: _____, in his parole hearing, displayed a disconcerting habit to obscure his true motives and actions. He consistently minimized his criminal conduct and offered self-serving reasons for the conduct. These are some examples: (a) he started dealing drugs because he wanted to get himself and his girlfriend "back on track, back in school;" (b) he choose [sic] to rob a drug dealer because he did not want to harm a law-abiding citizen; (c) his girlfriend was primarily responsible for setting him up to do the robbery because she intentionally brought the victim to the neighborhood; (d) somebody else gave his [sic] the gun; (e) the co-defendants were "always asking about robbing another drug dealer but I always refused to do that;" (f) he "kindly asked" the victim to get out of the car; (g) on the juvenile firearm offense and assault, "I really didn't do nothing, I just held the gun for a friend;" and (h) he wanted to plead guilty to spare the victim's family but his lawyer convinced him to go to trial. All these answers are incomplete, misleading, or false. As one Board member told him at the hearing "You are more interested in rationalizing your behavior than identifying the issues that you need to address."

Given the inmate's persistence in avoiding candor, it is hard to credit his critical claims about the murder that "I didn't know the gun was loaded" and "the shooting was an accident."

[This lifer was denied a parole and given a five year setback at an Initial hearing.]

#11: After the passage of three decades, and seven parole denials, _____ finally reached a point where he decided to invest some effort in reforming his character and behavior. This is commendable. A few years of improved effort and conduct is insufficient to reduce _____'s risk of violence to the low level suitable for community supervision. If released at this time he would be likely to re-offend and his release is incompatible with the welfare of society. Parole is therefore denied. _____ should continue with a commitment to programs and eliminate all disciplinary incidents. Because of the amount of work remaining for _____, there is no reason to reduce the review period of five years.

[This lifer was denied a parole and given a five year setback at a Review hearing.]

#12: _____ is not a serious candidate for parole. He expresses no remorse for the crime and has made no effort at rehabilitation. His conduct in prison has been very poor. There is no possibility that he could, at this time, succeed on parole because he is currently incapable of productive or pro-social behavior; he would be likely to commit a crime if released on parole. Accordingly, parole is denied.

_____ presented as a mentally ill person. His statements at the parole hearing gave reason to think that he needs a mental health evaluation and treatment. He repeatedly demonstrated symptoms of paranoia and his thinking was disorganized. The Department of Correction has been notified of _____'s paranoid and disorganized presentation at his hearing.

[This lifer was denied a parole and given a five year setback at a Review hearing.]

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#13: He showed little insight into the specific triggers for either his anger or substance abuse.

[This lifer was denied a parole and given a four year setback at a Review hearing.]

#14: _____'s prison record is extraordinary. He has no disciplinary reports. _____ started program involvement early in his incarceration, and has continued with extensive programming. Counselors have consistently reported on his meaningful participation and leadership in rehabilitative group programs. [He is] considered among the most reliable, hard working, and rule abiding [inmates]. He described his approach that has led to his achievements in the prison environment. He stated that "I don't give birth to negative thoughts, I stay around positive people, and stay in touch with my support network." Several family members attended the hearing as supporters of parole; ... No one spoke in opposition to parole.

The _____ County District Attorney submitted a letter stating that because of the inmate's cooperation with the prosecution, the District Attorney did not oppose parole. The letter stated that the prosecution agreed at the time of sentencing not to oppose parole.

[This lifer was approved for a parole at an Initial hearing.]