

PAROLE DECISIONS FOR LIFERS - 2013

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HIGHLIGHTS

- 137 Records of Decision for lifers published in 2013 comprise the raw data for this report. (2)
- 21 of 137 lifers were approved for parole, an Approval Rate of 15.3%, the lowest since 2003. (3)
- The average Approval Rate for the Wall Parole Board (2011/2012 and 2013) was 53.6% lower than the average Approval Rate for 2009 and 2010. (3)
- The average Approval Rate for the Wall Parole Board for Initial Hearings was 58% lower than the average Approval Rate for Initial Hearings for 2009 and 2010. (3)
- The average Approval Rate for the Wall Parole Board for Review Hearings was 50.2% lower than the average Approval Rate for Review Hearings for 2009 and 2010. (5)
- In 2013, no lifer whose Review Hearing was his/her fourth hearing of any type, i.e., Initial and three Review Hearings, before any Parole Board was approved for a parole. (6)
- The average Approval Rate for the Wall Parole Board for Review Hearings for lifers who had not had a prior life parole revoked was 72% lower than the average Approval Rate for Review Hearings for lifers who had not had a prior life parole revoked for 2009 and 2010. (6)
- The average Approval Rate for the Wall Parole Board for Review Hearings for lifers who had had a prior life parole revoked was 24% higher than the average Approval Rate for 2009 and 2010 for lifers who had had a prior life parole revoked. (6)
- 52% of lifers who had life paroles revoked and who appeared before the Parole Board in 2013 had been returned for substance abuse violations. (8)
- In 2013, the frequency of the approval factor Active Program Participation nearly doubled from 2011/2012. (10)
- The number Setbacks less than five years in 2013 was 33%, an increase from 31% in 2011/2012. (14)
- The length of time between hearing dates and the dates the Records of Decision was signed in 2013 was 257 days, a slight decrease from 261 days in 2011/2012. (17)

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PAROLE DECISIONS FOR LIFERS- 2013

A. INTRODUCTION

This report is the seventh prepared by the Norfolk Lifers Group analyzing parole decisions for lifers. A total of 137 Records of Decision published by the Parole Board for 2013 comprise the raw data for this study. See: www.mass.gov/parole for the Records of Decisions. Previous reports on lifer parole decisions published by the Norfolk Lifers Group can be found at: www.realcostofprisons.org. Please address any comments or questions about this report, or any previous report, to: Norfolk Lifers Group, MCI-Norfolk, P.O. Box 43, Norfolk, MA 02056.

While prisoners not serving life sentences may be eligible for paroles, only those serving life for second degree murder, or any other crime carrying 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 to prison after violating one or more conditions of a previous life parole. Every lifer denied a parole is then given a prescribed number of years, a setback, which may be from one to five years. The lifer must serve the length of the setback before he/she will have another Review Hearing. If a vote of the Parole Board is evenly divided, the parole is denied and a one year setback would be imposed. There were no tie votes in 2013.

For a parole to be approved, a two-thirds majority of the Parole Board must vote in favor. This requirement was changed in 2012, raising the necessary approval vote from a simple majority to the present two-thirds majority. A full Parole Board is comprised of seven members. Thus, for a parole to be approved by the full Parole Board, five members must now vote in favor. This change did not affect any of the votes in 2013. Of the 137 Records of Decision in 2013, 131 or 96% were unanimous. Of the remaining six Records of Decision, one was a 6-1 vote, two were 5-2 votes, one was a 4-3 vote (four voting to deny the paroles), and one was a 4-2 vote, also the four voting to deny the parole. In comparison, in 2011/2012, 94% of the 125 decisions were by unanimous votes. Thus, a significantly high number of unanimous votes by this Parole Board is not unusual. For those few who are granted paroles, the Parole Board typically requires an additional length of incarceration, normally one to two years in minimum security and pre-release, before the lifer rejoins society.

The Records of Decision for lifers in 2013 were tailored specifically to each individual case and divided into four distinct parts: the Parole Board's version of the Statement of the Case, Institutional Conduct, Parole History (including a review of any prior parole hearings), and the Decision. The parts are 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

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Decision part is usually the shortest and, often, provides little guidance concerning specific areas which require improvement for those lifers being denied parole. Program participation is usually not given equal emphasis as Institutional Conduct. In 2013, though, Institutional Conduct sections were more balanced between positive and negative behavior while in prison. While, the Parole Board did not indicate specific programs a denied lifer needed to complete before his/her next parole hearing the Parole Board did, in certain Records of Decision, urge denied lifers to address certain issues such as anger, substance abuse, or truthfulness.

Massachusetts General Law c. 127, §130 stipulates 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, the prisoner will not violate the law and the release would be compatible with the welfare of society. In addition to those legislated standards, the Parole Board considers four other goals of sentencing, namely: punishment, deterrence, public safety, and rehabilitation. What, if any, standards the Parole Board uses for determining if a lifer has met those factors have never been published. Decisions regarding those four additional factors are, it seems, purely subjective and, for that reason alone, very problematic. The Parole Board needs to define and publish the standards by which those decisions are rendered in order that those going before the Parole Board are able to better prepare themselves.

The 137 Records of Decision for 2013 is the highest number of decision published in the past few years. In 2011/2012, joined due to the massive changes in the make-up of the Parole Board which occurred in 2011 and which delayed the conducting of hearings and the publishing of decisions for several months, there were 125 Records of Decision. Similarly, in 2010, there were 123 decisions; the number of decisions in 2009 was only 90. All four years of Records of Decision are included, for purposes of comparison, in the tables in this report.

To date, the Parole Board has not published an Annual Report for 2011, 2012, let alone for 2013. The Parole Board needs to correct this glaring omission. In the past, the annual reports provided a wealth of information concerning, but not limited to, parole decisions for all prisoners, institutional parole rates, to which counties prisoners had been released, reasons paroled prisoners were returned to prison for violating paroles, caseloads for parole officers, and pardons/commutations of sentences. Publishing an annual report contributes to assessing the Parole Board's actions and whether or not the Parole Board is providing the contribution to public safety which is expected of that agency. A failure to produce annual reports can be viewed as an attempt to avoid critical evaluations. In any event, the Executive Office of Public Safety and Security should direct the Parole Board to file the long awaited annual reports.

B. RESULTS

1) Approval / Denial Rates

Of the 137 Records of Decision in 2013, 21 (15.3%) were approved for a parole, while 116 (84.7%) were denied. This is the lowest overall approval rate since the Norfolk Lifers Group began compiling data for paroles for lifers in 2003.¹ Comparing the Wall Parole Board (so named for the chairman, Josh Wall, appointed by Governor Deval Patrick in 2011), with the prior two years, i.e., 2009 and 2010, the approval rate decreased by 53.6% for 2011-2013 when compared to 2009 - 2010 (16.8% vs 36.2%).² The massive changes in the Parole Board's membership, prompted also by Governor Patrick, coupled with Josh Wall's ascendancy to the chairmanship, have resulted in the drastic drop in the number of paroles for lifers.³ In 2011 through 2013, the Parole Board rendered 262 decisions and only 44 were approved. In contrast, in 2009 - 2010, 213 decisions were rendered with 77 being approved. If the 36.2% combined approval rate for the pre-Wall Parole Board were applied to the 2011 - 2013 decisions, then 51 more lifers would have been approved. The annual cost of maintaining those 51 lifers in prison, using an average annual cost of \$45,000 per lifer, was \$2.3 million. Was a significant increase in public safety purchased by keeping those lifers in prison, as opposed to living as productive citizens? That question, of course, can not be answered definitively. Based, however, on the data presented later in this report regarding the reasons for lifers' paroles being revoked, it is clear that relatively few lifers are returned for committing new crimes. If the reason for the precipitous drop in approval rates was to show a new "tough on crime" stand, then the Parole Board, under Josh Wall, clearly achieved that objective. But, being "tough on crime" is not being "smart on crime." Again, was the additional \$2.3 million well spent? Whatever one's answer, what is essential is that the Parole Board needs to adopt a more balanced approach to making parole decisions.

1. Approval rates for the years 2003 through 2013, based on the reports compiled by the Norfolk Lifers Group, were:

2013 - 15.3%	2007 - 28.5%
2011-2012 - 18.4%	2006 - 29.6%
2010 - 34.1%	2005 - 33.3%
2009 - 38.9%	2004 - 46.6%
2008 - 31.3%	2003 - 37.8%

2. This percentage decrease of 53.6% is consistent when comparing the Wall Parole Board (2011-2013) approval rate with the average approval rate for the years 2003 through 2010, when Josh Wall served as the First Assistant District Attorney for Suffolk County. The average approval rate for 2003 through 2010 was 34.9% (302 of 866 decisions). The Wall Parole Board average approval rate of 16.8% is 51.9% lower than the average approval rate from 2003 through 2010.

3. Whether this trend also applies to paroles for non-lifers cannot be computed at this time as the Josh Wall Parole Board has yet to publish an annual report, which in previous annual reports had contained that data, for any of the years Wall has been chairman.

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Table 1 below presents the data for the Approval / Denial Rates from 2009 through 2013:

TABLE 1

	# Hearings	Approvals		Denials	
		#	%	#	%
2013	137	21	15.3	116	84.7
2011/2012	125	23	18.4	102	81.6
2010	123	42	34.1	81	65.9
2009	90	35	38.9	55	61.1

2. Initial Hearings

In 2013, thirty-one lifers appeared before the Parole Board for the first time. Each had served the requisite fifteen years in prison. Those thirty-one Initial Hearings represented 23% of the 137 Records of Decision for 2013. In 2011/2012, thirty-two Initial Hearings were held out of 125 overall hearings or 26%. The difference in the number of Initial Hearings was solely a function of the sentence structures for those serving second degree life sentences.

In 2013, six of those lifers who had Initial Hearings were approved for paroles, an increase of one over 2011/2012. In contrast, however, were the results of Initial Hearings in 2010 and 2009 when twenty-two and nine lifers respectively were approved. Overall, the combined approval rate for Initial Hearings for 2013 and 2011/2012 was 17.2% (11 of 63), a 58% decline from the combined rate for 2010 and 2009 of 41.9% (31 of 74). Concomitantly, the combined percentage of denial rates for Initial Hearings increased significantly when comparing 2013 and 2011/2012 (82.5% - 52 of 63) with 2010 and 2009 (58.1% - 3 of 74), or a 42% increase. Table 2 below contains the numbers and percentages of those approved or denied at Initial Hearings for 2013, 2011/2012, 2010, and 2009.

TABLE 2

	# Hearings	Approvals		Denials	
		#	%	#	%
2013	31	6	19.3	25	80.7
2011/2012	32	5	15.6	27	84.4
2010	44	22	50.0	22	50.0
2009	20	9	30.0	21	70.0

3) Review Hearings

Review Hearings are conducted for one of two reasons. First, lifers who had been denied a parole at a previous hearing have Review Hearings, after having served the Setback years. Thus, those who were denied at their Initial Hearings would have a Review Hearing at each subsequent appearance before the Parole Board. The length of time between hearings, the Setback, is determined by the Parole Board and can be up to five years.

The second reason for Review Hearings is for those lifers who had been granted paroles, but whose paroles had been revoked and the lifers had been returned to prison. When a lifer is returned and his/her parole revoked, the Parole Board determines a Setback before the lifer has a Review Hearing.

Review Hearings in 2013 comprised 77% of all the Records of Decision. Approval rates for Review Hearings steadily declined from 2009 through 2013, decreasing by 67% from 43.3% in 2009 (26 of 60) to 14.2% in 2013 (15 of 106). In contrast, denial rates increased steadily from 56.7% in 2009 (34 of 60) to 85.8% in 2013 (91 of 106). Overall, the average percentage of denials for Review Hearings in 2011/2012 and 2013 (the Wall Parole Board) was 83% (166 of 199). The average percentage for denials in Review Hearings by the Parole Board for 2009 and 2010 was 67% (93 of 139). That is an increase in the average percentage for denying paroles of 24% when comparing 2011/2012 and 2013 with 2009 and 2010.

Table 3 below presents the combined data for the number of hearings, the approvals and rates, and the denials and rates for both types of Review Hearings from 2009 through 2013.

TABLE 3

	# Hearings	Approvals		Denials	
		#	%	#	%
2013	106	15	14.2	91	85.8
2011/2012	93	18	19.3	75	80.7
2010	79	20	25.3	59	74.7
2009	60	26	43.3	34	56.7

Review Hearings can also be broken down for those lifers who had never been out on parole (Not. Revoc.) and those who had, but had the paroles revoked (Revoc.). In 2013, fifty-eight lifers who had not been previously paroled had Review Hearings, while forty-eight lifers who had a parole revoked had Review Hearings. For both categories, there were more Review Hearings held in 2013 than in 2011/2012, 2010, or 2009. As found in the report by the Norfolk

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Lifers Group for 2011/2012, the Parole Board continues to favor lifers who were brought back over those who had never had a parole, although that bias was significantly moderated in 2013. Approvals after Review Hearings for lifers not having had a prior parole increased from 1 of 54 in 2011/2012 to 6 of 58 in 2013. These seven total approvals for 2011/2012 and 2013, however, were 72% fewer than for 2010 and 2009, when there were twenty-five total approvals. On the other hand, the total number of approvals for lifers who had a prior parole revoked for 2011/2012 and 2013 was twenty-six as compared to twenty-one for 2009 and 2010, an increase of 24%. Interestingly, the total number of Review Hearings for lifers who had prior paroles revoked increased 93% from 2009 and 2010 to 2011/2012 and 2013 (45 to 87). In contrast, the total number of Review Hearings for lifers who had not had a prior parole increased by 19% (94 to 122).

It is evident that the Josh Wall Parole Board has significantly increased revoking paroles. While there is no question that violating the conditions of paroles necessitates corrective action, returning lifers to prison for violations short of committing new crimes is a waste of prison space and taxpayer dollars. The Parole Board needs to aggressively develop a program of sanctions to address technical violations, i.e., those which do not result in the commission of new crimes. The last resort should be a return to prison, an action which jeopardizes family relationships and terminates employment, not the first. Josh Wall in a number of Records of Decision and other forums has opined that: "A drug addict who is an active user in denial ... presents a high risk for violence associated with his substance abuse." That, of course, is one person's opinion for which Josh Wall has steadfastly refused, despite being directly asked, to back up with any evidence based studies to support his claim. But, Wall's contention does explain why the majority of those lifers who are returned are due to possession or use of drugs or alcohol - nearly 50% of those returned in 2011/2012 and 2013 (42 of 87). See the section of this report entitled Reasons For Revocations, *infra*. Those lifers needed treatment in the community, not a return to prison.

The number of Review Hearings for individual lifers ranged from one (the second hearing before the Parole Board as the first had been an Initial Hearing) to ten (the eleventh counting the Initial Hearing). Of the twenty-eight lifers who had more than four appearances before the Parole Board, whether having had a parole revoked or not, not one was paroled. Of the fifteen lifers approved for paroles after Review Hearings, for seven it was their first Review Hearing, for 6 it was their second Review Hearing, and for the remaining two it was their third. Thus, for 2013, at least, more in terms of the number of hearings was not better. This development will be reviewed in the 2014 and 2015 reports by the Norfolk Lifers Group to determine if this was an anomaly for 2013 or a trend which would be disturbing for those who have had multiple hearings and not yet received a parole. Table 4 on page 7 presents the data

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for Review Hearings differentiated for lifers who had never been on parole (Not Revoc.) and for those whose prior paroles had been revoked (Revoc.)

TABLE 4

	<u>Not. Revoc.</u>				<u>Revoc.</u>			
	<u># App.</u>	<u>%</u>	<u># Den.</u>	<u>%</u>	<u># App.</u>	<u>%</u>	<u># Den.</u>	<u>%</u>
2013	6	10.3	52	89.7	9	18.8	39	81.2
2011/2012	1	1.9	53	98.1	17	43.6	22	56.4
2010	11	20.8	42	79.2	9	34.6	17	65.4
2009	14	34.1	27	65.2	12	63.2	7	36.8

4) Comparing Approval Rates For All Hearing Types

Approval Rates for Initial Hearings and Not. Revoc. Review Hearings increased in 2013 as compared to 2011/2012. Both, however, were significantly lower than in 2010 and 2009. The Approval Rate for Revoc. Review Hearings decreased dramatically from 44% in 2011/2012 to 19% in 2013. That 19% Approval Rate matched the Initial Hearing Approval Rate, while exceeding the Approval Rate for Not Revoc. Review Hearings for 2013. Only in 2010 did the Approval Rate for Initial Hearings exceed the rates for both types of Review Hearings. Approval Rates for Revoc. Review Hearings significantly exceeded the Approval Rates for Not Revoc. Review Hearings in all of the last four years. Table 5 below presents the data, including the numbers of hearings, the numbers approved, and the percentage of approvals, for Approval Rates for all types of hearings from 2009 through 2013.

TABLE 5

	2013		2011/2012		2010		2009	
	<u>%</u>	<u>App.</u>	<u>%</u>	<u>App.</u>	<u>%</u>	<u>App.</u>	<u>%</u>	<u>App.</u>
Initial	19	6 of 31	16	5 of 32	50	22 of 44	30	9 of 30
Not Revoc. Review	10	6 of 58	2	1 of 54	21	11 of 53	35	9 of 26
Revoc. Review	19	9 of 48	44	17 of 39	35	14 of 41	63	12 of 19

5. Reasons For Returns From Prior Life Paroles

As noted earlier on Page 6, the forty-eight Review Hearings held in 2013 for lifers who had been returned to prison after a revocation of a life parole was the highest number when compared to 2009 (19), 2010 (26) and 2011/2012 (39). The forty-eight held in 2013 was an increase of 153% form 2009. The Wall Parole Board (2011/2012 and 2013) held a total of eighty-seven Revoc. Review Hearings, an increase of forty-two over 2009 and 2010, or 93% more.

Of the forty-eight Revoc. Review Hearings, twenty-five (52%) of the lifers had been brought back for substance abuse violations, including either drugs or alcohol or both. This was an increase in number and percentage from 2011/2012 when 43% (17 of 39) had been returned for substance abuse violations. This percentage of hearings (52%) for substance abuse returnees in 2013 was, however, in line with both 2009 (53%) and 2010 (54%). In the years from 2009 through 2013, substance abuse violations comprised a significant majority of the reasons for revocations of paroles. In contrast, in 2013, only three (6%) of those who had Revoc. Review Hearings had been returned to prison due to having been arrested for committing a felony.

Table 6 below presents the reasons paroles had been revoked, along with the numbers who were reparaoled, for the Revoc. Review Hearings held in 2013, 2011/2012, 2010, and 2009. The approvals in 2013 (9) was the second lowest for the four years, nearly one-half as compared to 2011/2012 (17), the year with the highest number of approvals for those having Revoc. Review Hearings. There is a degree of logic in this difference. The Wall Parole Board, in its first year, may have felt more comfortable approving second degree lifers who had been approved by a prior Parole Board, believing that was the safer approach to avoid any early criticism. The decisions for 2014 and subsequent years will tell whether the Parole Board will provide a balanced number of approval decisions for lifers who have Not Revoc. Review Hearings as compared with those lifers who have Revoc. Review Hearings.

TABLE 6

	2013		2011/2012		2010		2009	
	<u>#</u>	<u>App.</u>	<u>#</u>	<u>App.</u>	<u>#</u>	<u>App.</u>	<u>#</u>	<u>App.</u>
Substance Abuse	25	2	17	9	14	4	10	8
Assault	0	0	0	0	3	2	0	0
Associations	3	1	7	4	3	16	0	0

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TABLE 6 (cont.)

	2013		2011/2012		2010		2009	
	#	App.	#	App.	#	App.	#	App.
Domestic Issues	4	1	4	0	2	0	5	2
DUI	2	1	1	0	1	0	0	0
Larceny	1	0	0	0	1	0	1	1
Requested Return	0	0	0	0	1	0	0	0
Mental Health Issues	1	0	0	0	1	0	0	0
Obtaining A Hunting License	0	0	0	0	0	0	0	0
Absconding	1	0	4	2	0	0	1	0
Motor Veh. Viol.	1	1	0	0	0	0	1	1
Poor Parole Performance ¹	4	1	4	2	0	0	0	0
Weapons Violations	3	0	2	0	0	0	0	0
Felony Arrests ²	3	2	0	0	0	0	0	0
Totals	48	9	39	17	26	7	19	12

6. Approval Factors

In prior reports by the Norfolk Lifers Group on parole decisions for lifers, approval factors cited as reasons for supporting approving a parole in the Records of Decision were listed and frequency percentages calculated for each factor. Multiple factors were noted in each year for nearly all of Records of Decision in which a lifer was granted a parole. Specific approval factors varied on a case-by-case basis. In 2013, there were only twelve approval factors noted in the twenty-one Records of Decision for lifers granted paroles. Of those twelve, nine occurred in at least 10% of the 2013 Records of Decision for approvals. The nine factors

1. The four who had been returned for Poor Parole Performance were for: Failure to Complete a Long Term Residential Program (LRTP) (2), Moving Without Notifying a Parole Officer (1), and Threatening a Parole Officer (1).

2. The felony arrests were for: Receiving Stolen Property (1), Threatening to Kill (1), and Armed Robbery (1).

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and the respective frequency percentages were:

Active Program Participation	71.4% (15 of 21)
Four Goals of Punishment Met	52.4% (11 of 21)
No Risk for Future Violent Acts	47.6% (10 of 21)
Steady Employment While Incarcerated	47.6% (10 of 21)
Addressed Areas Needed For rehabilitation	47.6% (10 of 21)
High Level of Community Support	47.6% (10 of 21)
Prior Successful Parole History	33.3% (7 of 21)
Minimal Discipline History	23.8% (5 of 21)
No New Crimes while on Parole	19.0% (4 of 21)

The frequency of the Active Program Participation factor in 2013 nearly doubled in comparison to 2011/2012, where that factor was noted in only 39% (9 of 23) of the approvals. That the Parole Board in 2013 valued that factor so highly is a significant change and, hopefully, a precursor for the future. Specific programs were not often named nor recommended. But, what the Wall Parole Board did note was that lifers approved for paroles were those who had successfully addressed their areas of need, e.g., substance abuse, violence, anger, and then were able to explain convincingly what they had learned, how the programs had changed their lives for the better, and that they no longer posed a threat to the welfare of society.

The second most frequently cited approval factor in 2013 - 52.4% (11 of 21) - was that the four goals of sentencing, i.e., punishment, deterrence, public protection, and rehabilitation, had been met.. In 2011/2012, that factor was noted in only 17% (4 of 23) of approvals. The Records of Decision containing this factor, however, were void of any explanations of why the Parole Board members had determined that the four sentencing objectives had been met. Perhaps the Parole Board authors of the Records of Decision 1 felt that the reasons could be divined from the rest of the Records of Decision. If so, anyone seeking to be educated on this factor will be sadly disappointed. For an approval factor so frequently cited, the authors of the Records of Decision need to be specific as to the reasons why and the standards employed to reach the conclusion that the four goals of sentencing had been met.

The three factors not cited in at least 10% of the approved Records of Decision for 2013 were: the lifer was a non-shooter in a joint venture/felony murder - 9.5% (2 of 21), no relapses on parole - 4.8% (1 of 21), and support from the victim's family - 4.8% (1 of 21).

1. 36% of the Records of Decision in 2013 were authored by the Chairman (49); 35% by the General Counsel; (48); and 29% by the Chief of Staff (40). For the 2011/2012 Records of Decision, the Chairman authored 43% (54); the Chief of Staff 32% (40); and the General Counsel 25% (31)

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As with 2011/2012, five approval factors utilized by the Parole Board in 2009 and 2010 were distinctly absent in 2013. These were: Accepts Responsibility, Expresses Remorse, Family Support, Solid Parole Plan, and Understands Causative Factors of Criminal Behavior. Their absence suggests that the present Parole Board expects that those factors will be addressed by the lifer as a minimum to receive any serious consideration for a possible parole and, therefore, need not be given special recognition. Not having adequately addressed one or more of these five factors, however, is a sure path to a denial. The only question which would remain is: How long the Setback will be?

Lifers who appear before the Parole Board and believe that all they have to do is say they are sorry and then move on to what they have done in prison will be back before the Parole Board, probably after having served a five year Setback. If a lifer has any hope in being paroled, it is incumbent upon him/her to demonstrate to the Parole Board that he/she truly understands the impact his/her actions had on the victim, the victim's family, the community, and, lastly, on the lifer; that he/she understands the reasons for what he/she did; that he/she recognizes and has successfully addressed those areas of need; and that he/she will be able to rejoin society and not be a danger to commit new crimes or to endanger the welfare of society. What is encouraging is that the Parole Board, in 2013, at least, valued Active Program Participation, which addressed specific recognized areas of need, above all other factors. It is not the number of programs a lifer has completed that matters, but that the lifer has successfully completed programs geared to his/her specific needs.

In 2013, in three Records of Decision, the Parole Board noted that the lifers "merit[ed] parole due to successful rehabilitation." That the Parole Board recognizes that paroles can be "merited", is refreshing, even if it occurred in only three of the twenty-one approvals, if it indicates a trend that the Parole Board will be rewarding those lifers who demonstrate they have earned the right/privilege to rejoin society.

Table 7 below presents the comparative frequency percentages for approval factors for 2013, 2011/2012, 2010, and 2009.

TABLE 7

<u>Factor</u>	<u>2013 (21)</u>	<u>2011/ 2012 (23)</u>	<u>2010</u>	<u>2009</u>
Active Program Part.	71.4%	39.1%	69.0%	45.7%
Four Goals of Sent. Met	52.4%	17.4%	0	0
No Risk For Violence	47.6%	78.3%	0	0
Steady Employment While Incarcerated	47.6%	17.4%	0	0

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TABLE 7 (cont.)

<u>Factor</u>	<u>2013 (21)</u>	<u>2011/ 2012 (23)</u>	<u>2010</u>	<u>2009</u>
Community Support	47.6%	56.5%	23.8%	45.7%
Addressed Areas For Rehabilitation	47.6%	0	0	0
Successful Parole Hist.	33.3%	39.1%	0	0
Min. Disciplinary Hist.	23.8%	17.4%	52.4%	14.3%
No New Crimes on Parole	19.0%	0	0	0
Non-Shooter	9.5%	0	2.4%	0
No Relapse on Parole	4.8%	0	0	0
Victim's Family Support	4.8%	0	0	0
Accepts Responsibility	0	0	42.9%	54.3%
Expresses Remorse	0	0	50.0%	51.4%
Family Support	0	0	30.9%	57.1%
Solid Parole Plan	0	0	28.6%	57.1%
Understands Causative Factors	0	0	33.3%	20.0%

7. Denial Factors

In 2013, twenty factors for denying paroles appeared in the Records of Decision (116) in which lifers were denied paroles. As on previous years, multiple factors were cited in all decisions denying paroles. Of those twenty, fourteen occurred in at least 10% of the 116 Records of Decision in which lifers were denied paroles. Those fourteen factors were:

Release Incompatible With Welfare of Society	80.2% (93 of 116)
Likely to Reoffend	79.3% (92 of 116)
Unaddressed Issues	38.8% (45 of 116)
Limited Program Participation	31.0% (36 of 116)
Needs Longer Period of Adjustment	29.3% (34 of 116)
Lack of Insight Into Criminal Behavior	28.4% (33 of 116)
Poor Prior Parole Performance	26.7% (31 of 116)
Lying / Not Credible	19.8% (23 of 116)
Serious Disciplinary History	18.1% (21 of 116)
Diminishes Responsibility	15.5% (18 of 116)
Mental Health Issues	14.6% (17 of 116)
Violent History While in Prison	14.6% (17 of 116)

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Needs to Address Areas of Deceit	14.6% (17 of 116)
Lack of a Parole Plan	12.1% (14 of 116)

As with 2011/2012, the two most commonly cited factors for denying paroles merely regurgitated the legislative requirements which need be met before granting a parole, i.e., that the lifer be expected not to commit any new crimes and that the release will be compatible with the welfare of society. Implicit in the denial of a parole is that the Parole Board found that one or both of these conditions were not met. Using both as reasons for denying paroles is useless, unless the Parole Board also delineates why a lifer has not met those standards.

In one Record of Decision, the Parole Board noted that: "Given the fact of wrongful convictions in our criminal justice system, the Parole Board does not have a policy that admission of guilt is an absolute requirement for parole and nowhere does the law impose such a requirement." The lifer was denied parole and given a two year Setback.

The Parole Board also dealt with another lifer who maintained his innocence. In that case, the Parole Board unanimously denied parole on the basis that the lifer was not "rehabilitated." The Parole Board stated that while the lifer maintained innocence, the "jury's verdict is supported by probative circumstantial evidence, physical evidence, DNA evidence, and inculpatory statements _____ made to friends and the police. The Appeals Court affirmed the conviction. A claim of innocence by an inmate convicted of murder, unsupported by exculpatory evidence, does not change the Parole Board's expectation and the law's requirement that _____ achieve rehabilitation in order to live in the community under parole supervision." The Record of Decision was written by Josh Wall. Lifers, then, who go before the Parole Board and claim innocence need to support that claim with exculpatory evidence in order to overcome that there had been a trial, a conviction, an unsuccessful appeal, and the underlying presumption of guilt.

In another Record of Decision denying a parole, the lifer had claimed that he would not have inflicted such injuries if he had not been under the influence of drugs and hallucinating. The Parole Board then quoted from various poems written by the lifer while incarcerated, one of which contained "violent details of the murder, including sexual gratification after the victim's death." The lifer insisted he could not recall writing any such poems. To no avail, the lifer was denied parole and given a five year Setback. This Record of Decision demonstrates that what one writes and publishes on a website, or in any publication, is available for scrutiny by the Parole Board as well as other interested parties.

Table 8 on page 14 presents the frequency percentages for Denial Factors for 2013, 2011/2012, 2010, and 2009.

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TABLE 8

<u>Denial Factors</u>	<u>2013 N=116</u>	<u>2011/ 2012 N=102</u>	<u>2010 N=81</u>	<u>2009 N=55</u>
Release Incompatible	80.2	76.5	60.5	7.3
Likely To Reoffend	79.3	71.6	13.6	0
Unaddressed Issues	38.8	15.7	7.4	16.4
Limited Program Participation	31.0	11.8	23.4	40.0
Needs Longer Period of Adjustment	29.3	37.3	37.0	27.3
Lacks Insight Into Crim. Beh.	28.4	27.5	28.4	34.5
Poor Prior Parole Performance	26.7	0	12.3	1.8
Lying / Not Credible	19.8	26.5	11.1	25.4
Serious Disciplinary History	18.1	20.6	24.7	25.4
Diminishes Responsibility	15.5	21.6	19.8	58.2
Mental Health Issues	14.6	0	4.9	5.4
Violent History In Prison	14.6	0	12.3	18.2
Needs To Address Areas of Deceit	14.6	0	0	0
Lack of Parole Plan	12.1	0	4.9	1.8
No Supporters at Hearing	9.5	0	2.5	0
Continued Drug Addiction	6.7	10.8	17.3	21.8
Inconsistency Between Inmate's Version and the Facts of the Case	6.7	0	0	0
Sex Offender Issues	6.0	0	0	0
Lack of Compassion For Victims	2.6	0	0	0
Lack of Remorse	2.6	0	3.7	25.4

8) Setbacks

As in past years, no reasons were offered as to why particular lengths of Setbacks, i.e., five, four, three, or two years, were handed down to denied lifers. The only exception was when the Parole Board noted that lifers, given a Setback of less than five years, needed longer periods of adjustment to continue relevant program participation. In 2013, the Parole Board gave out Setbacks of less than five years in 33% of denials (38 of 116). That was slightly more than the 30% (31 of 102) in 2011/2012. The Wall Parole Board for 2011/2012 and 2013 handed down Setbacks of less than five years in 31.7% (69 of 218) denials, as compared to 38.2% for

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the Parole Board for 2009 and 2010 (52 of 136). Table 9 below presents the numbers and frequency percentages for the Setbacks handed down to denied lifers in 2013, 2011/2012, 2010, and 2009. The number of denials for each year is in parentheses.

TABLE 9

SETBACKS

	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
2013 (116)	0	14 (12%)	14 (12%)	10 (9%)	78 (67%)
2011/2012 (102)	1 (1%)	7 (7%)	12 (11%)	11 (11%)	71 (70%)
2010	0	14 (17%)	19 (23%)	2 (3%)	46 (57%)
2009	1 (2%)	3 (5%)	11 (20%)	2 (4%)	38 (69%)

9) Destinations of Approved Lifer Parolees

Of the twenty-one lifers approved for paroles in 2013, six were released directly to their homes. All six were lifers who had had a prior life parole revoked. This was an increase from four lifers released directly to homes in 2011/2012. Of the remaining fifteen lifers who were approved for paroles in 2013, nine were required to remain incarcerated in lower security for a length of time before being moved on to a separate destination, three were transferred out-of-state, two were deported, and one was returned to a Long Term Residential Program (LTRP). Second degree lifers are required by the Department of Correction to be housed in either medium or maximum security if and until the Parole Board approves a parole with a stipulation of a stay on lower security, i.e., minimum or pre-release. Of the nine sent to lower security after each has completed the required length of stay without incident, six then have to complete a LTRP, two then are to be deported, and one then is to go home. Table 10 below presents the destinations for approved lifers for 2013 and 2011/2012, the only years for which this data has been tabulated.

TABLE 10

<u>Destinations</u>	<u>2013</u>	<u>2011/2012</u>
Home	6	4
Lower - 6 Months	2	3
Lower - 9 Months	0	1

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TABLE 10 (cont.)

<u>Destinations</u>	<u>2013</u>	<u>2011/2012</u>
Lower - 12 Months	6	4
Lower - 18 Months	0	3
Lower - 24 Months	1	1
Interstate Compact (ICC)	3	0
I.C.E.	2	2
To A From & After Sent.	0	1
LTRP	<u>1</u>	<u>3</u>
Totals	21	23

10) Lifers Not Convicted of Second Degree Murder

Of the 137 Records of Decision for 2013, sixteen were held for lifers who had been sentenced to life with the possibility of parole for crimes which had not involved anyone's death. This was the highest number of such hearings in the years included in this report - 2011/2012 (9), 2010 (13), and 2009 (12).

In Massachusetts, a life sentence with the possibility of parole can be imposed as the maximum sentence for a variety of crimes. In these parole hearings in 2013, nine lifers had been convicted of Sexual Assaults/Rape, four of Armed Robbery, one for Burglary, and one for Unarmed Robbery. Of these sixteen lifers in 2013, one had an Initial Hearing and the remaining fifteen had Review Hearings. Three of the sixteen lifers were approved for paroles. All three had Review Hearings. Two of those approved had Review Hearings after a prior life parole had been revoked and were serving life sentences for Armed Robberies. Table 11 below presents the data for Lifers Not Convicted Of Second Degree Murder for the years 2013, 2011/2012, 2010, and 2009.

TABLE 11

<u>Crime</u>	<u>2013</u>		<u>2011/ 2012</u>		<u>2010</u>		<u>2009</u>	
	<u>#</u>	<u>App.</u>	<u>#</u>	<u>App.</u>	<u>#</u>	<u>App.</u>	<u>#</u>	<u>App.</u>
Sexual Assault	9	1	7	0	7	0	4	0
Burglary	2	0	0	0	0	0	1	0

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TABLE 11 (cont.)

<u>Crime</u>	<u>2013</u>		<u>2011/ 2012</u>		<u>2010</u>		<u>2009</u>	
	<u>#</u>	<u>App.</u>	<u>#</u>	<u>App.</u>	<u>#</u>	<u>App.</u>	<u>#</u>	<u>App.</u>
Armed Robbery	4	2	1	0	6	2	4	0
Unarmed Rob.	1	0	1	1	0	0	0	0
Habitual Off.	0	0	0	0	0	0	1	1
Armed Assault	0	0	0	0	0	0	1	0
A & B/ Dang. Wea.	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>	<u>0</u>
Totals	16	3	9	1	13	2	12	1

12) Time Between Hearing Dates And When The Records of Decision Were Signed

Extremely lengthy delays between when a parole hearing was held and when the applicable Record of Decision was written and signed have occurred since the Wall Parole Board has taken over parole hearings. In 2010, prior to Josh Wall becoming chairman, the average length of delay was 58 days. The Wall Parole Board in 2010/2011 averaged 261 days, the longest was 452 days and the shortest was 6 days.

In 2013, the Wall Parole Board averaged 257 days, a minuscule decrease, with the longest being 587 days and the shortest was also 6 days. But, the average delay for the Records of Decision published in November and December of 2013 dropped to 125 days. Hopefully, the lengths of the delays will continue to decline as the backlog inherited by the Wall Parole Board has been cleared. That backlog was the reason cited by Josh Wall for the inordinate delays when he was queried as to why the Records of Decision were taking so long to be published. The Parole Board's own regulations, however, require that lifers who have been denied paroles be notified within 21 days.

In addition to this "backlog", it appears that simple poor management was to blame. In 2013, several Records of Decision, which had been delayed for over 500 days, included the following footnote: "This decision was delayed because it had been assigned to an employee who left the agency without completing the decision. The Parole Board regrets the uncertainty and inconvenience that this delay caused to those involved." One is compelled to ask: Why did no one in the Parole Board management team, starting with Chairman and moving onto the Chief of Staff, follow up on the decisions left unwritten by the past employee? However weak

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the excuses by the Parole Board are, what is essential is that Records of Decision are published expeditiously now that the backlog is gone, as is the allegedly negligent employee. How would the Parole Board members react to any lifer who claimed that he/she could not complete a needed program because of a "backlog" of other prisoners waiting to participate (a real problem due to the lack of adequate program slots in the institutions of the Department of Correction) or that certain paperwork had been lost, discarded, or forgotten for over 18 months? One can bet assuredly that such lifers would be denied paroles and given five year Setbacks in order to get their acts together. The Wall Parole Board has already had far too long to get its act together.

Table 12 below presents the data for the delays between hearing dates and when Records of Decision were signed for the Wall Parole Board in 2013 and 2011/2012.

TABLE 12

<u>Lengths of Delay</u>	<u>2013</u>	<u>2011/2012</u>
1 - 100 Days	35 (26%)	21 (17%)
101 - 200 Days	18 (13%)	17 (13%)
201 - 300 Days	29 (21%)	25 (20%)
300 +	<u>55</u> (40%)	<u>62</u> (50%)
Totals	137	125

C. SELECTED EXCERPTS FROM 2013 RECORDS OF DECISION

The following twenty-one excerpts are quoted directly from Records of Decision for 2013. The names of the lifers and victims have been deleted by the author of this report. The excerpts have been selected as examples of positive or negative feedback from Parole Board members to the presentations by lifers at individual hearings or to offer insight into the decision making parameters employed by the Parole Board members. In offering these excerpts, there is no intent to embarrass or ridicule any lifer or the Parole Board. Rather, the intent is to assist lifers in better preparing themselves for parole hearings and/or to gain insight into what they may have to accomplish while incarcerated before they have a parole hearing.

The excerpts are divided into five categories: Approvals, Denials, Problematic Responses From Lifers At Parole Hearings, A Problematic Reason For a Denial, and Admitting

Guilt. After each excerpt, the result of each hearing, whether it had been an Initial Hearing or a Review Hearing, the length of any Setback in cases of denials, and whether the lifer had been returned to prison after a prior life parole had been revoked are indicated in brackets.

1. Approvals

- At his hearing _____ described his conscious decision to change his conduct and his efforts to achieve that goal. His institutional conduct is not marred by even a single disciplinary report. In his efforts to reform _____ has certain advantages that many do not: a positive and relatively stable childhood that gave him empathy and the ability to form attachments to others; a high school education with diploma; he does not have the traits of unchecked impulsivity or uncontrolled anger frequently associated with violent offenders; no current substance abuse issues; no mental health issues; ongoing support from family members who are stable and productive; and guidance from the victim's mother who has encouraged him to take responsibility for his actions and his rehabilitation.

[This lifer was granted parole after his Initial Hearing.]

- In describing his positive institutional conduct, _____ noted that he limited his associations to inmates who were also involved in programs and staying out of trouble. He described his thoughts about rehabilitation: "for someone to change, you have to realize you need help; it's a long process to change when its ingrained from childhood; the programs are essential to real change; they help you learn about yourself and how to change."

[This lifer was approved after his first Review Hearing. He had not been returned from a prior life parole.]

- _____ stressed his love of books and continued personal growth by immersing himself in an array of positive literature. He went on to explain that this allowed him to develop greater insight into positive behavior. He said, "You can't have a conversation with me unless it's about education or bettering yourself."

[This lifer was approved after his first Review Hearing. He had not been returned from a prior life parole.]

- _____ has worked successfully to gain insight on his addiction and develop strategies to avoid relapse. He recognizes and accepts the challenge of managing pain without narcotic medications. Due to his active rehabilitation, he appears at no risk for committing another violent offense. The risk of relapse, while always present, has been reduced due to his rehabilitative work and productive activity.

[This lifer was approved after his first Review Hearing. He had been returned from a prior life parole.]

Approvals (cont.)

- Community support, when it exists, is always an important factor supporting a release on parole. Of course, the Parole Board cannot base a release decision solely on community support and must look to other relevant factors. (The Parole Board then noted the following factors: 7½ years of success on parole, stable residence and relationships, passing all drug and alcohol tests, and communicating regularly with his Parole Officer as indicators of rehabilitation. In addition, the lifer had presented a petition supporting his parole with 142,000 signatures. Thirty supporters appeared at the hearing and four testified on the lifer's behalf)

[This lifer was approved after his second Review Hearing. He had been returned from a prior life parole.]

2. Denials

- Board members did not accept his minimization of his drug use on parole. _____ demonstrated on parole that he did not take parole conditions seriously, was not trustworthy, and was not suitable for community supervision. In short, he is not rehabilitated. At his hearing, he did not show additional insight or reform ... _____ has not recognized issues of control, anger, violence, and failure to take personal responsibility for his conduct.

[This lifer was denied parole at his first Review Hearing and given a five year Setback. He had been returned from a prior life parole.]

- _____ has an abundance of social skills, which he has used to navigate the prison environment and to make a good presentation at his parole hearing. He has relied more on social skills, however, and less on self-reflection and insight. His program participation is limited, and his non-violent disciplinary reports continue at a steady pace that shows good self-control but not a full commitment to change.

[This lifer was denied parole at his Initial Hearing and given a three year Setback.]

- _____'s record of persistent violence in prison does not support his bold assertions of heroic behavior (the lifer had claimed that various fights had resulted from his trying to convince other prisoners from participating in illegal activities). Self-serving claims of altruistic violence are not the basis for parole. The basis for parole includes non-violent good conduct and a commitment to rehabilitation demonstrated by persistent program participation.

[This lifer was denied parole at his Initial Hearing and given a five year Setback.]

2. Denials (cont.)

- _____ told the Board, "I'm older now; I'm done using drugs; today my motivation is different." He also said that counseling in prison has helped him. _____ was asked what strategies he would use to maintain sobriety if released, but he said little in response. He did not, however, describe any strategy that included the insight, thoughtfulness, careful planning, and multiple supports necessary for a person with such a severe addiction.

[This lifer was denied parole at his eighth Review Hearing and given a five year Setback. He had been returned from a prior life parole.]

- When questioned about his parole plan, _____ presented a plan that was very similar to what he had done while under his prior parole supervision. He did not identify anything he would do differently and was not candid about why he was returned to prison; it appeared as though he was protecting himself rather than revealing issues to be addressed.

[This lifer was denied parole at his second Review Hearing and given a three year Setback. He had been returned from a prior life parole.]

- The Parole Board emphasized concern that _____ has decided to ignore the Board's past recommendations, and he has passively resisted any real investment in his rehabilitation. _____ presented as attached and dis-engaged from direct dialogue that challenged his recitation of the facts and his lack of investment in his own rehabilitation... It is unclear if _____ is unwilling to participate in such rehabilitation because he does not feel he needs it, or if he has resigned himself to living the remainder of his life in prison.

[This lifer was denied parole at his fifth Review Hearing and given a five year Setback. He had not been returned from a prior life parole.]

- Until _____ is able to demonstrate sincerely that she has developed a more insightful understanding of the genesis of her anger and substance abuse, and that she has learned how to effectively manage these areas, this Board cannot say with confidence that she will live and remain at liberty without violating the law and that release is not incompatible with the welfare of society.

[This lifer was denied parole at her Initial Hearing and given a five year Setback.]

- _____ has not invested in rehabilitation through program work and other commitments. _____ obtained three prior paroles because he made a smooth presentation that obscured a lack of reform. The Parole Board now expects an inmate to invest in rehabilitation through active program participation with demonstrated results. _____ has not met this expectation and the Parole Board is unwilling to overlook that expectation.

[This lifer was denied parole at his sixth Review Hearing and given a four year Setback. He had been returned from a prior life parole.]

3. Problematic Responses From Lifers At Hearings

- In response to expressed concern he cannot be managed for significant periods of time without intensive treatment and the highest level of security, _____ responded that he was ready for parole and his further incarceration is "just filling space in prison now. It is a waste of taxpayer's money. Prison is a necessity for society to remedy social ills for crimes or sometimes for politics."

[This lifer was denied parole at his sixth Review Hearing and given a five year Setback. He had not been returned from a prior life parole.]

- _____ has 55 disciplinary reports. He said: "a lot of disciplinary reports are bogus, it's guilt by association; not everything written in disciplinary reports is true, most of it is not true; the majority of tickets are bogus." In an apparent to show improved impulse control, _____ told a Board Member that "a few years ago I would have jumped up and snapped your neck."

[This lifer was denied parole at his first Review Hearing and given a five year Setback. He had not been returned from a prior life parole.]

- Throughout the hearing the inmate was argumentative, combative, and defiant. Many times when asked a question he did not want to answer, he pretended he could not hear the question. He made a derisive comment about a physical characteristic of a Board Member...A Board Member asked him if had remorse. _____ said: "It's not so much remorse, well I have remorse, but it isn't the kind of remorse you should have for killing someone; it's over for [the victim's first name]." _____ is an egotistical, narcissistic and controlling person. He places his own views and desires above those of all others... At every parole hearing, he shows disrespect for the victim and cruelty towards the victim's family.

[This lifer was denied parole at his third Review Hearing and given a five year Setback. He had not been returned from a prior life parole.]

- _____ saw many faults with his parole officers and with the conditions set by the Parole Board. When a Board Member asked him what he would do differently if re-paroled, he offered no suggestions... When a Board Member asked him how to prevent a future alcohol relapse, _____ said: "Trust me, I won't drink again."

[This lifer was denied parole at his first Review Hearing and given a five year Setback. He had been returned from a prior life parole.]

- Board Members questioned _____ about his prison activity. One Board Member said, "You have a passive approach in prison." The inmate responded, "I haven't been a ball of fire." A Board Member commented that, "You are puzzling because you are busy doing nothing. It's hard to picture what you would do on parole. What would you do that is productive?" He

3. Problematic Responses From Lifers At Hearings (cont.)

admitted that his parole plan is not specific and that "I haven't figured out what I want to do."

[This lifer was denied parole at his Initial Hearing and given a three year Setback.]

- While he stated that he wished to take responsibility for his crime in his brief opening, he offered no apology or any expression of remorse. A Board Member later pointed out that he barely acknowledged the victim, and any regret appeared to be more about his plight than the harm he had caused.

[This lifer was denied parole at his Initial Hearing and given a five year Setback.]

4. Admitting Guilt

- Board Members were also perplexed by _____'s claim that he asserted self-defense for decades because "I was in denial; I was too ashamed and feeling guilty to admit it to myself; I had to accept it and realize what I had done, before admitting it publicly." A Board Member remarked that instead of claiming he did not "realize what I had done," it would be more honest to just admit he knew what he did but he thought it would help to hide it."

[This lifer was denied parole at his fourth Review Hearing and given a three year Setback. He had not been returned from a prior life parole.]

5. Problematic Reasons For Denials

- Although _____ has not received significant disciplinary reports in many years, his past behavior has demonstrated that when confronted with unmanageable stressors, he has required at least one lengthy psychiatric commitment, he has abused substances on several occasions, he has acted out in a disruptive or insolent manner, or he has retreated from participation in educational or rehabilitative programs.

Although _____ is not currently an open mental health case, that is likely due to his ability to keep a low profile, invest in employment that allows for more isolative tasks, and his own acceptance of living in an institutional setting.

[This lifer was denied parole at his third Review Hearing and given a five year Setback. He had not been returned from a prior life parole.]

[Author's note: The psychiatric commitment was to Bridgewater State Hospital nearly thirty years ago. Given that the lifer is not an open mental case now, it is perplexing why that commitment continues to be held over him.]