

A STUDY OF PAROLE BOARD RECORDS OF  
DECISION FOR LIFERS IN 2010

A Comprehensive Analysis of Parole Board  
Records of Decision For Lifers  
In Massachusetts In 2010

by

Gordon Haas  
Norfolk Lifers Group

December 2011

TABLE OF CONTENTS

|  | <u>Page(s)</u> |
|--|----------------|
| Executive Summary  | iv - vi        |
| Introduction   | 1 - 2          |
| Methodology  | 2 - 3          |
| Results  | 3 - 13         |
| Approval/Denial Rates ...                                    | 3-5            |
| Approval Factors ...   | 5-6            |
| Denial Factors ...   | 6-7            |
| Approval/Denial Factors For<br>Initial and Review Hearings . | 7-8            |
| Program Involvement ...                                      | 8-9            |
| Setbacks ...   | 9-10           |
| Returns From Previous Paroles .                              | 10-11          |
| Lifers Not Convicted of Second<br>Degree Murder ...          | 11-12          |
| Changes in Parole Board<br>Members ...                       | 12-13          |
| Discussion   | 14 - 27        |
| Approval/Denial Rates ...                                    | 14-15          |
| Approval Factors ...   | 16-17          |
| Denial Factors ...   | 18-19          |
| Approval Factors For Initial<br>and Review Hearings ...      | 20-21          |
| Denial Factors For Initial<br>and Review Hearings ...        | 21-24          |
| Program Involvement ...                                      | 24             |
| Setbacks ...   | 25-26          |
| Returns From Previous Paroles .                              | 26-27          |
| Excerpts From 2010 Records of Decision                       | 27 - 31        |
| Attribution  | 32             |

## EXECUTIVE SUMMARY

One hundred and twenty-three Records of Decision for parole hearings for second degree lifers held in 2010 by the Massachusetts Parole Board were studied. The overall approval rate was 34.1% (42 of 123), a decrease from 38.9% in 2009. Of the 123 lifers who appeared before the Massachusetts Parole Board in 2010, forty-four had Initial hearings with an approval rate of 50%. For the seventy-nine lifers who had Review hearings, the approval rate was 25.3%. Of the forty-two lifers approved for paroles in 2010, slightly more than one-half (22) had Initial hearings. Of the eighty-one lifers denied paroles, 27.2% had Initial hearings. 45% (9) of lifers who had Review hearings and were approved for a parole had had a prior parole revoked. The overall approval rate for lifers who had Review hearings, but had not had a prior parole revoked was 13.9%.

Three Approval factors cited in at least 20% of the forty-two approvals showed increases in frequency percentages from 2009. These were: Very Program Involved, Understands Causative Factors of Criminal Behavior, and Minimal Disciplinary Reports. Accepts Responsibility, Strong Community Support, Family Support, and Solid Parole Plan had significantly lower frequency percentages in 2010 as compared to 2009.

Two Denial factors in 2010 had significant increases in frequency percentages from 2009: Release Incompatible with Welfare of Society and Is a Danger to the Community, which may be a precursor for a return to the use of vague and uninformative reasons

for denying paroles. Conversely, Does Not Take Responsibility, Not Program Involved, and Untruthful showed precipitous declines in frequency percentages. Similar trends held for Approval and Denial factor frequency percentages for Initial and Review hearings.

As in 2009, the program most cited for Approvals was Alternatives to Violence (22 citations). Other programs cited in at least ten of the forty-two Approvals were: CRA (19), AA/NA (16), GED (12), and Work (10).

In the eighty-one denials, five year setbacks were assessed in forty-six Records of Decision, a percentage decrease from 69.1% in 2009 to 56.8% in 2010. Both two year (14) and three years (19) setbacks increased in frequency percentages as compared to 2009. Over 40% of those denied paroles in 2010 received either a two or three year setback as compared to 25.5% in 2009.

Twenty-six of the lifers appearing before the Massachusetts Parole Board in 2010 had had a prior parole revoked and had been returned to prison. Nine were re-paroled. One-half of those who had been returned to prison had their paroles revoked for primarily drug or alcohol use. Two-thirds of those who were re-paroled had been returned to prison in 2009. Four of those re-paroled had been returned for substance abuse, two for assault, and one each for associating with known felons, for violating a no contact order, and for failure to participate in mental health counseling. Sixty-five per cent of those denied a parole after having had a prior parole revoked received either a two year (41%) or a three year (24%) setback.

There were ten second degree lifers appearing before the Massachusetts Parole Board who were serving life sentences for

crimes other than second degree murder. Only two of those lifers were paroled. One had been convicted of rape and the other as an habitual offender.

The resignation of five Parole Board members and their being replaced by Josh Wall as chairman and four others as regular members caused significant delays in processing parole decisions for hearings held late in 2010. The average number of days from the dates hearings had been held and the dates Records of Decision were signed increased over 300% from fifty-eight days for eighty-six Records of Decision under the old Board to two hundred and forty-one days for the thirty-seven Records of Decision signed by Josh Wall.

# A STUDY OF PAROLE DECISIONS FOR LIFERS

2010

## INTRODUCTION

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

Under 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, or for any other offense which carries a life sentence, after the prisoner has been incarcerated for a minimum of fifteen years. The granting of a parole is not to be based solely upon good conduct or program involvement while incarcerated. Rather, a parole is to be granted only when a majority of the Parole Board members find 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)

Whether to grant a parole is entirely at the discretion of the members of the Parole Board. The Parole Board does not have the authority to, nor is it expected to, retry any lifer's case. The seriousness or severity of a particular offense may be one of many factors the Parole Board considers regarding whether or not paroling a lifer would be compatible with the welfare of society. The Parole Board has posted on line *Guidelines For Life Sentence Decisions*, which are available for downloading.

The members of the Parole Board who participated in the 2010 decisions were: Mark Conrad (Chairman), Candice Kochin, Thomas Merrigan, Leticia Munoz, Pamela Lombardini, Roger Michel, and Cesar Archilla. Except for Michel and Archilla, all the other members submitted their resignations in 2011 as a result of the political and media reaction to the killing of a Woburn police officer by a former lifer who had been paroled in 2008. The five members who resigned had voted in favor of paroling that lifer. As a result, the parole decisions for lifer in 2010 are the last ones rendered by the seven members listed above.

After the five resignations, Governor Deval Patrick appointed Josh Wall as Chairman. Decisions rendered on hearings conducted in the final months of 2010 were delayed into mid 2011. Those decisions, while presumably voted upon by the board members who had attended the hearings prior to the mass resignations, were signed by Josh Wall. There is no indication

who actually wrote the text of those decisions, or if the final decisions were consistent with the votes of the members who had resigned. Of the 123 parole decisions for 2010, Wall signed thirty-seven.

After decisions to parole or not to parole a lifer have been made, Records of Decision are completed. When a parole is denied, that Record of Decision, including a written summary of the reasons why the parole was denied, must be delivered to the lifer within twenty-one days after that decision had been reached. (120 CMR 301.08) The Record of Decision is a public record and a copy must be made available to anyone requesting one under the Massachusetts Public Record statutes.

If a lifer is denied a parole, the Parole Board then must decide how long that lifer 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 years. In cases in which Parole Board members cannot render a decision, i.e., the vote is evenly split between those for and those against granting a parole, the parole is denied and the setback to be assessed must be one year.

#### METHODOLOGY

In July 2011, a public records request was filed with the Parole Board seeking the Records of Decision for all second degree lifers who had a public parole hearing in 2010. Pursuant to that request, in October 2011, the Parole Board supplied 123 Records of Decision.

As with the studies of the 2003-2006, 2007, 2008, and 2009 Records of Decision, the results of each of the 123 Records of Decision for 2010 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 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, expresses no remorse, poor institutional behavior*. As with the 2007, 2008, and 2009 studies, the same twenty-eight factors were identified as specific reasons for denying paroles. Two Approval factors were added in this report to the fourteen factors used in prior studies for approving paroles. Those factors are: *Paroling to a from & after sentence* and *Paroled to a secure mental health facility*. The frequencies those factors appeared in each of the Records of Decision were tabulated. The percentages of the frequency of each factor were computed based upon the total numbers of those denied or approved, e.g., there were eighty-one denials and the number of times each factor was identified as contributing to a denial was divided by 81 to calculate the percentage frequency. The same method was employed for the approval factors with a base of 42. In most cases, multiple factors were identified both for approving or denying paroles for

lifers in 2010. The average number of factors cited in eighty-one cases of denials of parole was 3.1, a decrease from 3.6 in 2009. For the fifty-two denials not signed by Josh Wall, the average number of factors cited was 3.5. That average for denial decisions signed by Wall dropped to 2.5, due in part to seven decisions in which the sole factor cited was that the release *would be incompatible to the welfare of society*. The average number of factors in the forty-two cases of approvals was 4.4, an increase from 3.8 in 2009. For the thirty-four approval decisions not signed by Josh Wall, the average number of factors cited was 4.2. The average for approval decisions signed by Wall was 5.0.

Percentages were also calculated for approvals/denials using a base of 123, for Initial and Review hearings also with a base of 123, and percentage rates for approvals or denials of Initial and Review hearings using a base of 42 and 81 respectively. Initial hearings were those for lifers who had completed fifteen years of incarceration and then appeared before the Parole Board for the first time in 2010. Review hearings were either for lifers who had previously appeared before the Parole Board, been denied and then having served the length of the previously assigned setback, or who had once been paroled but returned for violating that parole.

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 a parole being granted or denied, are not included in this study. Only the reasons cited by the majority vote have been considered.

## RESULTS

### Approval/Denial Rates

Of the 123 Records of Decision included in this study, forty-two paroles were granted, an approval rate of 34.1%; eighty-one or 65.1% of the decisions were denials. A comparison of percentages of approval and denial rates with previous years is given in Table 1 below:

Table 1

| Year | Approved | Denied |
|------|----------|--------|
| 2010 | 34.1     | 65.9   |
| 2009 | 38.9     | 61.1   |
| 2008 | 31.3     | 68.7   |
| 2007 | 28.5     | 71.5   |
| 2006 | 29.6     | 70.4   |
| 2005 | 33.3     | 66.7   |
| 2004 | 46.6     | 53.4   |



In 2010, forty-four lifers appeared before the Parole Board for the first time, an Initial hearing. Those having Initial hearings were 35.8% of the total hearings for lifers held in 2010. The results were an approval rate of 50% (22 of 44) and the denial rate was the same, i.e., 50% (22 of 44). In contrast, seventy-nine lifers (64.2%) appeared before the Parole Board for Review hearings. The results were an approval rate of 25.3% (20 of 79) and a denial rate of 74.7% (59 of 79). Comparisons of the percentage rates for approval and denials at Initial and Review hearings with previous years is given below in Table 2.

Table 2

| Year | Initial Hearings |        | Review Hearings |        |
|------|------------------|--------|-----------------|--------|
|      | Approved         | Denied | Approved        | Denied |
| 2010 | 50.0             | 50.0   | 25.3            | 74.7   |
| 2009 | 30.0             | 70.0   | 43.3            | 56.7   |
| 2008 | 35.1             | 64.9   | 29.2            | 70.7   |
| 2007 | 31.9             | 68.1   | 26.7            | 73.3   |
| 2006 | 42.9             | 57.1   | 22.2            | 77.8   |
| 2005 | 30.2             | 69.8   | 35.6            | 64.4   |
| 2004 | 45.4             | 54.6   | 47.2            | 52.8   |

Of the forty-two lifers approved for a parole, 52.4% (22 of 42) had Initial hearings; 47.6% (20 of 42) had Review hearings. Of the twenty who were approved after Review hearing, nine (45%) had a previous parole revoked and were returned to prison. Discounting those nine lifers, eleven (55%) of the approvals after Review hearings were for those who had been denied a parole on a previous occasion(s) and then had served an assigned setback, without ever having been paroled before. Overall, the percentage of lifers having a Review hearing and being approved without having been paroled before was 13.9% (11 of 79).

Of the eighty-one lifers who were denied a parole, 27.2% (22 of 81) had Initial hearings; 72.8% (59 of 81) had Review hearings. Of the fifty-nine who were denied after a Review hearing, seventeen (28.8%) had been returned to prison after having a previous parole revoked. Discounting those seventeen lifers, forty-two (71.2%) were denied after a Review hearing without having been paroled before.

Of the 123 parole decisions in 2010, 91% (112) were unanimous decisions. There were eleven split decisions: four (3.3%) were votes of 6-1 and seven (5.7%) were votes of 4-3. All of the 6-1 votes resulted in denials of parole. Of the seven 4-3 votes, five were for approvals of parole and two for denials.

Of the eighty-six decisions not involving Josh Wall, thirty-four (39.5%) were approvals of parole and fifty-two (60.5%) were denials. Of the thirty-seven decisions signed by Wall, 8 (21.6%) were approvals and twenty-nine (78.4%) were denials.

Table 3 below reports the number of paroles approved or denied in 2010 based upon the category of the hearing that had been held, i.e., Initial, Review with no previous parole revocation, and Review with a prior parole revocation.

Table 3

|                           | Approved | Denied | Totals |
|---------------------------|----------|--------|--------|
| Initial                   | 22       | 22     | 44     |
| Review (No Revocation)    | 11       | 42     | 53     |
| Review (Prior Revocation) | 9        | 17     | 26     |
| Totals                    | 42       | 81     | 123    |

It should be noted that ten (23.8%) of the forty-two approved for a parole in 2010 were approved due to: a debilitating illness (1), an immigration detainer (5), a from & after sentence (3), and to a secure mental health facility (1). Thus, those ten of the forty-two approvals were not paroled directly back into society.

Approval Factors

There were sixteen factors identified as reasons for granting a parole in the 2010 study. Eight factors were cited in at least 20% of the forty-two Approval Records of Decision. Those eight factors were: Very Program Involved (29), Minimal Disciplinary Reports (22), Expresses Remorse (21), Accepts Responsibility (18), Understands Causative Factors of Criminal Behavior (14), Family Support (13), Solid Parole Plan (12), and Strong Community Support (10). The numbers in parentheses are the numbers of times each factor was cited in 2010 in the forty-two approvals of parole. A comparison of the frequency percentages for the Approval Factors for the years 2005 through 2010 is given below in Table 4.

Table 4

| Factor   | 2010 | 2009 | 2008 | 2007 | 2006 | 2005 |
|--|------|------|------|------|------|------|
| Very Program Involved                              | 69.0 | 45.7 | 71.9 | 76.9 | 65.5 | 61.8 |
| Accepts Responsibility                             | 42.9 | 54.3 | 31.3 | 46.1 | 24.1 | 11.8 |
| Expresses Remorse                                  | 50.0 | 51.4 | 21.9 | 46.1 | 24.1 | 11.8 |
| Amenable to Treatment and Supervision              | 16.7 | 11.4 | 15.6 | 48.7 | 10.3 | 35.3 |
| Health Issues                                      | 2.4  | 5.7  | 3.1  | 10.3 | 3.4  | 5.9  |
| Strong Community Support                           | 23.8 | 45.7 | 53.1 | 12.8 | 20.7 | 32.4 |
| Family Support                                     | 30.9 | 57.1 | 46.9 | 25.6 | 44.8 | 29.4 |
| Understands Causative Factors of Criminal Behavior | 33.3 | 20.0 | 6.2  | 17.9 | 20.7 | 5.9  |
| Minimal Disciplinary Reports                       | 52.4 | 14.3 | 28.1 | 25.6 | 6.9  | 2.9  |

Table 4 (cont.)

| Factor  | 2010 | 2009 | 2008 | 2007 | 2006 | 2005 |
|---|------|------|------|------|------|------|
| Non-Shooter   | 2.4  | 0    | 3.1  | 2.6  | 6.9  | 2.9  |
| Solid Parole Plan   | 28.6 | 57.1 | 21.9 | 23.1 | 27.6 | 8.8  |
| To Immigration  | 11.9 | 8.6  | 6.3  | 12.8 | 3.4  | 2.9  |
| Juvenile at Time of Offense                                     | 0    | 2.8  | 9.4  | 5.2  | 3.4  | 0    |
| Able to Abide by Rules and Regulations<br>of Prison Environment | 9.5  | 5.7  | 31.3 | 15.4 | 0    | 0    |
| To From & After Sentence  | 7.1  | NR   | NR   | NR   | NR   | NR   |
| To Secure Mental Health Facility                                | 2.4  | NR   | NR   | NR   | NR   | NR   |

Denial Factors

Of the twenty-eight factors used as reasons for denying parole, six occurred in at least 20% of the eighty-one Records of Decision: Release Incompatible With the Welfare of Society (49), Needs Longer Period of Adjustment (30), Lacks Causative Insight into Criminal Behavior (23), Serious Disciplinary History (20), Not Program Involved (19), and Does Not Take Responsibility (16). As with the Approval Factors, the numbers in the parentheses are the numbers of times each factor was cited in the eighty-one denials of parole. Table 5 presents a six year comparison of the frequency percentages for each of the twenty-eight factors used to deny paroles for lifers.

Table 5

| Factor  | 2010 | 2009 | 2008 | 2007 | 2006 | 2005 |
|---|------|------|------|------|------|------|
| Does Not Take Responsibility                      | 19.8 | 58.2 | 27.1 | 23.5 | 29.0 | 20.6 |
| Is a Danger to the Community                      | 13.6 | 0    | 28.6 | 49.0 | 17.4 | 29.4 |
| Not Program Involved                              | 23.4 | 40.0 | 52.9 | 32.6 | 24.6 | 8.8  |
| Minimizes Criminal Behavior                       | 4.9  | 10.9 | 10.0 | 5.1  | 2.9  | 11.8 |
| Waived Hearing                                    | 0    | 0    | 1.4  | 2.0  | 0    | 4.4  |
| Refused Move to Lower Security                    | 0    | 0    | 0    | 1.0  | 0    | 1.5  |
| Release Incompatible with Welfare<br>of Society   | 60.5 | 7.3  | 44.3 | 23.5 | 27.5 | 20.6 |
| Lacks Causative Insight into<br>Criminal Behavior | 28.4 | 34.5 | 47.1 | 43.9 | 27.5 | 22.1 |
| Poor Institutional Behavior                       | 12.3 | 18.2 | 30.0 | 9.2  | 5.8  | 4.4  |
| Refuses Sex Offender Treatment<br>Program         | 7.4  | 14.5 | 12.9 | 9.2  | 15.9 | 7.3  |
| Serious Disciplinary History                      | 24.7 | 25.4 | 28.6 | 17.3 | 20.3 | 29.4 |
| Crime Committed While Incarcerated                | 0    | 1.8  | 1.4  | 0    | 0    | 2.9  |
| Mental Health Issues                              | 4.9  | 3.6  | 11.4 | 15.3 | 10.1 | 13.2 |
| Prior Parole Failures                             | 12.3 | 1.8  | 7.1  | 7.1  | 11.6 | 1.5  |
| Crime Committed on Parole or Escape               | 4.9  | 5.4  | 8.6  | 1.0  | 4.3  | 11.8 |
| No Family or Community Support                    | 2.5  | 0    | 0    | 2.0  | 8.7  | 2.9  |
| No Home or Work Plan                              | 4.9  | 1.8  | 0    | 2.0  | 2.9  | 2.9  |

Table 5 (cont.)

| Factor  | 2010 | 2009 | 2008 | 2007 | 2006 | 2005 |
|---|------|------|------|------|------|------|
| Expresses No Remorse  | 3.7  | 25.4 | 8.6  | 7.1  | 7.2  | 2.9  |
| Substance Abuse Issues  | 17.3 | 21.8 | 17.1 | 17.3 | 20.3 | 8.8  |
| Untruthful  | 11.1 | 25.4 | 11.4 | 15.3 | 4.3  | 4.4  |
| Severity of Offense   | 0    | 3.6  | 4.3  | 0    | 10.1 | 4.4  |
| Unresolved Anger Issues   | 7.4  | 16.4 | 24.3 | 5.1  | 5.8  | 4.4  |
| Needs Longer Period of Adjustment   | 37.0 | 27.3 | 14.3 | 8.2  | 11.6 | 17.6 |
| Needs Counseling  | 2.5  | 1.8  | 1.4  | 5.1  | 5.8  | 1.5  |
| Incarcerated at Higher Security   | 3.7  | 7.3  | 4.3  | 5.1  | 4.3  | 7.4  |
| Manipulative  | 1.2  | 1.8  | 0    | 3.1  | 1.4  | 2.9  |
| Not Ready for Community Supervision   | 2.5  | 1.8  | 12.9 | 27.6 | 0    | 0    |
| Shows Inability to Abide by the Rules and Regulations of Prison Environment | 8.6  | 5.4  | 8.6  | 5.1  | 0    | 0    |

Approval/Denial Factors - Initial and Review Hearings

The factors for approving and/or denying paroles are compared for Initial and Review hearings in Tables 6 and 7 below. Table 6 lists the frequency percentages for each of the sixteen factors cited in approving paroles for both Initial and Review hearings. Table 7 gives the frequency percentages for each of the twenty-eight factors cited in denying paroles for both Initial and Review hearings. Both Tables list data for 2010, 2009, and 2008.

Table 6

| Factor   | Initial Hearings |      |      | Review Hearings |      |      |
|--|------------------|------|------|-----------------|------|------|
|  | 2010             | 2009 | 2008 | 2010            | 2009 | 2008 |
| Very Program Involved  | 81.8             | 77.8 | 84.6 | 54.4            | 42.8 | 63.2 |
| Accepts Responsibility                                       | 40.9             | 66.7 | 30.8 | 45.5            | 61.9 | 31.6 |
| Expresses Remorse  | 63.6             | 77.8 | 30.8 | 36.4            | 52.4 | 15.8 |
| Amenable to Treatment and Supervision                        | 9.1              | 11.1 | 7.7  | 22.7            | 14.3 | 21.1 |
| Health Issues  | 0                | 0    | 0    | 4.5             | 9.5  | 5.3  |
| Strong Community Support                                     | 27.3             | 66.7 | 76.9 | 22.7            | 47.6 | 36.8 |
| Family Support   | 31.8             | 44.4 | 76.9 | 31.8            | 76.2 | 26.3 |
| Understands Causative Factors of Criminal Behavior           | 18.2             | 22.2 | 0    | 50.0            | 23.8 | 10.5 |
| Minimal Disciplinary Reports                                 | 50.0             | 22.2 | 23.1 | 50.0            | 14.3 | 31.6 |
| Non-Shooter  | 9.1              | 0    | 0    | 0               | 0    | 5.3  |
| Solid Parole Plan  | 22.7             | 33.3 | 15.4 | 31.8            | 80.9 | 26.3 |
| To Immigration   | 18.2             | 11.1 | 7.7  | 4.5             | 9.5  | 5.3  |
| Juvenile at Time of Offense                                  | 0                | 11.1 | 23.1 | 0               | 0    | 0    |
| Able to Abide by Rules and Regulations of Prison Environment | 13.6             | 0    | 23.1 | 4.5             | 9.5  | 36.8 |
| To From & After Sentence                                     | 9.1              | NR   | NR   | 4.5             | NR   | NR   |
| To Secure Mental Health Facility                             | 4.5              | NR   | NR   | 0               | NR   | NR   |

Table 7

| Factor  | Initial Hearings |      |      | Review Hearings |      |      |
|---|------------------|------|------|-----------------|------|------|
|   | 2010             | 2009 | 2008 | 2010            | 2009 | 2008 |
| Does Not Take Responsibility  | 18.2             | 52.4 | 29.2 | 18.6            | 61.7 | 26.1 |
| Is A Danger to the Community  | 13.6             | 0    | 33.3 | 13.6            | 0    | 29.4 |
| Not Program Involved  | 13.6             | 38.1 | 50.0 | 28.8            | 41.2 | 54.3 |
| Minimizes Criminal Behavior   | 13.6             | 14.3 | 4.2  | 1.7             | 8.8  | 13.0 |
| Waived Hearing  | 0                | 0    | 0    | 0               | 0    | 2.2  |
| Refused Move to Lower Security  | 0                | 0    | 0    | 0               | 0    | 0    |
| Release Incompatible with Welfare of Society                                | 50.0             | 9.5  | 54.2 | 64.4            | 2.9  | 39.1 |
| Lacks Causative Insight Into Criminal Behavior                              | 27.3             | 28.6 | 45.8 | 30.5            | 41.2 | 47.8 |
| Poor Institutional Behavior   | 0                | 28.6 | 37.5 | 15.3            | 11.6 | 26.1 |
| Refuses Sex Offender Treatment Program                                      | 4.5              | 19.0 | 8.4  | 8.5             | 11.6 | 15.2 |
| Serious Disciplinary History  | 31.8             | 33.3 | 37.5 | 22.0            | 20.6 | 23.9 |
| Crime Committed While Incarcerated  | 0                | 0    | 4.2  | 0               | 2.9  | 0    |
| Mental Health Issues  | 0                | 0    | 4.2  | 6.8             | 5.8  | 15.2 |
| Prior Parole Failures   | 4.5              | 0    | 0    | 16.9            | 2.9  | 10.9 |
| Crime Committed on Parole or Escape   | 0                | 4.7  | 4.2  | 6.8             | 5.8  | 10.9 |
| No Family or Community Support  | 4.5              | 0    | 0    | 1.7             | 0    | 0    |
| No Home or Work Plan  | 0                | 0    | 0    | 6.8             | 2.9  | 0    |
| Expresses No Remorse  | 9.1              | 23.8 | 8.4  | 1.7             | 26.5 | 13.0 |
| Substance Abuse Issues  | 18.2             | 14.3 | 4.2  | 16.9            | 26.5 | 23.9 |
| Untruthful  | 13.6             | 19.0 | 8.4  | 10.2            | 29.4 | 13.0 |
| Severity of Offense   | 0                | 4.7  | 0    | 0               | 2.9  | 6.5  |
| Unresolved Anger Issues   | 13.6             | 4.7  | 20.8 | 6.8             | 23.2 | 26.1 |
| Needs Longer Period of Adjustment   | 59.1             | 28.6 | 20.8 | 25.4            | 26.5 | 10.9 |
| Needs Counseling  | 0                | 0    | 0    | 3.4             | 2.9  | 2.2  |
| Incarcerated at Higher Security   | 13.6             | 9.5  | 8.4  | 0               | 5.8  | 2.2  |
| Manipulative  | 0                | 0    | 0    | 1.7             | 2.9  | 0    |
| Not Ready for Community Supervision   | 0                | 0    | 16.7 | 3.4             | 2.9  | 10.9 |
| Shows Inability to Abide by the Rules and Regulations of Prison Environment | 0                | 9.5  | 8.4  | 10.2            | 2.9  | 8.7  |

Program Involvement

A comparison of the number of times specific programs were cited for 2005 through 2010 in Records of Decision for lifers granted paroles is given in Table 8. The numbers in parentheses indicate the number of lifers approved for paroles in that year.

Only programs cited in Approval decisions are included in Table 8. Specific programs were also noted in Denial decisions, but participation in those programs was not deemed sufficient, given other issues in the background or incarceration history of the lifer seeking a parole, to warrant an approval. The programs noted in the eighty-one denials, along with the number of times cited listed in parentheses, were: CRA (3), AA/NA (8), GED (5), Anger

Management (2), Emotional Awareness (1), College (1), Lifers Group (2), and Jericho Circle (1).

Table 8

| Program                       | 2010<br>(42) | 2009<br>(35) | 2008<br>(32) | 2007<br>(39) | 2006<br>(29) | 2005<br>(34) |
|-------------------------------|--------------|--------------|--------------|--------------|--------------|--------------|
| Correctional Recovery Academy | 19           | 18           | 18           | 24           | 8            | 3            |
| AA/NA                         | 16           | 20           | 22           | 16           | 14           | 0            |
| Alternatives to Violence      | 22           | 21           | 10           | 11           | 2            | 0            |
| GED                           | 12           | 0            | 11           | 10           | 5            | 2            |
| Anger Management              | 6            | 7            | 5            | 5            | 0            | 0            |
| Transition Planning           | 9            | 8            | 10           | 5            | 0            | 0            |
| Religious Programs            | 0            | 8            | 1            | 3            | 0            | 0            |
| Work                          | 10           | 12           | 2            | 3            | 0            | 0            |
| American Veterans in Prison   | 1            | 1            | 0            | 2            | 0            | 0            |
| Emotional Awareness           | 7            | 11           | 3            | 2            | 1            | 0            |
| College                       | 2            | 3            | 2            | 2            | 3            | 0            |
| Toastmasters                  | 5            | 3            | 4            | 1            | 0            | 0            |
| NEADS                         | 1            | 1            | 1            | 0            | 0            | 0            |
| Able Minds                    | 0            | 2            | 1            | 0            | 0            | 0            |
| Lifers Group                  | 0            | 1            | 1            | 0            | 0            | 0            |
| Jericho Circle                | 5            | 5            | NR           | NR           | NR           | NR           |

The following programs were also cited in 2010: Vocational / Welding (6), and Sex Offender Treatment Program (1). Fourteen Approvals noted no specific programs.

Setbacks

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 years. In the 2010 study, there were eighty-one denials. The setbacks assessed in 2010 for lifers broke down as follows:

|               |    |
|---------------|----|
| 1 Year .....  | 0  |
| 2 Years ..... | 14 |
| 3 Years ..... | 19 |
| 4 Years ..... | 2  |
| 5 Years ..... | 46 |

Table 9 shows the comparative frequency percentages for setbacks for the years 2005 through 2010.

Table 9

| Setbacks<br>Years | 2010 | 2009 | 2008 | 2007 | 2006 | 2005 |
|-------------------|------|------|------|------|------|------|
| 5                 | 56.8 | 69.1 | 84.3 | 67.4 | 76.8 | 75.0 |
| 4                 | 2.5  | 3.6  | 0    | 6.1  | 4.3  | 4.4  |
| 3                 | 23.4 | 20.0 | 7.1  | 14.3 | 13.0 | 16.8 |
| 2.5               | 0    | 0    | 0    | 0    | 1.4  | 1.5  |
| 2                 | 17.3 | 5.5  | 2.9  | 6.1  | 2.9  | 1.5  |
| 1                 | 0    | 1.8  | 5.7  | 6.1  | 1.4  | 5.9  |

Returns From Previous Paroles

Of the 123 Records of Decision in 2010, twenty-six, or 21%, were for lifers who had been granted a parole in a previous year and that parole had been revoked, either for technical violations of the conditions of the parole or for an arrest for suspicion of committing a new crime. All of these twenty-six Records of Decision are included as Review hearings. Of those twenty-six, nine (34.6%) were again granted a parole and seventeen (65.4%) were not. For those who had a parole in 2010 hearing after a revocation, one had been returned in 2002, two in 2004, two in 2005, one in 2006, two in 2007, one in 2008, and seven in 2010. For one lifer whose parole had been revoked, no date of return nor reason for return was given. Of the twenty-six lifers whose paroles had been revoked, the primary reasons for the revocations were: Drug or Alcohol Use (13), Assault (3), Associating with a Known Felon (3), Violating a Restraining or No Contact Order (2), DUI (1), Larceny (1), Requested to be Returned (1), and Failure to Participate in Mental Health Counseling. In addition to the primary reasons, six lifers whose paroles had been revoked were also cited for lying to or failure to report to their parole officers.

Of the nine lifers who were approved for a parole after having had a previous parole revoked, two had been returned in 2007, six in 2009, and one in 2010. Of those nine, four had been returned for substance abuse, two for assault, and one each for associating with known felons, for violating a no contact order, and for failure to participate in mental health counseling.

The setbacks assessed for the seventeen lifers who had their parole requests denied after having a prior parole revoked are shown in Table 10 below.

Table 10

| Reason for Revocation         | Setbacks |   |   |   | Total |
|-------------------------------|----------|---|---|---|-------|
|                               | 2        | 3 | 4 | 5 |       |
| Substance Abuse               | 4        | 1 | 1 | 3 | 9     |
| Associating with Known Felons | 0        | 1 | 0 | 1 | 2     |

Table 10 (cont.)

| Reason for Revocation         | Setbacks |          |         |          | Total |
|-------------------------------|----------|----------|---------|----------|-------|
|                               | 2        | 3        | 4       | 5        |       |
| Assault                       | 0        | 1        | 0       | 0        | 1     |
| DUI                           | 1        | 0        | 0       | 0        | 1     |
| Larceny                       | 1        | 0        | 0       | 0        | 1     |
| Violating A Restraining Order | 0        | 0        | 0       | 1        | 1     |
| Requested to be Returned      | 1        | 0        | 0       | 0        | 1     |
| Not Reported                  | 0        | 1        | 0       | 0        | 1     |
| Totals                        | 7<br>41% | 4<br>24% | 1<br>6% | 5<br>29% | 17    |

Table 11 below compares the Setbacks assessed for all lifers who were denied a parole in 2010, for both those who had a parole revoked and those who had not. Percentages of the total number of Setbacks for each of the two categories and the overall total are given in parentheses.

Table 11

| Category             | Setbacks |          |        |          | Totals |
|----------------------|----------|----------|--------|----------|--------|
|                      | 2        | 3        | 4      | 5        |        |
| Prior Parole Revoked | 7 (41%)  | 4(24%)   | 1 (6%) | 5 (29%)  | 17     |
| No Prior Parole      | 7 (11%)  | 15 (23%) | 1 (2%) | 41 (64%) | 64     |
| Totals               | 14 (17%) | 19(23%)  | 2 (3%) | 46 (57%) | 81     |

Lifers Not Convicted of Second Degree Murder

Of the 123 Records of Decision for 2010, ten (8.1%) were for those serving life terms for crimes other than second degree murder. This is a decrease from 2009 when thirteen of ninety (14.4%) Records of Decision were for lifers not convicted of second degree murder. The primary offenses and the results of the parole hearings are presented in Table 12 below.

Table 12

| Primary Offense | 2009     |        | 2010     |        |
|-----------------|----------|--------|----------|--------|
|                 | Approved | Denied | Approved | Denied |
| Armed Robbery   | 2        | 4      | 0        | 4      |
| Rape            | 0        | 7      | 1        | 1      |



Table 12 (cont.)

|  |   |    |   |   |
|--|---|----|---|---|
| Habitual Offender                            | 0 | 0  | 1 | 0 |
| Armed Assault in a Dwelling                  | 0 | 0  | 0 | 1 |
| Armed Burglary                               | 0 | 0  | 0 | 1 |
| Assault & Battery with a<br>Dangerous Weapon | 0 | 0  | 0 | 1 |
| <hr/>  |   |    |   |   |
| Totals                                       | 2 | 11 | 2 | 8 |

In 2010, one lifer not convicted of second degree murder had an Initial hearing resulting in a denial with a three year setback. That lifer had been convicted of armed robbery. All the other nine lifers in 2010 not convicted of second degree murder had Review hearings. Of the eight who were denied parole, one received a two year setback, four received three year setbacks, and three received five year setbacks.

Changes in Parole Board Members

Of the 123 parole decisions in 2010, the new Chairman, Josh Wall, was involved in thirty-seven. What that involvement entailed is unknown, i.e., did Wall actually write the Records of Decision after reviewing video tapes and/or vote sheets already completed by the previous board members, or did Wall merely sign Records of Decision already written prior to his becoming chairman or were the Records of Decision written by one of the remaining Parole Board members, or a combination of these possibilities. Equally unknown is whether Wall changed any of the results. Requests to clarify the impact Wall had on those thirty-seven Records of Decision have gone unanswered. The outcomes of the 123 Records of Decision with and without the involvement of Josh Wall are show in Table 13 below.

Table 13

|                     | Approved   | Denied     | Total |
|---------------------|------------|------------|-------|
| No Wall Involvement | 34 (39.5%) | 52 (60.5%) | 86    |
| Wall Involvement    | 8 (21.6%)  | 29 (78.4%) | 37    |
| <hr/>               |            |            |       |
| Totals              | 42 (34.1%) | 81 (65.9%) | 123   |

Josh Wall assumed control of a Parole Board in disarray with the resignations of five members as well as a vacancy in the position of Executive Director. Evidence of that upheaval lies in a comparison of the average number of days from the dates of hearings to the dates of decisions and from the dates of decisions were made to the dates the decisions were signed.

See Table 14 below for a comparison of the average number of days from dates of hearings to dates of decisions and from dates of decisions to dates the decisions were signed both for those decisions not involving Josh Wall (Non-Wall) and the Records of Decision Wall signed (Wall). It is important to note that the regulation calls for a lifer who is denied a parole to be notified of that denial with supporting reasons within twenty-one days after that decision has been made. There is no similar time requirement for notification of approvals. It cannot be assumed that any lifer received his/her Record of Decision on or shortly after the date the Record of Decision was signed. There are no data regarding when a lifer was notified of the decision after the Record of Decision had been signed.

Table 14

|   | Non-Wall  |         | Wall      |         |
|---|-----------|---------|-----------|---------|
|   | Approvals | Denials | Approvals | Denials |
| Average Number of Days from Date of Hearing to Date of Decision         | 26.6      | 27.9    | 141.8     | 66.3    |
| Average Number of Days From When Decision Had Been Made to Being Signed | 29.2      | 32.2    | 142.4     | 164.2   |

For the eighty-six decisions with no involvement of Josh Wall, the average number of days from the dates of hearings to the dates the Records of Decisions were signed was 58.4. The average for the thirty-seven Records of Decision involving Josh Wall was 240.7, an increase of over 300%. The average for all the 123 Records of Decisions for 2010 was 69.8. In 2011, the Parole Board returned to seven members and the average number of days between hearing dates and the completion of the Records of Decisions will, hopefully, be significantly reduced and, for denials, be in conformity with the requirements of the regulations.

## DISCUSSION

### Approval/Denial Rates (See Tables 1 and 2 in this Report.)

The overall rate of approvals for paroles in 2010 decreased to 34.1% from 38.9% in 2009. Concomitantly, the overall denial rate increased from 61.1% in 2009 to 65.9% in 2010. Thus, nearly two-thirds of lifers who had a parole hearing in 2010 were denied a parole. The impact of the changes in personnel on the Parole Board cannot be determined precisely as the past Board members were listed as participating in the decisions. The only difference was that Josh Wall, the new chairman, signed thirty-seven Records of Decision. What impact he may or may not have had on those decisions is unknown. Queries to the Parole Board on this question have gone unanswered. That being stated, it is significant to note that the approval rate for decisions signed by Josh Wall was 21.6%, as opposed to 39.5% for those decisions not involving Josh Wall. The denial rates were 78.4% for decisions signed by Wall and 60.5% for those not signed by him. Thus, the approval/denial rates for the eighty-six decisions not involving Wall were consistent with the 2009 approval/denial rates of 38.9% (Approval) and 61.1% (Denial).

There was a significant change in approval/denial rates for lifers having Initial and/or Review hearings. In 2010, a lifer having an Initial hearing had a 50% chance of being approved. That compares with an approval rate for Initial hearings in 2009 of 30%. The 2009 approval rate was the lowest since 2004 for Initial hearings. In 2010, however, the approval rate for Initial hearings

was the highest in the eight years the parole decisions have been studied by the Norfolk Lifers Group.

For Review hearings, the approval rate in 2010 (25.3%) is the second lowest in the eight years parole decisions have been studied. The lowest was 22.2% in 2006. It should be noted that in 2010, the approval rate for lifers having a Review hearing, but who had not been returned for a revocation hearing, was 13.6%. This approval rate is significantly lower than 2009 (34.1%) and 2008 (19.3%).

In 2010, the approval rate for Initial hearings was, once again, higher than the approval rate for Review hearings. In 2009, there had been a higher approval rate for Review hearings, which had reversed a trend of approval rates for Initial hearings exceeding Review hearings found in 2006, 2007, and 2008.

The overall denial rate of 65.9%, while higher than 2009 (61.1%), was the third lowest in the past eight years. But, the denial rate for those decisions signed by Josh Wall (78.4%) was the highest in the eight years of Records of Decision studied by the Norfolk Lifers Group. That denial rate was also the highest for those eight years whether for an Initial hearing or a Review hearing. There is an inverse relationship between rates of approvals and denials. Thus, as the approval rate for Initial hearings was the highest (50%), the denial rate for Initial hearings (50%) was the lowest in the eight years of results reported by the Norfolk Lifers Group. For Review hearings the denial rate in 2010 (64.7%) was the second highest for the period 2003-2010, exceeded only by the denial rate for Review hearings in 2006 (77.8%).

Approval Factors (See Table 4 in this Report.)

Three Approval factors in 2010 showed significant increases in percentage frequencies compared with 2009. These factors were Very Program Involved (69.0% from 45.7%), Understands Causative Factors of Criminal Behavior (33.3% from 20.0%), and Minimal Disciplinary Reports (52.4% from 14.3%). Four factors had significant decreases in percentage frequencies in comparison to 2009: Accepts Responsibility (42.9% from 54.3%), Strong Community Support (23.8% from 45.7%), Family Support (30.9% from 57.1%) and Solid Parole Plan (28.6% from 57.1%).

In 2009, Accepts Responsibility, Family Support, and Solid Parole Plan were all cited in over one-half of those who had been approved for parole. In 2010, however, Accepts Responsibility was cited 42.9% for approvals while Family Support was below 31% and Strong Community Support was less than 24%. The steep drop in both Family Support and Strong Community Support is difficult to understand as success on parole is presumed to be tied directly to the support system a potential parolee has available outside prison. Similarly, having a Solid Parole Plan would seem essential to successful reentry. Yet, in less than one-quarter of all approvals was the existence of a Solid Parole Plan cited as a reason for granting a parole.

What significantly increased in frequency percentages were factors relating to behavior while in prison, i.e., Very Program Involved, Understands Causative Factors of Criminal Behavior, and Minimal Disciplinary Reports. While these are important, how indicative they are for success on parole, without an in-place support system and solid parole plan, is open to question. The Parole

Board needs to conduct an in depth study of parole successes and failures based upon the factors cited in the respective Records of Decision.

The change in the make-up of the Parole Board members undoubtedly will have a significant impact on the frequency percentages of Approval factors, assuming there are enough paroles approved to study. This is one reason why the Parole Board needs now to study those who have been paroled for the last five years to determine what factors were most predictive of success on parole. The present Parole Board appears disinclined to parole most prisoners, let alone lifers. Whether or not the present Parole Board members would welcome or be influenced by evidence-based data from a comprehensive study of parole successes and/or failures is an open question. Still, that is no justification for not seeking to find out what translates into an acceptable probability for success on parole and what does not. Whether or not the Parole Board, and particularly its chairman, have either the interest or the will to undertake such a study is unknown. Excerpts, however, from published or televised interviews suggest that Josh Wall harbors significant cognitive illusions, i.e., false beliefs that he intuitively accepts as true, regarding factors for approving or denying paroles. An example is his insistence that he can determine if a lifer has been "punished enough" and use that as an indicator of whether a lifer is deserving of a parole. There is no evidence-based data to support such an illusion, yet the quality or length of punishment remains a significant factor for Wall, and, presumably for the other Parole Board members as well.

Denial Factors (See Table 5 in this Report.)

The results of the 2010 frequency percentages for Denial factors showed a return to the use of vague reasons for denying paroles. Those factors showing the most significant percentage increases in comparison to 2009 were: Release Incompatible with the Welfare of Society (60.5% from 7.3%), Is a Danger to the Community (13.6% from 0), Needs Longer Period of Adjustment (37.0% from 27.3%). Prior Parole Failures also showed an increase (12.3% from 1.8%). Conversely, several specific reasons for denying paroles showed significant decreases in frequency percentages: Does Not Take Responsibility (19.8% from 58.2%), Not Program Involved (23.4% from 40.0%), Expresses No Remorse (3.7% from 25.4%), Lacks Causative Insight into Criminal Behavior (28.4% from 34.5%), Poor Institutional Behavior (12.3% from 18.2%), and Unresolved Anger Issues (7.4% from 16.4%).

The impact of these changes is that a lifer who has been denied a parole is provided with reasons that are non specific and which offer less guidance regarding what needs to be addressed before his/her next parole hearing. The regulations stipulate that specific reasons be given for denying a parole. But, when over 60% of denials are based in whole or in part on a finding that a potential parolee's parole would be "Incompatible With the Welfare of Society" that regulatory requirement is clearly being ignored by the Parole Board. This is particularly apparent with the last eight denials signed by Josh Wall where that factor was the sole reason cited for denying the parole in seven of those decisions and was also included in the eighth denial.