

**PUBLIC HEARING ON THE PROCEDURES OF THE  
PENNSYLVANIA BOARD OF PROBATION AND PAROLE  
TUESDAY, SEPTEMBER 19, 2000  
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**TO: THE HONORABLE MEMBERS OF THE  
"HOUSE SUBCOMMITTEE ON COURTS"  
HON. DANIEL F. CLARK, CHAIR**

**STATEMENT OF ERNEST D. PREATE, JR.  
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Mr. Chairman, members of the Subcommittee, I thank you for permitting me this opportunity to address you on issues involving the policies and procedures of the Pennsylvania Board of Probation and Parole, and, certain criminal justice system and Department of Corrections issues as they are necessarily related to parole and the Parole Board.

For the last three (3) years I have had a calling for a comprehensive re-examination of our criminal justice system, and our prison and parole policies. I have received literally thousands of letters from prisoners in all twenty-six (26) correctional facilities in this state. I have addressed inmates in large gatherings at six (6) institutions; I've heard their questions, I've listened to their problems, and have tried to supply answers as best I could. Many of these inmates were in for violent crimes, serious offenses. Some were murderers serving life sentences, some were convicted of rape and other sex crimes, some were incarcerated for drug crimes, but many were in prison for non-violent crimes. I've even visited eight (8) prisoners on the notorious death-row at the State Correctional Institution in Greene County.

But more than that I've been "down" as they say in prison lingo. I've been where my freedom has been curtailed by guards and wire...

down at the bottom of humanity. I've lived amongst inmates for more than a year. I'm not proud of what I did, but I survived that and a near death motor cycle accident for a purpose - a purpose I believe that moves me today to pass on to you and those listening some very tough lessons learned.

What I've learned is that we think that by criminalizing more and more behavior, passing longer and mandatory sentences that we will solve the problems of society that spur criminal behavior: drug addiction, alcoholism, racism, poverty, lack of meaningful education, and, the denial of a fair chance to get a decent job. To be sure these must be rooted out, but, after all my years as a prosecutor, attorney general , prisoner and parolee, and now as a man on a mission for the treatment of all with human dignity, I can tell you we are, as a society and as a government, headed in the wrong direction. As a nation and a state we're on an incarceration binge. We are the freest nation in the world, yet we are the world's largest incarcerator. We now have two (2) million locked up and five (5) million more on probation or parole. That's 1 in every 34 citizens.

When the State Correctional Huntingdon was opened in 1900 our system had approximately two-thousand (2,000) inmates. In eighty (80)

years, our state's prison population grew to about eighty-five hundred (8,500) in 1980. In fact from 1940 to 1980 it remained relatively stable. But, in just the last twenty (20) years that eighty-five hundred (8,500) has exploded to now nearly thirty-seven thousand (37,000). And our prisons have gone from twenty-five percent (25%) people of color in 1930 to sixty-six percent (66%) today. Yet, people of color are only twelve percent (12%) of the population. Most inmates are poor, addicted, and, as Corrections' Secretary Horn tells us, the majority test out below the 8<sup>th</sup> grade level of education.

Aside from court commitments thru sentencing, a significant reason for the fill-up of our prisons and the constant building of new prisons (we built a prison a year in the last eighteen (18) years - and two (2) more are now on line) is the dramatic drop in paroles from the institutions, and, the increasing number of released prisoners recidivating. As a state legislative body, you are funding the growth of prisons at an incredible rate. In 1980, the budget of Department of Corrections budget was just \$100 million; it is now \$1.2 billion - a 1200% increase. The other state departments, on average, received approximately a 150% budget increase in the same 20 year span.

What have you obtained for this enormous expenditure and

incarceration of our people: Are we any safer? No, the Department of Justice tells us that 42% of Americans are afraid to walk in their own neighborhood at night. Are we any less addicted? No, President Clinton told us last year that 2.7 million Americans were now drug addicted, 3 times the number who were addicted in 1992 just 7 years before. Has the growth in longer sentences and mandatory sentences deterred people from committing crime? No, addiction numbers keep growing, the drop in violent crime in the last few years has bottomed out in Pennsylvania, and headed up in 1998. Last week Philadelphia's violent crime numbers were restated showing that it is the 2<sup>nd</sup> most dangerous city in the nation, behind Detroit. Moreover, as a state, we made 37,000 drug violation arrests in 1998 – a record. So much for incarceration and mandatorics deterring. Even renowned conservative criminologist and statistician Professor John DiIulio of the University of Pennsylvania recently called for zero prison growth and an end to mandatory sentences. And in 1999, so did the prestigious think tank, the Rand Corporation. Both called for drug treatment, and, intensive parole supervision as more effective and considerably less cheaper alternatives for the taxpayers.

But the more telling statistic is the one no one wants to talk about

because it reflects the virtual failure of our assumptions about incarceration deterring future criminal behavior. It is the recidivism statistic. Despite all the tough "war on drugs" talk from politicians – and I was one of them – despite all the calls for longer and mandatory sentences, despite inmates serving lengthier and lengthier sentences (average sentence received was 25 months in 1984, and 56 months in 1998), Pennsylvania released prisoners now recidivist at a horrendous rate, well over 60% – that is, for every 3 inmates released from PA prisons, 2 will be back in state prison in just 3 years. If building prisons and longer sentences were doing their job, this figure should be considerably lower. But, it isn't. And, one of the reasons is the tremendous anger and bitterness, seething and building in our prison population. It needs to be remembered that 95% of all inmates eventually do get out, and, many of these inmates feel they have been deceived by the criminal justice system. They are told by the judge, the defense attorney, and prosecutor at sentencing that after careful consideration of all their crimes, their history, their background, and the needs of the victim and the needs of society to punish that their sentence is a minimum of, say 5 years, and a maximum of 10 years. It is not infrequent that the judge even tells them they'll likely be

paroled at the expiration of their minimum. But if our aim is truth in sentencing, the Parole Board frustrates that goal. Because the Parole Board is human, it listens to the political winds. And today, the winds tell it to deny paroles to those seeking freedom and revoke the freedom of those released.

Here are the numbers: under the Thornburgh and Casey administrations, when there existed at least a semblance of carrying out the Court and the D.A.'s wishes, paroles were granted at around 70% – give or take a few percentage points. In fact, if you look at Chart 1 you'll see that under the Casey Administration, paroles granted ran from 69.9% in 1998 to 75.3% in 1993. But since 1995, paroles granted dropped precipitously in 3 years, to a low of 38.8% in 1996; that figure held at about 41% for 1997 and 1998 and in 1999 it rose to 49%.

Moreover, the numbers of inmates not getting paroled at all – that is given their unconditional release as "max-outs" has exploded from a low of 751 in 1994 to 2,616 in 1998 – over a 300% increase in just 4 years (Chart 2). Why is that number important for the safety of our citizens? Because these max-outs are the deceived ones, the embittered ones, and the ones thought too dangerous to be paroled. By definition, in the Parole Board's own words, these people are a

the Parole Board's own words, these people are a threat to the public safety. Yet, by failing to put these people in a halfway house for several months to carefully monitor their way back into society, and to help them for additional years under close personal supervision of a parole agent, these max-outs are now on Pennsylvania streets with no transitional housing, no parole supervision, and thus, no help to avert them from recidivating and committing new and often more violent crimes than before. It makes no sense. Thus, our current Parole Board policies actually wind up encouraging more crime.

I know, Mr. Chairman, that you have received at least one letter from an inmate who felt deceived. He sent me a copy of his letter to you. He states the Parole Board kept telling him each year he came up for review to take more DOC treatment programs and stay misconduct free. Yet when he met all these incremental requirements, nonetheless, they rejected him each time he applied. It was as if he got no credit for his efforts to be a good prisoner and to rehabilitate himself. That inmate has told you how bitter he is – so much so that he now glories in the fact he is going to max out and have no parole supervision. Is this what we want as a state? Embittered max-outs roaming our streets, prone to committing new and more violent



crimes?

Because the Parole Board seems to be moved by the winds of current politics, truth in sentencing demands that the Board be abolished. If the Board wants an inmate to max-out, tell him so up front. But don't deceive him by telling one thing and doing another. Don't say to him to "take a prescriptive program and stay misconduct free, and we will reevaluate you next year". Implicit in those words is a bargain with the inmate. All too often the Parole Board doesn't keep its part of that implied bargain. And, members of the Committee, I can tell you the word is spreading throughout the prison system. The Parole board is not to be trusted. It is by far the number one complaint of inmates.

By abolishing the Parole Board and abolishing our minimum-maximum sentence structure, we can achieve a fairer system, yet maintain a tough sentence regime, one less politically susceptible, and, more inclined to provide true incentive for the inmate to voluntarily commit to rehabilitation and reform himself or herself. It is called the determinative or flat sentence system and it is widely accepted in many states and in the federal Bureau of Prisons. In it, the inmate receives no minimum, but a true statement of his sentence. The

inmate can then "earn" his way to a lesser time in prison by doing "good time" – that is, taking prescriptive programs and staying free of serious misconducts. That way the prisoner gets 5 or more days off his sentence each month. For example, a prisoner serving a flat 5-year sentence can reduce his sentence by 10 months through earning good-time credits. He still serves a long term (over 4 years), nearly 85% of his sentence, but, in this type of system, the prisoner himself has the key to reducing his sentence, not the Parole Board. And his taking of treatment and vocational programs does accrue to his credit, instead of being all too often ignored in the current Parole Board practice.

Then, too, abolishing the Parole Board and their fat salaries of over \$90,000.00 each will free up millions of dollars to hire more parole agents, end a wasteful bureaucracy, while, at the same time, increasing public safety. Lest you think this is a new found opinion of mine, the record will show that as far back as the early 1990's, I publicly supported earned time bills supported by several members of the legislature.

Lastly, I have to say that as a former member of the Pardons Board, our current commutation policy of not approving any lifers for commutation by the Governor is a frustration of the whole

Constitutional purpose of the Board. I have here two charts, Charts 3, and 4, which will show that under the Casey Administration, sentences of 26 lifers were commuted. Before that the Thornburg administration commuted lifers as did every Governor for over the last century. I personally voted with the 4 other members of the Pardons Board ( Lt. Governor Mark Singel, a County Warden, a lawyer, and, a psychiatrist) for the commutation of sentences of dozens of deserving lifers during my 6 years on the Pardons Board. Why? Because even I, as a tough prosecutor, recognized that not all those convicted of murder should be treated the same. Some were innocent of murder; some were not the triggermen, but merely an accomplice with no foreknowledge; some were women who killed abusive spouses or boyfriends; some were youths when they committed the murder, but now, after decades of imprisonment, they have become model prisoners; or some were just too old and too feeble to ever be a threat to society. As Chart 5 shows, we have 2323 inmates doing life for 1<sup>st</sup> degree murder, and, 857 doing life for 2<sup>nd</sup> degree murder. Obviously, Judges and juries thought these 857 did not commit intentional, premeditated murder. Yet, the term imprisonment is the same. Even the Supreme Court Chief Justice, Mr. Rehnquist, recognized the importance of the pardoning

process in the criminal justice system in the Herrera case in 1993 when he called it the "fail safe" part of the process that would correct excesses and abuses the judicial system could not reach.

What does this have to do with Parole? A great deal. If the Pardon's Board isn't going to do its Constitutional duty, then, we ought to consider a "parole for lifers" law. We have the nations largest lifer population at three thousand, six-hundred-thirty-two (3,632) as of August 31, 2000. The vast majority of states have a parole for lifers law, e.g. New York, Maryland, California. Parole eligibility - and I emphasize eligibility and not release - starts after twenty-five (25) years of imprisonment as in New York. Often , states have higher thresholds. And, of course, the inmate must have had good conduct, taken treatment and vocational programs, show genuine remorse for the crime, and shown he or she is capable of adhering to the laws of society.

For example, if Pennsylvania had a lifers parole eligibility law starting after 25 years of incarceration, then only 239 or 7% of the 3495 inmates in 1997 would have been eligible; in 1998 only 274 out of 3495 or 8% would have been eligible. If the eligibility age were moved to 30 then only 69 out of 3495 inmates, or 2% would have been eligible. It's

such a small number, but, it would give each and every lifer incentive to do good, to get that chance at freedom, instead of thinking every day his life sentence is really a death sentence. And for the 29 lifers who died in 1998 that was their reality.

Under my proposal the Pardons Board would function as the Parole Board with the same recommendatory power to the Governor; or there could be a set up for a "Long Term Sentence Review Committee", with power to make such recommendations to the Governor. This is the case in Maryland. Further, the Sentencing Code of Pennsylvania could be amended to reflect that the trier of fact (judge or jury) make a choice upon a murder conviction, "life with no eligibility for parole", or, " life with eligibility for parole" after 25 or 30 years. Or, the Code could reflect that certain murderers convicted of specified aggravating circumstances such as multiple murder, or killing during a rape, or killing a law officer are ineligible for parole. In other words, there are several reasonable options that could be legislatively explored rather than continue with the current unacceptable practice.

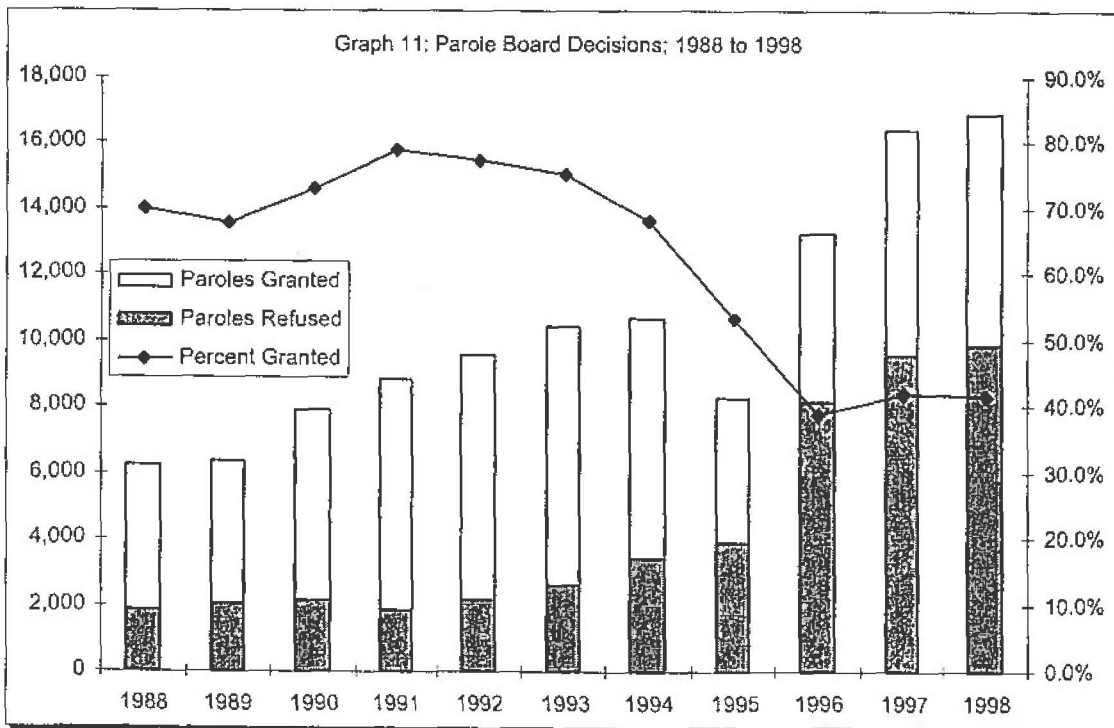
I hope to work with you over the next months and years to provide an innovative, progressive, yet humane, sentencing structure, one that is fair and not arbitrary, truthful and not deceptive, incentive

laden and not dependent on whichever way the political winds are blowing. Thank you.

Table 31: Paroling Actions by the Pennsylvania Board of Probation and Parole; Calendar Years 1988 through 1998\*

Year	Paroles Granted	Paroles Refused	Total Actions	Percent Granted
1988	4,343	1,873	6,216	69.9%
1989	4,297	2,044	6,341	67.8%
1990	5,778	2,127	7,905	73.1%
1991	6,955	1,863	8,818	78.9%
1992	7,403	2,165	9,568	77.4%
1993	7,841	2,571	10,412	75.3%
1994	7,270	3,392	10,662	68.2%
1995	4,401	3,862	8,263	53.3%
1996	5,155	8,114	13,269	38.8%
1997	6,858	9,561	16,419	41.8%
1998	7,044	9,862	16,906	41.7%

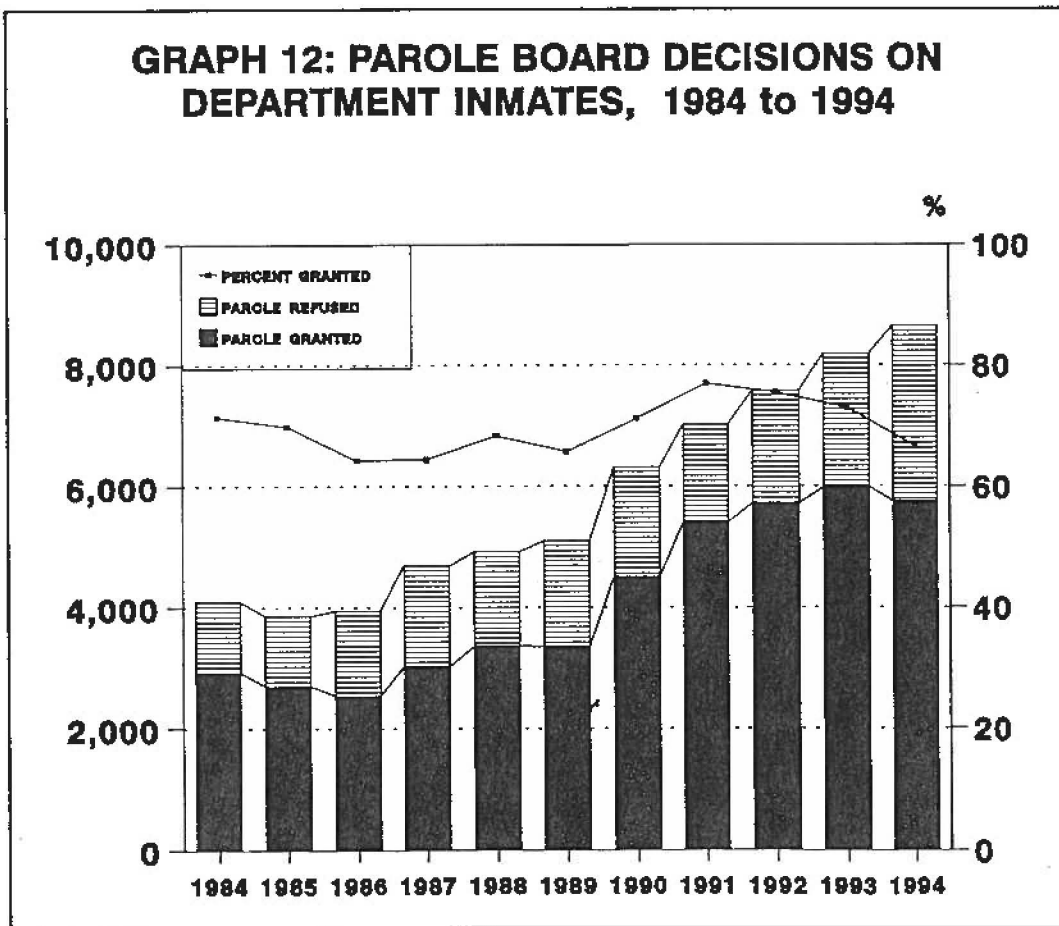
\* Information for this table was provided by the Pennsylvania Board of Probation and Parole. The number of paroles granted reported above and the number of Departmental releases reported in Table 32 do not match due to processing differences between the DOC and the PBPP. The above table reflects parole processing while Table 32 shows actual movement of inmates out of the DOC. Also, figures reported this year are inconsistent with those reported in prior years due to revisions made by the PBPP.



**TABLE 32: PAROLING ACTIONS BY THE PENNSYLVANIA BOARD OF PROBATION AND PAROLE INVOLVING STATE PRISON INMATES, 1984-1994\***

YEAR	PAROLES GRANTED	PAROLES REFUSED	TOTAL ACTIONS	PERCENT GRANTED
1984	2,925	1,171	4,096	71.4
1985	2,699	1,162	3,861	69.9
1986	2,539	1,410	3,949	64.3
1987	3,021	1,665	4,686	64.5
1988	3,363	1,557	4,920	68.4
1989	3,355	1,745	5,100	65.8
1990	4,505	1,818	6,323	71.2
1991	5,401	1,614	7,015	77.0
1992	5,722	1,858	7,580	75.5
1993	5,982	2,211	8,193	73.0
1994	5,752	2,898	8,650	66.5

**GRAPH 12: PAROLE BOARD DECISIONS ON DEPARTMENT INMATES, 1984 to 1994**



\* - Information for this table was obtained from the Pennsylvania Board of Probation and Parole's December 1994 Quarterly Summary Report.



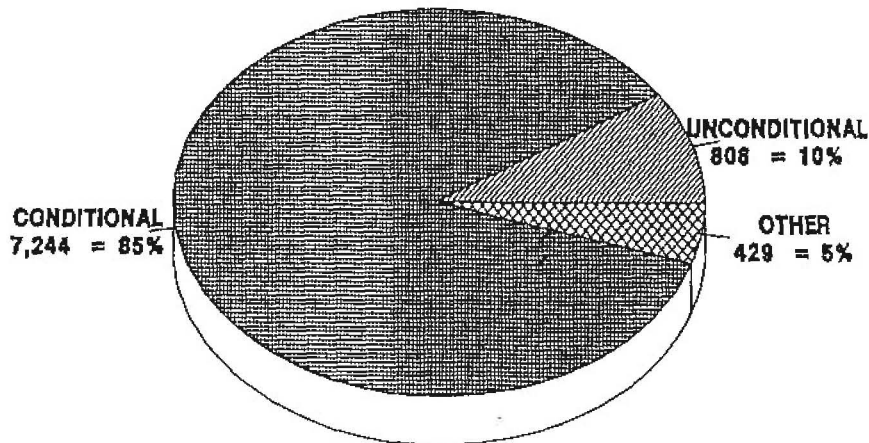
Pennsylvania Department of Corrections  
1994 Annual Statistical Report

# CHART 2.

TABLE 31: DISCHARGES FROM THE STATE PRISON IN 1993 AND 1994 BY TYPE

TYPE OF RELEASE	1993	PERCENT OF TOTAL	1994	PERCENT OF TOTAL
<b>UNCONDITIONAL</b>				
MAXED OUT	750	8.9	751	8.9
BY COURT ORDER	89	1.1	57	0.7
<b>TOTAL</b>	<b>839</b>	<b>10.0</b>	<b>808</b>	<b>9.6</b>
<b>CONDITIONAL</b>				
STATE PAROLE	5,330	63.3	5,250	61.9
COUNTY PAROLE	22	0.3	23	0.3
REPAROLED (STATE)	1,795	21.3	1,971	23.2
<b>TOTAL</b>	<b>7,147</b>	<b>84.8</b>	<b>7,244</b>	<b>85.4</b>
DEATHS	78	0.9	102	1.2
OTHER	362	4.3	327	3.9
<b>TOTAL DISCHARGES</b>	<b>8,426</b>	<b>100.0</b>	<b>8,481</b>	<b>100.0</b>

**GRAPH 11: DISTRIBUTION OF 1994 RELEASES BY TYPE**



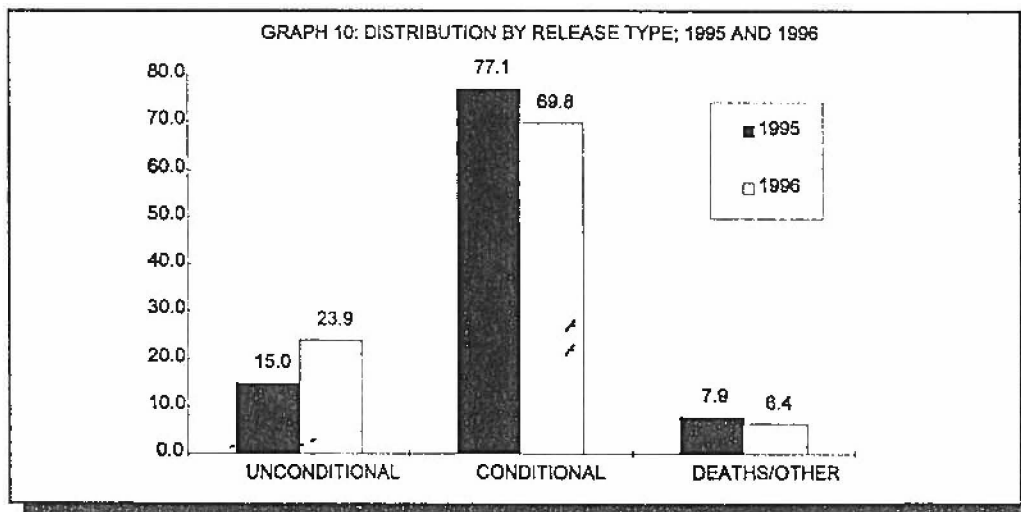
# Chart 2 (cont.)

TABLE 30: INMATE RELEASES BY TYPE FOR CALENDAR YEARS 1995 AND 1996

TYPE OF RELEASE	1995	PERCENT OF TOTAL	1996	PERCENT OF TOTAL
UNCONDITIONAL				
MAXED OUT	1,022	14.1	1,814	22.6
EXECUTED	2	0.0	0	0.0
BY COURT ORDER	64	0.9	106	1.3
TOTAL	1,088	15.0	1,920	23.9
CONDITIONAL				
STATE PAROLE	3,704	51.0	3,800	47.2
COUNTY PAROLE	22	0.3	9	0.1
REPAROLED (STATE)	1,872	25.8	1,802	22.4
TOTAL	5,598	77.1	5,611	69.8
DEATHS	122	1.7	127	1.6
OTHER*	455	6.3	385	4.8
TOTAL	577	7.9	512	6.4
TOTAL RELEASES	7,263	100.0	8,043	100.0**

\*OTHER INCLUDES TRANSFERS TO STATE HOSPITALS AND OTHER JURISDICTIONS

\*\* TOTAL EXCEEDS 100% DUE TO ROUNDING.



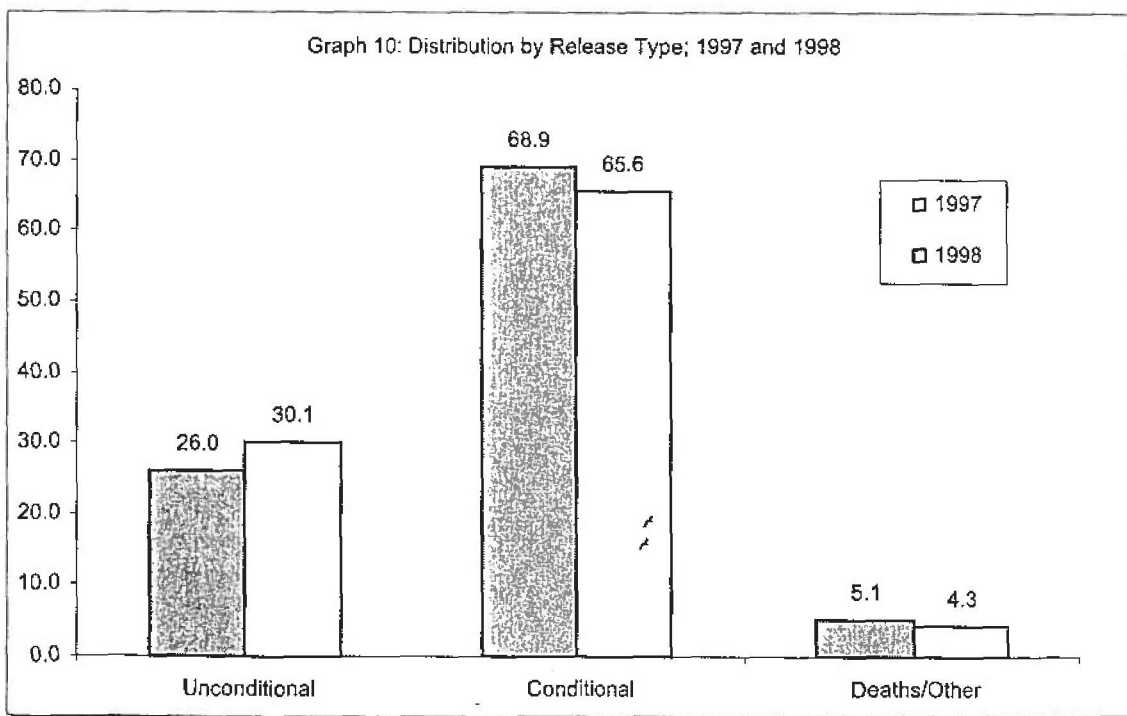
# CHART 2 (end)

**Table 30: Inmate Releases by Type for Calendar Years 1997 and 1998**

Type of Release	1997		1998	
	Number	Percent	Number	Percent
<b>Unconditional</b>				
Maxed Out*	2,423	24.9%	2,616	29.0%
Executed	0	0.0%	0	0.0%
By Court Order	103	1.1%	101	1.1%
<b>Total</b>	<b>2,526</b>	<b>26.0%</b>	<b>2,717</b>	<b>30.1%</b>
<b>Conditional</b>				
State Parole	4,881	50.2%	4,126	45.7%
County Parole	10	0.1%	8	0.1%
Reparoled (State)	1,811	18.6%	1,793	19.9%
<b>Total</b>	<b>6,702</b>	<b>68.9%</b>	<b>5,927</b>	<b>65.6%</b>
<b>Other Releases</b>				
Deaths	109	1.1%	128	1.4%
Other**	392	4.0%	259	2.9%
<b>Total</b>	<b>501</b>	<b>5.1%</b>	<b>387</b>	<b>4.3%</b>
<b>Total Releases</b>	<b>9,729</b>	<b>100.0%</b>	<b>9,031</b>	<b>100.0%</b>

\* Expiration of maximum sentence.

\*\* Other includes transfers to state hospitals and other jurisdictions.

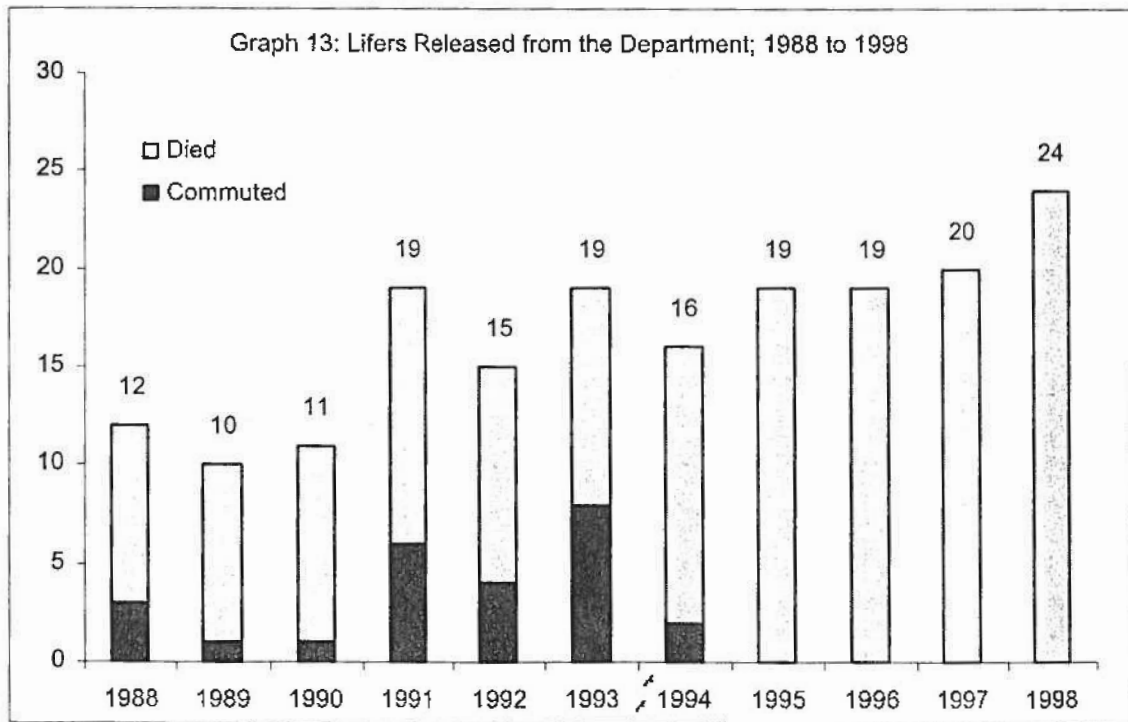


**CHART 3.**

**Table 33: Releases by Type for Inmates Serving a Life Sentence; Calendar Years 1988 through 1998**

Year Released	Commuted*	Died	Total
1988	3	9	12
1989	1	9	10
1990	1	10	11
1991	6	13	19
1992	4	11	15
1993	8	11	19
1994	2	14	16
1995	0	19	19
1996	0	19	19
1997	0	20	20
1998	0	24	24
<b>Total</b>	<b>25</b>	<b>159</b>	<b>184</b>
18 Average Time Served (Years)		10.7	

\* Refers to commuted lifers who were released from the PA DOC.



**CHART 4**  
 Pennsylvania Department of Corrections  
 1994 Annual Statistical Report

TABLE 34: LIFERS DISCHARGED FROM STATE PRISON, 1984 TO 1994

YEAR RELEASED	COMMUTED	DIED	TOTAL
1984	1	7	8
1985	2	7	9
1986	1	7	8
1987	0	4	4
1988	3	9	12
1989	1	9	10
1990	1	10	11
1991	5	13	18
1992	4	11	15
1993	4	11	15
1994	2	14	16
<b>TOTAL</b>	<b>24</b>	<b>102</b>	<b>126</b>
<b>AVERAGE TIME SERVED (YEARS)</b>	<b>22.2</b>	<b>13.1</b>	<b>15.2</b>

**GRAPH 14: LIFERS DISCHARGED FROM THE DEPARTMENT, 1984-1994**

