

Lifers' Group Inc.

A
STUDY OF
PAROLE BOARD DECISIONS
FOR LIFERS

2007

JUNE 2008

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INTRODUCTION

Pursuant to Massachusetts laws, M.G.L. c 127, §130 and §133A, the parole board may grant a parole to a prisoner serving a life sentence for second degree murder after the prisoner has been incarcerated for a minimum of fifteen (15) years. The decision to grant a parole cannot solely be based upon good conduct or program involvement while incarcerated. A parole is to be granted only when a majority of the parole board members believe that "there is a reasonable probability that if a prisoner is to be released, he or she will live and remain at liberty without violating the law and that his or her release is not incompatible with the welfare of society." (M.G.L. c.127, §130)

The decision to grant or not grant a parole is entirely at the discretion of the parole board. The parole board does not have the authority to, nor is it expected to, retry any prisoner's case. The seriousness or severity of a particular case may be one of many factors the parole board considers regarding whether paroling a prisoner would be incompatible with the welfare of society.

Parole hearings for second degree lifers are open to the public and are held at 12 Mercer Road in Natick, MA. Hearing schedules are posted on the website for the Executive Office of Public Safety and Security: <http://www.mass.gov>. Or, the information can be obtained by calling 508-650-4545.

Witnesses for or against granting parole may testify at the public hearings. Written statements are also accepted in lieu of testimony. All records concerning a prisoner seeking parole, including juvenile records, are open for review by parole board members.

Once a decision to parole or not to parole a prisoner has been made, a Record of Decision is completed. That Record of Decision must be given to the

lifer, within twenty one (21) days after the decision has been reached. The Record of Decision is a public record. A copy must be provided to anyone requesting one under the Massachusetts Public Records statutes, specifically M.G.L. c. 4, § 7 (26) and c. 6, § 10(c).

If a lifer is denied a parole, the parole board then decides how long that prisoner must wait until his or her next hearing before the parole board. The length of that period between hearings is termed a setback. The parole board can assess setbacks up to five (5) years. In cases in which the parole board members cannot render a decision, i.e., the vote is evenly split between those for and those against granting parole, the parole is denied and the setback must be one year.

METHODOLOGY

This study of parole board decisions for lifers covers the decisions made in 2007. Records of Decision for all lifer hearings conducted in 2007 were requested by the Lifers' Group Inc. at Norfolk under the Public Records Law. Upon receipt of the assessed costs for locating the records and photocopying each page, the parole board sent the Records of Decision for 122 hearings. To these was added 15 other Records of Decision for 2006 which had been decided by the parole board in 2007, but were received too late to include in the previous study of parole board decisions for lifers covering the years 2003-2006 jointly produced by the Lifers' Group Inc. and the Phantom Prisoner, LTD. The 2007 study covers 137 Records of Decision. For a copy of the 2003-2006 report, send \$5.00 to Phantom Prisoner LTD., P.O. Box 114379, Centerdale, RI 01911 and request the Parole Study.

As with the study of 2003-2006 Records of Decision, the results of each of the 137 Records of Decision were tabulated based upon the outcome, i.e. approved or denied, the reasons cited for the decisions, and in the case of denials, the length of the setbacks. In analyzing the reasons for approving or denying a parole, the specific wordings in the decisions were used, e.g., "does not take responsibility," "poor institutional behavior," "expresses remorse." Two

additional factors were identified as specific reasons for denying parole in the 2007 Records of Decision, "not ready or suitable for community supervision," and "shows inability to abide by the rules and regulations of the prison environment." One additional factor was identified as a specific reason for approving parole in the 2007 Records of Decision, "able to abide by the rules and regulations of the prison environment." Twenty-eight (28) factors were identified as specific reasons for denying paroles and fourteen (14) for approving paroles. The frequencies that those factors appeared in the Records of Decision were tabulated. In most cases, multiple factors were identified both for approving or denying paroles. The percentage of the frequency of each factor was computed based upon total number denied or approved, i.e., there were 98 denials and the number of times each factor was identified as contributing to a denial was divided by 98 to calculate the percentage frequency. The same method was used for approval factors with a base of 39.

Percentages were also calculated for approval/denials using a base of 137, for initial and review hearings also with a base of 137, and percentage rates for approvals or denials of initial and review hearings, using bases of 47 and 90 respectively. Initial hearings were those for lifers who had completed fifteen (15) years of incarceration and appeared before the parole board for the first time in 2007. Review hearings were for lifers who had previously appeared before the parole board, had been denied, and had served the length of the previously assigned setback.

While no individual parole board member was identified in the Records of Decision, dissenting opinions were provided in a limited number of the decisions. The dissenting reasons, whether against parole being granted or denied, are not included in this study. Only the reasons cited by the majority vote have been considered.

RESULTS

Of the 137 Records of Decision included in this study for 2007, 39 paroles (28.5%) were granted, 98 (71.5%) were denied. A comparison of percentages with previous years is given below.

	Approved	Denied
2007	28.5	71.5
2006	29.6	70.4
2005	33.3	66.7
2004	46.6	53.4
2003	37.8	62.2

In 2007, 47 lifers appeared before the parole board for the first time. (Initial). The results were an approval rate of 31.9% (15 out of 47) and a denial rate of 68.1% (32 of 47). In contrast, 90 lifers appeared before the parole board for review hearings. The results were an approval rate of 26.7% (24 out of 90) and a denial rate of 73.3% (66 of 90). Comparisons of percentages with previous years are as follows:

Initial Hearings		
	Approved	Denied
2007	31.9	68.1
2006	42.9	57.1
2005	30.2	69.8
2004	45.4	54.6
2003	40.5	59.5

Review Hearings		
	Approved	Denied
2007	26.7	73.3
2006	22.2	77.8
2005	35.6	64.4
2004	47.2	52.8
2003	36.1	63.9

Of the possible twenty-eight (28) factors identified as reasons for denying parole, two (2) that had been cited in the 2003-2006 study were not in 2007. These were: crime had been committed while incarcerated and severity of

offense. Ten factors occurring most often in 2007 were: a danger to the community (48), lacks causative insight into criminal behavior (43), not program involved (32), not ready or suitable for community supervision (27), does not take responsibility (23), release incompatible with welfare of society (23), serious discipline report history (17), substance abuse issues (17), mental health issues (15), and untruthful (15). The numbers in parentheses are the actual number of times each factor had been cited. The following table presents a comparison of the frequency percentages for each of the twenty-eight (28) factors used to deny paroles for lifers from 2003 through 2007.

FACTOR	2007	2006	2005	2004	2003
Does not take responsibility	23.5	29.0	20.6	17.7	18.0
Is a danger to the community	49.0	17.4	29.4	45.2	24.6
Not program involved	32.6	24.6	8.8	4.8	8.2
Minimizes criminal behavior	5.1	2.9	11.8	11.3	1.6
Waived hearing	2.0	0	4.4	3.2	1.6
Refused move to lower security	1.0	0	1.5	0	0
Release incompatible with welfare of society	23.5	27.5	20.6	19.4	19.7
Lacks causative insight into criminal behavior	43.9	27.5	22.1	32.2	16.4
Poor institutional behavior	9.2	5.8	4.4	9.7	8.2
Refuses sex offender treatment program	9.2	15.9	7.3	11.3	8.2
Serious discipline report history	17.3	20.3	29.4	20.9	21.3
Crime committed while incarcerated	0	0	2.9	6.4	0
Mental health issues	15.3	10.1	13.2	12.9	14.7
Prior parole failures	7.1	11.6	1.5	6.4	4.9
Crime committed while on parole or escape	1.0	4.3	11.8	8.1	3.3
No family or community support	2.0	8.7	2.9	1.6	0
No home or work plan	2.0	2.9	2.9	0	0
Expresses no remorse	7.1	7.2	2.9	11.3	3.3
Substance abuse issues	17.3	20.3	8.8	8.1	4.9
Untruthful	15.3	4.3	4.4	6.4	9.8
Severity of Offense	0	10.1	4.4	4.8	19.7
Unresolved anger issues	5.1	5.8	4.4	3.2	0
Needs longer period of adjustment	8.2	11.6	17.6	12.9	11.5
Needs counseling	5.1	5.8	1.5	3.2	3.3
Incarcerated at highest security	5.1	4.3	7.4	3.2	3.3
Manipulative	3.1	1.4	2.9	0	4.9
Not ready or suitable for community supervision	27.6	0	0	0	0
Shows inability to abide by the rules and regulations of prison environment	5.1	0	0	0	0

There were fourteen (14) factors identified as reasons for granting a parole in the 2007 study. The seven most cited were: "very program involvement (30), amenable to treatment and supervision (19), accepts responsibility (18), expresses remorse (18), strong family support (10), minimal discipline reports (10), and solid parole plan (9). The numbers in parentheses are the number of times each factor had been cited. A comparison of the frequency of percentages for each factor for the years from 2003 through 2007 is given below.

FACTOR	2007	2006	2005	2004	2003
Very program involved	76.9	65.5	61.8	75.9	62.1
Accepts responsibility	46.1	24.1	11.8	16.7	2.7
Expresses remorse	46.1	24.1	11.8	13.0	27.0
Amenable to treatment and supervision	48.7	10.3	35.3	40.7	29.7
Health issues	10.3	3.4	5.9	5.6	5.4
Strong community support	12.8	20.7	32.4	16.7	24.3
Family support	25.6	44.8	29.4	38.9	40.5
Understands causative factors of criminal behavior	17.9	20.7	5.9	5.6	0
Minimal discipline reports	25.6	6.9	2.9	7.4	16.2
Non shooter	2.6	6.9	2.9	7.4	5.4
Solid parole plan	23.1	27.6	8.8	1.8	8.1
To immigration	12.8	3.4	2.9	7.4	10.8
Juvenile at time of offense	5.2	3.4	0	5.6	10.8
Able to abide by rules and regulations of prison environment	15.4	0	0	0	0

The factors for denying and/or granting paroles were also compared for Initial or Review hearings to determine which factors for 2007 may have been more or less significant. The table listed on page 7 gives the frequency percentage for each factor used in denying paroles for both Initial and Review hearings. The table on top of page 8 lists the frequency percentage for each factor used in granting paroles for both Initial and Review hearings in 2007.

Factors Cited For Denying Paroles - 2007	Initial	Review
Does not take responsibility	21.9	24.2
Is a danger to the community	40.6	53.0
Not program involved	43.7	27.3
Minimizes criminal behavior	0	7.6
Waived hearing	3.1	1.5
Refused move to lower security	3.1	0
Release incompatible with welfare of society	25.0	22.7
Lacks causative insight into criminal behavior	40.6	45.4
Poor institutional behavior	21.9	3.0
Refuses sex offender treatment program	3.1	12.1
Serious discipline report history	21.9	15.1
Crime committed while incarcerated	0	0
Mental health issues	18.7	13.6
Prior parole failures	3.1	9.1
Crime committed while on parole or escape	0	1.5
No family or community support	0	3.0
No home or work plan	0	3.0
Expresses no remorse	3.1	9.1
Substance abuse issues	9.4	21.2
Untruthful	6.2	19.7
Severity of offense	0	0
Unresolved anger issues	0	7.6
Needs longer period of adjustment	15.6	4.5
Needs counseling	3.1	6.1
Incarcerated at highest security	6.2	4.5
Manipulative	0	4.5
Not ready for community supervision	28.1	27.3
Shows inability to abide by the rules and regulations of prison environment	3.1	6.1

Factors Cited for Granting Paroles - 2007	Initial	Review
Very program involved	86.7	65.4
Accepts responsibility	40.0	50.0
Expresses remorse	46.7	45.8
Amenable to treatment and supervision	46.7	50.0
Health issues	6.7	12.5
Strong community support	6.7	16.7
Family support	33.3	20.8
Understands causative factors of criminal behavior	20.0	16.7
Minimal discipline reports	26.7	25.0
Non-shooter	6.7	0
Solid parole plan	26.7	20.8
To immigration	26.7	4.2
Juvenile at time of offense	0	8.3
Able to abide by rules and regulations of prison environment	13.3	16.7

In some cases programs were cited when paroles were granted, or if there had been a split vote. A comparison of the number of times these programs were cited for 2003 through 2007 is given below.

PROGRAMS	2007	2006	2005	2004	2003
CRA	24	8	3	16	2
AA/NA	16	14	0	0	0
Alternatives to Violence	11	2	0	2	1
GED	10	5	2	0	1
Anger Management	5	0	0	0	0
Transition Planning	5	0	0	0	0
Religious programs	3	0	0	0	0
Work	3	0	0	0	0
American Veterans in Prisons	2	0	0	0	0
Emotional Awareness	2	1	0	0	0
College	2	3	0	0	0
Toastmasters	1	0	0	0	0

When a parole is denied, the parole board determines the length of time which must elapse before the lifer is to appear again before the parole board. This length of time is termed a setback and may be up to five (5) years. In the 2007 study, there were ninety-eight (98) denials. The accompanying setbacks broke down as follows:

1 Year.....6
 2 Years.....6
 3 Years.....14
 4 Years.....6
 5 Years.....66

The following table shows the comparative frequency percentages for setbacks for the years 2003 through 2007:

Setbacks in years	2007	2006	2005	2004	2003
5	67.4	76.8	75.0	69.4	55.7
4	6.1	4.3	4.4	3.2	8.2
3	14.3	13.0	16.8	16.1	16.4
2.5	0	1.4	1.5	0	1.6
2	6.1	2.9	1.5	6.5	4.9
1	6.1	1.4	5.9	4.8	13.1

Sixty-five (65) lifers were tracked regarding the times of their hearings to study whether or not the timing of hearings had an impact on the percentages of those granted paroles. Hearings are held at 10:00 am, 12:00 p.m, and 2:00 p.m. Of the sixty-five (65) lifers, twenty-five (25) were granted parole. Of the twenty-five

(25) granted parole – ten (10) had their hearings at 10:00 a.m., seven (7) had their hearings at 12:00 p.m., and eight (8) had their hearings at 2:00 p.m. Thus, for this sample, there were no significant differences as to the chances for being approved for a parole based solely upon the time the hearings were held. It had been hypothesized that the number of approvals for the 2:00 p.m. hearings would have been significantly higher than the other two. That hypothesis was proven not to be true for the sample studied.

DISCUSSION

The overall approval rate for paroles for lifers continued the downward movement which began in 2005. The overall approval rate for 2007 (28.5%) was the lowest in the last five (5) years. Those who had their first hearing in 2007, i.e., their Initial hearing, fared better than those who had Review hearings. The approval rate for Initial hearings was 31.9% as compared to 26.7% for Review hearings. This continued a trend that began in 2006 when 42.9% of those who had Initial hearings were approved versus 22.2% for Review hearings.

While the make up of the parole board is changing as a result of criticisms that the parole board has been overwhelmingly weighted in favor of prosecutorial/police backgrounds, the rates of lifers paroled in 2007 does not reflect any softening of the approval criteria. In fact, it appears to be just the opposite. For the second year in a row, lifers had less than a three (3) in ten (10) chance of being paroled. The fears of pundits and politicians that bringing onto the parole board members of diverse social and professional backgrounds, particularly with social science backgrounds, would result in opening the floodgates for paroles for lifers have been proven groundless.

As in past years, several of the most cited reasons for denying paroles were vague to the point of being unhelpful in informing lifers why they were denied. These reasons can be best categorized as “conclusionary allegations”. Three factors met that criteria: is a danger to community (49.0%), not ready or suitable, for community supervision (27.6%) and release incompatible with the welfare of

society (23.5%). The first, danger to community, showed a marked rise from 2006 (17.4%). The second, suitability for supervision, was new for 2007 and thus no comparisons can be made with previous years. The third, incompatibility, was slightly less than in 2006 (27.5%), but in a similar range for 2003-2007, so that factor seems to have remained fairly constant.

There were a few factors for denying paroles which were more specific and showed significant increases from 2006. These were: lacks causative insight into criminal behavior (from 27.5% to 43.9%), not program involved (from 24.6% to 32.6%), and untruthful (from 4.3% to 15.3%). Two factors that have been significant in 2006 showed moderate decreases in 2007: serious discipline report history and substance abuse issues (both from 20.3% to 17.3%). For a more comprehensive analysis of all the factors listed for denying and /or granting paroles see the comparison tables given in the Results section.

Regarding granting paroles, as in the past years, being program involved was overwhelmingly the most significant factor – 76.9%, an increase from 65.5% in 2006. Other factors also showed significant increases: amenable to treatment and supervision (from 10.3 % to 48.7%), accepts responsibility and expresses remorse (both from 24.1% to 46.1%), and minimal discipline reports (from 6.9% to 25.6%). Significant factors in 2006 which showed decreases in 2007 were: family support (44.8% to 25.6%), strong community support (20.7% to 12.8%), understands causative factors of criminal behavior (20.7% to 17.9%) and solid parole plan (27.6% to 23.1%). While being amenable to treatment and supervision falls into the vague and conclusionary category, being program involved, accepting responsibility, expressing remorse, and minimum of disciplinary reports do not.

It is interesting to note the rise in untruthfulness as a factor in denying paroles (4.3% to 15.3%). The message seems to be that just saying one accepts responsibility and is sorry is not enough. How those expressions are made, the sincerity with which they are made, and the depth of what is said counts far more than simply saying: "I'm sorry." and then moving on to other matters. Expressing remorse and accepting responsibility are extremely important aspects of every

parole hearing. Much preparation needs to be done to be able to demonstrate to the parole board that such expressions are real, truthful, from the heart, and with an understanding that the prisoner knows and feels the full meaning of the words.

As in past years, understanding, or the lack thereof, of the causative factors for criminal behavior appears to more significant in denying paroles than in granting them. That suggests that understanding those causative factors is an expectation the presence of which does not significantly impact the granting of a parole, but its absence is increasingly cited for denying a parole. Thus, while understanding the causative factors of criminal behavior is significant relative to whether a person will commit additional crimes if paroled, that factor alone is not enough to grant parole. The lack of such understanding is, however, enough to deny parole.

Regarding approving paroles, the drops in frequency percentages for strong community support, family support and /or solid parole plan, need to be seen as anomalies for 2007. It is premature to reach any conclusions based on one year. More information needs to be gathered, i.e., after the 2008 Records of Decision have been analyzed, to see if trends are developing. Thus, it remains important for lifers going for parole to have as much family and community support as possible as these have been strong factors for approving paroles over the past five (5) years. Similarly, at least for 2006 and 2007, having a solid parole plan is important as well.

For the first time, differences in frequency percentages for approving and/or denying paroles between Initial and Review hearings were calculated. As this is the first year, conclusions must be carefully made as data from future years are needed before any trends can be determined. That being said, program involvement was significantly higher for both granting and denying paroles for Initial hearings. Not surprisingly, poor institutional behavior and needs longer period of positive adjustment were significantly cited more often for denying paroles at Initial hearings than at Review hearings. Conversely, substance abuse issues, refuses sex offender treatment programs and untruthfulness were

significantly cited more often for Review hearings than for Initial hearings. It should be noted that there was a large difference (26.7% to 4.2%) between Initial and Review hearings regarding granting paroles due to immigration status. This may reflect a heightened sensibility to the issue of those who are not in this country legally, but are serving prison terms, in this case for second degree lifers. This increase was also reflected in the marked rise in 2007 of paroling lifers to immigration (up to 12.8% in 2007 from 3.4% in 2006).

The most frequently cited factor for granting paroles in 2007 was being very program involved (76.9%). Not being program involved was also a significant factor in denying paroles (32.6%, the highest from 2003 through 2007). In the 2007 Records of Decision specific programs were cited eighty-four (84) times. This was a marked increase from 2006 when specific programs were noted thirty-three (33) times, and well above the other years: 2005 (5), 2004 (18) and 2003 (4) respectively. By far the most cited program in 2007 was the CRA (24) and then AA/NA (16), Alternatives to Violence (11), and GED (10). What seems significant is that the parole board is recognizing the importance and validity of certain programs. While participation in these programs is not required as paroles were granted to some who had not completed any or all of them, successful completion of these programs, where appropriate, would seem to be an important addition to any parole package.

As in the past, five year setbacks were the most frequently assessed (67.4% in 2007). This, however, was below the prior three years: 2006 -76.8%, 2005 -75.0% and 2004 -69.4%. All other setback options in 2007 -4, 3, 2, 1 year - showed modest increases to compensate for the drop in five (5) year setbacks.

The parole board continues not to give any reasons for deciding the length of a setback, other than one (1) year for split decisions, i.e., tie votes. It would be of much assistance if the parole board, since the determination of a setback is entirely discretionary, would provide reasons and criteria, assuming some exist, for why one length of a setback is determined rather than another. Until then, little can be concluded other than the actual frequency percentages.

SUMMARY

137 Records of Decision for parole hearings for second degree lifers conducted in 2007 were studied. The approval percentage was 28.5% (39 of 137); the denial rate was 71.5% (98 of 137). This approval percentage was the lowest in the years 2003 through 2007. The approval rate for Initial hearings (31.9%) was moderately higher than for Review hearings (26.7%).

The four factors most cited for approving paroles were: very program involved, accepts responsibility, expresses remorse, amenable to treatment and supervision. This was consistent with the years 2003 through 2006.

The four factors most cited for denying paroles were: is a danger to the community, lacks causative insight into criminal behavior, not program involved, and not ready or suitable for community supervision. The first three were consistent with the years 2003 through 2006. The fourth was a new factor cited in 2007.

As with past years, the number of five year setbacks was vastly higher than any other length – 66 to a total of 26 for 2, 3, or 4 year setbacks. The percentage of five year setbacks (67.4%) was the lowest since 2003.

The number of programs cited for approving paroles was also significantly higher in 2007 – eighty four (84) times in 2007 as compared to thirty-three (33) in 2006, five (5) in 2005, eighteen (18) in 2004, and four (4) in 2003. Of all the programs, the CRA and AA/NA were the most cited, twenty-four (24) and sixteen (16) times respectively.

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Questions or comments regarding this study may be addressed to:

***Lifers' Group Inc.
MCI Norfolk
P.O. Box 43
Norfolk, MA 02056***

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***Phantom Prisoner, Ltd.
Parole Study - 2007
P.O. Box 114379
Centerdale, RI 02911***