



# John Howard Association of Illinois

300 West Adams Street, Suite 423 Chicago, IL 60606  
Tel. 312-782-1901 Fax. 312-782-1902 [www.john-howard.org](http://www.john-howard.org)

## To Set The Record Straight:

### A John Howard Association Report on the Parole Rates of Indeterminately Sentenced Prisoners

By

James “Yaki” Sayles

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This report was written by James “Yaki” Sayles, Program Coordinator for the John Howard Association of Illinois. The report draws upon data obtained from the Prisoner Review Board and upon observations reported by volunteers who monitored the Prisoner Review Board since 2006. Mr. Sayles, himself a former prisoner, was the Program Coordinator of the John Howard Association of Illinois from July 2005 until his death in March of 2008. His thoughtful presence, service to prisoners, and respect for human rights are sadly missed.

The John Howard Association of Illinois provides critical public oversight of the state’s prisons, jails, and juvenile correctional facilities. As it has for more than a century, the Association promotes fair, humane, and effective sentencing and correctional policies, addresses inmate concerns, and provides Illinois citizens and decision-makers with information needed to improve criminal and juvenile justice.

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Malcolm C. Young, Executive Director  
John Howard Association of Illinois  
300 West Adams Street – Suite 423  
Chicago, IL 60606  
(312) 782 -1901  
[www.john-howard.org](http://www.john-howard.org)

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A JOHN HOWARD ASSOCIATION REPORT ON THE PAROLE RATES  
OF INDETERMINATELY SENTENCED PRISONERS IN ILLINOIS**

**INTRODUCTION**

The Illinois Prisoner Review Board (PRB)<sup>1</sup> is Illinois' paroling agency. Its functions include deciding parole for juvenile delinquents, revocation and restoration of good time credits, hearing and making recommendations for clemency petitions and deciding parole cases for the remaining 300 indeterminate sentenced prisoners in Illinois.

Over the past two years, Association staff monitored nearly all Prisoner Review Board *en banc* hearings where cases of indeterminate sentenced prisoners (C# prisoners<sup>2</sup>) are decided. Our observations surprised us. Common public perception seems to be that most Illinois prisoners are eligible for parole, and that the Board liberally paroles prisoners before they have served their full sentence, with little reason or justification. News stories about recent crimes being committed by someone "on parole," usually refer to a person who was released after serving a post-1978 determinate sentence, without review, on Mandatory Supervised Release (MSR), and not an indeterminate sentenced prisoner released on "discretionary parole." Less than 300 Illinois prisoners are eligible to come up for parole before the Board each year, and, on average, less than 3.5% are granted parole.

Indeterminate sentenced prisoners become eligible for parole after serving their minimum sentence. No provisions in the law mandate that they serve their maximum terms. Changes in sentencing laws in 1978 and thereafter which would make C# prisoners' sentences harsher (such as requiring a prisoner to serve the sentence he would have served under the determining sentencing scheme before he is eligible for parole) could not constitutionally be applied to this class of prisoners because of the *ex post facto* clauses in both the Illinois and U.S. Constitutions. Thus, the Board is still required to adhere to the rehabilitative model as the standard for deciding parole applications.

In other words, the prime determining factors for the Board to consider when deciding parole cases remain the conduct of the prisoner during incarceration and the likelihood of his remaining at liberty without violation of the law. The PRB is to determine whether the prisoner is rehabilitated, and can be returned to society with a minimum risk of the commission of future crimes. This fact is evidenced by the reason given by the PRB whenever it paroles someone, i.e.,

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<sup>1</sup> The Illinois Prisoner Review Board is an independent, quasi-judicial entity that makes decisions on a number of issues pertaining to adult and juvenile matters. Aside from decisions to grant parole to indeterminate sentenced prisoners, the PRB oversees decisions on good time, parole ("old law") and Mandatory Supervised Release ("new law") revocations, and clemency. The governor with the approval of the Senate appoints the 15-member Board. PRB members travel statewide to the institutions to conduct hearings, and then meet bi-monthly in "En Banc" sessions to make decisions on parole applications and other matters.

<sup>2</sup> "C#s" is the catch-all term used to designate all indeterminate sentenced prisoners in Illinois. The letters such as "C," "B," "A," "H," or "L" are used by the Illinois Department of Corrections as part of the prisoners' identification number, and to distinguish the statute under which prisoners were convicted.

"Acceptable Risk." But political pressure has often affected the Board's mission and practice, despite otherwise good intentions.

### **THE NATIONAL ADOPTION OF PAROLE AND INDETERMINATE SENTENCING**

For over a century, the purpose of incarceration and the guiding consideration in sentencing was the rehabilitation of the offender. Defendants were sentenced to a low and high range of years by a judge, e.g. 50-100 years, and could be released on parole when a parole board determined that the prisoner was rehabilitated. In 1981 a federal appeals court described the philosophy in this way:

Beginning in the latter part of the nineteenth century...the view that punishment should fit not the crime but the criminal gained currency. Raw vengeance and straightforward deterrence gradually were replaced by rehabilitation as the principal theoretical basis for imprisonment. Adherents of this new position argued that the convict's experience during his imprisonment could be structured to motivate him to abandon his criminal disposition for that of a law-abiding citizen. Once this metamorphosis was accomplished, the aim of incarceration would be fulfilled, and further confinement could serve no purpose. Until rehabilitation had been achieved, on the other hand, a potential recidivist could not responsibly be returned to society. *Warren v. U.S. Parole Commission*, 659 F. 2d 183, 189-190 (D.C. 1981)

Under this penal theory the appropriate period of incarceration could not be determined at sentencing, because the sentencing judge was usually not in a position to predict the term of correctional 'therapy' necessary to rehabilitate a criminal to the point that his release would not pose an unacceptable risk to society. An axiom of the rehabilitative model in its purest form, then, is the indeterminate sentence, which leaves the task of determining when it is safe to release an offender to trained correctional and parole personnel. Under this approach a quickly rehabilitated murderer could be released rather promptly, while an incorrigible petty thief might languish in jail forever.<sup>3</sup>

The first parole act in Illinois, known as the Indeterminate Sentencing Act, (the Act) was passed in 1895.<sup>4</sup> It gave Illinois parole authorities the power "to adopt such rules concerning prisoners committed to their [sic] custody as would prevent them from returning to criminal courses, best secure their self-support, and accomplish their reformation."<sup>5</sup> The philosophy of the Act suggested that most criminals could be rehabilitated. This required an individualized inquiry into the life history, behavioral deficits, and 'treatment' needs of each offender and that the prison authorities carefully examine incoming prisoners as to their familial and social influences, their present tendencies, defects and conditions, and based upon these, to design "a plan of treatment."<sup>6</sup> The prisoner's progress, or lack thereof, was continually noted so as to provide facts

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<sup>3</sup> *Warren v. U.S. Parole Commission*, 659 F. 2d 183, 189-190 (D.C. 1981)

<sup>4</sup> Archives of the State of Illinois, Second Edition (online), Record Group 403.000 Parole and Pardon Board (L.1895, p.158). Also see: *Dreyer v. Illinois*, 187 U.S. 71, 79-80 (1902).

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

that might inform “the question of the parole or final discharge of the prisoner.” The warden was to attend the meetings of the parole board and provide it with information and his opinion in writing “as to the fitness of each prisoner for parole.”<sup>7</sup> Every public officer to whom an inquiry could be addressed had the duty of providing the parole board with information “which might throw light upon the question of the fitness of the prisoner to receive the benefits of parole.”<sup>8</sup> Judges and State’s Attorneys were to provide their information for the purpose of throwing light upon the question as to whether such prisoner was capable of again becoming a law-abiding citizen.”<sup>9</sup>

In February, 1978 Illinois abolished parole, and instituted a new "determinate" sentencing law, which shifted the focus away from rehabilitation and towards punishment. At the time nearly 11,000 indeterminately sentenced prisoners remained incarcerated in Illinois. The new law permitted some of these prisoners to opt for a determinate sentence, but others – those with a minimum sentence of 20 years and those convicted of murder – were required to remain under the indeterminate sentencing law and they continued to have their parole applications reviewed by the Prisoner Review Board. Since 1978, the total number of C# cases has been reduced by parole release, conversion of old sentences to new sentences under the provisions of the 1978 statute, completion of maximum terms of imprisonment, grants of executive clemency, and deaths in prison. Currently approximately 300 prisoners remain confined under the pre-1978 law.<sup>10</sup>

## **THE PAROLE HEARING/ EN BANC PROCESS**

### **The Parole Applicant**

Most C# prisoners are living proof that a system focused on rehabilitation works. While nearly all of them committed some of the most heinous crimes in Illinois, most also took advantage of educational and vocational training available to them years ago and became some of the most positive and outstanding prisoners in the system. Many of them were school dropouts when they entered prison, usually between the ages of 16 to 22. Today many are mature men and women, many of whom have earned GED's, acquired a wide range of vocational skills, and college degrees. Most currently range in age from 50 to 80+ years old, and many are chronically ill. They are positive role models in the prisons, and have the potential to make positive contributions to their communities. Paroled C#'s have returned to

**The Parolee:** The recidivism rate for C-number parolees is currently approximately 6%, according to the latest information provided by the PRB. Myriad studies have shown that elderly prisoners and persons convicted of murder are the least likely to recidivate. (See Hughes, Timothy A., Doris James Wilson, and Alan Beck. *Trends in State Parole, 1990-2000.* Washington, D.C.: United States Department of Justice, Bureau of Justice Statistics. 2001)

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Effective June 19, 1998, Illinois enacted “truth in sentencing” laws which created a three-tiered sentencing structure—convictions for first degree murder require the offender to serve 100% of the sentence; other offenses require the offender to serve 85% of the sentence, and still others allow the offender to serve 50% of the sentence. To help eliminate confusion between these structures, all references in this paper to the “new law” are with regard to the 1978 determinate sentencing structure, which required offenders to serve 50% of their sentences without any release review, versus the “old law”, i.e., the indeterminate sentencing structure, which continues to require release review.

society to become business owners, landlords, ministers, students, paralegals, mentors and, more importantly, providers for their families. They assist homeless people and work with at-risk children, other ex-offenders, and drug abusers. Rather than being a financial drain on the state, many paroled C#'s now maintain responsible roles in society.

### **The Institutional Hearing**

When the PRB was formed in 1978, and for the next six years, parole hearings were conducted by three-member panels. A panel would visit the holding institution and conduct a hearing with the prisoner. The PRB members would generally ask prisoners questions in three areas—about their crime, about their institutional adjustment, and about their parole plans. The members would hear from any witnesses on his or her behalf, such as attorneys, family members and clergy, among others. All three members met the prisoner in person, became familiar with issues concerning each case, got to know the family and supporters, and were able to experience the demeanor and attitude of everyone they met.

Subsequent to the hearing, those same three members voted on whether or not to parole the prisoner. A majority vote of two members determined the prisoner's fate.

In 1984 the PRB adopted a policy whereby only one member of the Board would interview the prisoner at the holding institution, and that member would make a presentation to the full PRB in Springfield, at an "*en banc*" hearing where the full Board convenes to deliberate. Some suggest that the change in policy was specifically implemented to limit paroles, subordinating to retribution the spirit and intent of the concept and practice of parole inherent in the philosophy of rehabilitation.<sup>11</sup>

### **The *En Banc* Deliberations and Parole Decisions**

At the Springfield "*en banc*" proceeding, those PRB members who are present gather around a table strewn with files. The Chair calls a case, and the member that conducted the prisoner's institutional hearing presents the parole application. As standard practice, the other members of the Board rely solely on the presentation of the hearing officer. In most cases, the other members have no direct familiarity with the case, although in some situations one or more of the members present may have acted as the hearing officer in an earlier institutional hearing or presided over the "opposition hearing"<sup>12</sup>. The audio recording, which is made at each institutional hearing, is never played at the *en banc* hearing. Letters of support are noted but are seldom circulated or

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<sup>11</sup> Brief of Amici Curiae, Northwestern University Legal Clinic, pps. 14-17 and "Punishments Must Meet Standards," *Chicago Sun-Times*, June 21, 1984, p.50.

<sup>12</sup> The Prisoner Review Board conducts closed "opposition hearings" at which opponents to parole are allowed to voice their objections. Prisoners and their attorneys are not informed of the fact of the hearing, the date or location of the hearing and are not permitted to attend the hearing. The public, our staff and volunteers are not permitted to observe any of these opposition hearings. At the *en banc* hearing, when the Board discusses what occurred at the opposition hearing, observers are asked to leave the room. In many instances, the Board's request that observers leave the room is the first notice for an inmate and his advocate that an opposition hearing was held. Because prisoners and their advocates are excluded from these hearings, they have no opportunity to challenge or correct testimony provided to the Board in secret.

discussed at any length. Opposition to parole from law enforcement, prosecutors and family and friends of the victims are more often discussed, sometimes in closed session. When the members discuss a case, they may inquire about such things as the committing offense, educational and vocational accomplishments, institutional adjustment, gang affiliation, drug use, alcohol abuse, among other factors.

The quality and length of the presentation of the case depends upon the presenting member. The presentation can be as short as a few of minutes or as long as half an hour. No evidence, statements, or correction of misinformation on behalf of the prisoner can be presented by any attorneys, family members or friends present at the *en banc* hearing.

At the end of the presentation, the hearing officer then moves to grant or to deny parole. The motion is seconded, and the case is then either discussed and voted upon, or another move is made for "leave," which means the Board is in full agreement and will not discuss the case further. When the Board moves for "leave," the prisoner is automatically denied parole and his or her case is continued for at least another year. However, a subsequent motion can be made to extend the continuance for two or three years.

Currently, 13 members sit on the Illinois Prisoner Review Board, and a prisoner needs seven votes to obtain parole. It has become increasingly difficult for prisoners who demonstrate that they deserve parole to obtain the requisite votes. Prisoners need seven votes whether all Board members are present or not. An absent member or a member who abstains, constitutes a "no" vote.

Additionally, many PRB members often say that they "can't get past the crime." An assessment of the prisoner's readiness for release based on his or her prison record and personal transformation since confinement are subordinated to that sentiment. The rationale given most prisoners when parole is denied is: "To grant parole would deprecate the seriousness of the offense and promote disrespect for the law."

### **Public Perception and What the Numbers Show:**

The public is often told that the PRB is a "liberal," parole-granting body that abuses its authority to grant releases to prisoners. This viewpoint was best evidenced in 2007 when the Board granted parole to two men. Each of the parolees had been convicted of murder: one had served over 30 years on a sentence of 75-100 years, and the other had served nearly 30 years on a sentence of 150-300 years. The Prisoner Review Board determined that each prisoner was rehabilitated and had otherwise met the criteria for acceptable parole risks.<sup>13</sup>

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<sup>13</sup> In 1985 one result of the actions taken by then Cook County State's Attorney Richard Daley was the maintenance by the PRB of a "Parole Registry" which lists the names and other basic information on each person having been granted parole. The Registry also lists the reason that each person was granted parole—and that reason is the same for everyone: "Acceptable Risk". However, there is no statute or Board Rule which defines "Acceptable Risk", or which can help to guide prisoners so that they may become an "Acceptable Risk".

Factors that quantify "acceptable risk" would include: 1) The likelihood of remaining at liberty without violating the law; 2) institutional disciplinary record, especially over the last five years, must demonstrate constructive, personal transformation; 3) the betterment of one's self through education and/or vocational training; 4) a parole plan which

Nevertheless, their releases were met with outrage from local prosecutors who complained that the Board was releasing people too early and before they had served their maximum sentences.<sup>14</sup> To underscore the point, one prosecutor declared that “when a judge sentenced a defendant to 75 to 150 years, he was sending a message to future parole boards. Do not let this person go.”<sup>15</sup> Some judges may have sent "do not let this person go" messages to the paroling authority with regard to certain defendants. However, this was not the case with most judges. Most judges on the bench when the present class of C#'s were sentenced had an understanding of the law and paroling practices that was shared by Judge Robert J. Collins, who, in 1976, sentenced Homer E. Hanrahan to 50 to 100 years for a 1974 murder. At Mr. Hanrahan's hearing on his 1993 parole application, he presented an affidavit from Judge Collins. The affidavit stated:

I assumed, as was the case under the system of indeterminate sentencing then in effect in Illinois, that [Mr. Hanrahan] would become eligible for parole after about 11 or 12 years, depending upon his record in prison.

In imposing this sentence, I further assumed, based upon my years of experience as a judge and my familiarity with paroling practices at that time, that after Mr. Hanrahan became eligible for parole, the parole board (now the Illinois Prisoner Review Board) would make its own decision about the appropriateness of parole, based upon its assessment of Mr. Hanrahan's performance in prison and whether it would pose any danger to the community to release him at that time.<sup>16</sup>

The protests of these paroles sought to create an image of a reckless PRB, over eager to release those prisoners still eligible for parole from prison. However, actual parole rates from 1978 to the present show that, contrary to this picture, the PRB rarely grants parole. Indeed, for more than two decades the PRB has been exceedingly parsimonious in granting parole for indeterminately sentenced prisoners.

Between 1978 and 1983, parole applications were reviewed and granted at the rates listed below<sup>17</sup>:

<b>Year</b>	<b>Number of Parole Reviews</b>	<b>Number Granted</b>	<b>Percent Granted</b>
1978	6,684	3,823	57%
1979	2,908	1,257	43%
1980	1,653	353	21%

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includes family or community support, housing, and education and/or employment; and 5) the expression of remorse. Special recognition should be considered for those prisoners who have saved the life of a correctional officer, or acted in a manner beyond which is expected of those imprisoned.

<sup>14</sup> Mitch Dudek, “Parole Opposed For Murder Convicts,” *Chicago Tribune*, 2-8-07

<sup>15</sup> Mike Parker, “2 Convicted Killers About To Be Released,” CBS/2 Chicago 2-8-07.

<sup>16</sup> Brief of Homer E. Hanrahan before the Illinois Supreme Court, 1995, p. 3

<sup>17</sup> State of Illinois, Prisoner Review Board, Annual Reports, 1978-1983.

1981	1,404	304	22%
1982	1,189	300	25%
1983	1,053	295	28%

However, in 1984, the number of paroles granted decreased dramatically. In all but five years since 1984, the PRB has granted parole in only 1% to 4% of the cases reviewed<sup>18</sup>:

<b>Year</b>	<b>Number of Parole Reviews</b>	<b>Number Granted</b>	<b>Percent Granted</b>
1984	791	21	3%
1985	821	38	4%
1986	866	25	2%
1987	929	21	2%
1988	813	14	1%
1989	721	23	3%
1990	681	31	4%
1991	704	35	5%
1992	644	14	2%
1993	615	24	4%
1994	571	7	1%
1995	568	16	3%
1996	522	9	2%
1997	477	17	3%
1998	439	6	1%
1999	393	14	3%
2000	332	10	3%
2001	324	16	4%
2002	315	14	4%
2003	225	5	2%
2004	215	23	10%
2005	211	15	7%
2006	179	11	6%
2007	144	7	5%

In some cases, the Board determines that parole candidates are unlikely to obtain support for parole within a two or three year period, and thus, the Board votes to continue the case for a set amount of time not to exceed three years. These prisoners are effectively denied parole during those years, without a hearing.

Thus, the number of parole reviews in the above statistics does not accurately reflect the number

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<sup>18</sup> State of Illinois, Prisoner Review Board, Annual Reports, 1984-2006. The statistics for 2006 and 2007 were provided by the PRB.

of C# prisoners eligible for parole in any given year, and the percentages for each year given are therefore also not accurate. For example, in 2005, there were 322 indeterminate sentenced prisoners held by the Department of Corrections, yet only 211 of those prisoners received parole reviews in that year. The remaining 111 C# prisoners were effectively denied parole, and the percentage of paroles granted in that year is more accurately 4%, rather than the stated 7%.

Without considering those prisoners who did not receive hearings due to extended sets, since 1984, on average C# prisoners have been granted parole less than 3.5% of the time since 1984.

### **WHAT HAPPENED?**

In 1983, then-Governor James Thompson sent James K. Williams, his assistant for criminal justice issues, to the PRB to do “a survey on what was going on with a number of cases in which the Governor thought that decisions were being made he didn’t agree with.” Mr. Williams “looked over cases to see how they were handled, who was handling them...and reported to him [the Governor] on the results of what [he] found. . . .” As a result of these findings, one member of the PRB was not reappointed, and the Governor wrote a letter to the PRB insisting that murder and other serious cases be voted on by the entire PRB.<sup>19</sup>

Soon thereafter, in June, 1984, Cook County State’s Attorney Richard M. Daley wrote a letter to the editor of the Chicago Sun-Times complaining about two specific cases in which the PRB had granted parole and declaring his intention to promote legislation which would make it more difficult for murderers to be paroled in Illinois.<sup>20</sup> The proposed legislation included, in relevant part: (1) a requirement that there be majority approval of the full PRB to parole any person convicted of murder or anyone with a minimum sentence of 20 years or more, and; (2) the creation of a public registry of all PRB parole decisions and the Board’s reasons for granting parole. The change in PRB procedures in 1984 seems to have had an impact; certainly for every year thereafter the number of persons paroled was a small fraction of the number of inmates who applied for parole.

### **CONCLUSION**

In 1978, the average time served on a murder conviction in Illinois was approximately 12 years. In 1983, the average had risen to 15 years. The C# prisoners still incarcerated in 2008 have now served at least 29 years, and the majority have served 35 to 40 years. Paroled C# prisoners have a very low recidivism rate - less than 6% - compared to the general recidivism rate of 51.8% for Illinois prisoners<sup>21</sup>, and generally have an excellent adjustment upon their release on parole.

The Association’s research and observations found that contrary to what the public seems to

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<sup>19</sup> Brief of Amici Curiae, Northwestern University Legal Clinic, pps. 14-17.

<sup>20</sup> “Punishments Must Meet Standards,” *Chicago Sun-Times*, June 21, 1984, p.50.

<sup>21</sup> Illinois Department of Corrections, June 2005 Department Data (most recent available), [http://www.idoc.state.il.us/subsections/reports/department\\_data/Department%20Data%202005.pdf](http://www.idoc.state.il.us/subsections/reports/department_data/Department%20Data%202005.pdf)

believe, the Prisoner Review Board is a very strict paroling body – relying heavily on continuing cases where parole seems unlikely and denying far more requests for parole than it grants. Our observations at individual parole hearings and the *en banc* hearings also reflect a generally thoughtful Board, which carefully considers various factors in deciding parole cases, but which often places more emphasis on the facts of the crime than on a prisoner's individual successes at rehabilitation, expressions of remorse and convincing parole plans.

The C# prisoners who are still incarcerated have all served very long sentences in prison. Even though the majority of C# prisoners are now elderly, pose little risk of recidivating and have demonstrated that they have turned their lives around, parole is still denied to 95% of them. The lack of notice and access to opposition hearings, as well as a prohibition against an advocate correcting errors made at *en banc* hearings, make parole even more elusive for the remaining C# prisoners. This exceedingly low rate of parole continues, notwithstanding that C# prisoners who have been granted parole demonstrate, despite their past crimes, that they are acceptable risks for parole.

# Historic Perspective of Illinois PRB Record

