

# Predicting Parole Grants: An Analysis of Suitability Hearings for California's Lifer Inmates



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### I. Introduction

In the past few years, the United States has moved toward an unprecedented bipartisan consensus that we have a mass incarceration problem: too many people serving too-long sentences. An increasing number and proportion of these inmates are serving life terms. From 2008 to 2012, the national 'lifer' population rose 11.8 percent, from 142,727 to 159,520.<sup>1</sup> California houses the greatest proportion of these inmates (30.1 percent of its prison population), followed by Utah (29.2 percent) and Nevada (21.5 percent).<sup>2</sup>

The large majority of lifer inmates nationally (110,439 out of 159,520, or nearly 70 percent) were sentenced to indeterminate terms, and are serving life terms *with* the possibility of parole. California accounts for roughly one third of this number, with 35,759 lifer inmates. No other state rivals California on this score. Texas, in second place, has only 8,493 inmates serving life terms with the possibility of parole.<sup>3</sup> In most states, a parole board or similar governing body determines lifer inmates' chances of release by deciding whether, when, and under what conditions a lifer inmate will be permitted to leave prison.

Despite the large number of lifer inmates, strikingly little is known about states' decision-making process for releasing them,<sup>4</sup> and releasing authorities' suitability determinations are largely invisible to the public eye. This study is an important step forward in understanding the factors that predict parole release. We report the initial results from an analysis of over 700 California lifer hearings. Controlling for a variety of factors, including characteristics of the inmate, the crime, and the hearing itself, we identify several variables that are significantly associated with a lifer inmate's chance of receiving a parole grant.

### II. The California Lifer Landscape

California first instituted parole as a means of early release for prisoners serving "excessive" terms, and parole has been viewed increasingly as a means of managing the state prison population.<sup>5</sup> Overpopulation has gained particular import since *Brown v. Plata* in 2011, when the U.S. Supreme Court held that the state's crowded prisons violated the Eighth Amendment.<sup>6</sup> Efforts to reduce the overall prison population, most notably Public Safety Realignment (AB 109), have resulted in a state prison system more and more concentrated with serious offenders.

As of September 2015, 34,466 individuals were serving life sentences with the possibility of parole in California,<sup>7</sup> including many inmates serving three-strike sentences. This number represents more than one in four of the state's inmates, and has increased by seven percent just in the past half-decade (and this does not include prisoners serving life terms *without* the possibility of parole).<sup>8</sup> In short, the number is enormous, representing not only a significant percentage of California prisoners, but a substantial portion of the nation's lifers. The lifer population also differs in composition from the rest of the state's prison population; it is older, more violent, and slightly more male, though its racial makeup, resembles the general prison population in California.<sup>9</sup>

### III. The Parole Process in California

#### A. Conduct of the Hearing

One Commissioner and one Deputy Commissioner<sup>10</sup> preside over every lifer parole hearing in California.<sup>11</sup> Both are Board of Parole Hearings (BPH) employees, but they serve distinct roles. Commissioners, of whom the state usually employs only twelve at any given time, are appointed by the Governor and undergo a lengthy confirmation process. Lifer hearings comprise nearly all of a Commissioner's working hours. Deputy Commissioners, on the other hand, are hired through the civil service appointment process and currently number around thirty-five. In addition to lifer hearings, Deputy Commissioners conduct placement, mentally disordered offender, and rehospitalization hearings, review BPH decisions, and adjudicate pre-hearing decisions.<sup>12</sup>

Before each hearing, the prison where an inmate is housed distributes a board packet to the Commissioner and Deputy Commissioner assigned to a hearing, as well as to the inmate's attorney and the District Attorney's office in the county where the life crime was committed. The packet contains key documents from the inmate's central file (C-file), including a summary of the life crime, the inmate's criminal record, psychological evaluations, the post-conviction progress report, and prior parole decisions. Commissioners and inmates' attorneys are not required to review the entire C-file before the hearing, though many do so in addition to reading the board packet.

A lifer inmate's initial suitability hearing takes place one year before his or her minimum eligible release date. Each

*Federal Sentencing Reporter*, Vol. 28, No. 4, pp. 268–277, ISSN 1053-9867, electronic ISSN 1533-8363.  
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hearing is held in a small meeting room at the prison where an inmate is housed. Typically, anywhere from four to eight people are present around a conference table: the Commissioner, Deputy Commissioner, inmate and inmate's counsel, as well as members of other groups who are entitled to be present, including the victim and/or victims' next of kin,<sup>13</sup> a representative from the District Attorney's office in the county of conviction,<sup>14</sup> and occasionally members of the media.

The Commissioner is primarily responsible for running the hearing and ensuring that all relevant topics are covered, including the commitment offense, the inmate's behavior and program participation in prison, and the inmate's plans for release. Although an inmate is not required to discuss the life crime, the commissioners may, and often do, question him or her about it. Ideally, these questions are designed to probe the reasons the crime was committed, since the degree to which the inmate has addressed these factors—the so-called “nexus” between the life crime and the danger the inmate currently poses—is the crux of the determination.<sup>15</sup> The Deputy Commissioner typically conducts the portion of the hearing spent on post-conviction factors, including disciplinary infractions and program participation in prison. In most hearings, the commissioners also spend a significant amount of time on an inmate's post-release plans (also known as exit plans or parole plans), such as housing, employment, and substance abuse relapse prevention. Victims and victims' next of kin are permitted to make a statement, and a representative from the District Attorney's office may speak as well. At the commissioners' discretion, letters from community members supporting or opposing release may be read into the record.<sup>16</sup> Every inmate is represented by either publicly appointed or private counsel. The inmate's attorney typically gives a short statement or summation at the end. Most hearings last between one and three hours, and all hearings are audio recorded.

Immediately following a hearing's conclusion, the room is cleared of all persons except the Commissioner and Deputy Commissioner. The two of them deliberate in secret, usually for twenty to thirty minutes, then the parties all reconvene and the commissioners announce their decision. There is no record of these private deliberations.

## B. Decision Criteria

Commissioners are tasked with determining whether an inmate “will pose an unreasonable risk of danger to society if released from prison.”<sup>17</sup> They are specifically directed to consider a list of fifteen factors catalogued in the California Code of Regulations (CCR).<sup>18</sup> Circumstances that tend to show unsuitability for release include an especially egregious commitment offense (e.g., abuse or mutilation of the victim; multiple victims), a previous record of violence or sadistic sexual offenses, an unstable social history, psychological problems, the presence or absence of exit plans, and institutional misbehavior. The remaining nine circumstances tend to show suitability, and include the

absence of a juvenile record, evidence of remorse, and a stable social history.

Although the CCR enumerates specific factors for commissioners to consider in making suitability determinations, it also underscores the commissioners' wide latitude. Commissioners may use any information they find relevant, and “the importance attached to any circumstance or combination of circumstances in a particular case is left to the judgment of the panel.”<sup>19</sup> This is particularly so given that many of the criteria are somewhat subjective. For example, reasonable persons might disagree about whether a crime was “exceptionally callous,” whether an inmate's motive for an offense was “inexplicable,” what kinds of in-prison misconduct count as “serious,” or whether an inmate's relationships with others were “reasonably stable.” Making these kinds of judgment calls about the meaning of a particular inmate's circumstances is a fundamental part of each commissioner's role.

If the panel votes to find the inmate suitable for parole release (i.e., “grant parole”), the grant is automatically sent to the Governor for review. In the majority of cases, where the life crime was murder, the Governor may affirm, modify, or reverse the Board's decision. In non-murder cases, the Governor may remand the case back to the BPH for a full Board review.<sup>20</sup> In 2015, approximately 86.5 percent of grants sent to the Governor were upheld, which is a significant contrast to previous administrations. For instance, Governor Grey Davis upheld 2.8 percent of parole grants, and Governor Schwarzenegger upheld 28.8 percent of parole grants (Figure 1).<sup>21</sup>

In the event that parole is denied, the panel must decide on the proper “denial length”—the amount of time that will elapse before the inmate's next hearing. Prior to 2008, the panel could impose a denial length of one to five years, in one-year increments. To set the term, they began with one year as the default, adding additional years only if it was “not reasonable to expect that parole would be granted at a hearing during the following year[s].”<sup>22</sup> This scheme was drastically altered in November 2008 with the passage of Proposition 9, Marsy's Law. Thereafter, any panel that denied parole was required to set the denial length beginning with a default of fifteen years. A shorter denial length could be imposed only with clear and convincing evidence that safety considerations did not require longer incarceration. If commissioners found that such evidence existed, they could then reduce a denial length to ten, seven, five, or three years.<sup>23</sup>

## IV. Trends in Lifer Parole

### A. Grant Rates

California's grant rate—the rate at which the BPH finds lifer inmates suitable for release—remained below 8 percent until 2008, when the California Supreme Court handed down two key decisions, *In re Lawrence*<sup>24</sup> and *In re Shaputis*.<sup>25</sup> These cases held that an inmate could not be denied parole release based solely on the heinousness of the crime he or she committed. Instead, the relevant inquiry is

**Figure 1**  
**Governor's Reversal Rate for Parole Decisions**  
**Involving Murder Cases, 1991–2015**



the “current dangerousness” the inmate poses; the commitment offense is only useful insofar as it bears on this threat to society. The need for a relationship between the commitment offense and an inmate’s current dangerousness has come to be known as the “nexus” requirement.

In the past seven years, likely due in no small part to *Lawrence* and *Shaputis*, as well as to extensive professional development training the BPH has undergone under the appointment of Jennifer Shaffer as Executive Officer in 2011, the grant rate for lifer inmates has more than tripled—from 8 percent in 2008 to 30 percent in 2015 (Figure 2).

As noted above, California is one of only a handful of states in which the governor has the authority to reverse parole board decisions.<sup>26</sup> This authority was granted via popular ballot measure in 1988, and applies to all murder cases,<sup>27</sup> which comprise the bulk of lifer commitment offenses.<sup>28</sup>

As Figure 1 shows, from 1999 to 2011, even in the few cases where the BPH found an inmate suitable for parole release, Governors Grey Davis and Arnold Schwarzenegger usually reversed grants. More recently, however, the election of Governor Jerry Brown and administrative changes to the BPH have resulted in a significant upward trend in the lifer grant rate.<sup>29</sup> The average reversal rate for lifer parole grants has fallen to 13.5 percent. The increased grant rate by the BPH, coupled with the significant reduction in reversals by the Governor, has led to a record number of lifer inmates being released from California prisons in the last several

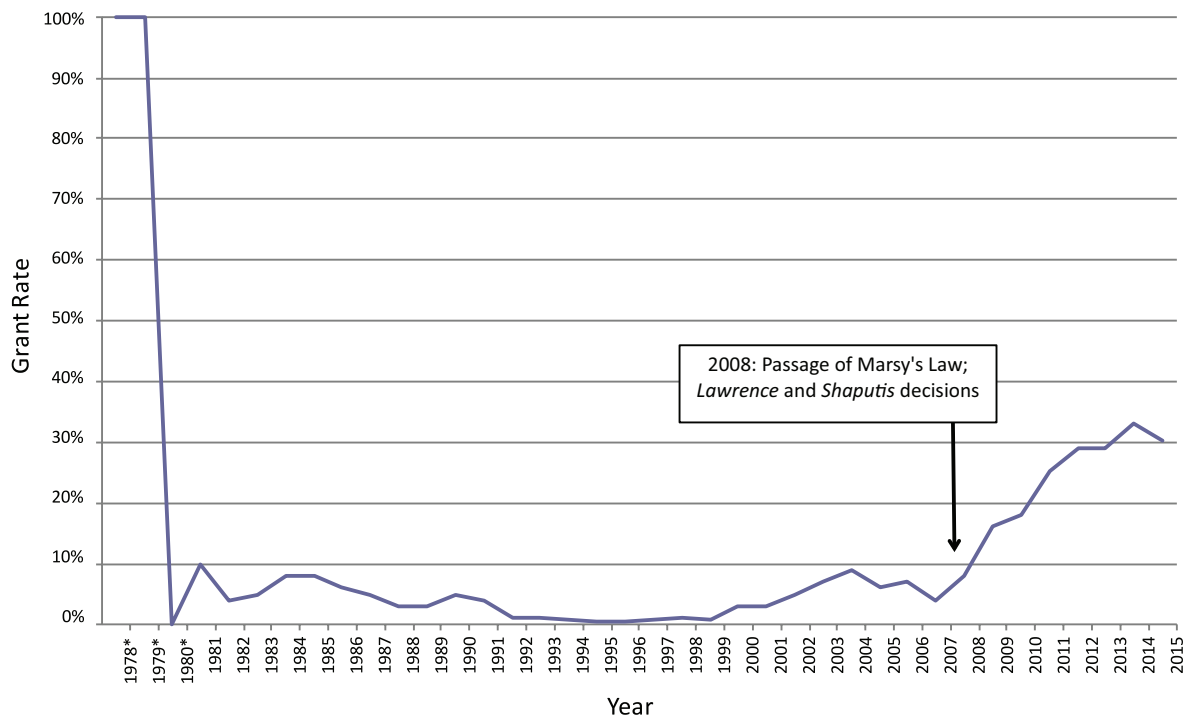
years. Previous research suggests that their likelihood of recidivating is extremely low.<sup>30</sup>

#### **B. Factors Associated with Parole Release**

Previous research on parole grants in California has suggested that a number of factors, including some that are unassociated with the BPH’s formal decision-making criteria, may be related to an inmate’s chance of getting parole. One assessment that reviewed past studies concluded that “parole boards do not consistently apply suitability criteria, and that parole suitability decisions are ‘primarily a function of institutional behavior [and] crime severity,’ among other factors.”<sup>31</sup> The same study found that gender, but not race, appeared to affect the denial length that California inmates received.<sup>32</sup> This lack of a racial effect in parole board releases is consistent with recent studies in other jurisdictions.<sup>33</sup>

Multiple studies have suggested that the attendance of victims and victims’ next of kin at parole hearings is associated with a greater likelihood of parole denial.<sup>34</sup> This factor is particularly salient in California, where in 2008, Marsy’s Law expanded the definition of “victim” and affirmed victims’ rights to attend and speak at parole hearings (among many other reforms).<sup>35</sup> A study by the Stanford Criminal Justice Center in 2011 found a significant difference in the grant rate between hearings when victims were and were not present: “When victims attend hearings, the grant rate is less than half the rate when

**Figure 2**  
**Board of Parole Hearings Grant Rate, 1978–2015**



\*There was only one lifer suitability hearing conducted in 1978 and in 1979, and two hearings in 1980.

victims do not attend.”<sup>36</sup> The same study found that other factors in the BPH’s assessment criteria—including the inmate’s age, prior adult and juvenile record, and the number of people victimized in the life crime—were not significant. The authors stressed, however, that their analyses were preliminary and correlational, writing that a more nuanced analysis was necessary to control relevant factors and tease out the relationship between variables. The results we report here are the first step toward this more nuanced analysis.

## V. Methods

### A. Data Collection

We received 754 hearing transcripts constituting a random sample of 10 percent of all BPH suitability hearings conducted between October 1, 2007, and January 28, 2010, from the California Department of Corrections and Rehabilitation.<sup>37</sup> The transcripts are a verbatim record of the parole hearings, and averaged 150 pages in length.

Five trained research assistants read and evaluated the transcripts according to a detailed coding manual. Not only did coders work under close supervision, but at the beginning of the project, all were assigned to a series of identical transcripts to ensure intercoder reliability. Coders recorded 152 separate variables for each transcript and recorded their codes using a shared database, which took between forty-five and sixty minutes per transcript per coder. The

variables covered twelve subject areas: basic information about the hearing itself, background, discussion of crime, prisoner’s prior history, progress in prison, exit plans, psychological report, District Attorney’s statement, inmate’s testimony, victim testimony, program participation, and reasons for the Board’s decision.

### B. Data Analysis

We conducted a logistic regression analysis to examine the effects of more than twenty variables of interest on grant or denial of parole by the BPH. It is important to note that our dependent variable in the analysis was dichotomous: we looked at whether the Board voted to grant an inmate parole, but made no distinction between longer and shorter denial lengths.

We chose our independent variables based on multiple criteria. Most importantly, we sought to include as many variables as possible that represented factors the Board is statutorily directed in the CCR to consider in making its release decisions. These factors included the inmate’s age, psychiatric evaluations, participation in rehabilitative prison programs, and in-prison behavior. Additionally, we included variables the earlier analysis of a subset of this data had suggested might be relevant: the victim’s attendance at the hearing, the District Attorney’s recommendation, and whether a hearing was an inmate’s first.<sup>38</sup> We also included a handful of other variables of interest that related to characteristics about the inmate or the commitment

offense, such as race, gender, number of victims in the life crime, and sexual violence in the life crime.

Finally, we used a stochastic data imputation strategy for variables that had missing data. To ensure that the imputation did not skew our results, we performed 1,000 imputations, ran a logistic regression independently for each imputation, and pooled the results of these models. Thus, the results we report here are likely a conservative estimate of our independent variables' significance.

## VI. Results and Discussion

Our logistic regression model compares inmates who were found suitable for parole release to inmates who were denied parole, regardless of the denial term imposed. Multiple groups of variables had significant or marginally significant effects on an inmate's chances of receiving a parole grant. As we will discuss in more depth, many of these variables are consistent with the Board's formal criteria. Results of our regression are shown in Figure 3, and we address each variable, or group of variables, below, including those that had no significant effect on an inmate's odds of release.<sup>39</sup>

### A. Demographic Variables: Age, Race, and Gender

Age is positively correlated with an inmate's chances of obtaining a parole grant; older inmates were significantly more likely to be found suitable for parole release, compared to younger inmates. An increase of ten years in age made an inmate anywhere from 1.3 to 5 times more likely to be granted parole. This finding is consistent not only with the large body of research documenting that older inmates are less likely to recidivate, but also with the formal inclusion of increased age as a factor that tends to indicate an inmate's suitability for release.

An inmate's age at the commission of a crime, however, had an inverse effect; the older an inmate was when he or she committed the crime, the less likely he or she was to be granted parole. Being ten years older made an inmate more than half as likely to be granted parole. This result might indicate that younger offenders are perceived as having a greater capacity for rehabilitation. Releasing authorities may also believe that younger offenders were more impressionable or vulnerable to negative influences when they committed their crimes, and are thus less "responsible" for their actions than older offenders are.

Consistent with previous studies, we found no significant effects of an inmate's race on his or her chances of obtaining a parole grant versus a parole denial. We also found no evidence that an inmate's gender significantly affects his or her chances of being granted parole.

### B. Behavior in Prison

We included variables that represent both positive and negative behavior in prison. Given the wide variety of programs that any given prison may offer, as well as the drastic differences in offerings between facilities, we created a variable that indicated simply whether or not an

inmate had participated in *some* kind of programming. This might include anger management, educational programmings, vocational training, and the like. The only category of programming we considered as a separate variable was substance abuse programming—that is, programming related to drug or alcohol use, such as Alcoholics Anonymous or Narcotics Anonymous. We considered substance abuse separately for a couple of reasons. First, it is one of the most common kinds of programming available, and exists in many (if not most) California prisons. This meant that there were enough people who *had* participated in it for us to meaningfully compare this group to people who had not. But more importantly, in our data it acted as a kind of proxy for prior drug or alcohol use—so much so, in fact, that covariance prevented us from including prior drug or alcohol use in our model. In order not to group everyone with a history of drug and alcohol abuse into the "programming" variable, it made sense to separate out substance abuse programming.

We found that substance abuse programming participation was significantly and positively associated with release; inmates who participated in substance abuse programming were more likely to obtain parole grants than inmates who had not participated. Because of the covariance problem we mentioned above, it is a bit difficult to interpret this result. It is entirely possible that commissioners simply find this type of programming particularly valuable. It is also possible, though, that the group who participated in this programming were inmates whose commitment offense was carried out while the inmate was abusing drugs or alcohol, which we might imagine commissioners would consider an "external" cause of criminal behavior—more of a disease or circumstance than a character flaw. This might make inmates who participated in substance abuse programs seem more rehabilitable than other inmates, provided their addiction was treated. Surprisingly, participation in other types of programs, which included educational and vocational programming, was not significantly correlated with obtaining a grant.

Negative behaviors in prison can be measured in a number of ways. Prisoners may receive a 128 rules violation report for committing a minor disciplinary infraction or a 115 rules violation report for committing a major disciplinary infraction. Of course, these classifications are somewhat subjective, and correctional officials have a great deal of discretion in labeling prisoner misconduct. We include two variables as proxies for prisoner misconduct. First, we looked at the number of 115s an inmate had *ever* received while incarcerated for his or her life crime, as a way to examine the magnitude of in-prison misbehavior over the time of an inmate's incarceration. Second, we looked at the number of 115s or 128s a prisoner received in the year prior to his or her hearing. Since this second variable includes 128s, it encompasses more behaviors than the first variable. But unlike the first variable, it addresses the recency of the misbehavior.

**Figure 3**  
**Logistic Regression Comparing Inmates being denied Parole and Inmates being granted Parole**

Variable	Value	Estimated effect		95% Confidence interval		P-value	
		Log Odds	Odds#	Low bound	High bound		
(Intercept)	Baseline: Denied	-4.65	0.01	0.00	0.18	0.0021	**
Age at hearing (x10)		0.91	2.49	1.25	4.96	0.0093	**
Age at crime (x10)		-0.91	0.40	0.18	0.90	0.0271	*
Race and ethnicity	Baseline: White						
	Black	-0.34	0.71	0.34	1.48	0.3637	
	Latino	-0.06	0.95	0.47	1.92	0.8756	
	Other	0.22	1.24	0.48	3.24	0.6576	
Gender	Baseline: Female						
	Male	-0.71	0.49	0.19	1.30	0.1543	
Adult violent convictions	Baseline: No						
	Yes	0.69	1.98	0.95	4.14	0.0674	°
Hearing start time	Baseline: Morning						
	Early afternoon	0.40	1.50	0.81	2.77	0.1993	
	Late afternoon	-0.47	0.62	0.28	1.41	0.2546	
Hearing time	Baseline: Initial						
	Subsequent	1.77	5.86	0.69	49.43	0.1040	
Victim/VNOKs present	Baseline: No						
	Yes	-0.68	0.51	0.17	1.54	0.2307	
Asked about 12 steps	Baseline: Not asked						
	Yes, failed	-1.72	0.18	0.05	0.67	0.0104	*
	Yes, succeeded	0.15	1.16	0.66	2.05	0.6089	
DA recommendation	Baseline: No recommendation						
	Yes, opposes	-1.28	0.28	0.12	0.67	0.0047	**
	Yes, supports	0.50	1.64	0.15	17.50	0.6797	
Program participation	Baseline: No						
	Yes, substance abuse	0.61	1.83	0.96	3.50	0.0662	°
	Yes, other	0.25	1.28	0.63	2.60	0.4874	
Lied or evasive	Baseline: No						
	Yes	-1.18	0.31	0.16	0.58	0.0003	**
Number of 115s (x10)		-0.56	0.57	0.32	1.00	0.0510	°
115/128 in the past year	Baseline: No						
	Yes	-0.42	0.66	0.24	1.85	0.4279	
Life crime	Baseline: First Degree Murder						
	Second Degree Murder	0.21	1.23	0.62	2.45	0.5484	
	Other	-0.11	0.89	0.29	2.75	0.8411	
Expressed remorse or responsibility	Baseline: Yes						
	No	-0.92	0.40	0.05	3.23	0.3887	
Has a job offer letter	Baseline: No						
	Yes	1.24	3.47	1.76	6.83	0.0003	**
Number of victims	Baseline: One						
	Two or more	-0.21	0.81	0.40	1.65	0.5669	
Sexual violence in life crime	Baseline: No						
	Yes	-10.15	0.00	0.00	Inf	0.9845	
Victim defiled	Baseline: No						
	Yes	-0.19	0.82	0.36	1.91	0.6490	
Only low risk evaluations	Baseline: No						
	Yes	0.86	2.36	1.30	4.27	0.0047	**

#: The odds estimate multiplies the odds of being granted parole over the baseline of being denied. An odds estimate of 2 multiplies the inmates' odds of being granted parole by 2. An odds estimate of 0.5 multiplies the odds of being granted parole by 0.5, therefore dividing their chance by 2.

Of these two variables, only the number of 115s a prisoner had ever received appears to influence releasing decisions. The more 115s an inmate had collected during this period of incarceration, the lower his or her odds of obtaining a grant; an increase of ten 115s

divided an inmate's odds in half. This effect was only marginally significant, and may suggest that commissioners are willing to overlook recent misdeeds but are less willing to overlook a longer history of more significant disciplinary infractions.

### C. Psychological Evaluations

Inmates in our sample had been subject to multiple types of psychiatric tests throughout their time of imprisonment aimed to assess inmates' risk of reoffending and/or overall psychological well-being. Any given inmate had taken between one and four different tests: Historical, Clinical, and Risk Management Scales (HCR-20), Clinician Generic Risk assessment, Axis-V Global Assessment of Functioning (GAF), and/or the Hare Psychopathy Checklist-Revised (PCLR-Hare). These psychiatric tests are administered within months of the inmate's initial hearing and subsequent hearings. None of these tests alone had been administered to enough inmates in our sample for us to assess its effects independently. To get at the question of whether psychological assessments are important to release decisions in a broader sense, we created a dichotomous variable to indicate whether or not each an inmate had received only "low-risk" scores (regardless of how many tests he or she had taken). The advantage of this approach is clarity. The disadvantage is that it necessarily eliminates finer distinctions—for example, an inmate who received one medium-risk assessment is classified identically to an inmate who received four high-risk assessments.

Our results indicate that having across-the-board low-risk scores is highly significant to suitability decisions. An inmate who receives only scores of "low" is more than twice as likely to receive a grant, compared to an inmate who receives at least one score that is not "low." This result suggests that, consistent with the statutory criteria, the Board takes psychological evaluations into serious consideration in making their releasing decisions, and finds psychiatric reports compelling when assessing an inmate's dangerousness to society.

### D. Life Crime Characteristics

Particularly following the *Lawrence* and *Shaputis* decisions mentioned above, it was important to include characteristics of the commitment offense in our analysis. Although commissioners are not prohibited from considering the life crime itself, its relevance is its relationship to an inmate's current dangerousness. We looked at a number of characteristics related to the commission of the life crime: the charge (first degree murder, second degree murder, or "other"), whether the crime had more than one victim, whether the victim was defiled or mutilated, and whether the life crime included sexual violence.

To our surprise, *none* of these variables was significantly correlated with release, suggesting that they exert no independent effect on releasing authorities' decisions after controlling for other factors. Insofar as we can determine statistically, it appears that the commissioners' decisions are not based on the heinousness of the life crime.

The only remaining factor we tested that related to the life crime was not related to its commission; instead, it was a dichotomous variable indicating evasiveness or untruthfulness: whether the inmate lied or tried to evade capture while he or she was under investigation. "Evasion"

included actively running from the police, denying involvement in the crime for which he or she was later convicted, or lying to the police about the crime itself. We included this variable as a rough proxy for "truthfulness" or "deceptiveness" related to the life crime. This variable's effect was small, but highly significant. Inmates who had lied or evaded police were slightly, but consistently, less likely to obtain a parole grant than inmates who had not.

The meaning of this result is not entirely clear. It is possible that commissioners were reluctant to release someone who had lied to police or evaded capture, but it seems surprising that this factor is a more reliable predictor of release than, say, whether someone was sexually violent or murdered multiple people. Instead, we suspect that this variable may be acting as a proxy for truthfulness or deceptiveness more generally. For example, perhaps inmates who lied to the police are also more likely to be untruthful to their work supervisors, prison guards, or even the Board, in ways that were not otherwise capturable from the data set. The significance of this variable points to possibilities for future research, including ethnographic or other qualitative explorations.

### E. Past Criminal Behavior

An inmate's history of violence, as measured by the presence of prior adult violent convictions (in addition to the life crime), appears to influence release decisions, although the effect is only marginally significant. To our surprise, however, the effect is in the opposite direction than one might expect: having violent convictions on an inmate's record prior to his conviction for the life crime actually appears to make him or her *more* likely to obtain a parole grant.

Assuming that this finding is not merely statistical noise (which it may well be, particularly given that its significance is only marginal), we suspect that past criminal behavior is actually serving as a proxy for an unobserved variable, such as a familiarity with prison life, which might allow an inmate to stay out of trouble more easily, work more effectively with his or her attorney, or hold other advantages in navigating prison bureaucracies. The "shock effect" of being imprisoned—not only to one's own psyche, but also to relationships with family or friends—might also be diminished for inmates with prior violent offenses.

### F. Exit Plans

Previous research suggests that detailed release plans are key to former inmates' rehabilitation and to preventing recidivism, in addition to being among the statutory factors commissioners are directed to consider in making their decisions. We included one such variable, which we believed was a particularly strong indicator of an inmate's ability to come up with a detailed formal release plan: whether he or she had a letter from a prospective employer indicating a willingness to hire the inmate upon his or her release. We found that receipt of a letter from an employer was highly significant, indicating that the BPH is 3.5 times more likely to release an inmate who has

proof of strong employment prospects after being released from prison.

### G. Hearing Conduct

The remainder of the variables in our model dealt with the conduct of the parole hearing itself. We divided this into three categories: (1) characteristics of the hearing (the hearing's start time and whether it was the inmate's first); (2) inmate testimony (whether the inmate expressed remorse or took responsibility for the crime, and whether he or she successfully answered a question about the 12 steps if asked—this is a common question at the hearings, particularly given the prevalence of substance abuse programming); (3) other people present at the hearing (specifically, the presence of victim(s) as defined by Marsy's Law and the presence and recommendation of the District Attorney). We address each category in turn below.

**1. Characteristics of the Hearing.** We were interested in the hearings' start time for two reasons. First, an Israeli study suggested that hearings that begin early in the day may be more likely to result in release than hearings that start later in the day,<sup>40</sup> and we were interested to see if this result would be duplicated in our data. Second, an interview study with parole commissioners suggests that some of commissioners themselves believe that they are less effective or attentive when hearings start later in the day.<sup>41</sup> Although our analyses cannot speak to commissioners' attentiveness, we found no significant difference in the odds of receiving a grant for hearings with morning start times versus late afternoon or early afternoon start times.

Primarily as a control, to allow us to more effectively examine the effects of other variables of interest, we included a variable indicating whether a hearing was an inmate's first hearing or a subsequent hearing. As prior studies have found, release rates in California are lower for initial hearings than for subsequent hearings.<sup>42</sup> We found that this variable was just shy of marginal significance on its own, suggesting that the lower grant rates for initial hearings are likely not due to commissioners' refusal to grant an inmate parole at a first hearing on principle.

**2. Inmate Responses to Questions.** There are many ways to examine an inmate's performance at a parole hearing, and we included several in this model. First, our data contained two variables intended to measure an inmate's acceptance of his role in the commitment offense: whether he or she expressed remorse for the crime, or whether he or she took responsibility for the crime. Since these two variables are closely related, and since the coding of a particular statement as "remorseful" versus "taking responsibility" is somewhat subjective, we collapsed them into a single measure that indicated whether an inmate expressed remorse or took responsibility for his actions at the hearing. Inmates who did one of these two things, or both of these things, were put in one category, while inmates who did neither of these things were put in a second category.

We found that an inmate's expression of remorse or responsibility did not have a significant effect on his or her chances of obtaining a grant. There are multiple ways we might interpret this finding. For one, we might conclude that in making their determinations, commissioners give little weight to an inmate's remorse or sense of responsibility for his or her crime. It is also possible, however, that an inmate's overt expression of remorse or responsibility is not the only way that commissioners assess whether an inmate actually accepts his role in the commitment offense. An inmate's demeanor, tone of voice, or other actions may all play a role in whether a commissioner believes an inmate's expressions of remorse or responsibility, and none of those factors are reflected in this data.

As mentioned above, it also is fairly common for commissioners to ask inmates during hearings about their participation in 12-step programs. According to the commissioners, the purpose of doing so is to see whether an inmate internalized the lessons of the program or whether his or her participation was merely pro forma.<sup>43</sup> Our variable indicates whether an inmate was asked—and answered—anything at all about the 12 steps. For example, an inmate might be asked, "What is step 7?" or "Name the step you found most meaningful." We found that failing to answer such a question was significantly prejudicial to an inmate's chances of obtaining a parole grant—dividing those chances by five—in a way that was not mirrored by the success of doing so. That is, if an inmate has participated in a 12-step program, knowing the steps will not necessarily help him or her obtain parole, but *not* knowing the steps will significantly decrease his or her odds of obtaining parole.

**3. Third Parties Present at Parole Hearings.** Victims, or victims' next of kin, attend only about 10 percent of parole hearings.<sup>44</sup> Previous research, including research conducted using a subset of the data we use here, has found a correlation between victims' attendance and an inmate's chance of obtaining parole.<sup>45</sup> However, we found no significant effect of victim attendance on a hearing's outcome. This lack of significance is probably due at least in part to the inclusion of a variable in our model to indicate whether a hearing is an initial or subsequent hearing, since victims are more likely to attend initial hearings, and in general initial hearings result in fewer grants.

District Attorneys attend a majority of hearings, sometimes in person and sometimes via video or telephone conferencing. Since DAs typically oppose release, we expected that their *support* for release would be significant, in part because it is so rare. However, we found that DA support for release did not have a significant positive effect compared to the DA not attending the hearing at all. In contrast, the DA's opposition to release had a significant negative effect on an inmate's chance of obtaining a parole grant. One way to interpret these results is that since a representative from the DA's office attends most parole hearings and usually opposes parole, commissioners interpret a DA's *lack* of attendance as tacit support for an



inmate's release; thus, there is no significant difference between a DA supporting a grant of parole and a DA not attending the hearing at all. Alternatively, it may simply be the case that since the Board is specifically assessing an inmate's dangerousness, it is more attuned to DA opposition than to DA support.

#### H. Summary

This model offers a picture of cautious parole hearings in which a near-pristine inmate profile is expected for an inmate to be found suitable for parole release, as is reflected in low overall grant rate for hearings in our data set. Although "doing everything right" doesn't necessarily guarantee a finding of suitability for release, doing certain things wrong or having "red flags" in one's profile significantly reduces the chance that an inmate will obtain a grant.

It is striking, too, that the results largely track the official suitability guidelines, suggesting that when it comes to giving a parole grant versus not giving a parole grant, commissioners are not persuaded by many factors external to these criteria. One exception to this is opposition from the District Attorney. But on the whole, statutory factors such as age, in-prison behavior, a letter from a future employer, and psychological evaluations are significant in an inmate's odds of getting a grant, while factors such as a victim's attendance at the parole hearing or the heinousness of the life crime are not.

#### VII. Conclusion and Future Directions for Policy and Research

Given the large number of inmates serving life sentences with the possibility of parole, and the enormous power vested in parole boards across the country to determine their release, it is crucial to understand which factors are reliably associated with parole release. Like other decision-makers in the criminal justice system, the 340 individuals that comprise parole boards in the United States<sup>46</sup> exercise tremendous discretion. Yet, the subjective nature of these decisions has scarcely been examined. Our research sheds some light on the factors associated with findings of suitability for lifer inmates in California, but more research is needed both within the state and on a national scale. Guidelines and procedures vary from state to state, and legal frameworks and political orientations change over time.

Within California itself, the grant rate has doubled since the period covered by our data. Future work should examine whether the factors we identify have remained consistent as the grant rate has risen, and should also probe more deeply into factors we do not cover, such as whether the type of legal representation matters, and whether gubernatorial review decisions hinges on the same factors. Additionally, the effects of newer administrative mechanisms, such as consultations<sup>47</sup> and petitions to advance hearings, need to be examined.

It is also important to acknowledge that this study reports only the first level of our regression analyses, looking only at whether or not inmates are found suitable. We have not yet examined the circumstances under which different denial lengths are doled out, which is particularly important given the expansion of denial lengths under Marsy's Law. We intend to take up these questions in a future article, asking whether the same factors that predict suitability decisions also predict the length of the parole denials given.

California Governor Jerry Brown recently introduced an initiative, intended to appear on the November 2016 ballot, that will have the effect of converting some determinate sentences to indeterminate ones.<sup>48</sup> As the state shifts back toward an indeterminate sentencing scheme, a rich understanding of decision making by the BPH will take on even greater importance.

#### Notes

\* Kathryn Young can be reached at [young@umass.edu](mailto:young@umass.edu). More information about her research is available at [kathrynemyoung.com](http://kathrynemyoung.com). The authors wish to acknowledge several people who assisted with this project. Alexandra Lampert and Jordan D. Segall coordinated and oversaw the transcript coding process, and Lee Crayton conducted initial data analysis. Albert Gilbert, Diem Quynh (Cynthia) Ngoc Huynh, Nathan Pearl, Jeffrey Tai, and Jimmy Threatt served as coders. Jimmy Threatt also provided excellent research assistance. The Office of the Governor, California Department of Corrections and Rehabilitation, and California Board of Parole Hearings provided the data used and/or cited in this article. Executive Officer Jennifer Shaffer shared some particularly useful suggestions. Finally, Joan Petersilia and Robert Weisberg offered helpful guidance at several points throughout the research and writing process.

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<sup>1</sup> Ashley Nellis, *Life Goes On: The Historic Rise in Life Sentences in America*, at 13, The Sentencing Project (Sept. 2013), available at [http://sentencingproject.org/doc/publications/inc\\_Life%20Goes%20On%202013.pdf](http://sentencingproject.org/doc/publications/inc_Life%20Goes%20On%202013.pdf).

<sup>2</sup> *Id.* at 6.

<sup>3</sup> *Id.*

<sup>4</sup> Beth Schwartzapel, *Life Without Parole*, The Marshall Project (July 10, 2015), available at <https://www.themarshallproject.org/2015/07/10/life-without-parole#.ehPdiJpFp>.

<sup>5</sup> Sheldon L. Messinger, John E. Berecochea, David Rauma, & Richard A. Berk, *The Foundations of Parole in California*, 19 *Law & Soc. Rev.* 69 (1985).

<sup>6</sup> *Brown v. Plata*, 563 U.S. 493 (2011).

<sup>7</sup> *An Update to the Future of California Corrections*, at 27, California Department of Corrections (Jan. 2016), <http://www.cdcr.ca.gov/Blueprint-Update-2016/An-Update-to-the-Future-of-California-Corrections-January-2016.pdf>.

<sup>8</sup> See Robert Weisberg, Debbie A. Mukamal, & Jordan D. Segall, *Life in Limbo: An Examination of Parole Release for Prisoners Serving Life Sentences With the Possibility of Parole in California*, at 3, Stanford Criminal Justice Center (2011), [http://law.stanford.edu/wp-content/uploads/sites/default/files/child-page/164096/doc/slspublic/SCJC\\_report\\_Parole\\_Release\\_for\\_Lifers.pdf](http://law.stanford.edu/wp-content/uploads/sites/default/files/child-page/164096/doc/slspublic/SCJC_report_Parole_Release_for_Lifers.pdf).

<sup>9</sup> *Id.*

- <sup>10</sup> When we refer to “commissioners” in this article (no capitalization), we are referring to Commissioners and Deputy Commissioners.
- <sup>11</sup> California Penal Code § 3041(a).
- <sup>12</sup> See California Department of Corrections and Rehabilitation, Board of Parole Hearings (BPH), Deputy Commissioners, available at [http://www.cdcr.ca.gov/BOPH/deputy\\_commissioners.html](http://www.cdcr.ca.gov/BOPH/deputy_commissioners.html). Prior to the passage of AB 109 2009, Deputy Commissioners were also responsible for parole revocation hearings, which are now conducted at the county level. Proportionally, Deputy Commissioners now spend significantly more time on lifer hearings.
- <sup>13</sup> Victims and VNOKs (Victims’ Next of Kin) attend approximately 10 percent of hearings. Weisberg et al., *supra* note 8.
- <sup>14</sup> Evidence suggests that prosecutors are “taking full advantage of their opportunity to weigh in on suitability decisions.” David R. Friedman & Jackie M. Robinson, *Rebutting the Presumption: An Empirical Analysis of Parole Deferrals Under Marsy’s Law*, 66 Stan. L. Rev. 173, 198 (2014).
- <sup>15</sup> *In re Lawrence*, 44 Cal. 4th 1181, 190 P. 3d 535, 82 Cal. Reprtr. 3d 169 (2008), and *In re Shaputis*, 44 Cal 4th 1241, 190 P. 3d 573, 82 Cal Rptr. 3d 213 (2008).
- <sup>16</sup> “Public Comment,” California Department of Corrections and Rehabilitation website, “Lifer Parole Process” (n.d.), available at [http://www.cdcr.ca.gov/BOPH/lifer\\_parole\\_process.html](http://www.cdcr.ca.gov/BOPH/lifer_parole_process.html).
- <sup>17</sup> Cal. Code Regs. tit. 15, § 2281(a). The Board is directed to begin with the presumption that an inmate is suitable for release; under the California Penal Code, the Board “shall set a release date” unless it determines that “consideration of the public safety requires a more lengthy period of incarceration.” California Penal Code § 401(b).
- <sup>18</sup> Cal. Code Regs. tit. 15, § 2402(a).
- <sup>19</sup> Cal. Code Regs. tit. 15, § 2281(c) and § 2281(d).
- <sup>20</sup> Cal. Const. art. V, § 8(b).
- <sup>21</sup> Weisberg et al., *supra* note 8.
- <sup>22</sup> Stats 1982 ch. 1435 § 1, p. 5474.
- <sup>23</sup> Marsy’s Law, full text of law and proposed changes available at [http://ag.ca.gov/cms\\_attachments/initiatives/pdfs/i771\\_07-0100\\_a1ns.pdf](http://ag.ca.gov/cms_attachments/initiatives/pdfs/i771_07-0100_a1ns.pdf).
- <sup>24</sup> *In re Lawrence*, 44 Cal. 4th 1181, 190 P. 3d 535, 82 Cal. Reprtr. 3d 169 (2008).
- <sup>25</sup> *In re Shaputis*, 44 Cal 4th 1241, 190 P. 3d 573, 82 Cal Rptr. 3d 213 (2008).
- <sup>26</sup> Cal. Const. art. V, § 8(b).
- <sup>27</sup> Proposition 89, November 1988, amending Art. V, Sec. 8 of the California Const. and enacting Penal Code § 3041.2. For non-murder cases, the Governor may remand the case back to the Board.
- <sup>28</sup> Weisberg et al., *supra* note 8.
- <sup>29</sup> Scott Shafer, *Record Number of State’s Inmates Granted Parole*, The California Report, May 16, 2014, available at <http://audio.californiareport.org/archive/R201405160850/a>.
- <sup>30</sup> Weisberg et al., *supra* note 8, at 17.
- <sup>31</sup> Friedman & Robinson, *supra* note 14.
- <sup>32</sup> *Id.* at 204.
- <sup>33</sup> Shamena Anwar & Hanming Fang, *Testing for Racial Prejudice in the Parole Board Release Process: Theory and Evidence*, 44 J. Legal Stud. 1 (2015); Stéphane Mechoulan & Nicolas Sahu-guet, *Assessing Racial Disparities in Parole Release*, 44 J. Legal Stud. 39–74 (2015).
- <sup>34</sup> See Julian V. Roberts, *Crime Victims, Sentencing, and Release from Prison*, in *The Oxford Handbook of Sentencing and Corrections* 104–26 (Joan Petersilia & Kevin R. Reitz, eds. 2011).
- <sup>35</sup> Cal. Penal Code § 3041.5(b)–(c).
- <sup>36</sup> Weisberg et al., *supra* note 8.
- <sup>37</sup> Of the 754 hearings, 49 (6.5 percent) took place in 2007, 276 (36.7 percent) took place in 2008, 377 (50 percent) took place in 2009, and 52 (6.9 percent) took place in 2010. Note that this dataset is larger than the “Life in Limbo” study referenced above at note 8, but also includes the cases in that dataset.
- <sup>38</sup> Weisberg et al., *supra* note 8.
- <sup>39</sup> In the interest of space, we have combined our results and discussion into a single section.
- <sup>40</sup> See Shai Danziger, Jonathan Levav, & Liora Avnaim-Pesso, *Extraneous Factors in Judicial Decisions*, 108 Proceedings of the National Academy of Sciences of the United States of America 6689 (2011), available at <http://www.pnas.org/content/108/17/6889>.
- <sup>41</sup> Kathryn M. Young, *Parole Hearings and Victims’ Rights: Implementation, Ambiguity, and Reform* (forthcoming, Connecticut Law Review).
- <sup>42</sup> Weisberg et al., *supra* note 8.
- <sup>43</sup> Young, *supra* note 41.
- <sup>44</sup> Weisberg et al., *supra* note 8.
- <sup>45</sup> *Id.*
- <sup>46</sup> Edward E. Rhine, Joan Petersilia, & Kevin R. Reitz, *The Future of Parole Release: A Ten-Point Reform Plan*, in *Crime and Justice: A Review of Research* (Michael Tonry ed., forthcoming 2016).
- <sup>47</sup> Consultations were created by Senate Bill 260 in 2014, and modified California Penal Code § 3041(a), requiring a meeting between inmates and commissioners six years prior to an inmate’s minimum eligible release date to discuss suitability. See [http://www.cdcr.ca.gov/BOPH/docs/YOPH/Chapter%20312%20\(SB%20260\)%20Youth%20Offender%20Sentencing%20Fact%20Sheet.pdf](http://www.cdcr.ca.gov/BOPH/docs/YOPH/Chapter%20312%20(SB%20260)%20Youth%20Offender%20Sentencing%20Fact%20Sheet.pdf).
- <sup>48</sup> The Public Safety and Rehabilitation Act of 2016, available at [https://www.gov.ca.gov/docs/The\\_Public\\_Safety\\_and\\_Rehabilitation\\_Act\\_of\\_2016\\_%2800266261xAEB03%29.pdf](https://www.gov.ca.gov/docs/The_Public_Safety_and_Rehabilitation_Act_of_2016_%2800266261xAEB03%29.pdf).