

# *Phantom Prisoner, Ltd.*

## **A STUDY OF PAROLE BOARD DECISIONS FOR LIFERS**

**2003 - 2006**

**May 2007**

### ***Phantom Prisoner, Ltd.***

Phantom Prisoner, Ltd., is an organization operating through democratic principles, devoted to helping mankind and educating the citizens of the Commonwealth in the areas of penal and correctional planning and reform. It is our intent to promote, provide and attempt to ensure that meaningful prison reform and conditions within the Commonwealth move forward in a positive way. To do this we act as an information resource for prisoners, their families and other citizens on a variety of issues related to the criminal justice system.

We are interested in the rights of all prisoners (be they civil rights or basic human rights) regardless of age, race, color, creed, religious affiliation, gender or sexual orientation.

## A STUDY OF PAROLE BOARD DECISIONS FOR LIFERS 2003-2006

### INTRODUCTION:

Under Massachusetts' law, M.G.L. c. 127 §130 and §133A, prisoners serving second degree life sentences are eligible for parole. Those serving first degree life sentences are ineligible for parole and must seek commutations of their sentences. This study concerns only prisoners serving second degree life sentences. Massachusetts's law mandates a parole hearing (Initial) for second degree lifers after fifteen (15) years have been served. The full Parole Board is expected to be present for Initial hearings, unless waived by the lifer seeking parole. In all parole decisions regarding lifers, the full Board must vote unless a member is recused due to a conflict of interest. The full Parole Board consists of seven (7) members and a majority of voting members is required to grant a parole to a lifer.

According to Massachusetts General Law c. 127, §130:

*No prisoner shall be granted a parole permit merely as a reward for good conduct but only if the parole board is of the opinion that there is a reasonable probability that, if such prisoner is released, he will live and remain at liberty without violating the law and that his release is not incompatible with the welfare of society.*

The decision to parole a prisoner, including second degree lifers, is completely discretionary for the Parole Board. Pursuant to M.G.L. c. 127 § 130, there are only two (2) factors circumscribing that decision, i.e., the probability of not committing a further crime and that the release would not be incompatible with the welfare of society. Thus, good behavior alone and/or program involvement will not guarantee a parole. The Parole Board, however, is not expected to "retry" a prisoner's crime.

The Parole Board is an administrative agency under the Executive Branch, not the Judiciary Branch of state government. All records concerning a prisoner seeking parole, including juvenile records, are open for review by Parole Board members.

If a prisoner is denied parole at the Initial hearing, the Parole Board determines how long a period must be served (Setback) before the prisoner has another parole hearing (Review). Massachusetts' law mandates that the Parole Board must schedule a subsequent hearing for those denied parole "within five years" of the date of the previous hearing. (M.G.L. c. 127, §133A) The specific length of the setback within that five year period is left to the discretion of the Parole Board. At every parole hearing for lifers, therefore, the Parole Board first must decide whether or not to grant parole. If approved, the Parole Board will then set conditions upon the lifer. If denied, the Parole Board must next decide when the lifer will again appear for a hearing.

In all cases, i.e., approvals and denials, a Record of Decision must be given to the lifer within twenty-one (21) days of the date the decision was made. The Record of Decision is a public record under the Massachusetts' Public Record Law, M.G.L. c. 4, §7(26) and c. 6, §10(c). Copies of the Records of Decision of parole hearings for lifers must be provided by the Parole Board upon request.

All hearings before the Parole Board for lifers are public. Witnesses for and against granting parole may testify. A lifer is allowed an opening and a closing statement, and may be accompanied by counsel. Parole Board members may individually question the lifer on a wide range of topics including, but not limited to, any aspects of the crime, the lifer's history before and during incarceration, and plans for life after prison, should

the lifer be paroled. Hearings may last up to four (4) hours or more and are recorded for future reference by any Parole Board member unable to attend.

### **METHODOLOGY:**

This study covers parole decisions rendered for lifers from 2003 through 2006. Records of Decisions of parole hearings for lifers were requested and supplied – at a cost for locating the individual Records of Decision, photocopying, and mailing same – for each year of the four (4) year period. The results of the Records of Decision were tabulated based upon the outcomes, i.e., approved or denied, the reasons for the decisions, and the length of setbacks, in case of denials. Parole revocation hearings and cases in which decisions were postponed due to administrative reasons such as seeking information from other agencies like the Department of Health were excluded from this study.

A total of 414 Records of Decision were analyzed. In tabulating the reasons for approving or denying a parole, the specific wordings in the decisions were employed, e.g., "does not take responsibility," "poor institutional behavior," or "amenable to treatment or supervision." Twenty-six (26) such factors were identified as specific reasons for denying parole, and thirteen (13) for approving parole. The frequency that those factors appeared in Records of Decisions were then tabulated. Multiple factors were usually identified in each Record of Decision.

No Parole Board member is identified in the Records of Decisions. Each decision is written as a decision by the Parole Board as a whole without identifying by name how individual Parole Board members may have voted. There is also a listing of whether members concurred or

dissented, again, without identifying specific Parole Board members. In some cases, there were brief explanations of dissenting votes. As this study is concerned only with the end results of the 414 hearings, reasons for dissension are not included.

Setbacks, i.e., the length of time before the next hearing for a lifer denied parole, varied from one (1) year to five (5) years. A one year setback is required under Parole Board regulations in cases where the Parole Board members split evenly in deciding whether or not to parole a lifer. Such split decisions are considered a denial as a majority of voting members is required to grant a parole to a lifer.

## **RESULTS:**

### **A. Approvals/Denials**

The 414 Records of Decision for lifers analyzed in this study covered the years 2003 through 2006. The number of decisions for each year was as follows:

2003	98
2004	116
2005	102
2006	98*

\* The Parole Board reported that there were several cases heard in 2006, but not decided until 2007. Reasons why these decisions were delayed were not disclosed. These cases are not, therefore, included in this study.

Of the 414 decisions regarding lifers seeking parole, 154 (37.2%) were granted parole; 260 (62.8%) were denied. Those decisions can be further broken down by the numbers of those approved and/or denied

per year. These results and resultant percentages are as follows:

	<u>APPROVED</u>		<u>DENIED</u>	
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
2003	37	37.8	61	62.2
2004	54	46.6	62	53.4
2005	34	33.3	68	66.7
2006	29	29.6	69	70.4

#### **B. INITIAL/REVIEW HEARINGS**

In each year, both types of hearings were held, i.e., Initial [for lifers who had completed fifteen (15) years of incarceration] and Review (for lifers who had been denied parole at a previous hearing.) Over the four (4) year period, there were 159 (38.4%) Initial hearings and 255 (61.6%) Review hearings. The numbers and percentages of Initial and Review hearings per year were as follows:

	<u>INITIAL</u>		<u>REVIEW</u>	
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
2003	37	37.8	61	62.2
2004	44	37.9	72	62.1
2005	43	42.2	59	57.8
2006	35	35.7	63	64.3

Both the Initial and Review hearings can each be further analyzed for Approvals or Denials of the requests for parole by lifers in the years covered by this study. Overall, the 159 Initial hearings resulted in 63 (39.6%) approvals and 96 (60.4%) denials. The 255 Review hearings resulted in 91 (35.7% approvals and 164 (64.3%) denials. These totals can also be broken down for each year of the study.

#### **Initial Hearings:**

	<b>APPROVED</b>		<b>DENIED</b>	
	<b>No.</b>	<b>%</b>	<b>No.</b>	<b>%</b>
2003	15	40.5	22	59.5
2004	20	45.4	24	54.6
2005	13	30.2	30	69.8
2006	15	42.9	20	57.1

#### **Review Hearings:**

	<b>APPROVALS</b>		<b>DENIALS</b>	
	<b>No.</b>	<b>%</b>	<b>No.</b>	<b>%</b>
2003	22	36.1	39	63.9
2004	34	47.2	38	52.8
2005	21	35.6	38	64.4
2006	14	22.2	49	77.8



### **C. FACTORS FOR APPROVING OR DENYING PAROLES**

A total of thirty-nine (39) factors were isolated for either approving (13) or denying (26) paroles to lifers for the years of this study. The factors are listed as follows with a reference number and whether the factor was cited for either approving or denying a request for parole. No factor was listed for both approvals and denials of parole. Approvals are designated A and Denials D.

<u>Factor #</u>	<u>Description</u>	<u>A/D</u>
1	Does Not Take Responsibility	D
2	Is a Danger to Community	D
3	Not Program Involved	D
4	Minimizes Criminal Behavior	D
5	Waived Hearing	D
6	Refused Move to Lower Security	D
7	Release Incompatible with Welfare of Society	D
8	Lacks Causative Insight Into Criminal Behavior	D
9	Very Program Involved	A
10	Poor Institutional Behavior	D
11	Refuses Sex Offenders Treatment Program	D
12	Serious Disciplinary Report History	D
13	Accepts Responsibility	A
14	Expresses Remorse	A
15	Amenable to Treatment and Supervision	A
16	Health Issues	A
17	Crime Committed While Incarcerated	D
18	Strong Community Support	A
19	Family Support	A
20	Understands Causative Factors of Crim. Beh.	A
21	Mental Health Issues	D
22	Minimal Disciplinary Reports	A
23	Prior Parole Failures	D
24	Crime Committed While On Parole or Escape	D
25	No Family or Community Support	D
26	No Home/Work Plan	D
27	Expresses No Remorse	D
28	Substance Abuse Issues	D

<u>Factor #</u>	<u>Description</u>	<u>A/D</u>
29	Non-Shooter	A
30	Solid Parole Plan	A
31	Untruthful	D
32	To Immigration	A
33	Severity of Offense	D
34	Unresolved Anger Issues	D
35	Needs Longer Period of Positive Adjustment	D
36	Needs Counseling	D
37	Incarcerated at Highest Security	D
38	Manipulative	D
39	Juvenile at Time of Offense	A

The tables below illustrate the frequency these factors occurred for denying and/or approving paroles for lifers in each of the years of this study.

#### REASONS FOR DENYING PAROLES FOR LIFERS 2003 - 2006

Factor #	Description	2003 (61)	2004 (62)	2005 (68)	2006 (69)
1	Does Not Take Responsibility	11	11	14	20
2	Is a Danger to Community	15	28	20	12
3	Not Program Involved	5	3	6	17
4	Minimizes Criminal Behavior	1	7	8	2
5	Waived Hearing	1	2	3	0
6	Refused Move to Lower Security	0	0	1	0
7	Release Incompatible with Welfare of Society	12	12	14	19
8	Lacks Causative Insight Into Criminal Behavior	10	20	15	19
10	Poor Institutional Behavior	5	6	3	4
11	Refuses Sex Offender Treatment Program	5	7	5	11
12	Serious Discipline Report History	13	13	20	14
17	Crime Committed While Incarcerated	0	4	2	0
21	Mental Health Issues	9	8	9	7
23	Prior Parole Failures	3	4	1	8
24	Crime Committed While On Parole or Escape	2	5	8	3
25	No Family or Community Support	0	1	2	6
26	No Home or Work Plan	0	0	2	2
27	Expresses No Remorse	2	7	2	5
28	Substance Abuse Issues	3	5	6	14
31	Untruthful	6	4	3	3
33	Severity of Offense	12	3	3	7
34	Unresolved Anger Issues	0	2	3	4
35	Needs Longer Period of Positive Adjustment	7	8	12	8
36	Needs Counseling	2	2	1	4
37	Incarcerated at Highest Security	2	2	5	3
38	Manipulative	3	0	2	1

# REASONS FOR APPROVING PAROLES FOR LIFERS 2003 - 2006

Factor #	Description	2003 (37)	2004 (54)	2005 (34)	2006 (29)
9	Very Program Involved	23	41	21	19
13	Accepts Responsibility	1	9	4	7
14	Expresses Remorse	10	7	4	7
15	Amenable to Treatment and Supervision	11	22	12	3
16	Health Issues	2	3	2	1
18	Strong Community Support	9	9	11	6
19	Family Support	15	21	10	13
20	Understands Causative Factors of Crim. Beh.	0	3	2	6
22	Minimal Disciplinary Reports	6	4	1	2
29	Non-Shooter	2	4	1	2
30	Solid Parole Plan	3	1	3	8
32	To Immigration	4	4	1	1
39	Juvenile at Time of Offense	4	3	0	1

There was a significant diversity in the frequency of the utilization of the factors not only from year to year, but also in the actual occurrences from 2003-2006. For Denials these ranged from Danger to Community cited seventy-five (75) times (28.8%) to Refused to Move to Lower Security cited only once (0.4%). For Approvals the most frequently cited factor was Very Program Involved at 104 (63.4%); the least cited factors were Health Issues and Juvenile at Time of Offense each at eight (8) (4.9%).

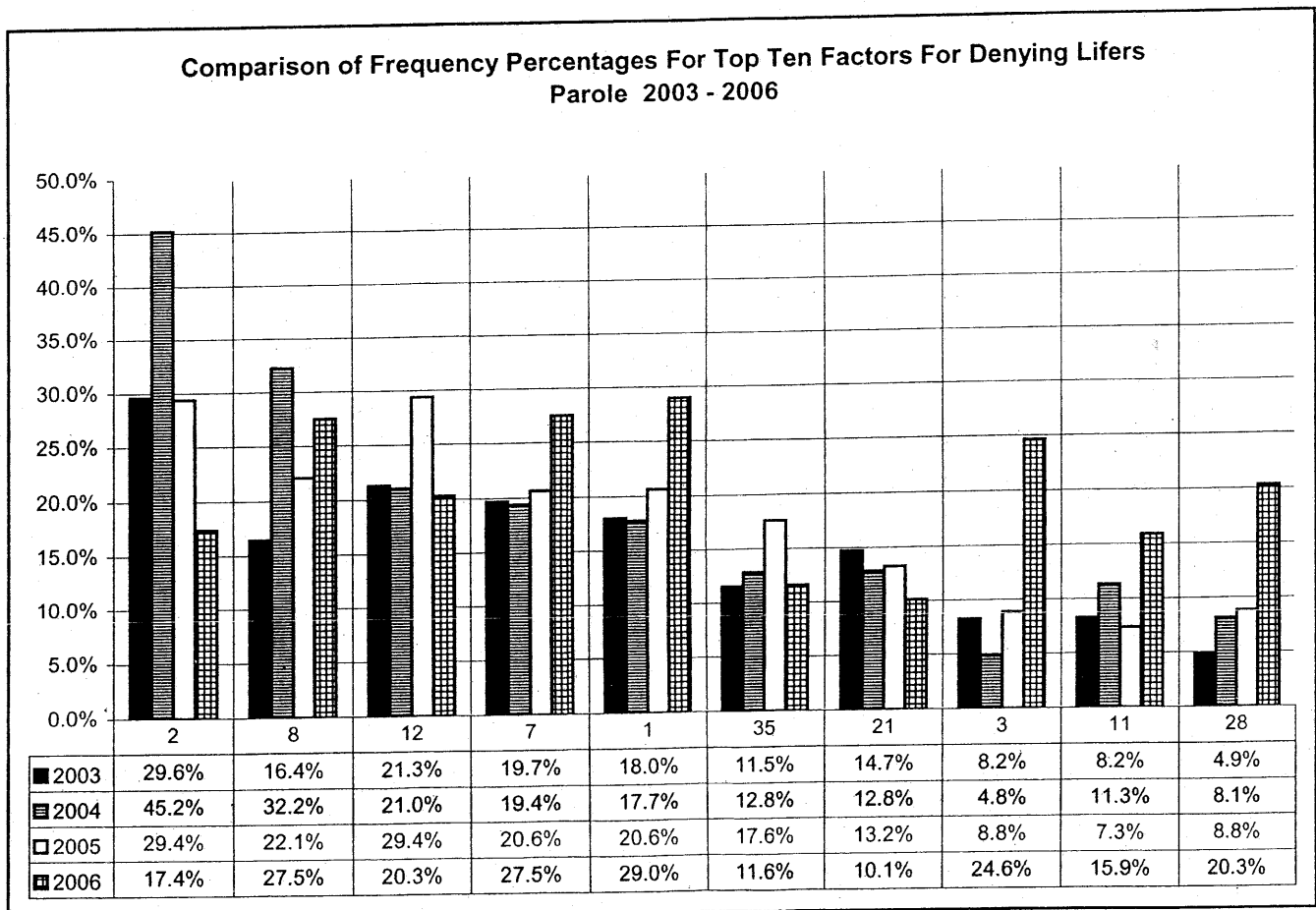
## C-1 MOST FREQUENTLY CITED FACTORS

Notwithstanding this diversity, there were a number of factors [ten (10) for Denials and eight (8) for Approvals] that occurred at a significantly higher rate than the others. The ten (10) factors for Denials were:

<u>Factor #</u>	<u>Description</u>	<u>Overall Percentage Of Occurrence</u>
#2	Danger to Community	28.8
#8	Lacks Causative Insight Into Criminal Beh.	24.6
#12	Serious Disciplinary History	23.1

<u>Factor #</u>	<u>Description</u>	<u>Overall Percentage Of Occurrence</u>
#7	Release Incompatible with Welfare of Society	21.9
#1	Does Not Take Responsibility	21.5
#35	Needs Longer Period of Positive Adjustment	13.5
#21	Mental Health Issues	12.7
#3	Not Program Involved	11.9
#11	Refuses Sex Offender Treatment Program	10.8
#28	Substance Abuse Issues	10.8

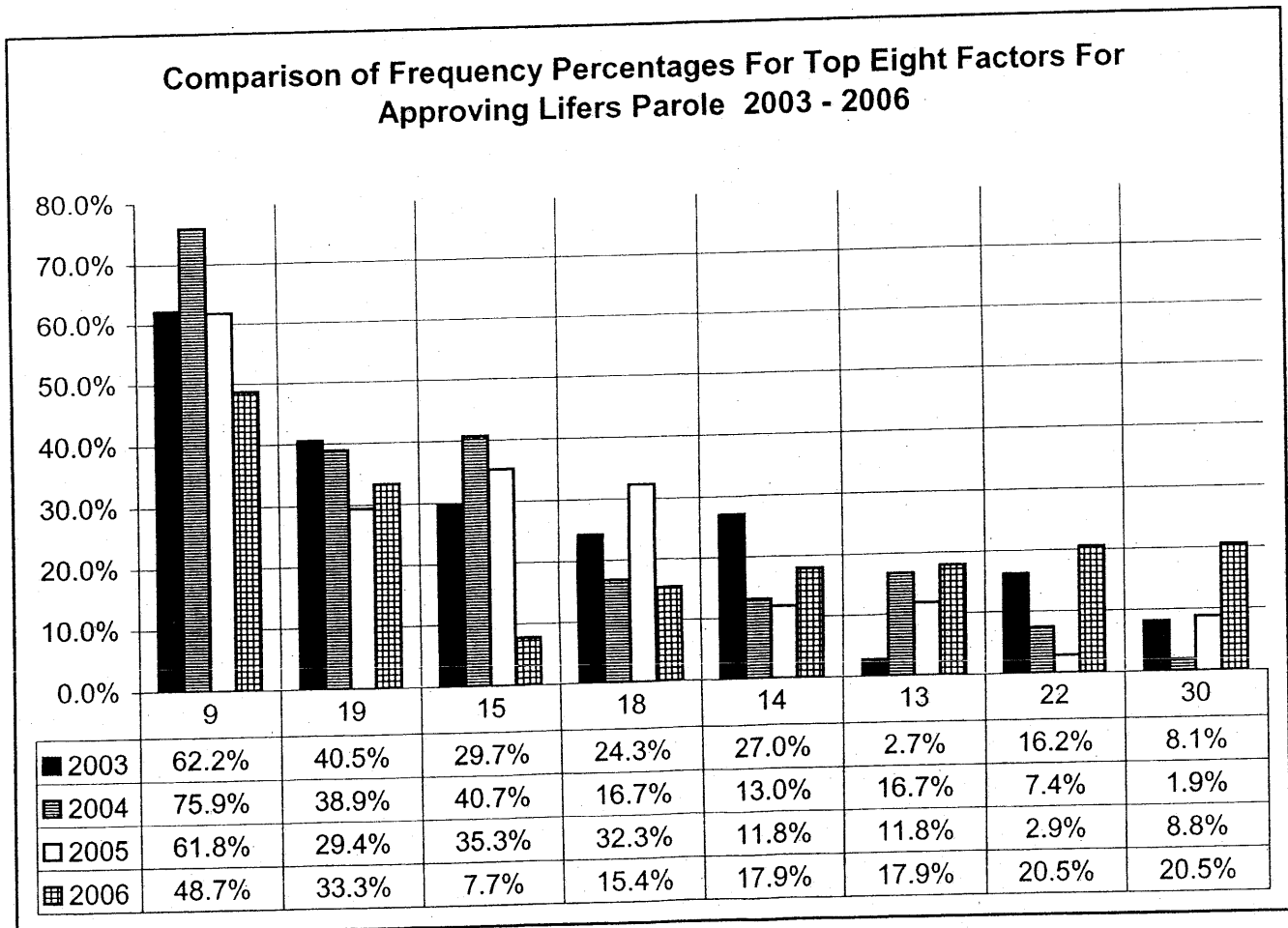
A comparison of the frequency percentages for each year of this study for these ten (10) factors is presented below:



<u>Factor #</u>	<u>Description</u>	<u>Overall Percentage Of Occurrence</u>
#9	Very Program Involved	63.4
#19	Family Support	36.0

<u>Factor #</u>	<u>Description</u>	<u>Overall Percentage Of Occurrence</u>
#15	Amenable to Treatment and Supervision	29.3
#18	Strong Community Support	21.3
#14	Expresses Remorse	17.0
#13	Accepts Responsibility	12.8
#22	Minimal Disciplinary Reports	11.6
#30	Solid Parole Plan	9.1

A comparison of the frequency percentages for each year of this study for these eight (8) factors is presented below:

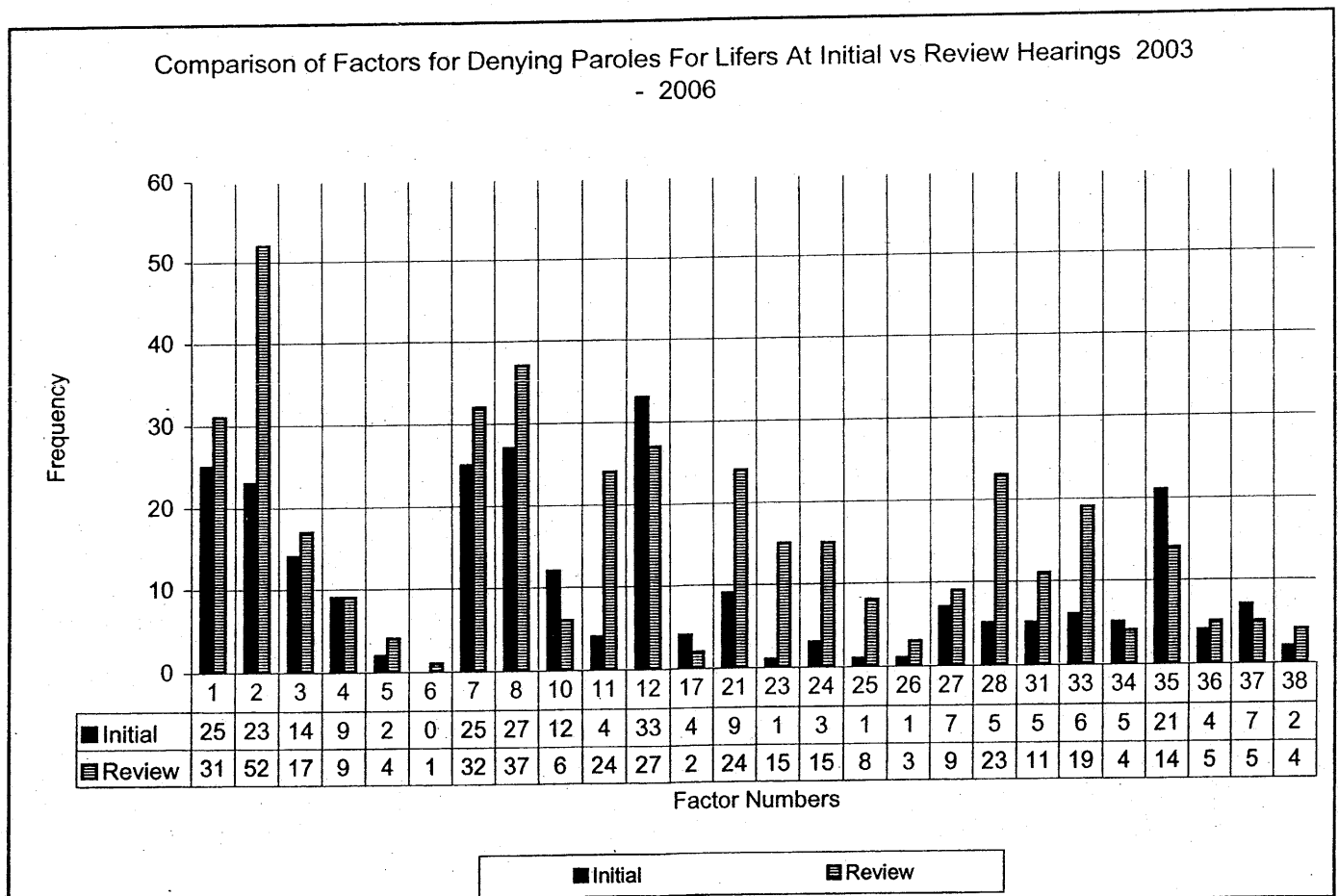


As has been stated, the most frequent factor for approving paroles for lifers was: Very Program Involved. Seven (7) programs were specifically cited in the Records of Decisions. The seven (7) programs and the number of times each was cited in the years of this study were:

<u>Program</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>TOTAL</u>
CRA	2	16	3	8	29
AA	0	0	0	9	9
GED	1	0	2	5	8
Alt. To Viol.	1	2	0	2	5
NA	0	0	0	5	5
College	0	0	0	3	3
Spectrum	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>	<u>1</u>
<b><u>TOTALS</u></b>	<b>4</b>	<b>18</b>	<b>5</b>	<b>33</b>	<b>60</b>

## **C-2 FACTORS FOR INITIAL REVIEW HEARINGS - DENIALS**

The frequency of occurrences of factors for denying paroles can be compared for Initial versus Review Hearings. That comparison is given in the table below:



For all Review hearings, those factors cited more frequently than twenty (20) times for denying parole were:

<u>Factor #</u>	<u>Description</u>	<u>FREQUENCY</u>
#2	Danger to Community	52
#8	Lacks Causative Insight into Crim. Beh.	37
#7	Release Incompatible with Welfare of Society	32
#1	Does Not Take Responsibility	31
#12	Serious Discipline Report History	27
#11	Refuses Sex Offender Treatment Program	24
#21	Mental Health Issues	24
#28	Substance Abuse Issues	23

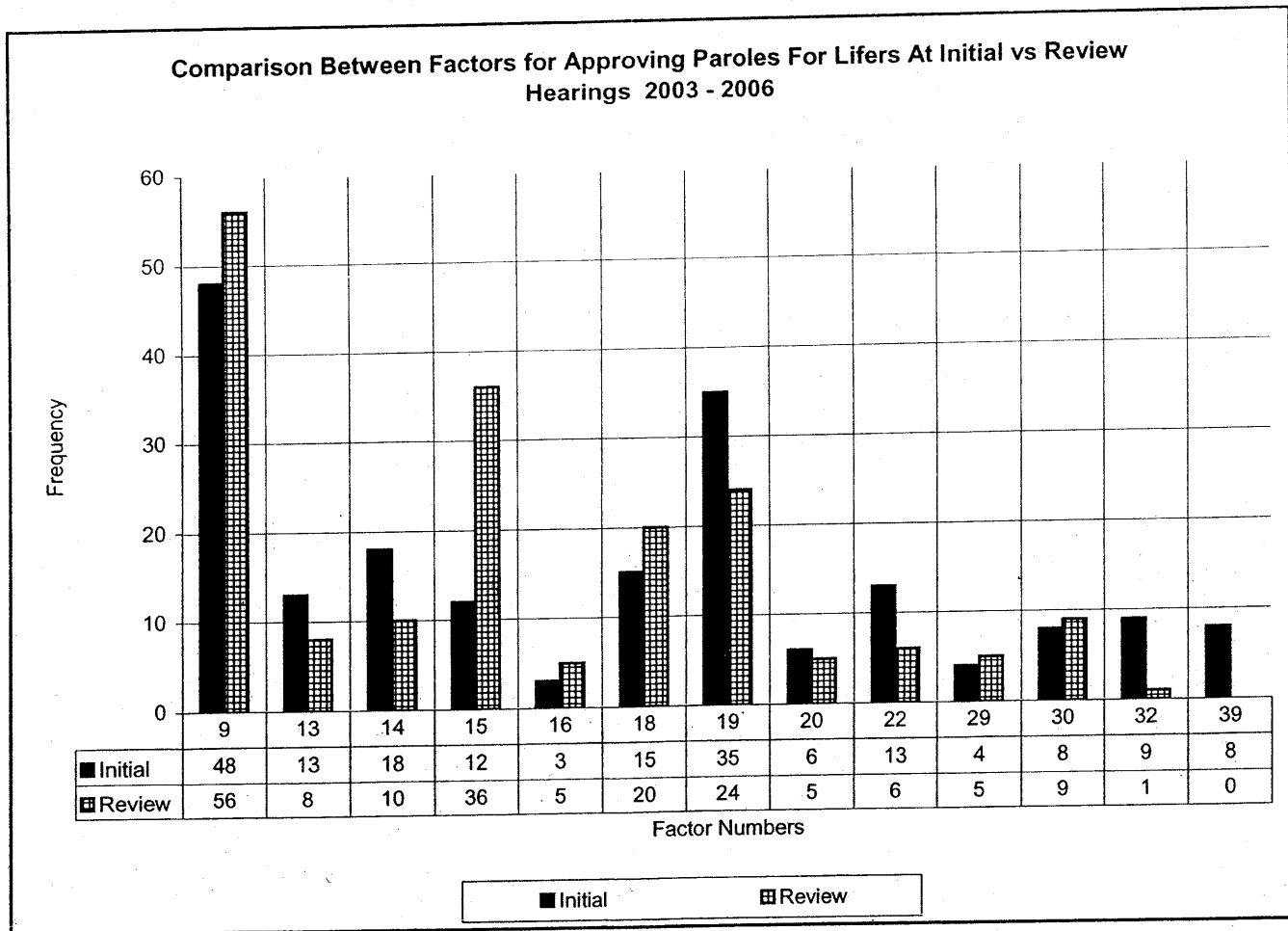
In contrast, for all Initial hearings those factors cited more frequently than twenty (20) times for denying parole were:

<u>Factor #</u>	<u>Description</u>	<u>FREQUENCY</u>
#12	Serious Discipline History	33
#8	Lacks Causative Insight into Crim. Beh.	27
#7	Release Incompatible with Welfare of Society	25
#1	Does Not Take Responsibility	25
#2	Danger to Community	23
#35	Needs Longer Period of Positive Adjustment	21

For those factors that occurred over twenty (20) times from 2003-2006 for denying parole to lifers, only two (2) occurred more for Initial hearings than for Review hearings. These were: #12 (Serious Discipline History) -33-27 and #35 (Needs Longer Period of Positive Adjustment) - 21-14 respectively.

### **C-3 FACTORS FOR INITIAL vs REVIEW HEARINGS - APPROVAL**

The frequency of occurrence of factors for approving paroles can also be compared for Initial vs. Review Hearings. That comparison is given in the table below:



For all hearings which resulted in a parole being approved for a lifer, the factors cited ten (10) or more times were:

<u>Factor #</u>	<u>Description</u>	<u>FREQUENCY</u>
#9	Very Program Involved	56
#15	Amenable to Treatment & Supervision	36
#19	Family Support	24
#18	Strong Community Support	20
#14	Expresses Remorse	10



For all Initial hearings resulting in approvals, the factors cited ten (10) or more times were:

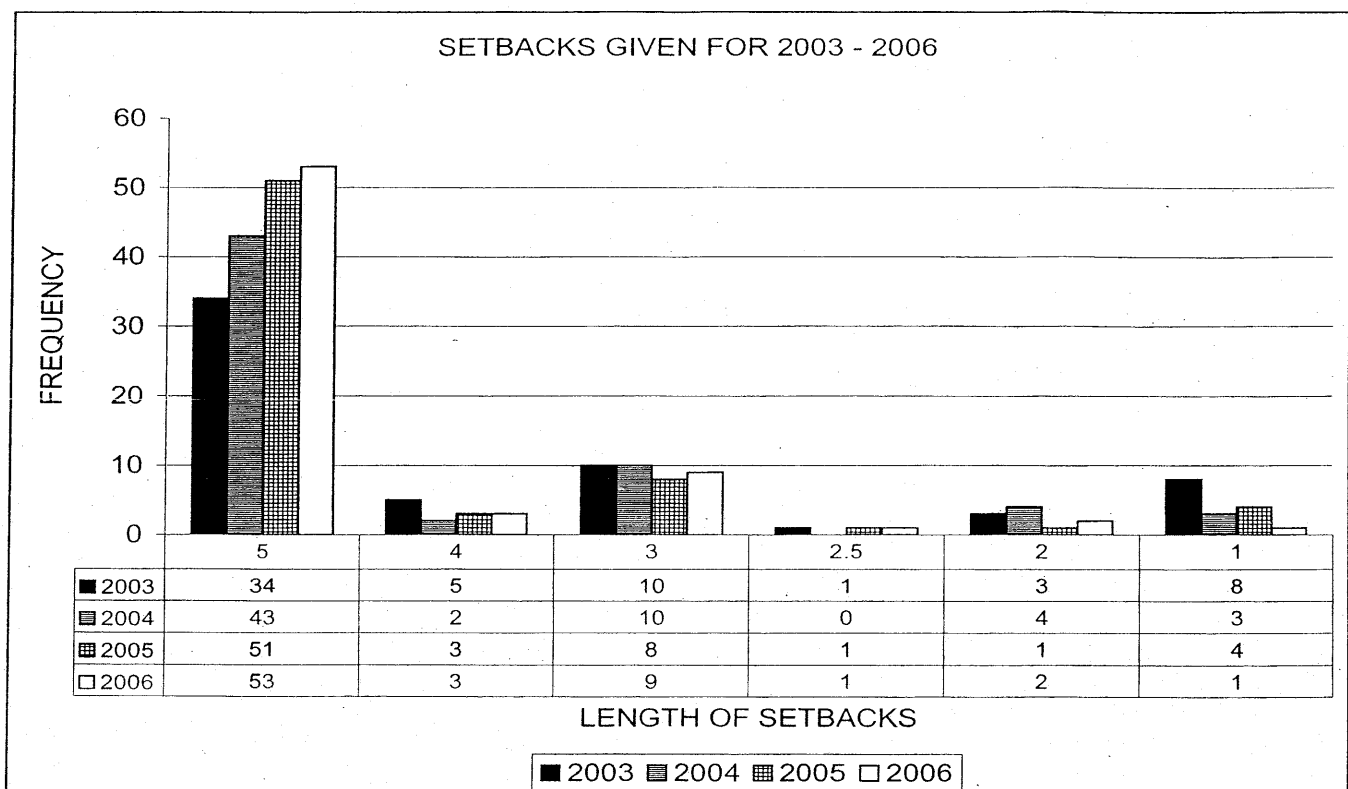
<u>Factor #</u>	<u>Description</u>	<u>FREQUENCY</u>
#9	Very Program Involved	48
#19	Family Support	35
#14	Expresses Remorse	18
#18	Strong Community Support	15
#13	Accepts Responsibility	13
#22	Minimal Disciplinary Reports	13
#15	Amenable to Treatment & Supervision	12

For the factors that occurred ten (10) or more times in approving paroles, there were four (4) in which the frequency for Initial hearings exceeded that for Review hearings. These were: #19 (Family Support) - 35 to 24, #14 (Expresses Remorse) - 18 to 10, #13 (Accepts Responsibility - 13 to 8, and #22 (Minimal Disciplinary Reports) - 13 to 6 respectively.

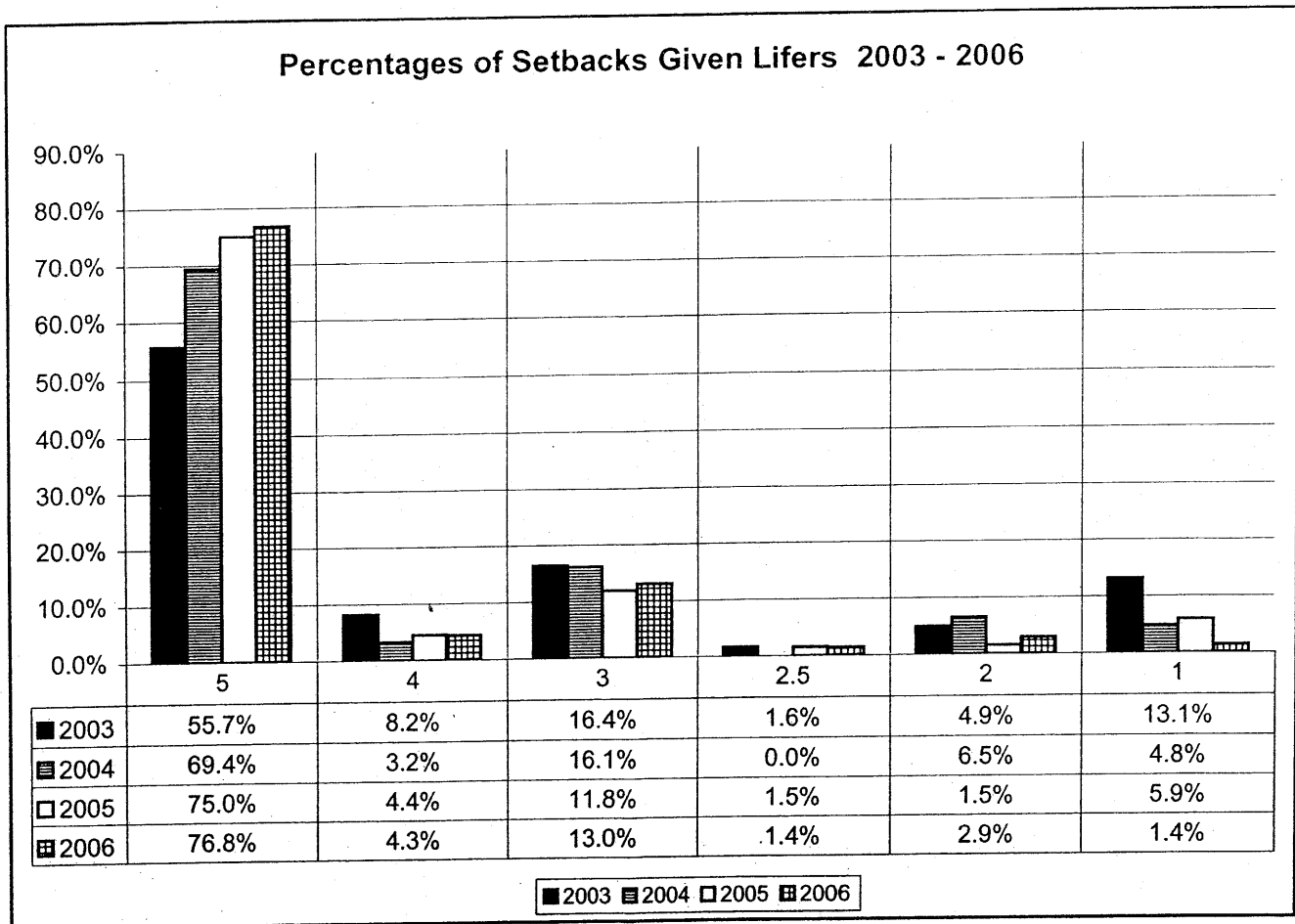
#### **D. SETBACKS**

For every denial of parole, whether after an Initial or Review hearing, the next time the lifer is to appear before the Parole Board must be determined. Massachusetts law, M.G.L. c. 127, §133A, mandates that the lifer have a parole hearing "up to five years" after the date of the denial. That period of time between hearings is referred to as a "setback." Parole Board regulation 103 CMR 301.01(5), states that the setback is five (5) years, unless the Parole Board decides that a shorter

period setback is appropriate. There are no published guidelines for deciding when or why a lifer should be given a setback of less than five (5) years, except for split decisions which call for a setback of one (1) year. Split decisions are those in which the votes for approving and denying parole are equal, e.g., three (3) to three (3). Split decisions occur when there is less than a full board or a member is excused due to a conflict of interest. If a parole board member does not attend a hearing he/she will review the videotape of the hearing and participate in the vote for or against a parole. The length of setbacks given each year during the period of this study, i.e., 2003 - 2006 break down as follows:



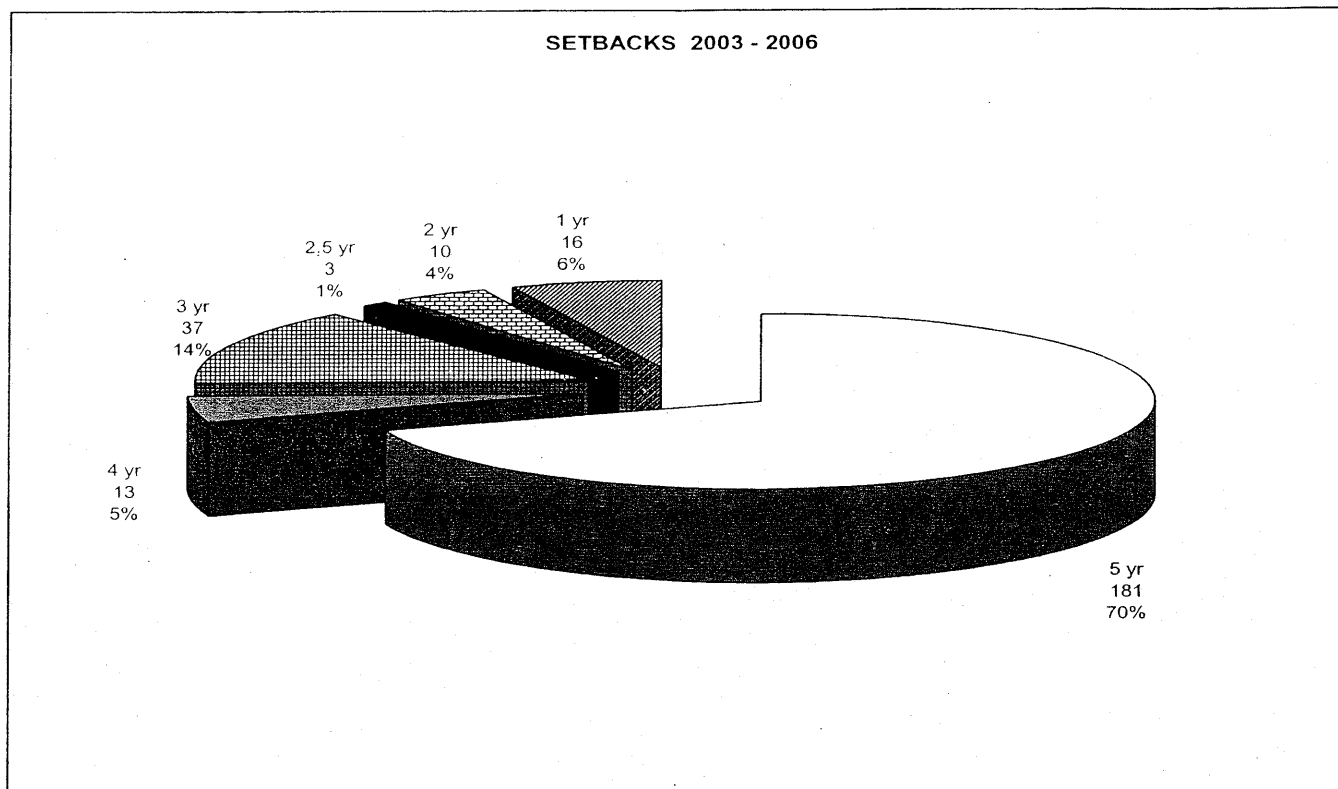
The Percentages for the length of setbacks for 2003 - 2006 are as follows:



The grand totals for the length of setbacks for 2003 - 2006 are:

<u>SETBACK IN YEARS</u>	<u>TOTALS FOR 2003 - 2006</u>
5	181
4	13
3	37
2.5	3
2	10
1	16

The overall percentages are depicted in the chart below:



There were eleven (11) lifers who received denials and setbacks in 2003 and 2004 of three (3) or less years and thus appeared again before the Parole Board in 2005 or 2006. At the subsequent hearing they were also denied parole. Of the eleven (11), seven (7) or 63.6% received a higher setback after another denial in 2005 or 2006. Two (2) - 18.2% - received a lower setback and two (2) - 18.2% received the same length of setback after the second appearance. The distribution of the setbacks for these eleven (11) lifers handed down by the Parole Board from one appearance to the next was:

From 3 to 5 years	4
From 2 to 5 years	2
From 1 to 2 years	1
From 3 to 3 years	2
From 3 to 2½ years	1
From 2 to 1 year	1

## **DISCUSSION:**

### **A. CONTENT OF RECORDS OF DECISIONS**

In reviewing the Records of Decisions for lifers for 2003 - 2006 it became apparent that at some point in 2005 a significant change occurred in how the Records of Decision were written. In 2003 and 2004, Records of Decision often did not exceed one (1) page. For few details were committed to writing as to why a parole decision was made, particularly a denial. There were one (1) or two (2) paragraphs and then a listing of parole board members, identified only by a number, and a notation whether the Board member concurred or not. In 2005, the Records of Decision became more detailed and, consequently much longer. A Record of Decision rarely was one (1) page, sometimes going to a third page. The listing of concurring votes with Board members identified only by numbers continued to be included.

### **B. REASONS FOR DENYING/APPROVING PAROLES**

In the years of this study, the Parole Board, if a parole was denied, never committed to a future granting of parole if certain conditions were met before the next appearance. For instance, rather than just stating a lifer was Very Program Involved - the most frequent reason given for approving a parole for 2003 - 2006 - the Records of Decision included reference to specific programs that had been successfully completed. Conversely, when a parole was denied and one (1) of the reasons given was "Not Program Involved," specific programs the lifer should complete were not identified. One conclusion is that the Parole Board is concerned with establishing an expectation of parole if one or more programs are completed and a resultant possible liberty interest

challenge in court if the recommendation cited in a Record of Decision are subsequently achieved. Since parole is not to be granted solely as a reward for good behavior, the absence of specific recommendations for program involvement must leave a lifer in a quandary as to what he/she can do to be approved for parole. Factors such as: "Is a Danger to the Community," "Release Incompatible with the Welfare of Society," "Lacks Causative Insight into Criminal Behavior," and "Needs Longer Period of Positive Adjustment" are just general enough to be of little or no help. How is a lifer to demonstrate he or she is not a danger to the community, or that society's welfare would be compatible with a parole, or how to gain causative insight, or how long a period of positive adjustment may be required? And, these are four (4) of the six (6) most frequently cited factors for denying parole.

Since parole decisions are left to the discretion of individual Board members changes in the make-up of the Parole Board further complicates the chances of being approved. The reasons one majority of the Parole Board denied parole may not concern new members appointed in the interim between hearings. Thus, any presumed guidance gleaned from a previous hearing may then turn out irrelevant in subsequent hearings.

This lack of specific standards for approving paroles for lifers must leave a lifer unsure of what he or she needs to accomplish in order to be granted a parole. Parole decisions need not be mechanical, but the large number of factors (26) cited for denying paroles as well as the breadth of variations for many factors from year to year demonstrates how discretionary and unpredictable the decision to approve or deny a parole is.

### **C. SEVERITY OF OFFENSE**

The decision to grant a parole to a lifer is obviously fraught with influences outside of the individual lifers' development during incarceration. Severity of the offense, another unquantifiable factor, seems to have made a resurgence: from twelve (12) citations in 2003 to three (3) in 2004, three (3) in 2005 and then to seven (7) in 2006. The severity of offense is a factor that cannot change. Severity of offense as a reason for denying parole implies a continuum of offenses. What is severe enough to deny parole and what is not is so variable that it may well function as a safe haven for decision makers. Once again, some semblance of standards needs to be established.

The question remains: Are there offenses so severe that the Parole Board has decided parole should not be granted? If so, those severities need to be identified for time cannot diminish the severity of an offense. There have been lifers in this study who have been denied parole based on the severity of the offense and then approved at a subsequent parole hearing, while for others the severity of offense continues to block parole seemingly without regard to what the lifer has accomplished. Severity of offense is simply too broad and too susceptible to political influence and other extraneous factors to be a reason for denying parole without further elaboration as to why the offense was so severe as to merit a denial of parole.

### **D. WELFARE OF SOCIETY**

Perhaps it may be too simplistic to contend that every second degree lifer should be paroled if the conditions under M.G.L. c. 127 §130 - not to commit any further crimes and the welfare of society would be compatible with the granting of parole - are met. The safety of the public

is protected under the first criterion. What then constitutes a lifer's parole not being compatible with the welfare of society? Are there professions, e.g., judges, prosecutors, police officers, parole board members, whose members, if victims of a murder, are considered in a different category than non law enforcement personnel? There is no different standing for such professions under the law. But, when the Parole Board is comprised overwhelmingly of members with direct connections to the law enforcement community, it is easy to see how in their eyes, the welfare of society would be diminished if certain second degree lifers, because of who their victims were, were paroled.

Most every second degree lifer either pled guilty or was found guilty of second degree murder by a jury. Those few found guilty by a jury were thus specifically found not guilty of first degree murder. What is common among such lifers is that all have an opportunity for parole. No second degree plea can be dictated by a defendant. Such pleas have to be initiated by the prosecution and approved by a judge. It is difficult to believe that the family members of victims are not made aware of the plea, especially since victims family members are afforded opportunities to make victim impact statements. Certainly, prosecutors and judges know of the parole possibility after fifteen (15) years and often hold that out as a carrot to induce a plea. Use of severity of offense as being incompatible with the welfare of society to deny parole by the Parole Board runs counter to the intent of the original pleas.

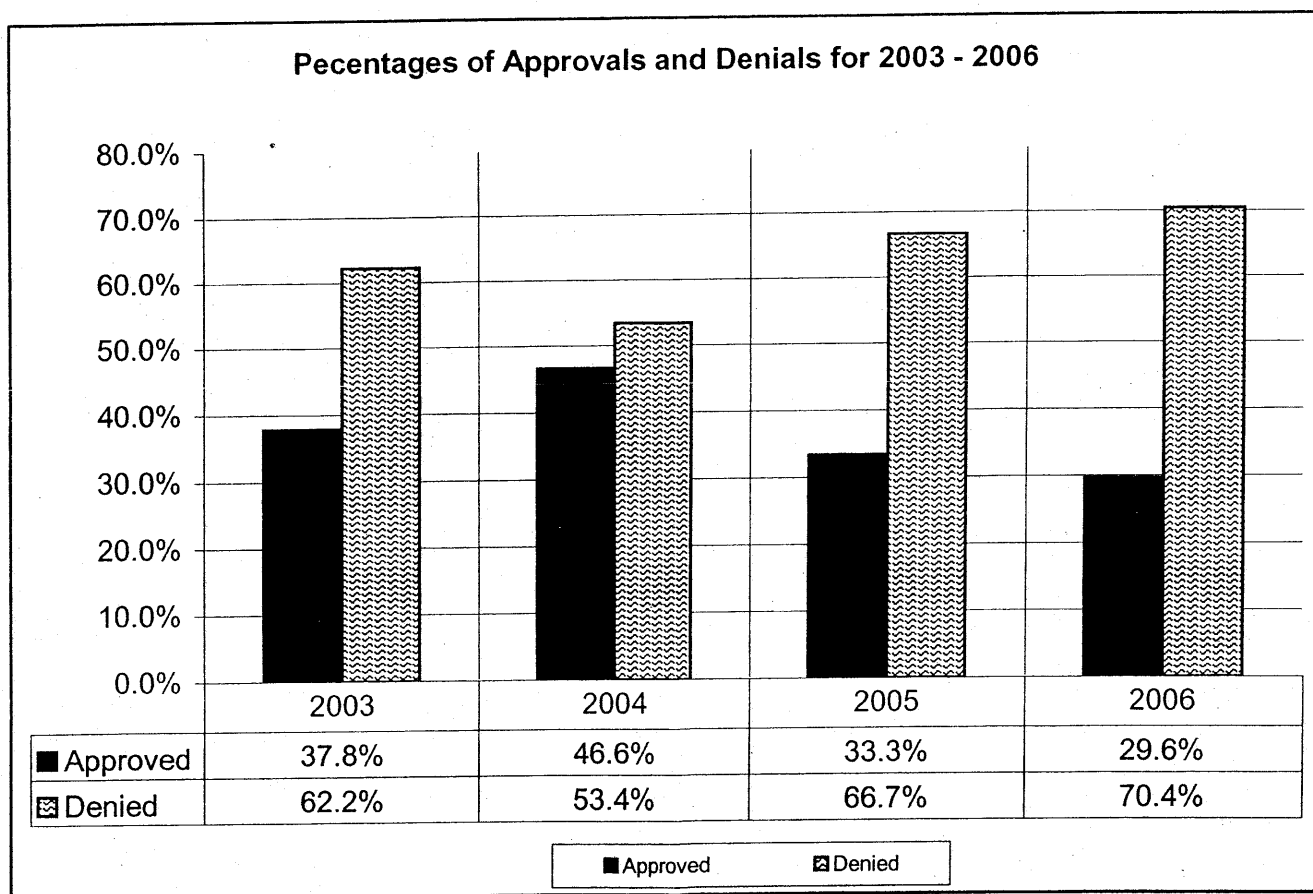
As part of the Executive Branch, the Parole Board has no judiciary authority. Consequently, denying paroles based on the severity of offense contravenes the sentences handed down by the judiciary. This is particularly apt for lifers who were found guilty at a jury trial. A jury is the representative of society and its decision as to the severity of an offense needs to be reinforced by the Parole Board not countermanded. While a jury is unaware of the penalty for a second degree murder, that



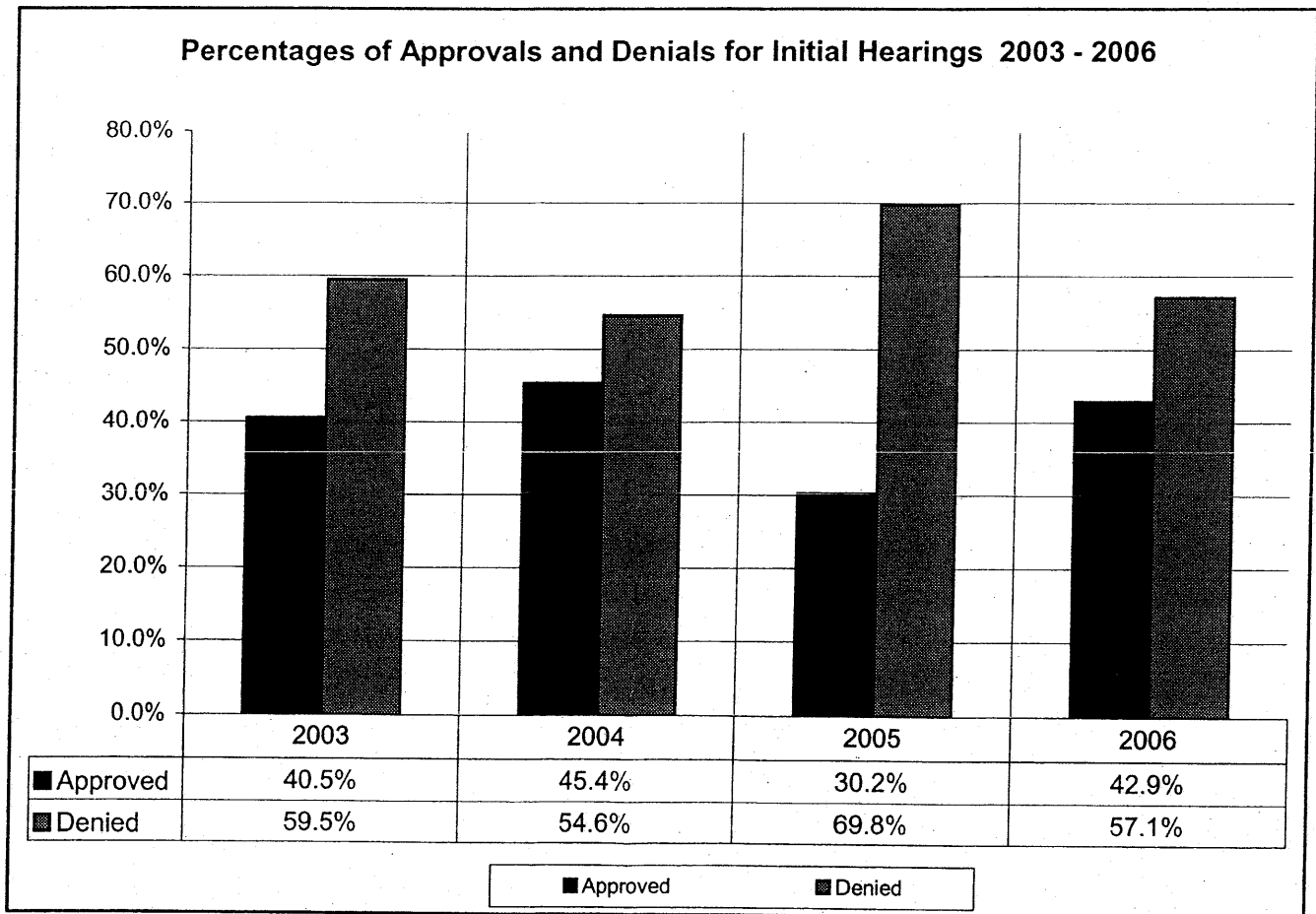
should not be an excuse for the Parole Board to substitute its judgment for the jury verdict. Three (3) of the present Parole Board members, including the Chairperson, have been told their terms will not be renewed. That may constitute a significant shift in the decisions made by the Parole Board, particularly if new members have backgrounds outside law enforcement, e.g., mental health or social work.

### **E. APPROVALS/DENIALS**

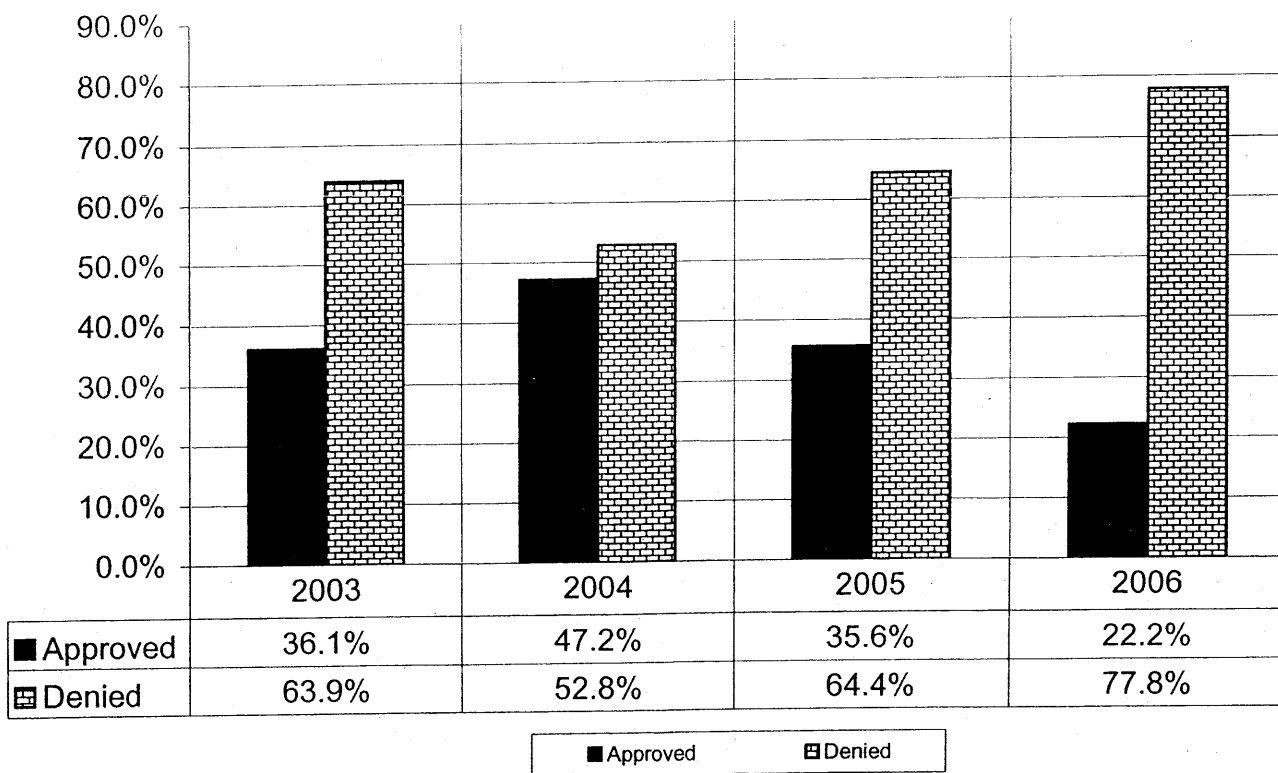
For no year of the study did the numbers or the percentages of approvals exceed that of denials. In 2004 the percentage of approvals was the highest - 46.6%. The trend moved downward in 2005 and 2006, 33% and 29.6% respectively. And, in 2006 the percentage of denials exceeded 70% for the only time.



The differences in percentages for Approvals/Denials isolated for Initial vs. Review hearings were striking. Those lifers going for their Initial hearing were more likely to be approved in 2003 and 2006 than those at Review hearings. Conversely, the percentage for Approvals for those having Review hearings were higher than Initial hearings in 2004 and 2005. The largest disparity occurred in 2006 where 42.9% of those having Initial hearings were approved vs. only 22.2% for Review hearings. In fact, the percentage of denials for those having review hearings has increased by approximately twelve (12) percentage points each year from 2004 to 2005 to 2006. See the following charts for a comparison of percentages of approvals and denials:



Percentages of Approvals and Denials for Review Hearings 2003 - 2006



This trend of increasing percentages of denials for Review hearings needs continued study. What is particularly troubling is the possibility that under the present Parole Board, there may be a belief that the longer a lifer serves, the less likely that a parole should be approved. This may seem contradictory as it is clear that the longer a lifer serves, the more amenable to parole he or she usually becomes. This is due not only to the maturity of age, but the impact of programs geared to addressing the causative factors of criminal behavior. The irony may be that the present Parole Board is considering that there is a point after which a lifer is beyond a reasonable expectation of positive assimilation back into society should a parole be approved. That is to say, that after a period of years, regardless of program participation, a lifer is too institutionalized to make an effective transition back into society. After

further study, if found to be a rationale of the Parole Board such a conclusion would, negate the intent and purpose of the concept of parole.

## **F. SETBACKS**

After the decision to deny a parole, the Parole Board then decides when the lifer will next appear for a Review hearing. M.G.L. c. 127 § 133A states that the time period (Setback) between parole hearings for lifers can be up to five (5) years. The Parole Board has interpreted that law to mean that each lifer denied parole is to be given a five (5) year setback unless the Parole Board determines a shorter period of time is appropriate. Split votes, i.e., an equal number of votes for and against parole, always lead to a one year setback.

How the Parole Board members decide the length of a setback is unknown. There are no guidelines; at least none that have been published. Nor, are reasons for the determination of the length of a setback given in Records of Decisions. Overwhelmingly, the Parole Board hands down five (5) year setbacks - 70% for the years of this study. That percentage has climbed consistently higher from one year to the next from 2003 to 2006 - 55.7% in 2003, 69.4% in 2004, 75.0% in 2005, and 76.8% in 2006. The other lengths of setbacks vary without a consistent pattern from year to year.

Excluding the one (1) year setback mandated for a split vote, the next most frequent length handed down was three (3) years - 14% from 2003 - 2006. Four (4) year setbacks were given for 5% of denials and two (2) year setbacks for 4%.

There seems to be a contradiction between what the law states and how the Parole Board implements M.G.L. c. 127 §133A. Literally, a five (5)

year setback is not in accord with the statutory language. Up to five (5) years would seem to exclude a five (5) year setback. More importantly, however, is the intent of the legislative language. It would seem reasonable that the most extreme length of setback was intended for cases in which a lifer needs substantial time for program participation and behavior modification. Yet, the Parole Board has employed a presumptive five (5) year setback, i.e., all lifers denied parole are to be given the maximum unless the Board votes otherwise. It is clear from the data, however, that for 24% of the denials from 2003 through 2006, the Parole Board found that a shorter period for a setback was appropriate

What is troubling is that there is no information as to how or why those decisions were made. The patterns from year to year in this study show an inconsistency bordering on random. Assuming the Parole Board determines setbacks on a case-by-case basis, there still needs to be some semblance of standards to determine who receives a setback less than five (5) years. How can a lifer demonstrate that he or she does not deserve a five (5) year setback if there is no information on how or why the Parole Board arrives at the conclusion that a shorter setback is required?

The setbacks given to lifers who were denied parole at an Initial and a Review hearing or two Review hearings during the years of this study demonstrate just how random the decision on the length of setbacks appears to be. Eleven (11) lifers were denied parole twice from 2003 to 2006. Of those, seven (7) - 63.6% received higher setbacks after the second denial than they had received after the first denial. Only two (2) received shorter setbacks. That includes one lifer who received a one (1) year setback due to a split decision. The remaining two (2) received the same setback [three (3) years] after the second denial as they did after the first. Why a larger setback was rendered after the second

denials in the seven (7) cases was not discussed in any of the Records of Decision.

It seems clear that the Parole Board needs to develop and publish standards for determining setbacks. Presently, the only rationale seems to be nothing more than "gut" feelings which obviously must vary from member to member. Unfettered discretion is neither fair nor rational. Some demonstrable factors need to be identified. Such factors are not difficult to develop. For instance, lifers who need mental health counseling, substance abuse work, educational or vocational training should be given time to achieve those objectives in a meaningful way. Similarly, those lifers with poor disciplinary histories may need to demonstrate continued positive adjustments for a significant period of time. The maximum setback would seem reasonable under these circumstances.

Under the present system, no such indices are evident. Instead, some consensus is arrived at in a manner that no one seems to be willing or able to define. This lack of information suggests that the random pattern of setbacks less than five (5) years results solely from chance. That is a disservice to the public and to the lifers trying to prepare themselves for parole. A five (5) year setback given without reasons to a lifer implies that all he or she may have accomplished has been for naught. The decision to determine the length of a setback needs to be circumscribed by more than how the wind may be blowing on the day the decision is made. It would seem not to be unreasonable to require the Parole Board to define how decisions about setbacks are determined. In the end, everyone - the public, the Parole Board, and the lifers - will be better served when there exists the confidence that the decision regarding the length of a setback is grounded in rational factors rather than mere chance.

This study has been compiled by the staff of Phantom Prisoner, Ltd. This study may be duplicated or photocopied in whole or in part without permission.

Assistance from the Lifers' Group, Inc., in gathering and analyzing the information in this study has been greatly appreciated.

Questions or comments regarding this study may be addressed to us at:

***Phantom Prisoner, Ltd.***  
***Parole Study***  
***P.O. Box 114379***  
***Centerville, RI 02911***

Additional copies of this study are also available at the above address. Please include \$3.50 postage and handling fee per copy requested.