No. 24-_____

THE SUPREME COURT OF THE UNITED STATES

SIRHAN B. SIRHAN,

PETITIONER *in forma pauperis*,

V.

STATE OF CALIFORNIA,

RESPONDENT.

APPENDICES G – K TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

Angela Berry, Esq.
Sup. Ct. Bar No.: 323577
Attorney of Record
75-5660 Kopiko Str., Suite C-7, #399
Kailua-Kona, HI 96740
Ph.: 866 285-1529
Email:
angela@guardingyourrights.com

Denise F. Bohdan, Esq.
Sup. Ct. Bar No.: 3 2 3 5 7 9
P.O. Box 383
Cardiff, CA 92007
Ph.: 619-851-5227
Email: denise@bohdanlaw.com

Attorneys for Petitioner
Sirhan B. Sirhan

California Ballot Pamphlet, Nov. 1988, Secretary of State of CA, Prop. 89, pp. 44-47.

APPENDIX G

California
BALLOT PAMPHLET

AVISO

Una traducción al español de este folleto de la balota puede obtenerse si completa y nos envía la tarjeta con porte pagado que encontrará entre las páginas 80 y 81. Escriba su nombre y dirección en la tarjeta en LETRA DE MOLDE y regrésela a más tardar el 24 de octubre de 1988.

General Election

NOVEMBER 8, 1988

CERTIFICATE OF SECRETARY OF STATE

I, March Fong Eu, Secretary of State of the State of California, do hereby certify that the foregoing measures will be submitted to the electors of the State of California at the GENERAL ELECTION to be held throughout the State on November 8, 1988, and that this pamphlet has been correctly prepared in accordance with law.

Witness my hand and the Great Seal of the State in Sacramento, California, this 18th day of August 1988.

March Fong Eu

MARCH FONG EU
Secretary of State

Secretary of State

SACRAMENTO 95814

Dear Fellow Californians:

This is your California Ballot Pamphlet for the November 8, 1988, General Election. It contains the ballot title, a short summary, the Legislative Analyst's analysis, the pro and con arguments and rebuttals, and the complete text of each proposition. It also contains the legislative vote cast for and against each measure proposed by the Legislature.

This pamphlet also contains a statement from each of California's five qualified political parties, summarizing its policies and principles. These are provided in the extra space available in this pamphlet to give you, the voters, a clearer understanding of the philosophies of the parties and the candidates who represent them.

Many rights and responsibilities go along with citizenship. Voting is one of the most important, as it is the foundation on which our democratic system is built. Read carefully all of the measures and information about them contained in this pamphlet. Legislative propositions and citizen-sponsored initiatives are designed specifically to give you, the electorate, the opportunity to influence the laws which regulate us all.

Take advantage of this opportunity and exercise your rights by voting on November 8, 1988.

SECRETARY OF STATE

Please note that Proposition 78 is the first proposition for this election. To avoid confusion with past measures Legislature passed a law which requires propositions to be numbered consecutively starting with the next nu after those used in the November 1982 General Election. This numbering scheme runs in twenty-year cycles.

CONTENTS

89 Governor's Parole Review

Official Title and Summary Prepared by the Attorney General

GOVERNOR'S PAROLE REVIEW. LEGISLATIVE CONSTITUTIONAL AMENDMENT. Provides that no decision of the parole authority which grants, denies, revokes, or suspends the parole of a person sentenced to an indeterminate term upon conviction of murder shall become effective for a period of 30 days. Permits Governor to review the decision during this period subject to statutory procedures. States that the Governor may only affirm, modify, or reverse a parole authority decision on the basis of the same factors which the parole authority may consider. Requires Governor to report to the Legislature the pertinent facts and reasons for each parole action. Summary of Legislative Analyst's estimate of net state and local government fiscal impact: The fiscal impact of this measure is unknown and depends on the actions of the Governor. Grants of parole would result in relatively minor savings. Denials of parole could result in relatively minor costs.

Final Vote Cast by the Legislature on SCA 9 (Proposition 89)

Assembly:	Ayes 63	Senate:	Ayes 29
	Noes 11		Noes 5

Analysis by the Legislative Analyst

Background

Under California statutes, adults who commit murder are sentenced to an indeterminate term in state prison or, in the case of first degree murder, death. A minor who commits murder when he or she is 16 years of age or older may be dealt with under the juvenile court law or may be tried as an adult and sentenced accordingly. If tried as an adult, however, the death penalty may not be imposed if the person was under the age of 18 at the time of the commission of the crime. Other minors who commit murder may be committed to the Department of the Youth Authority for an indeterminate period, although they may be confined only until the age of 25 unless an order or petition for further detention has been made.

The parole release date for state prison inmates serving an indeterminate term is set by the Board of Prison Terms. The date of release on parole for minors committed to the Youth Authority is set by the Youthful Offender Parole Board. In making parole decisions, the Board of Prison Terms and the Youthful Offender Parole Board are required to consider many factors, including the following: the seriousness of the inmate's offense; the safety of the public; and statements from the public.

Under the California Constitution, the Governor may grant a reprieve, pardon, or commutation after a person is sentenced. The Governor may not grant a pardon or commutation to a person who has been twice convicted of a felony, unless the action is recommended by four members of the State Supreme Court.

Proposal

This constitutional amendment would allow the Governor to approve, modify, or reverse any decision by the parole authority (Board of Prison Terms or Youthful Offender Parole Board) regarding the parole of persons who are sentenced to an indeterminate term for committing murder. The Governor, subject to specified procedures, would have 30 days from the date of the board's parole action to review the decision. In reviewing parole decisions, the Governor could consider only that information which the Board of Prison Terms and the Youthful Offender Parole Board are required to consider in making their parole decisions.

Fiscal Effect

The fiscal impact of this constitutional amendment is unknown and would depend on the actions of the Governor. The measure could result in relatively minor state savings if the Governor decided to release a person from prison or the Youth Authority after the person's parole had been denied by the Board of Prison Terms or the Youthful Offender Parole Board. The measure could, however, result in relatively minor state costs if the Governor decided to deny parole to a person who would have been granted parole by the Board of Prison Terms or the Youthful Offender Parole Board.

Text of Proposed Law

This amendment proposed by Senate Constitutional Amendment 9 (Statutes of 1988, Resolution Chapter 63) expressly amends the Constitution by amending a section thereof; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO ARTICLE V, SECTION 8

SEC. 8. *(a)* Subject to application procedures provided by statute, the Governor, on conditions the Governor deems proper, may grant a reprieve, pardon, and commutation, after sentence, except in case of impeachment. The Governor shall report to the Legislature each reprieve, pardon, and commutation granted, stating the pertinent facts and the reasons for granting it. The Governor may not grant a pardon or commutation to a person twice convicted of a felony except on recommendation of the Supreme Court, 4 judges concurring.

(b) No decision of the parole authority of this state with respect to the granting, denial, revocation, or suspension of parole of a person sentenced to an indeterminate term upon conviction of murder shall become effective for a period of 30 days, during which the Governor may review the decision subject to procedures provided by statute. The Governor may only affirm, modify, or reverse the decision of the parole authority on the basis of the same factors which the parole authority is required to consider. The Governor shall report to the Legislature each parole decision affirmed, modified, or reversed, stating the pertinent facts and reasons for the action.

89 Governor's Parole Review

Argument in Favor of Proposition 89

Proposition 89 provides that no decision of the parole board releasing a convicted murderer shall become effective until it is first reviewed by the Governor. Under Proposition 89, the Governor, for the first time, will have the power to block the parole of convicted murderers.

Proposition 89 is based on a simple premise—namely, that the public has a right to be protected against the early release of murderers from state prison by having as much scrutiny and as many levels of examination as possible before a convicted murderer is paroled. Surely, everyone would agree that any decision to parole a convicted killer should be carefully scrutinized.

In 1983, Governor Deukmejian tried to block the parole of convicted rapist-murderer William Archie Fain. The court declared the Governor didn't have that authority and Fain was set free. Proposition 89 will correct the situation created by that court decision by expressly giving the Governor the power to block the early release of convicted murderers.

Proposition 89 is needed because current law does not protect the public. Consider the following:

- First-degree murderers who were paroled last year averaged less than 14 years in state prison.
- Between 1973 and 1986, 365 murderers who had been paroled were sent back to prison because they violated parole or committed another felony.
- In the next three years, over 500 convicted killers are due for parole hearings and possible release, including Hillside Strangler Kenneth Bianchi, mass murderer Juan Corona, Golden Dragon Massacre killer Peter Ng, Manson Family followers Tex Watson, Bobby Beausoliel, Leslie Van Houten and Patricia Krenwinkle, as well as Robert Kennedy assassin Sirhan Sirhan.

We have already seen many tragic examples of the instances where a convicted killer has been paroled from prison only to commit further crimes.

For example, Robert Nicolaus was sentenced to death in 1964 for killing his three children. After his death sentence was overturned in 1967, he was subsequently paroled in 1977. In 1985 he murdered his former wife.

Robert L. Massie murdered a woman in a robbery in 1965 and was sentenced to death. His death sentence was overturned in 1972. He was paroled in 1978 and killed a store clerk in 1979.

In Sacramento County alone since 1978, there have been eight cases where a previously convicted murderer was paroled from prison only to murder again!

Murder is the most serious of crimes contemplated by our society. For this reason, the trial of a murder defendant is a difficult and closely monitored process. Even if the defendant is convicted, the Governor still has the power to grant reprieves, pardons and commutations. The procedural safeguards of the system are designed to protect defendants. The Governor can act on behalf of more lenient treatment of convicted criminals. We believe the state's top elected official should *also* be given the power to protect the public from the early release of still dangerous killers.

We urge a "Yes" vote on Proposition 89.

DANIEL E. BOATWRIGHT
State Senator, 7th District

GARY A. CONDIT
Member of the Assembly, 27th District

IRA REINER
Los Angeles County District Attorney

Rebuttal to Argument in Favor of Proposition 89

Proposition 89 will require the Governor to act within 30 days of the granting of a parole date or it will become final. He will not have any different information than his nine-member parole board would have had. It will simply allow him to grant or deny a parole date when it is politically expedient.

Proposition 89 would have made no difference in the William Fain Case. The Governor tried to block Fain's parole years after his parole date was granted by the Board of Prison Terms.

Under current law, a person convicted of first degree murder must serve a minimum of 17 and three quarters years of actual time in prison before parole. The Board of Prison Terms guidelines call for much longer time.

The law does not require that any parole date be set for a murderer. Public safety is the primary consideration of the parole board. The person has to be found suitable for parole. The Board of Prison Terms commissioners are prosecutors, sheriffs, police officers, and probation officers. They represent hundreds of years of experience in law enforcement. Their main job is to protect the public. If they give a parole date it is only when all doubt has been removed. Any question about the advisability of a parole date is cause for them to take it away. Proposition 89 will only politicize the parole process.

REVEREND PAUL W. COMISKEY S.J.
on behalf of the Prisoners Rights Union

Argument Against Proposition 89

Proposition 89 in effect makes the Governor of the state another parole board with the same powers and the duty to apply the same rules. The only plausible reason for change is to give the Governor power to veto the parole board if the parole board makes a politically unpopular decision. Examples would be giving someone a parole date when large parts of the public did not approve or denying someone a parole date when it is politically unpopular to do so. The Board of Prison Terms is composed of a group of nine commissioners who are appointed by the Governor with the consent of the Senate. They apply a very technical set of rules when they make decisions about setting a parole date. They are trained and experienced and conduct hundreds of hearings each year for prisoners all over the state. They are former police officers, prosecuting attorneys, and probation officers. They grant a parole release date in about 2 percent of the hearings they conduct. Persons convicted of murder are only eligible to be released on parole after serving 10 years in prison and typical release dates are given for 20 years or more. A prisoner given a release date today will have gone before the parole board a number of times. All relevant facts are considered in great detail from the day the person is born to the day of the hearing. This means considering the person's family background, [illegible]ion, crimes, psychological and physical health, job [illegible]story, prison behavior, and plans for the future. Parole release dates are only set after a person is found suitable for parole. The actual release date is usually set for years away. If any information develops during those years that makes a parole date inadvisable, the parole board has full authority to take the date away. At the hearing to set a parole date the prisoner is present with his attorney, the district attorney from the county is there, and three parole board members conduct the hearing. If the three parole board members cannot agree on a decision they can refer the matter to the entire panel of nine members to make a decision. Most of the persons in prison now have not been found suitable for parole and it is likely that many never will be. The parole board is under no obligation to set a parole date if there is any risk to society. To require prisoners to go through the extremely rigid process they must go through to get a parole date and then leave the decision up to the whim of the Governor is to make a farce and mockery of justice and the rule of law. The parole board members are appointed by the Governor and paid a handsome salary. If they are not competent to make a decision, how can we expect the Governor who appointed them to do any better?

Proposition 89 will politicize decisions about whether to grant or deny parole. Unpopular persons will be denied parole dates because governors will sacrifice the interests of justice for votes. The criminal justice system will appear even more hypocritical than it is at present.

REVEREND PAUL W. COMISKEY S.J.
on behalf of the Prisoners Rights Union

Rebuttal to Argument Against Proposition 89

Protecting public safety is a legitimate responsibility of the Governor and other elected officials. Proposition 89 will not politicize the parole process, but it will provide an extra measure of safety to law-abiding citizens by giving the Governor the authority to block the parole of criminals who still pose a significant threat to society.

Proposition 89 will help ensure that the rights of crime victims and their families are protected, and it represents a positive step in maintaining law and order in our state.

The opponents of Proposition 89 contend that the law would encourage more public outcry, but the evidence suggests otherwise. Since 1984, the Board of Prison Terms has been able to consider public views in connection with their decisions to grant parole dates to prisoners. But in virtually every case there has been no significant degree of public outcry. In most instances, the families of the murder victims wish to put those tragic events behind them and have no desire to become involved in public campaigns associated with the murder of a loved one.

Proposition 89 will correct a weakness in the state's parole system and further strengthen California's system of justice.

VOTE YES ON PROPOSITION 89.

GEORGE DEUKMEJIAN
Governor

DANIEL BOATWRIGHT
State Senator, 7th District

Declaration of Angela Berry filed August 4, 2023, in Writ of Habeas Corpus proceedings, Los Angeles County Superior Court

APPENDIX H

Angela Berry, St. Bar No. 157379
75-5660 Kopiko Street, Suite C-7, #399
Kailua-Kona, HI 96740
Telephone: 866 285-1529
Fax: 866 285-1181
Angela@guardingyourrights.com

Attorney for Sirhan Bashar Sirhan

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

In re:	Case No. BH014184 (Underlying Case No. A233421)
SIRHAN B. SIRHAN, On Habeas Corpus	DECLARATION OF ANGELA BERRY FILED CONCURRENTLY WITH TRAVERSE

TO: THE HONORABLE JUDGE OF THE SUPERIOR COURT, Department 56W; THE DISTRICT ATTORNEY OF LOS ANGELES COUNTY GEORGE GASCON; CALIFORNIA ATTORNEY GENERAL ROB BONTA

Counsel for Petitioner files in the instant Declaration in Support of Petitioner's Traverse.

Dated: 8/3/2023

Respectfully submitted,

Angela Berry
C9F0A76C847549C...

Angela Berry
Attorney for Petitioner
SIRHAN B. SIRHAN

DECLARATION OF ANGELA BERRY

I, Angela Berry, declare:

1. I am an attorney duly licensed to practice law in the State of California and I am in good standing.

2. I am Sirhan Sirhan's current counsel and was his counsel at the time of the 2021 Parole Hearing.

3. The 2021 Board granted Mr. Sirhan parole on August 27, 2021. Thereafter, the Governor reversed that decision.

4. I believe that the Kennedys who oppose release had *ex parte* communications with the Governor prior to him reversing his Board's recommendation for parole. I did not learn of these communications until Ellis George Cipollone O'Brien Annaguey LLP Law Firm filed what it called "Amicus Curiae Brief in Opposition to Sirhan Bashar Sirhan's Petition for Writ of Habeas Corpus". Therein, and attached as exhibits, are some of the communications of Browne George Ross O'Brien Annaguey & Ellis LLP and the Governor. ("BGR Firm", the former law firm representing the Kennedys who oppose release.)

5. I was not served with the information by the BGR Firm prior to January 13, 2022.

6. As Mr. Sirhan's attorney, I attest that none of the information provided in the BGR Firm December 9, 2021 letter addressed to the Governor was provided to the 2021 Board. Further, I attest that none of the named parties currently represented by the Ellis George Cipollone Law firm appeared at the 2021 Parole Hearing.

7. I believe that the Governor not only considered the BGR filing, but other information supplied by the Kennedys who oppose release. This belief is based on the BGR letter itself, which informs the Governor that those opposing release will submit their own testimonials under separate cover.

8. Exhibits A and C, submitted with this Traverse, are true and correct copies of the "10-day Packet" and "65-day Packet" prepared by The Board of Parole Hearings in advance of the August 2021 hearing. I have Bates stamped them for ease of the Court's review.

9. Other exhibits submitted with the Traverse, namely Exhibits B, D, E, F, G, H, I, J, and S

///

are true and correct copies of pages from transcripts that I believe to be copies of the original Reporters' Transcripts on Appeal of the trial. These copies were obtained through access to the Mary Ferrell Foundation's archives, which houses thousands of official documents from the investigation and trial. The markings on the transcripts, for instance, handwritten page numbers in the top right portion of some of the pages, were contained in the copies stored in the Mary Ferrel archives. I have in no way altered the copies provided to the Court.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signed this 3rd day of August, 2023 at Kailua-Kona, HI.

DocuSigned by:
Angela Berry
C9F6A76C847B49C...

Angela Berry

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, Denise F. Bohdan, declare:

I am employed in the County of San Diego, California. I am over the age of 18 years and not a party to the within action. My business address is BOHDAN LAW, P. O. Box 383 Cardiff, CA 92007.

On August 7, 2023, I served the foregoing document(s) described as

DECLARATION OF ANGELA BERRY

upon the persons shown on the attached list:

____ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing of correspondence for mailing with United States Postal Service, and that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business pursuant to Code of Civil Procedure Sec. 1013(e).

____ **(BY FACSIMILE)** In addition to service by mail as set forth above, a copy of said document(s) also was/were delivered by facsimile transmission to the addressee pursuant to Code of Civil Procedure Sec. 1013(e).

____ **(BY PERSONAL SERVICE)** I hand-delivered said document(s) to the addressee pursuant to Code of Civil Procedure Sec. 1011.

XXX

____ **(BY E-MAIL)** to the e-mail address given to me by the recipient.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Executed at San Diego, California, on this 7th day of AUGUST, 2023.

D F Bohdan

Denise F. Bohdan

SERVICE LIST

Rob Bonta
Attorney General of California
Mina Choi, D.A.G.
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Mina.Choi@doj.ca.gov
Mr. Charles Chung, D.A.G.
Charles.Chung@doj.ca.gov

Los Angeles County District Attorney
GEORGE GASCON
Dep. D.A. Steve Katz
211 W. Temple Street
Los Angeles, CA 90012
SKatz@da.lacounty.gov

Ellis George Cipollone O'Brien Annaguey, LLP
Eric M. George
egeorge@egcfirm.com
Serli Polatoglu
spolatoglu@egcfirm.com
2121 Avenue of the Stars, 30th Floor
Los Angeles, CA 90067

Wiggins, O and Tan, T: "Maryland revokes Governor's authority to overturn parole decisions involving people serving life terms", Washington Post, December 7, 2021

Url:https://www.washingtonpost.com/dc-md-va/2021/12/07/maryland-parole-governor-criminal-justice-prison/

APPENDIX I

Democracy Dies in Darkness

Local

Maryland revokes governor's authority to overturn parole decisions involving people serving life terms

Updated December 7, 2021

By Ovetta Wiggins and Rebecca Tan

Maryland will no longer allow the sitting governor to overturn parole decisions for inmates serving life sentences, removing itself from a list of three states that still give governors that authority.

The Maryland General Assembly voted this week to revoke the governor's ability to reject parole board recommendations, ending a consequential policy that has shaped the prospects of early release for hundreds of inmates in the state, the vast majority of them Black.

It comes after years of debate between those who favor harsher punishment for violent criminals and advocates for inmates serving life terms who say the parole process has been unfairly politicized since the state's tough-on-crime agenda in the 1990s.

Amid the nationwide reckoning with criminal justice, post-conviction reform has emerged as one of the thorniest issues to resolve, particularly when it concerns those serving life sentences. In Maryland, lawmakers have attempted to make headway, passing bills that removed the governor's ability to reject parole board recommendations and abolished life without parole for those who committed crimes as juveniles. Both bills were vetoed by Gov. Larry Hogan (R).

After an at-times-emotional debate about escalating crime, victims' rights, redemption and fairness, the Senate voted 31 to 16 on Monday and the House 92 to 46 late Tuesday to override Hogan's veto of the parole bill.

Walter Lomax, who served 39 years of a life sentence before being released by a judge in 2006 and becoming the lead voice in the fight for parole reform in Maryland, watched from the State House as the Senate voted.

“I’m just totally elated,” he said. “There are still so many people on the inside that’s still waiting for this legislation, so many of their family members and friends, because they have been getting the recommendations and haven’t been able to get out. So I’m totally elated. I really am.”

The law will take effect in early January and tighten some aspects of the parole process even as it removes the governor’s direct involvement. Those with life sentences would have to serve 20 years before being eligible for parole, up from 15 years. And they would still have to earn recommendations for release from at least six of the 10-member, governor-appointed Parole Commission.

“Listening to [the Republicans], I guess I just realized that that’s the mind-set that they have and they’re not going to change that,” said Lomax, who has spent the past several years traveling to Annapolis to meet with lawmakers about the bill.

Carl Marine, 63, who said he served 37 years for first-degree murder, sat near Lomax as the Senate voted. Marine was released six years ago under a judge’s decision.

“I believe if a man changes he should be given a second chance. I don’t believe the governor should have an opportunity to interfere with that, especially if [the inmate] has served most of his time,” said Marine, who works with a reentry program. He said there is “no doubt in [his] mind” that he would still be incarcerated if a judge had not acted.

Maryland governors used to routinely parole people serving life terms, but this changed in 1995 when, in the face of a nationwide crime wave, then-Gov. Parris N. Glendening declared that “life means life.” For two decades, governors rejected hundreds of parole recommendations for lifers with little to no explanation, drawing criticism from criminal justice advocates who said the state was violating the rights of inmates who had accepted life sentences — some while they were younger than 18 — with the understanding that good behavior might earn them a meaningful chance for early release.

In a state where 77 percent of those serving life were Black — the highest percentage in the country — compared to 30 percent of the general population, the implications of this policy were being borne predominantly by Black families, advocates said.

Sen. Delores G. Kelley (D-Baltimore County), who has sponsored the bill for several years, said release decisions should rest in the hands of those with the expertise to make the determination.

She said the members of the Parole Commission, who are appointed by the governor and confirmed by the Senate, “are following social science. They are objective in ways the governors are not.”

“This bill is a minor step in the criminal justice reforms that are needed and long overdue in Maryland to fix these situations and right these wrongs,” said Sen. Jill P. Carter (D-Baltimore City), who led the debate on Monday, after raising the racial disparity.

Several Republican lawmakers rejected the argument that the bill is the answer to a problem of over-incarceration.

“Could we just stop with the excessive incarceration line here?” Sen. Robert G. Cassilly (R-Harford) asked. “This is someone who murdered someone who they intended to murder.”

Cassilly said the General Assembly was sending the wrong message at a time when local leaders, reeling from violent crime, are pleading for help.

“How many times have we watched the evening news in this state and watched grieving county executives, grieving mayors, grieving legislators say ‘enough is enough,’ he said. “They stand beside the dead 5-year-old. The stand beside the woman stabbed to death in the back of the church.”

During the House debate, Minority Leader Jason C. Buckel (R-Allegany) described the grisly details of killings that were committed by inmates who were recommended for release but were rejected by Hogan.

“There are some people, some situations, that cannot be fixed,” he said, adding that the role of lawmakers is to “save the people who can be saved and protect those from those who can’t.”

Hurst, J., “Prop. 89, Plan to Give Governor Parole Veto Power”, LA Times, October 28, 1988,

URL: https://www.latimes.com/archives/la-xpm-1988-10-28-mn-340-story.html

APPENDIX J

POLITICS

Prop. 89, Plan to Give Governor Parole Veto Power, Expected to Win

By JOHN HURST

Oct. 28, 1988 12 AM PT

TIMES STAFF WRITER

Proposition 89 is expected to win hands down. After all, so the reasoning goes, who is going to vote against a measure designed to keep murderers in prison?

Supporters and opponents alike predict a landslide victory Nov. 8 for the proposed state constitutional amendment that would give the governor the authority to cancel paroles granted to murderers.

Even the lineup of names on the official ballot arguments looks like a mismatch.

Listed in favor of the proposition are the politically powerful, or at least the well-connected: Gov. George Deukmejian, Los Angeles County Dist. Atty. Ira Reiner, Sen. Daniel E. Boatwright (D-Concord) and Assemblyman Gary A. Condit (D-Ceres).

There are a number of opponents of the measure, but the only one listed on the sample ballot is a Roman Catholic priest, Father Paul W. Comiskey, general counsel for an organization called the Prisoners Rights Union--not a name likely to reassure the mass of California voters in these days of fear.

Boatwright--who authored the legislative constitutional amendment and considers it a "measure of safety"--is predicting an 80% voter approval rate.

Comiskey, who says the amendment would politicize parole decisions, rates chances of defeating the measure as about equal to those of a "snowball in hell."

Proposition 89 would give the governor 30 days in which to review decisions of state adult and youth parole boards regarding the release of prisoners serving life sentences for murder with the possibility of parole. In deciding whether to affirm, modify or reverse a parole board decision, the governor would be limited under the measure to considering only those factors that had been considered by the parole authorities. The measure would also require the governor to report to the state Legislature the pertinent facts of each parole decision reviewed.

This legislative initiative is not new. It has been floundering in the Legislature since 1983, born of the public furor over the release from prison of William Archie Fain, who was serving a life term for the 1967 shotgun murder of a teen-age boy in Stanislaus County, as well as the rape of two teen-age girls and a 43-year-old housewife. After Deukmejian found he could not legally cancel Fain's parole, Boatwright introduced the legislative amendment to give the governor such authority in future cases.

But the measure languished in the Assembly Public Safety Committee until this year, said Boatwright, when pressure from the dissident "Gang of Five" Democrats (who oppose the leadership of Democratic Speaker Willie Brown of San Francisco) helped to give it a "fair hearing."

The measure was overwhelmingly passed by both the Senate and the Assembly, and was placed on the Nov. 8 ballot. The proposition's chances certainly were not hurt earlier this year when Fain, inspiration for the proposed amendment, was charged with a brutal attempted rape in Alameda County. He has pleaded not guilty.

Comiskey argues that the parole of Fain is a false issue because the convict's release date had been set by the parole board years before Deukmejian became involved in the controversy and the proposed amendment would have given the governor only 30 days to reverse the decision from the day the release date was set.

If passed, Proposition 89 would seem not only to allow a conservative governor to reverse a decision granting a parole to a murderer, but would also allow a more liberal governor to grant such a release over the objections of a parole board.

But Boatwright argues that the governor already possesses the authority to commute a prisoner's sentence and says that his amendment would provide the counterbalancing authority to prevent a release.

It would "provide an extra measure of safety to law-abiding citizens," says a ballot argument by Deukmejian and Boatwright.

Fears Politicization

"Proposition 89 will politicize decisions about whether to grant or deny parole," insists Comiskey in his ballot argument.

"I think it's going to invite lawlessness in this whole area," he told The Times. "It will result in a very chilling effect on anybody getting out on parole."

"Boatwright has always been a convict-basher," Comiskey said. "He's a bully. He picks on people inside prisons."

Boatwright eagerly embraced the accusation.

“I don’t like prisoners,” he proclaimed. “I was a deputy district attorney, and I saw what these people did to innocent families. And you’re right, I don’t like them.”

The Prisoners Rights Union is joined in its opposition to the measure by such diverse groups as the American Civil Liberties Union and the California Probation, Parole and Correctional Assn.

“The governor appoints all parole board members,” said Susan Cohen, executive director of the Probation, Parole and Correctional Assn. “And now this initiative seems to be a way to second-guess them. . . .

“This (amendment) does not reflect a professional point of view,” she continued. “Now you’re going to have a . . . politician . . . making decisions on who should or shouldn’t get out of prison.”

Boatwright counters that he is not concerned about the actions of the current parole authorities, most of whom have law enforcement backgrounds and all of whom were appointed by Deukmejian. It is what future parole boards might do that worries Boatwright.

“Basically it’s not necessary for now,” he said. “We’re looking out for a future situation where we might have a parole board that leans more to the defendant than to the public.”

But one of Boatwright’s ballot arguments in favor of Proposition 89 implicitly criticizes Deukmejian’s adult parole board for being too lenient.

“First-degree murderers who were paroled last year,” complains the ballot argument, “averaged less than 14 years in state prison.”

Despite the implicit criticism, the nine-member adult parole board--officially called the Board of Prison Terms--has endorsed the measure allowing the governor to reverse its decisions.

“I think the board feels that the governor has a right to review the board’s work,” said Robert Patterson, executive director of the Board of Prison Terms. “And I think the board feels the governor will approve of the actions taken by the board. . . . I don’t think he’ll ever have to use this law.”

Patterson pointed to figures from the second quarter of this year showing that board members had granted parole dates to only 2.5% of the 221 convicts who went before them. He said that murderers who were released last year with less than 14 years served had been imprisoned under a seven-years-to-life sentencing structure that was replaced by a ballot measure in 1982.

That measure requires first-degree murderers to serve 25 years to life and second-degree killers to serve 15 years to life. The minimum terms in both sentences can be reduced by work time and good behavior.

There are currently about 6,400 adult prisoners serving first- and second-degree terms in California, Patterson said. He did not know how many were sentenced under the new more stringent terms.

Parolee Murders

The ballot argument in favor of Proposition 89 also maintains that since 1978 in Sacramento County, eight paroled murderers killed new victims.

But Cohen of the parole and probation officers association contends that the constitutional amendment would have had no effect on those paroles unless they involved highly publicized cases.

"They only would have been kept in if there was some reason to draw them to the attention of the public to begin with," she said. "If nothing in that wheel was squeaking, nothing would have prevented the release."

WHAT PROPOSITION 89 WOULD DO Proposition 89 PAROLE REVIEW

Main Sponsor: Sen. Daniel E. Boatwright (D-Concord).

Other Supporters: Gov. George Deukmejian, Los Angeles County Dist. Atty. Ira Reiner, Assemblyman Gary A. Condit (D-Ceres).

Opponents: Father Paul W. Comiskey, SJ, general counsel for the Prisoners Rights Union; the American Civil Liberties Union, and the California Probation, Parole and Correctional Assn.

Key provisions of Proposition 89:

The proposition would amend the state Constitution to allow the governor 30 days in which to review decisions of state adult and youth parole boards regarding the release of prisoners serving life sentences for murder with the possibility of parole. In deciding whether to affirm, modify or reverse a parole board decision, the governor would be limited under the measure to considering only those factors that had been considered by the parole authorities. The measure also would require the governor to report the pertinent facts of each parole decision reviewed to the state Legislature.

Life in Limbo: An Examination of Parole Release for Prisoners Serving Life Sentences with the Possibility of Parole in California (2011) Stanford Criminal Justice Ctr., 13 (Appendix17) at PA_0285 pp. 11-15)

APPENDIX K

Stanford Law School
Stanford Criminal Justice Center

LIFE IN LIMBO:

An Examination of Parole Release for Prisoners Serving Life Sentences with the Possibility of Parole in California

Robert Weisberg, Debbie A. Mukamal and Jordan D. Segall
September 2011

Stanford Criminal Justice Center

Stanford Law School
559 Nathan Abbott Way
Stanford, CA 94305
www.law.stanford.edu/program/centers/scjc

CONTENTS

ACKNOWLEDGEMENTS

The Stanford Criminal Justice Center (SCJC) serves as Stanford Law School's vehicle for promoting and coordinating the study of criminal law and the criminal justice system, including legal and interdisciplinary research, policy analysis, curriculum development, and preparation of law students for careers in criminal law. The center is headed by faculty co-directors Robert Weisberg and Joan Petersilia and executive director Debbie Mukamal.

The authors gratefully acknowledge the Office of the Governor, the California Department of Corrections and Rehabilitation and the Board of Parole Hearings for providing data used and/or cited in this bulletin. We are also grateful to the many individuals who provided context for our understanding of the subject of this report.

The authors would like to acknowledge Alexandra Lampert, SLS 2011, for the research and leadership she provided for the transcript analysis that underlies this report. Her analytical skills and logistical management were invaluable. Albert Gilbert, Diem Quynh (Cynthia) Ngoc Huynh, Nathan Pearl, Jeffrey Tai, and Jimmy Threatt, students at Stanford University, served as research assistants during the production of this report. We are grateful for their careful coding.

INTRODUCTION

In recent years, California's prison system has been under federal judicial control because of severe overcrowding, which partly results from the recycling of revoked inmates under parole supervision. The federal litigation has cast a sharp focus on the mandatory parole system created by the 1976 Determinate Sentencing Law and viewed as the legal mechanism by which this recycling has developed. But far too little attention has been given to the prison population serving life sentences with the possibility of parole under older *indeterminate sentencing* principles, a population that as of 2010 represents **a fifth of California state prisoners. More than 32,000 inmates comprise the "lifer" category,** i.e., inmates who are eligible to be considered for release from prison after screening by the parole board to determine when and under what condition.[1] (This group of prisoners is distinct from the much smaller population of 4,000 individuals serving life sentences without the possibility of parole (LWOP)).

The goal of this project is to examine in empirical detail (a) the lifer population, covering key details of its demographics, and (b) the processes by which lifers are considered for release, including an examination of historical trends in grant and denial rates, the recidivism record of released inmates, and legal and policy analysis of the specific mechanisms of the parolee hearing process. Despite the importance of the lifer population in terms of its size and the major legal and policy changes that have occurred to the parole process for lifers in the last several years, little research has yet been devoted to this topic.

We foresee the result to be a body of research that will generate both better public understanding and further academic examination of the lifer population and processes. In addition, we hope our study generates suggestions for legal and policy reform, including better ways of assessing the recidivism risks of lifers, the fairness of the hearing process, and possible budgetary savings from changes in the state's legal rules governing lifers.

This is the first in a series of reports the Stanford Criminal Justice Center (SCJC) will be issuing on this topic. It describes the scope of the population of prisoners serving life sentences with the possibility of parole, as well as the process by which they are considered for release. It also includes initial analysis from our research examining Board of Parole Hearings transcripts the factors that might correlate with grant and denial decisions. Finally, this report identifies important research questions we are now pursuing.

Some highlights from our findings include:

- The size of the lifer population has increased as a percentage of the overall California prison population from eight percent in 1990 to 20 percent in 2010. Most individuals serving life sentences with the possibility of parole are serving time for first- or second-degree murder.
- In line with the increase in the size of the lifer population, the Board of Parole Hearings has steadily increased the number of lifer suitability hearings it has conducted in the last 30 years, representing a 745 percent increase from 1980 to 2010. The majority of the increase has occurred in the last decade.
- More than twice as many hearings were scheduled than conducted in 2010, reflecting a trend that has appeared and grown since 2000. While efforts by the Board to address the backlog of hearings has increased the flow of hearings, the passage of Marsy's Law and new regulations promulgated in 2008 have likely increased the number of hearings.
- A lifer now stands an 18 percent chance of being granted parole by the Board of Parole Hearings. The grant rate has fluctuated over the last 30 years—nearing zero percent at times and never arising above 20 percent. The change in the rate could be attributed to changes in characteristics of the inmates appearing in a particular year, changes in the composition of the board, and court clarification of standards the Board should use in determining suitability or other factors.
- In addition, while an inmate's chance of being granted parole has increased in the last two years, the length of time he or she must wait for a subsequent hearing when denied parole has also increased (though there is a legal mechanism by which an inmate can petition the Board to advance his/her hearing by a showing of, among other things, changed circumstances).
- The Governor's rate in reversing decisions made by the Board has fluctuated over the last two decades, reflecting the individual policy orientation of the particular Governor in office.
- As with the size of the lifer population and the number of hearings conducted by the Board, the number of parole decisions made by the Governor involving murder cases has increased by 1754 percent in the last 20 years, with the bulk of the increase occurring after 2000 (when the total number of suitability hearings conducted by the Board increased).
- The likelihood of a lifer convicted of murder being granted parole by the Board and not having the decision reversed by the Governor is—and always has been—slim. In 2010, the probability was approximately six percent.
- A major—perhaps *the* major—question in public debate about the current lifer population is their risk of recidivating. While data is limited, interim information suggests that the incidence of commission of serious crimes by recently released lifers has been minuscule, and as compared to the larger inmate population, recidivism risk—at least among those deemed suitable for release by both the Board and the Governor—is minimal.

In particular, initial results from our research analyzing nearly 450 Board of Parole Hearings lifer suitability hearing transcripts from the time period 2007 through 2010 reveal the following significant findings:

- Grant rates vary significantly year to year: the grant rate in 2010 was nearly triple what it was in 2007 and 2008.
- Though commissioners become more lenient in one dimension—by increasing the grant rate in 2009 and 2010—they become more stringent on another dimension in those years, by setting lengthier periods of time until the subsequent parole hearing when denying parole.
- When victims attend hearings, the grant rate is less than half the rate when victims do not attend.
- There is no statistically significant difference in the grant rates of various types of offenses. One factor strongly associated with release is whether the life crime involved sexual violence. Other factors that do not relate in any statistically significant way include the use of a firearm in the life crime or the number of people the inmate victimized in the commission of the life crime.
- Prior record does not appear to significantly affect release decisions, whether they are adult or juvenile records.
- Most inmates committed their life crime between the ages of 20 and 25. Inmates who committed their life crimes between 20 and 30 were somewhat more likely to be paroled than inmates whose life crimes were committed in their forties. The average age of inmates at the time of the parole hearing is 50.8. The average age of inmates granted parole is 49.9 years, and the average age of inmates denied parole is 51. Surprisingly, age does not appear to be a significant factor in release decisions.
- Other factors like immigration status, whether an inmate has children, and marital status are not significantly associated with a release or denial.
- More research is needed to determine grant rate variance across prison facility, and the reasons associated with it, including the security levels of and program availability at each facility.
- In-prison behavior can affect whether an inmate is granted or denied parole. CDC 115 infractions are strongly associated with the grant rate, though CDC 128 infractions are not significantly associated with the grant rate. Also, the seriousness of the disciplinary violation is dispositive: violent disciplinary infractions—regardless of when they occur—are significantly associated with parole denials.
- Scores of psychological examinations administered to predict recidivism risk and inmate psychological stability are significantly correlated with the grant rate. Inmates who receive an average score or higher on these exams virtually never receive parole release.
- History of drug or alcohol abuse is not correlated with the grant rate. However, whether an inmate is participating in a 12-step program and whether he or she can correctly answer questions about those steps does affect whether an inmate is granted or denied parole.

WHO ARE CALIFORNIA'S "LIFERS?"

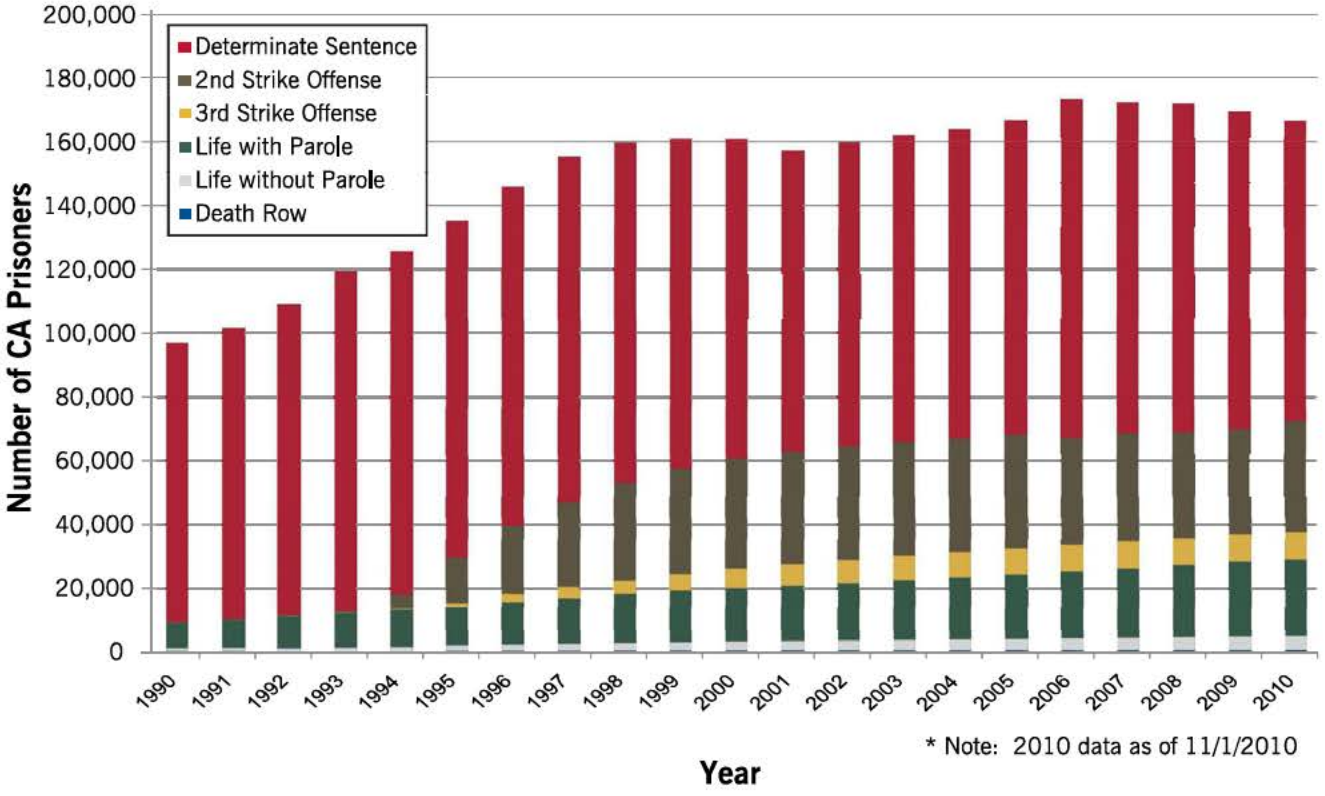
As of 2010, 20 percent of the California prison population is serving a term-to-life prison sentence, more than twice the percentage 20 years ago, and the highest such percentage of any system in the country.[2] Of the roughly 32,000 inmates serving life with the possibility of parole sentences, about 75 percent are serving so-called "term-to-life" sentences and 25 percent are serving three-strikes sentences. Chart 1 contextualizes the growth of these populations within the larger prison population.

This bulletin concentrates on those inmates serving "term-to-life" or life sentences with the possibility of parole sentences (generally referred to as "lifers" by the California Department of Corrections and Rehabilitation (CDCR)). Note, however, that because the three-strikes law is less than two decades old, the percentage of the overall lifer population contributed by three-strikes will surely grow, regardless of any changes in the term-to-life population. It is presently unknown whether and how current policies and laws governing parole release for the term-to-life population will also presumably apply to the three-strike population, the first of whom will come before the Board of Parole Hearings for parole release in 2019.[3]

Although numerous crimes can lead to life sentences under the California Penal Code, the great majority of current lifers were convicted of first- or second-degree murder[4] or attempted murder; the two other crimes with substantial numbers of lifers are rape and kidnapping. More details on the proportion of lifers representing the various crime categories, as well as the length of time typically served by category, appears in the "Detailed Demographics" section beginning on page 15.

CHART 1

Sentencing Categories Comprising the CA Prison Population, 1990 – 2010



* Note: 2010 data as of 11/1/2010

PAROLE PROCESS IN A NUTSHELL

The California Penal Code and Board of Parole Hearings regulations lay out the detailed rules that govern the parole decision-making process for individuals serving term-to-life sentences. The Board of Parole Hearings ("Board" or "BPH", formerly called the "Board of Prison Terms") is responsible for conducting suitability hearings to determine parole consideration for lifers. Its power vests from California Penal Code § 3040, et seq.: "The Board of Prison Terms shall have the power to allow prisoners imprisoned in the state prisons pursuant to subdivision (b) of Section 1168 to go upon parole outside the prison walls and enclosures." As early as 1914, the court held that whether an inmate should be released on parole should "be left to the judgment and discretion of the [B]oard to be exercised as it might be satisfied that justice in the case of any particular prisoner required."[5]

The Board is comprised of 12 full-time members, appointed by the Governor and confirmed by the Senate.[6] Terms of service are three years, although Commissioners are eligible for reappointment. Membership is supposed to "reflect as nearly as possible a cross section of the racial, sexual, economic, and geographic features of the population of the state."[7]

Some 70 Deputy Commissioners—civil servants—also participate in and make decisions at hearings to determine suitability for parole release, though they are not permitted to rule on objections at hearings.[8] Commissioners and Deputy Commissioners participating in parole suitability hearings are required to receive 40 hours of annual training, including training in domestic violence and intimate partner battering.[9] They are required to have a "broad background in criminal justice" and "...a varied interest in adult correction work, public safety, and shall have experience or education in the fields of corrections, sociology, law, law enforcement, medicine, mental health, or education."[10]

The Board meets with and schedules initial parole suitability hearings with individuals serving life terms one year before their minimum parole eligibility dates (MEPD). Typically, one commissioner and one deputy commissioner preside over a hearing. Hearings are held in person and at the institution in which the prisoner is currently housed. Before the hearing, the Board receives a case file consisting of the inmate's central file, forensic evaluations (including the results of risk assessment instruments), behavior in prison, vocational and education certificates, letters of support and opposition, and statements from victims.

MARSY'S LAW: AN EXPANSION OF VICTIMS' RIGHTS

In November 2008, California's voters passed Proposition 9—also known as "Marsy's Law"—a ballot initiative promoted as a "Victims' Bill of Rights." It was named for Marsy Nicholas, a 21-year-old college student who was murdered by her boyfriend in 1983 and whose perpetrator was released on bail without her family's knowledge. The law amended the California Constitution by expanding victims' rights in a number of important ways, including providing notice and granting participation in all proceedings. Specifically within the parole process for lifers, Marsy's Law grants the victim, next of kin, members of the victim's family, and two representatives designated by the victim the right to attend and make statements at suitability hearings which reasonably express their views concerning the prisoner, the effect of the crimes on the victim and the victim's family, and the prisoner's suitability for parole. It requires the Board to consider the entire and uninterrupted statements of victims, including victims of non-life crimes. It also forbids the prisoner or his/her attorney from asking the victim questions during the hearing. See: California Constitution Article I, Section 28 and California Penal Code §§ 3041.5 and 3043.

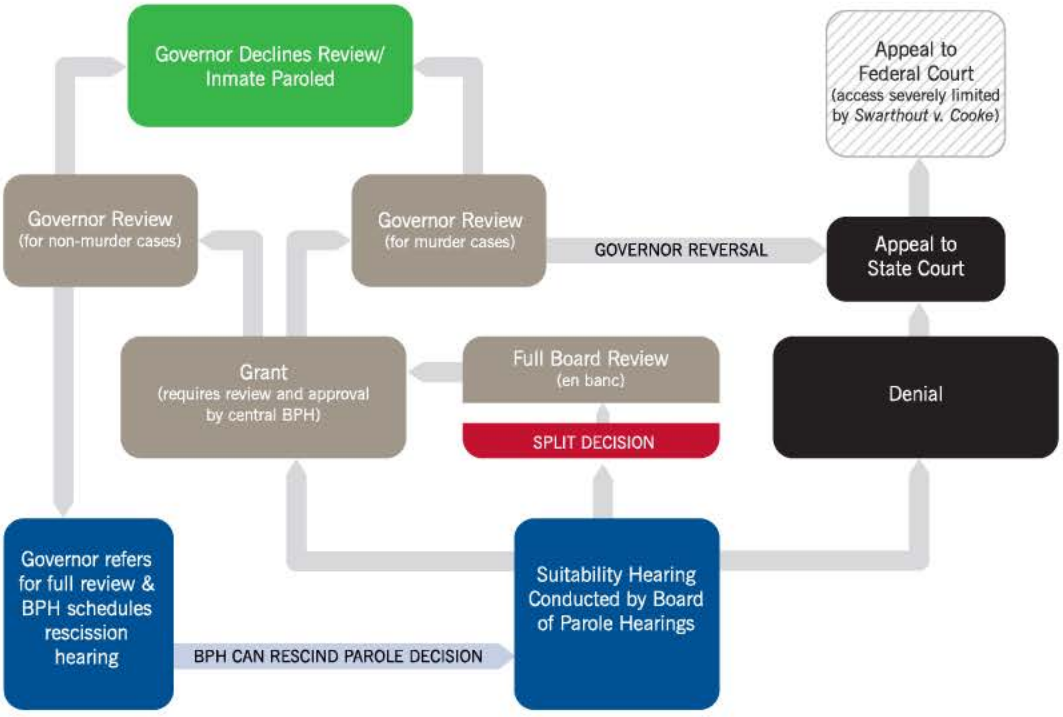
As discussed within the text, another very important change made by Marsy's Law was to lengthen the number of years by which individuals serving life sentences are granted subsequent hearings when denied parole by the Board.

The inmate is entitled to attend the hearing in person, ask questions, receive all non-confidential hearing documents at least 10 days in advance of the hearing, have his/her case individually considered, receive an explanation of the reasons for parole denial, and receive a transcript of the hearing proceedings.[11] The inmate is also entitled to be represented by counsel at a suitability hearing.[12] California pays appointed attorneys $50 per hour and a maximum of eight hours or $400 to represent inmates at parole hearings.[13] Privately retained attorneys charge between $2000 and $5000 for parole board hearing representation.[14] Some attorneys maintain that the amount of time necessary to review the inmate's file, meet and prepare with the inmate, and provide representation far exceeds eight hours.

The District Attorney from the county from which the inmate was committed has the right to participate in the hearing and be notified by the Board at least 30 days before the hearing date.[15] The District Attorney is limited to asking clarifying questions of the inmate via the Board.

As in nearly every jurisdiction in the United States, victims have the right to receive notice and participate in the parole hearing process in California.[16] As expanded by Marsy's Law in 2008, the victim, next of kin, members of the victim's family, and two representatives have the right to receive notice 90 days prior to the hearing and to present uninterrupted testimony at the hearing either in person, by written statement, audio or video statement, or by video-conference appearance.[17] The victim or his or her representative may speak about any of the crimes of which the inmate has been convicted, the effect of the crime, and the suitability of the inmate for parole. These individuals are also entitled to request and receive a stenographic record of all proceedings.[18]

In addition to the Board members, inmate, inmate's attorney, the District Attorney, and victim(s), members of the press are permitted and sometimes attend hearings. In addition, at least 30 days before the hearing, the Board must send written notice to the judge of the court where the inmate was convicted; the attorney who represented the defendant at trial, the law enforcement agency that investigated the case, and, where the person was convicted of the murder of a peace officer, the agency which had employed that peace officer at the time of the murder.[19] Any of these parties may submit written or recorded information to the Board.[20]



DETERMINING SUITABILITY FOR PAROLE RELEASE

Individuals serving life sentences with the possibility of parole—unlike those serving death or LWOP sentences—are presumed to receive a parole date unless the Board determines that the prisoner poses an "unreasonable risk of danger to society."[21] Regulations guide the Board in making these assessments. In particular, circumstances that weigh in favor of release include: (1) no juvenile record; (2) stable social history; (3) signs of remorse: (4) motivation for crime: (5) Battered Woman Syndrome; (6) lack of a significant violent criminal history; (7) age; (8) understanding and plans for the future; and (9) institutional activities that indicate an ability to function within the law upon release.[22] Factors that weigh against release suitability for release include: (1) the commitment offense;[23] (2) previous record of violence; (3) unstable social history; (4) sexual offense background; (5) severe mental problems; and 6) serious misconduct in prison.[24] California law also lays out detailed due process rights for prisoners in regard to these hearings.[25]

In a series of key decisions (see "California Courts Clarify Standards for Determining Release" on this page), the California Supreme Court has shed light on the weight of the factors identified in the law and regulations. Notably, "although the Board exercises broad discretion in determining whether to rescind parole, such decisions are subject to a form of limited judicial review to ensure that they are supported by at least 'some evidence."[26] By extension, the "some evidence" standard applies to Board decisions granting or denying parole.

> The nature of the prisoner's offense, alone, can constitute a sufficient basis for denying parole. Although the parole authority is prohibited from adopting a blanket rule that automatically excludes parole for individuals who have been convicted of a particular type of offense, the authority properly may weight heavily the degree of violence use and the amount of viciousness shown by a defendant.[27]

For some time, the Board had relied heavily and primarily on the commitment offense itself in making

CALIFORNIA COURTS CLARIFY STANDARDS FOR DETERMINING RELEASE

While statute and regulation present the factors the Board—and by extension, the Governor—should consider in deciding whether to release individuals serving life sentences, case law over several decades has clarified the standards and the weight of the various criteria to be used by the Board and Governor in making their decisions. The Court most recently clarified that the relevant inquiry is whether there is "some evidence" showing that the prisoner is a current threat to public safety, and while the commitment offense is probative, in and of itself cannot serve as the sole reason to deny parole.

Roberts v. Duffy (140 P.260 (Cal. 1914): Whether an inmate should be released on parole should "be left to the judgment and discretion of the [B]oard to be exercised as it might be satisifed that justice in the case of any particular prisoner required."

In re Minnis, 498 P.2d 997 (Cal. 1972): "Although a prisoner is not entitled to have his term fixed at less than maximum or to receive parole, he is entitlted to have his application for these benefits 'duly considered;" based upon an individualized consideration of all relevant factors.

In re Powell, 755 P.2d 881 (Cal. 1988): "[D]ue process requires only that there be some evidence to support a rescission of parole by the BPT."

In re Rosenkrantz, 59 P.3d 174 (Cal. 2002): '[U]nder California law the factual basis for a Board decision granting or denying parole is subject to a limited judicial review under the 'some evidence' standard of review." Also: "The nature of the prisoner's offense, alone, can constitute a sufficient basis for denying parole. Although the parole authority is prohibited from adopting a blanket rule that automatically excludes parole for individuals who have been convicted of a particular type of offense, the authority properly may weigh heavily the degree of violence used and the amount of viciousness shown by a defendant."

(continued next page)

its decision, labeling nearly all offenses "heinous, atrocious, and cruel" and using that as the basis for denying inmates parole. But the Court has now clarified that the Board must grant parole unless it concludes that the inmate is still dangerous, and the Board cannot use the circumstances of the crime, standing alone, as a basis to deny parole.[28] As a result, the trend has moved from reliance on the commitment offense to indicia that the inmate "lacks insight" (as shown by minimizing culpability or inconsistent statements of the crime itself) when determining unsuitability. In sum, the appropriate and governing standard of review of parole decisions for lifers is whether there exists "some evidence" that the inmate poses a current threat to public safety.

In 1988, Proposition 89 amended the California Constitution and gave the Governor authority to review the parole board's decisions in cases involving non-murder cases and reverse the parole board's decisions in cases involving murder convictions.[29] For decisions involving non-murder cases, the Governor is limited to remanding the case back to the Board for full review if s/he disagrees with the decision made by the Board. California is one of only four states with gubernatorial review of parole board decision-making, though California is unique in limiting reversal power to decisions involving murder convictions.[30] The Governor must apply the same legal standards as did the BPH itself when reviewing decisions. According to the California Supreme Court, the Governor's decision should "reflect an individualized consideration of the specified criteria" that also must be considered by the Board in making parole decisions.[31] Any judicial review of the Governor's decision, in turn, "strictly is limited to whether some evidence supports the Governor's assessment of the circumstances of petitioner's crime—not whether the weight of the evidence conflicts with that assessment."[32]

Once a prisoner is released from custody onto parole supervision, the length of the parole period post-release depends chiefly on the original crime of conviction, according to rules set out in California Penal Code § 3000.1. If the original crime was murder and it was committed after 1982, the released person is presumptively on parole for his/her lifetime but can petition the Board to be discharged from parole after either five years (if second-degree) or seven years (if first-degree). Most other lifers will serve between three and five years, but can petition for discharge earlier.

In re Dannenberg, 104 P.3d 783 (Cal. 2005): "[T]he Board, exercising its traditional broad discretion, may protect public safety in each discrete case by considering the dangerous implication of a life-maximum prisoner's crime individually." Also: [I]n order to prevent the parole authority's casey-b-case suitability determinations from swallowing the rule that parole should be 'normally" be granted, an offense must be 'particularly egregious' to justify the denial of parole."

In re Lawrence, 190 P.3d 535 (Cal. 2008): "[T]he relevant inquiry is whether the circumstances of the commitment offense, when considered in light of other facts in the record, are such that they continue to be predictive of current dangerousness many years after commission of the offense." Also: "In some cases, such as those in which the inmate has failed to make efforts toward rehabilitation, has continued to engage in criminal conduct postincarceration, or has shown a lack of insight or remorse, the aggravated circumstances of the commitment offense may well continue to provide 'some evidence' of current dangerousness even decades after commission of the offense."

In re Shaputis, 190 P.3d 573 (Cal. 2008): "[T]he paramount consideration for both the Board and the Governor under the governing statutes is whether the inmate currently poses a threat to public safety..."

RECENT DISPOSITION RATES

As Chart 2 depicts, in the last 20 years the annual number of scheduled hearings to determine suitability for parole release for individuals serving life sentences has grown significantly though not at a consistent rate, with the annual number averaging about 1600 early in this period and over 6000 in the most recent years. But the annual number of hearings actually conducted has grown less significantly and has fluctuated much more, with the percentage of scheduled hearings actually ending up in conducted hearings dropping notably from about 75 percent to about 50 percent. In 2009, the Board of Parole Hearings scheduled 5,639 hearings to determine parole suitability and conducted 2,714 hearings.[33]

The reasons for this drop-off and increasing magnitude of the drop-off require further examination, including inquiry into whether resource constraints on BPH have played any role. But a key factor—at least in the last two years—appears to be a disincentive built into the system: If an inmate anticipates a high probability of denial of parole at a hearing, s/he often chooses to cancel the hearing as a formal denial by the Board could greatly delay his or her entitlement to a subsequent hearing. The mechanisms by which an inmate exercises this risk aversion is a stipulation to his/her own unsuitability for parole release; a waiver of the hearing; or a postponement. A stipulation is essentially the inmate's concession that s/he is not suitable for parole release, while a waiver is a related but slightly different mechanism by which the inmate agrees to forego his/her entitlement to a hearing at which s/he could have argued suitability. The use of these procedural mechanisms has become much more significant since the passage of Marsy's Law in 2008, which greatly increases the delay in entitlement to a new hearing after a denial and regulations promulgated in 2008 that give an inmate the right to waive his or her hearing without stipulating to unsuitability.[34] The operation of these mechanisms and the inmate factors associated with them deserve special research emphasis, and the relationship between stipulations/waivers and the timing of later hearings and grant/release outcomes is an important question on which SCJC is now seeking to obtain and analyze empirical data. Meanwhile, we now have raw data on the frequency of stipulations/waivers.

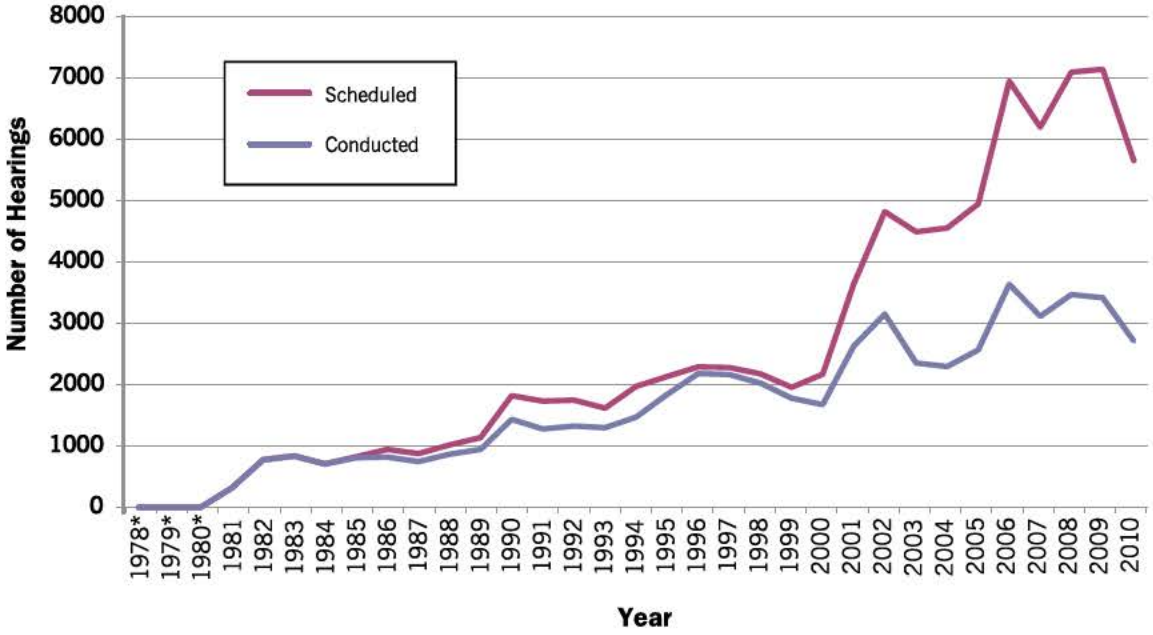
As Chart 3 illustrates, overall the grant rates by the Board of Parole Hearings have increased significantly in absolute numbers in recent years; these rates have fluctuated erratically as a percentage of conducted hearings, although in recent years that percentage has been higher than in previous ones. Currently the BPH grant rate is about 18 percent.

In the last decade (2000-2010), the percentage of scheduled hearings resulting in denial has dropped from about 75 percent to about 40 percent, but the percentage resulting in grants has only increased a few percent. The explanation for the difference, as noted, has been a very large decrease in the percentage of scheduled hearings resulting in actually conducted hearings. More analysis is necessary to appreciate the difference in grant rates year-by-year. In particular, the more extreme differences in grant rates may be explained by differences in the profiles of appearing inmates, the composition of the board, or other factors.

As Chart 4 illustrates, the average denial length (i.e. the numbers of years of delay before the inmate is entitled to a subsequent suitability hearing) has changed without pattern between 2000-08 but jumped dramatically after that. Proposition 9/Marsy's Law mandates denial periods of three, five, seven, 10, and 15 years,[35] the presumption starting with a 15-year denial period absent clear and convincing evidence that it should be shorter,[36] Although litigation is pending on whether these deferral periods violate the ex post facto clause.[37] An inmate may request that the Board advance a subsequent hearing once every three years. The Board has wide discretion to grant or deny these requests, the criteria including "the views and interests of the victim" and changed circumstances or "new information [that] establishes a reasonable likelihood that the additional period of incarceration is unnecessary."[38] According to statistics included by

CHART 2

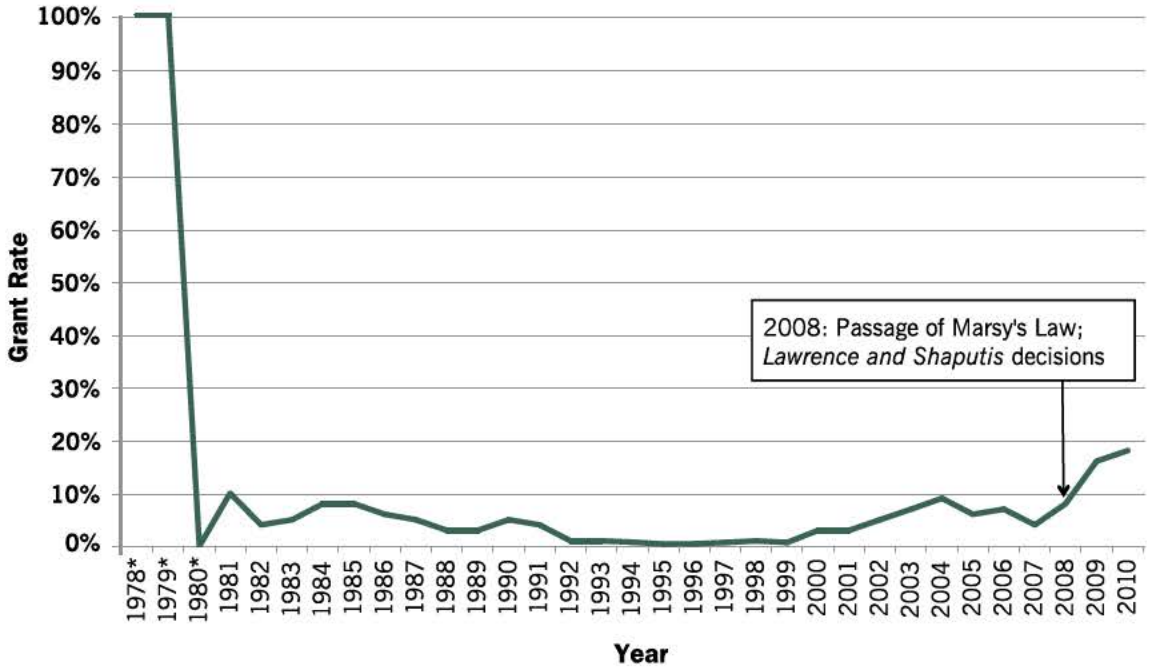
Number of Scheduled and Conducted Lifer Suitability Hearings, 1978 – 2010



* There was only 1 lifer suitability hearing conducted in 1978 and in 1979, and 2 hearings in 1980.

CHART 3

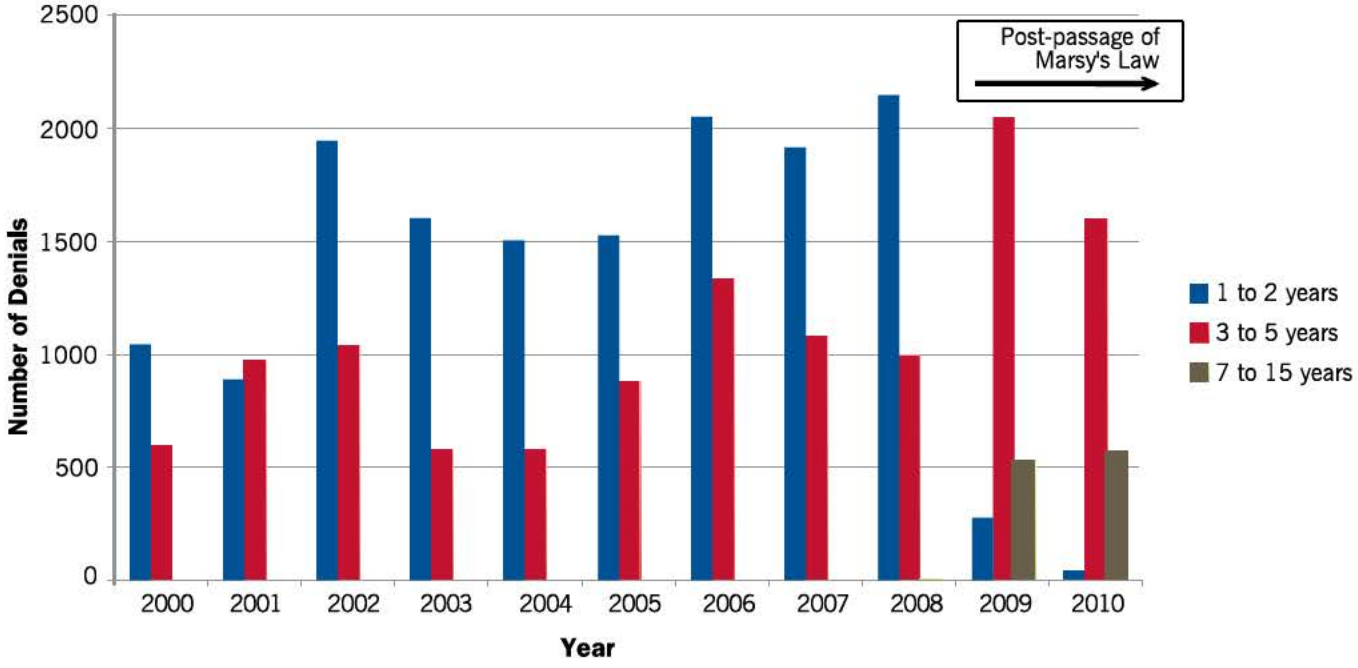
Board of Parole Hearings Grant Rate, 1978 – 2010



* There was only 1 lifer suitability hearing conducted in 1978 and in 1979, and 2 hearings in 1980.

CHART 4

Duration of Parole Denials, 2000 – 2010



plaintiffs in pending litigation, the Board denied 59 out of 61 or 97 percent of requests for advanced hearings submitted by prisoners between December 2008 and August 2010.[39]

Before the passage of Marsy's Law in 2008, two-thirds of prisoners who were denied released received deferral dates of one or two years. Now most inmates denied release receive 3- and 5-year denials. A significant incidence of those long-term denials has occurred and will probably increase the number of inmates requesting waivers and making stipulations of unsuitability.

As Chart 6 depicts, the Governor's use of his power to reverse grants by the Board of Parole Hearings has changed dramatically with the identity of the Governor. Governor Pete Wilson (1991-1999), the first Governor to implement the new measure, rejected only 27 percent of grants, although he only considered a handful of cases. Governor Gray Davis (1999-2003)—who claimed he would not parole a single convicted murderer—reversed virtually all the grants during his term. Governor Arnold Schwarzenegger (2003-2011) reversed about 60 percent of grants, while remanding about 20 percent to the Board of Parole Hearings for further review (though Chart 6 illustrates the reversal rate within his term fluctuated). In his first few months in office, Governor Jerry Brown has reversed at the lowest rate of the three Governors. The Davis Administration is likely to remain a sharp anomaly—a virtual nullification of the law—since the Proposition 89 procedure was arguably designed as a kind of appellate review by the Governor.

A lifer's prospect of actually being granted parole by the Board and not having the decision reversed by the Governor is—and always has been—slim. Using the overall Board grant rate and the Governor's non-reversal rate for murder cases, we have estimated the likelihood in Chart 7.

CHART 5

Annual Number of Governor's Parole Decisions Involving Murder Cases, 1991 – 2010

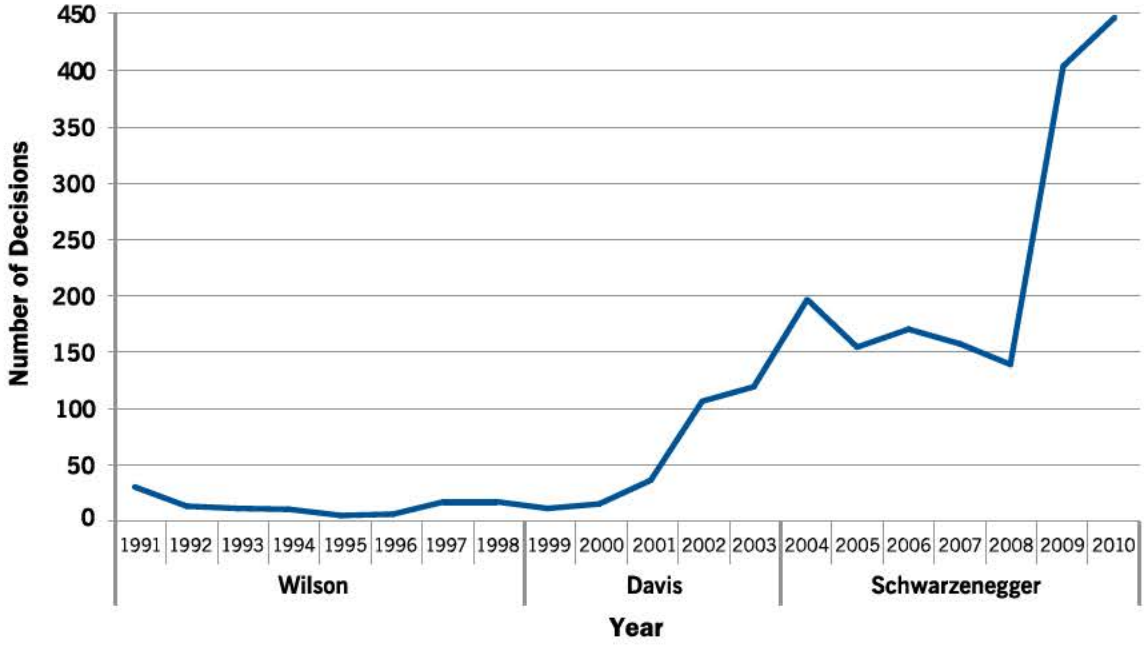


CHART 6

Governor's Reversal Rate for Parole Decisions Involving Murder Cases, 1991 – 2010

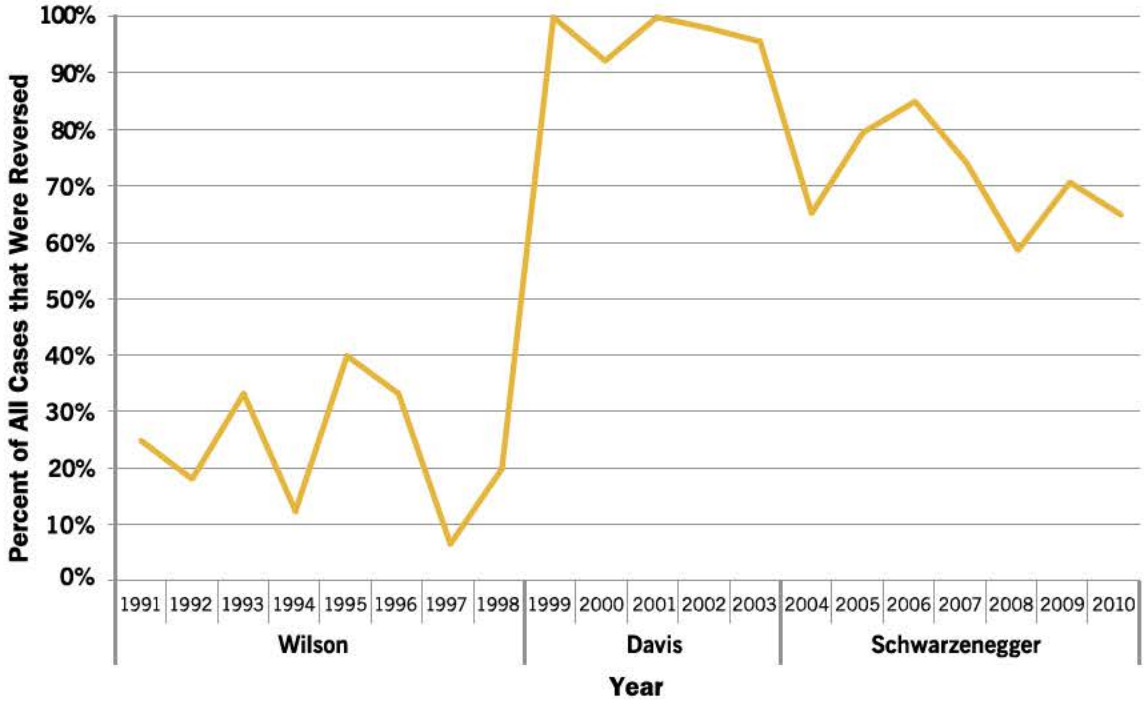
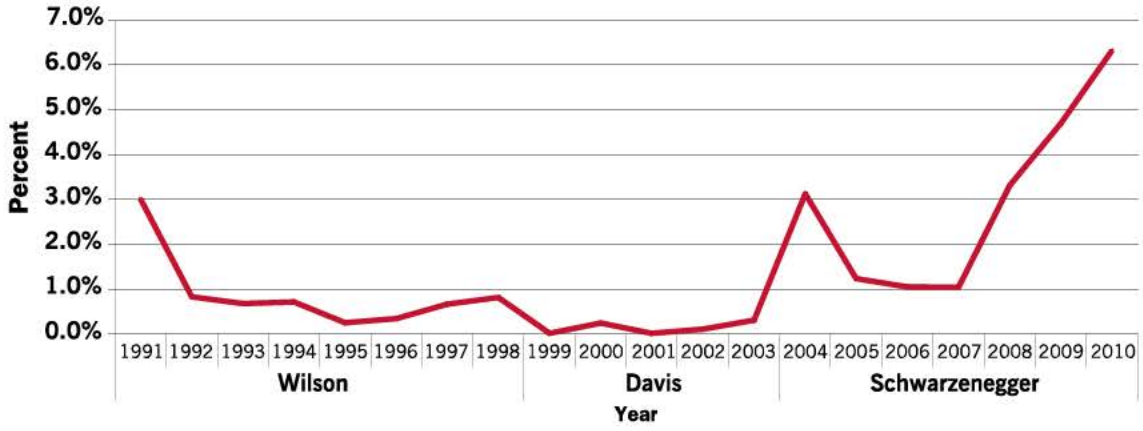


CHART 7

Estimated* Likelihood of a Murder Case Being Granted Parole by BPH and Governor, 1991 – 2010



*Estimated likelihood was calculated using the BPH's parole grant rate for all life-term sentences and the Governor's non-reversal rate for murder cases.

DEMOGRAPHIC DETAILS OF THE LIFER POPULATION

As discussed earlier and depicted in Chart 8, most lifers currently incarcerated were convicted of first- and second-degree murder.[40] Of the people serving term to life sentences in California as of December 31, 2010, the largest categories by crime type are described in Chart 8.

CHART 8

Lifer Population by Type of Crime

TYPE OF CRIME	NUMBER OF PRISONERS	AS A PERCENTAGE OF LIFER POPULATION
Murder	19,360	81%
1st Degree	8,299	35%
2nd Degree	8,654	36%
Attempted	2,399	10%
Rape & other sexual offenses	1,467	6%
Kidnapping	1,057	4%

For the 1499 individuals who served term-to-life sentences who were released from custody between January 1, 1990 and December 31, 2010, the average amount of time served was 225 months or 18.75 years. Of approximately 1,000 lifers who had been sentenced for murder and were released from custody during the 20-year period from 1990-2010, the average number of years served was about 20 years.

The average length served by the largest categories of crime type is depicted in Chart 9.

CHART 9

Lifer Population by Average Years Served

TYPE OF CRIME	NUMBER OF PRISONERS	MEAN (YEARS)	PUNISHMENT PROSCRIBED BY CURRENT CA PENAL CODE[41]
2nd Degree Murder	701	19.87	15 years to life
1st Degree Murder	375	20.14	25 years to life
Kidnapping for Robbery or Rape	120	17.13	7 years to life
Attempted Murder	107	13.85	7 years to life

Obviously, because these individuals have committed more serious crimes, they are not typical of the larger California prison population, but the mix of similarities and dissimilarities in comparisons to the overall prison population is complex.

The vast majority—**96%**—of lifers are **male** (as compared to 93% of the overall prison population).

The percentages of lifers who are **Black** (31%) and **Hispanic** (38%) are very similar to the percentages for these groups in the overall inmate population.[42]

In terms of age, 85% of current lifers are 55 or under and 14% are 56 or older. In addition, note that the actual number of currently incarcerated lifers who are aged over 65 is 929. Unsurprisingly, this distribution is not similar to the age disproportion of the overall inmate population, since most lifers are serving lengthy prison sentences. In particular:

13% of California prisoners are **22-25,** as compared to **5%** of lifers.	**33%** of California prisoners are **26-35,** as compared to **25%** of lifers.	**25%** of California prisoners are **36-45,** as compared to **30%** of lifers.	**18%** of California prisoners are **46-55,** as compared to **24%** of lifers.	**5%** of California prisoners are **56-65,** as compared to **10%** of lifers.	**1%** of California prisoners are **over 65,** as compared to **4%** of lifers.

The distribution among lifers by **mental health** designations is closely proportionate to that in the **general inmate population.**

The percentage of lifers "sentenced" by each county closely approximates the percentage of all prisoners coming from those counties and is also closely proportionate to the general population of those counties. In particular, **Los Angeles (39%)**, **San Diego (7%)**, and **Orange (6%)** and **Riverside (6%) Counties** comprise the **biggest feeders of the state's lifer population.** Further analysis might factor in serious crime rates of those counties, as well as changes in the distribution over time.

The distribution of lifers among across the state prisons is highly dispersed, ranging from one percent to eight percent in particular prisons, and is not a function of the differing sizes of the prisons: As a percentage of the prisoner population in particular prisons the lifer concentration differs drastically, with a huge concentration in **California State Prison - Solano (63%)**, **Calipatria State Prison (48%)**, **Correctional Training Facility (38%)** and **California State Prison - Corcoran (36%).** The reason for this variance may lie in noncontroversial decisions about logistics, resources, and classification status, but the issue merits further examination, including analysis of program availability at those institutions and whether place of imprisonment bears any distinct association with rates of hearings and grants/denials.

Individuals serving life sentences with the possibility of parole are fairly evenly distributed among **medium (30%) and high medium (29%) housing security levels**, skewing them more toward the higher end than the general inmate population. On the other hand, **75%** of lifers score as **low risk** and **90%** as **low or moderate risk** by the Californa Static Risk Assessment instrument.[43] These scores contrast sharply with the general inmate population (28% low, 28% moderate, 11% high property, seven% high drug, 22% high violent, and four percent none)**.** These figures merit detailed further and secondary data gathering, including correlations to hearing/grant rates and consideration in light of recidivism analysis.

RISK OF RELEASE

Any indeterminate sentencing system—including California's for individuals serving life sentences with the possibility of parole—purportedly has several important purposes. Among them is retribution which suggests that offenders should be punished in proportion to the harm they caused and their culpability in committing the crime. Thus, some portion of the time lifers serve is intended to satisfy the retributive purpose. The other portion meets other important purposes, including deterrence, rehabilitation, and incapacitation—all of which focus on using criminal penalties to minimize future criminal behavior by the individual offender and would-be offenders.[44] In meeting these purposes, the Board is charged with assessing what the public safety risk is of each lifer's release. Indeed, the criteria for release as articulated by governing statute and regulations and relevant case law reiterates that predicting and preventing recidivism is the primary concern.

Few studies have been conducted documenting the recidivism rates for lifers specifically but the few that exist all suggest that the recidivism rate—as defined by recommitment for a new offense—is relatively low.[45] In a cohort of convicted murderers released since 1995 in California, the actual recidivism rate is in fact minuscule. In particular, among the 860 murderers paroled by the Board since 1995, only *five* individuals have returned to jail or returned to the California Department of Corrections and Rehabilitations for new felonies since being released, and none of them recidivated for life-term crimes.[46] This figure represents a lower than one percent recidivism rate, as compared to the state's overall inmate population recommitment rate to state prison for new crimes of 48.7 percent.[47] The variance between these two rates warrants additional analysis; in particular, a more nuanced examination of the 860 individuals granted parole release as compared to the overall lifer population might explain their low recidivism rates.

Other sources of information shedding light on the recidivism risk of lifers are established studies of recidivism rates for non-lifers that focus on crime of conviction, criminal record, age at time of release, length of imprisonment and other factors. The factors examined in these studies can be used as proxies to help us gauge likely recidivism projections for lifers. A good example is the age factor. Some non-lifer studies demonstrate that as a general matter, people age out of crime. For most offenses—and in most societies—crime rates rise in the early teenage years, peak during the mid-to-late teens, and subsequently decline dramatically. Not only are most violent crimes committed by people under 30, but even the criminality that continues after that declines drastically after age 40 and even more so after age 50.[48] More uncertain are the prospects for offenders between the ages of thirty and fifty. Determining when there is not an unreasonable risk to public safety to parole relatively young lifers will depend on the continuing improvement of risk-assessment instruments, as well as careful attention to the empirical evidence linking particular types of crimes to particular rates of re-offending. In California specifically, CDCR's newest recidivism report (October 2010) documents that inmates designated as serious or violent offenders, older inmates and inmates who serve 15 years or more recidivated at a lower rate than those who were not.[49]

Two other sources of information are the risk levels classifications as assessed by both the California Static Risk Assessment instrument and the tools used by the Forensic Assessment Division (FAD) to predict current risk. Both indicate that lifers are relatively lower risk than other inmates, but more information is needed to understand the nature of instruments used and their ability to correlate recidivism rates with risk scores.

THE SCJC LIFER TRANSCRIPT ANALYSIS

In light of the rules governing and stakeholders participating in parole release for lifers, and the great variety of factors they bring into play in any hearing, the Stanford Criminal Justice Center decided to undertake the first empirical assessment of the actual conduct and circumstances of parole hearings to assess which factors play salient roles in predicting or determining outcomes. We received 754 hearing transcripts constituting a random sample of 10 percent of all parole suitability hearings conducted between October 1, 2007, and January 28, 2010 from the California Department of Corrections and Rehabilitation. 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.

These transcripts ranged from less than 50 to more than 200 pages. To transform them into usable data, we used two procedures. First, we roughly summarized the data, gathering a basic set of information about all of the transcripts: hearing date, inmate name, result (grant or denial), persons present at the hearing, and so on. As a second, more comprehensive, process, we designed an extended codesheet to capture more than 180 variables of interest from the transcripts, ranging from inmate characteristics to details of the life offense to prison programming. We hired and trained Stanford University undergraduates to code the transcripts by carefully reading the text and making selections on a web-based form.

To date, we have completed 448 transcripts in this second-pass process, or approximately 60 percent of the sample. The majority of the completed transcripts were from hearings conducted in 2009 (after the passage of Marsy's Law and the court decisions in *Lawrence* and *Shaputis*), though we have coded some transcripts from 2007, 2008, and 2010 as well.

GENERAL FINDINGS

There are two types of parole suitability hearings: initial suitability hearings, in which the prospective parolee is appearing in front of the parole board for the first time, and subsequent suitability hearings, in which the prospective parolee has been denied parole at a past hearing. Almost 90 percent of the hearings were subsequent, rather than initial, parole hearings. Chart 10 summarizes the dispositions of the 754 hearings by whether the hearing was an initial or subsequent hearing. (Note that the table excludes one hearing in which the decision was postponed pending the receipt of a missing psychological evaluation, and a second in which the commissioners' decision was not indicated in the transcript.)

CHART 10

Disposition by Hearing Type, Full Sample

	INITIAL	SUBSEQUENT	TOTAL	
Denied	87	567	654	(87.0%)
Granted	2	96	98	(13.0%)
Total	89	664	752	

In total, 87 percent of the hearings in our sample resulted in a denial of parole. Inmates in subsequent parole hearings fared much better than inmates appearing in front of the Board for the first time: nearly 15 percent of subsequent hearings resulted in a grant and 2.2 percent of initial hearings produced grants.

Grant rates appear to vary significantly by year. Chart 11 reports the grant rate by year from the full sample of transcripts. (Our reporting on the grant rate here is not intended to expand upon or change our earlier analysis of the overall grant rate, but to contextualize our transcript analysis.)

CHART 11

Grants by Year, Full Sample

YEAR	DENIED	GRANTED	GRANT RATE
2007	45	4	8%
2008	255	21	8%
2009	316	61	16%
2010	40	12	23%

By the end of our sample, the grant rate was nearly triple what it was in 2007 and 2008. The result is highly statistically significant.

Though commissioners became more lenient on one dimension, by increasing the grant rate in 2009 and 2010, they became more stringent on another dimension. Upon denying a parole applicant, parole commissioners must set a date until the next parole hearing but have discretion in determining the length of time. The commissioners most commonly set a date of one, three, or five years until the next parole hearing[50], but in some cases in our dataset, the commissioners delayed the next parole hearing for as much as 15 years. Chart 12 summarizes the average number of years to next hearing, by the year the hearing was conducted.

CHART 12

Years to Next Hearing, by Hearing Date

2007	2008	2009	2010	TOTAL
2.0	2.2	4.6	5.1	3.5

The result may reflect the impact of "Marsy's Law," an amendment to the California state constitution enacted by California voters via the ballot initiative process in November 2008. As discussed above, Marsy's Law, also called Proposition 9, increased the maximum parole denial period to 15 years. After 2008, one- and two-year denial terms, which were common prior to the passage of Marsy's Law, became prohibited. The result was a significant shift upward in denial periods: in the 2009 transcripts in our sample, 45 percent of denials were for periods of five years or more.

Every hearing is led by a presiding commissioner, who is joined by a deputy. In total, there were 24 presiding commissioners in our dataset. The total number of hearings they presided over varied from a low of six hearings to a high of 89. Because of the relatively small amount of data we have about each commissioner, we cannot conclude that there is a statistically significant difference between the grant rates of the various commissioners. That said, the numerical differences are substantial: grant rates by commissioner varied greatly from a low of zero percent to a high of 31 percent. One commissioner, for instance, granted parole in twelve of the 61 hearings in our sample he presided over; Another commissioner, by contrast, granted parole in only one of the 43 hearings in our sample over which she presided. Additional study is necessary to understand possible reasons for these variances, including the classification status of inmates seen by each commissioner.

The last piece of information we have collected about the complete sample is information about who attended the hearing. Specifically, we have data on whether a victim appeared at the hearing, with "victim" defined broadly as either the immediate victim of the crime or a friend, family member, or acquaintance of the victim of the crime. Chart 13 summarizes grant rates by the presence of victims.

CHART 13

Grant Rate by Presence of Victim at Hearing

	DENIED	GRANTED	GRANT RATE
Victim not present	586	94	13.8%
Victim present	70	4	5%

There is a statistically significant difference in the grant rate between hearings at which victims are present and hearings at which victims are not present. The effect is in the expected direction: when victims attending hearings, the grant rate is less than half the rate when victims do not attend. A more nuanced analysis of the relationship between victim participation and disposition rates might identify the reasons for this correlation. In particular, a better tracking of when victims most commonly participate in hearings—particularly whether they typically appear primarily at initial or first subsequent suitability hearings – could explain why their participation is associated with parole denials.

SPECIFIC FINDINGS: SECOND-PASS ANALYSIS

More detailed results can be obtained from our second-pass analysis. Because we have finished coding only around two-thirds of the transcripts, however, these analyses are necessarily preliminary. In what follows, we consider two general categories of results: first, the general characteristics of inmates serving life sentences and their relationship to release decisions; and second, other factors that are positively or negatively associated with parole release.

INMATE CHARACTERISTICS

Life Crime

As Chart 14 indicates, the majority of parole-eligible life offenders are second- or first-degree murderers. There is no statistically significant difference in the grant rates of various types of offenders, although those serving sentences for attempted murder are the least successful inmates. Grant rates for first- and second-degree murderers are nearly identical.

Chart 14 also includes the average time served by inmates in each offense category at the time of the hearing, in years.

CHART 14

Offense Type by Decision

	AVERAGE YEARS SERVED	DENIED INMATES	GRANTED INMATES	TOTAL
Second Degree Murder	20.1	195	44	239
First Degree Murder	17.2	104	20	124
Attempted Murder	14.2	26	0	18
Kidnapping for Sex Crime/Robbery	21.7	27	2	29
Aggravated Mayhem	15.0	2	0	2
Kidnapping for Ransom	16.5	2	0	2
Conspiracy to Commit Murder	21.2	4	2	6
Rape	13.1	3	0	3
Drive-By Shooting	20.1	1	0	1
Torture	8.6	2	0	2
Total	18.9	368	68	436

One factor that appears to be strongly associated with release is whether the life crime involved sexual violence. Only two of the 32 transcripts we have coded so far that involved sexual violence of any kind resulted in grants of parole; by contrast, 16 percent of parole cases not involving sexual violence (66 out of 404) resulted in release.

Several factors related to the life crime are not related to release in a statistically significant way. First, the use of a firearm in the life crime does not appear to have a significant effect on the outcome of the parole hearing. In total, 182 prisoners did not use firearms in the commission of their life crime, and 214 prisoners did use a firearm. The release rates were 15 percent and 16 percent, respectively; the difference is not statistically significant.

Commissioners' decisions did not seem to vary according to the number of people the inmate victimized in the commission of the life crime. Thirteen of the 106 cases (12 percent) in which the inmate's life crime involved multiple victims resulted in release; by contrast, 55 of the 333 (16.5 percent) single-victim cases resulted in release. The difference is not statistically significant.

Prior Record

Prior record does not appear to significantly affect release decisions, whether they are adult or juvenile records. Sixteen percent of inmates with juvenile records prior to the commission of their life crimes obtained parole release, compared to 15 percent of inmates without juvenile records. The difference is not statistically significant.

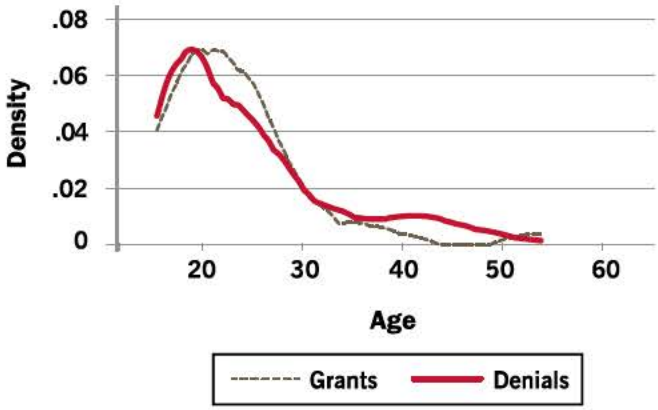
The same holds true for the effect of prior adult criminal records. Almost 60 percent of inmates in our sample had prior adult convictions before committing their life crime, but the grant rate was 14 percent for inmates without adult criminal records and 16 percent for inmates with criminal records.

Age

Chart 15 shows the age at life crime, by whether the inmate was paroled. The figure shows that most inmates committed their life crime between the ages of 20 and 25. The pattern is similar for both paroled and non-paroled inmates, though inmates who committed their life crimes between 20 and 30 were somewhat more likely to be paroled than inmates whose life crimes were committed in their forties. Few of the latter type of inmates received parole grants.

CHART 15

Age at Life Crime, by Parole Outcome



The average age of inmates at the time of the parole hearing is 50.8. The average age of inmates granted parole is 49.9 years, and the average age of inmates denied parole is 51. The difference is not statistically significant. Surprisingly, age does not appear to be a significant factor in release decisions: a simple logistic regression model using age at the hearing date to predict the probability of release shows a somewhat negative but statistically insignificant effect of age on the likelihood of parole release.

Other Factors

Chart 16 provides assorted demographic characteristics of the inmates in our sample. None of the characteristics presented in the table—immigration status, whether an inmate has children, and marital status—is significantly associated with a release or denial.

CHART 16

Assorted Demographic Characteristics

	DENIED	GRANTED	GRANT RATE	% OF TOTAL
Immigration Status				
Citizen	224	41	15.5%	63%
Illegal immigrant	50	6	10.7%	13%
Legal resident	3	1	25.0%	1%
Unknown*[51]	78	19	19.6%	23%
Children				
Has children	137	31	18.5%	41%
Doesn't have children	210	35	14.3%	59%
Marital Status				
Divorced	84	10	10.6%	24%
Married before prison	51	9	15.0%	15%
Married, during prison	32	15	31.9%	12%
Single	156	23	12.9%	45%
Spouse deceased	13	4	23.5%	4%

Though these characteristics are not significantly associated with the grant rate, some results are intrinsically interesting. First, 59 percent of the inmates in our sample have children. Of that population, only 35 percent are married, and only 22 percent were married before entering prison.

Other Factors Associated with Release

Facility

Parole hearings are held on-site at most of California's 33 state prisons. Grant rates might vary across facilities for a variety of reasons, such as systematic differences in the type of inmates held at various facilities, availability of rehabilitative programs at various facilities, or differences in the pool of commissioners who conduct hearings at various facilities.

Chart 17 presents the grant rate by facility. To avoid misleading findings, state prisons that are poorly represented in our sample—specifically, facilities with fewer than ten hearings in the sample—were omitted from this table, leaving a total of 13 facilities.

CHART 17

Grant Rate by Facility

	DENIALS	GRANTS	GRANT RATE
Mule Creek	9	5	35.7%
California Institution for Women	10	5	33.3%
San Quentin	13	4	23.5%
California Men's Colony	26	6	18.8%
Avenal	51	11	17.7%
Correctional Training Facility	45	9	16.7%
Central California Women's Facility	17	3	15.0%
California Substance Abuse Treatment Facility	23	4	14.8%
Solano	61	9	12.9%
California Medical Facility	16	2	11.1%
Chuckawalla Valley	20	2	9.1%
Folsom	12	1	7.7%
Pleasant Valley	10	0	0.0%

As the table indicates, grant rates differ dramatically by facility. Some prisons, like Chuckawalla, Folsom and Pleasant Valley, have grant rates below 10 percent, others, like Mule Creek and the California Institution for Women, grant more than a third of parole cases. As stated above, Solano houses the largest percentage of lifers as a percentage of its total prison population.

A more robust analysis of grant rates by institution is warranted to better understand the reasons underlying variances.

Behavior in Prison

Inmate behavior during the prison term is a recurring theme in parole hearings. Parole commissioners typically scrutinize inmate's disciplinary records, and often ask detailed questions about violations of prison rules.

In California prisons, disciplinary infractions are documented using two forms, the CDC 128 "Custodial Counseling Chrono" (or sometimes the CDC 128B "Informational Chrono"), and the CDC 115 "Rules Violation Report." 128 infractions are typically minor conduct violations, including smoking, being in an unauthorized area, using foul language, or possessing non-serious contraband. 115 infractions, which trigger a notice-and-hearing process, can be either non-serious ("administrative") or serious. Serious violations include violence toward inmates or prison personnel, possession of controlled substances or weapons, and other serious infractions.

Both 115s and 128s are exceedingly common. Eighty-one percent of inmates in our sample have at least one 115 in their record, and 89 percent of inmates have at least one 128. The 115 infractions are strongly associated with the grant rate; 25 percent of inmates with no 115 infractions received parole grants, while only 13 percent of inmates with at least one 115 infraction received a grant—a result significant at the .01 level. And the more 115s an inmate accumulates, the greater an effect the inmate's disciplinary record has on the inmate's chances for parole release. Just 16 of the 149 inmates with more than five 115s (11 percent) received parole release.

On the other hand, 128 infractions are not significantly associated with grant rate. One inmate received a grant of parole despite accumulating sixty 128 infractions.

Preliminary evidence also suggests that the seriousness of the disciplinary violation has a substantial effect on commissioners' decisions. For example, violent disciplinary infractions, regardless of when they occur, are significantly associated with parole denials. Only 11 of the 128 (8.5 percent) inmates with violent disciplinary records in prison were released, compared to 20 percent of inmates with no violent disciplinary infractions.

Psychological Evaluations

Virtually all inmates who appear at parole hearings have undergone psychological evaluations. Parole commissioners always receive and often review the results of these evaluations carefully.

The two most common types of clinical opinions in our sample are the Axis V Global Assessment of Functioning Scale and the Clinician Generic Risk assessment.[52] The Axis V GAF measures a patient's overall level of psychological, social, and occupational functioning on a 100-point continuum, with higher scores indicating higher functioning. The Clinician Generic Risk, by contrast, assigns inmates a simple risk-of-recidivating score: low, low-moderate, moderate, moderate-high, and high.

CHART 18

Grant Rate by psychological Evaluation Instrument

	DENIED	GRANTED	TOTAL	GRANT RATE
Clinician Generic Risk				
Low	107	42	149	28%
Low-Moderate	50	8	58	14%
Moderate	47	2	49	4%
Moderate-High	12	0	12	0%
High	14	0	14	0%
Axis V-GAF				
0-74	37	0	37	0%
75-84	78	18	96	19%
85-100	66	12	78	15%

Both the Clinician Generic Risk and the Axis V-GAF are significantly correlated with grant rate. This is especially true of the Clinician Generic Risk assessment, which is statistically significant at the .001 level. As Chart 18 indicates, inmates who receive an average score or higher virtually never receive parole release. Similarly, none of the inmates in our sample who received below 75 on the Axis V-GAF enjoyed favorable release outcomes.

These results suggest that the psychological evaluation tools used to assess risk potential and inmate psychological stability play an influential role in the parole process.

Drug Abuse

During parole hearings, commissioners often discuss inmates' records of drug and alcohol abuse at considerable length. A history of drug or alcohol abuse is not correlated with grant rate. What is highly associated with grant rate, however, is whether an inmate is participating in a "twelve-steps" program (that is, Alcoholics Anonymous, Narcotics Anonymous, or some similar program), and whether he or she can correctly answer questions about those steps, which commissioners often ask to test inmates' commitment to drug and alcohol treatment

In total, 159 inmates were asked whether they could identify one or more of the 12 steps. Of the 56 inmates who failed to correctly answer the commissioners' question, only one was paroled. By contrast, 37 of the 141 who correctly responded to commissioners' queries received parole—a grant rate double that of inmates who were not asked about their treatment program.

It therefore appears that commissioners mostly do not discriminate between inmates who have or have not abused drugs or alcohol. For those inmates with substance-abuse problems, however, the ability to demonstrate a commitment to a recovery program is a key component of obtaining parole release.

Conclusion

The foregoing analyses are necessarily preliminary, but they shed important light on how the parole hearing process functions in California. Some results, like the importance of in-prison conduct and psychological evaluations, confirm standard presuppositions about what matters to parole commissioners. Other results, like the irrelevance of age and offense type, are counterintuitive.

As the study proceeds, we will continue to analyze factors that contribute to parole release decisions, with the goal of developing a comprehensive model of parole decisionmaking in California.

FURTHER EMPIRICAL RESEARCH ON THE PAROLE RELEASE PROCESS FOR LIFERS

The Stanford Criminal Justice Center is working on the following other research projects related to lifers and will be issuing subsequent bulletins on a quarterly basis:

THE ROLE OF THE DISTRICT ATTORNEY: One key factor in the course and ultimate outcome of lifers seeking release is the role of the District Attorney. SCJC is currently undertaking an innovative survey consisting of interviews with district attorneys in a broad sample of California counties. The goal of the survey is to determine particular offices' approach to these hearings, including what resources and staff they devote, whom they assign to the hearing, what role the designated District Attorney representatives are expected to play, how they prepare for the hearings, what factors they consider important in opposing release, their role in judicial review, and other information.

THE ROLE OF VICTIM(S): We are currently reviewing the role victims play in the hearing process, including how their rights have expanded since the passage of Marsy's Law, how frequently and in what manner victims participate and whether victim participation has any bearing on Board decision-making. In addition, our research will identify model practices for victim participation used in other jurisdictions.

THE ROLE OF COMMISSIONERS: Given the enormous role commissioners and deputy commissioners play in the parole suitability hearing process, we are investigating the nature of training received by commissioners who preside over suitability hearings; how commissioners prepare for and approach suitability hearings; and the roles assumed by commissioners versus deputy commissioners.

FORENSIC EXAMINATIONS: The governing standard for granting parole is whether the inmate presents a current risk to public safety. The Forensic Assessment Division (FAD) is charged with conducting forensic examinations on lifer inmates prior to their meeting with the Board. We are currently researching the tools and procedures used by the FAD to determine the role the examinations play and the weight they get—and should get—in assessing current and future risk.

JUDICIAL REVIEW OF PAROLE DECISIONS: Given that the majority of decisions made by the Board result in denial and the relatively high reversal rate among Governors, the court serves as an effective and default vehicle for lifers seeking parole release through habeas appeals. Since the 2011 *Swarthout v. Cooke* decision, which virtually precludes federal habeas corpus review, state judicial review offers inmates an opportunity to challenge the decisions of BPH and the Governor.[53] Tracking the number of cases brought before the court and the results of these habeas petitions will help us gain important understanding into the flow of parole release for lifers.

ENDNOTES

1 Under California's Determinate Sentencing Law, most felonies carry a "determinate" prison sentence consisting of a specific number of months or years the offender must serve in prison before s/he can be released. See California Penal Code § 1170. The death sentence can only be imposed for first-degree murder when certain special and aggravating circumstances are charged and proved. For a few very egregious crimes, the sentence may be life without the possibility of parole (LWOP). Individuals serving LWOP sentences can only be released from prison by Governor pardon or commutation. See California Penal Code §§ 4801-4802; 15 California Code of Regulations § 2816. The "lifers" who are the subject of this study are prisoners who have been sentenced to a "life sentence with the possibility of parole." These sentences are also sometimes called "indeterminate" because, by definition, the trial judge cannot pre-determine the exact time the prisoner will be released; that time is subject to the parole process.

Any sentence of life with the possibility of parole has a minimum sentence that must be served before the Board can even consider release. The default rules for the minimum term are established by California Penal Code § 3046: (a) No prisoner imprisoned under a life sentence may be paroled until he or she has served the greater of the following: (1) A term of at least seven calendar years or (2) A term as established pursuant to any other provision of law that establishes a minimum term or minimum period of confinement under a life sentence before eligibility for parole.

For many specific crimes that authorize life sentences, the specific criminal statute expressly includes a minimum prison term that constitutes "any other provision of law" under § 3046 (a) (2). Thus, the punishment for second degree murder is ordinarily "a term of 15 years to life," while first degree murder generally carries "a term of 25 years to life." (California Penal Code § 190 (a)).

Other statutes specifying indeterminate sentences do not mention a minimum term, describing the sentence simply as "imprisonment in the state prison for life with the possibility of parole" or "imprisonment in the state prison for life." In this category are sentencing provisions for attempted premeditated murder (California Penal Code §§ 664(a), 187, 189) as well as aggravated mayhem (California Penal Code § 205), torture (§ 206.1), kidnap for ransom without bodily harm (§ 209, subd. (a)), kidnap for robbery or sexual assault (§ 209, subd. (b)), kidnap during carjacking (§ 209.5, subd. (a)), nonfatal train wrecking (§ 219), attempted murder of peace officer or firefighter (§§ 664, subd. (e), 187), exploding a destructive device with intent to kill (§ 12308), and exploding a destructive device that causes mayhem or great bodily injury (§ 12310, subd. (b)). These statutes would then incorporate the default minimum term of seven years under California Penal Code § 3046(a)(1).

Finally, note that if a person is convicted of a crime carrying an indeterminate term that does not specify a minimum term but is also convicted of a separate crime that does carry a fixed term, that latter term can establish the minimum number of years that must be served before parole eligibility. Thus, the operative minimum term can depend on any of the numerous complex determinate sentencing laws and enhancements. California Penal Code § 1168(b), cross-referenced in § 3040, states: "For any person not sentenced under [a determinate term], but who is sentenced to be imprisoned in the state prison … the court imposing the sentence shall not fix the term or duration of the period of imprisonment."

2 For instance, as comparison to other large systems, lifers (i.e. people serving life sentences with the possibility of parole) comprise nearly three percent of the federal prison population, four percent of the Florida prison population, nearly five percent of the Texas prison populations, 10 percent of the Ohio prison population, and nearly 15 percent of the New York prison population.

3 Because the Three-Strikes law was passed in 1994, the first inmates sentenced under that law will come before the Board of Parole Hearings in 2019 after they have served 25 years of their sentences. See California Penal Code § 667(e)(2): "If a defendant has two or more prior felony convictions …the term for the current felony conviction shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greater of…imprisonment in the state prison for 25 years."

4 Under California Penal Code §§187-189, a person commits first-degree murder when s/he kills with deliberation and premeditation, or otherwise causes death in the course of commuting or attempting to commit one of several enumerated felonies, including arson, rape, sexual assault against a minor, carjacking, robbery, burglary. A person commits second-degree murder if s/he kills intentionally, although without premeditation, or if s/he causes death with "an abandoned and malignant heart," which means that s/he has acted with a conscious disregard for—or indifference to—human life.

5 *Roberts v. Duffy*, 140 P.260 (Cal. 1914) at 264.

6 California Penal Code § 5075.

7 California Penal Code § 5075(b). The list of current Commissioners and their biographies is available on the California Department of Corrections and Rehabilitation website at: http://www.cdcr.ca.gov/BOPH/commissioners.html.

8 The minimum qualifications for a Deputy Commissioner include either: (1) two years of experience in the California state service with equivalent responsibility to a Parole Administrator I; (2) three years of experience within the last five in the California Department of Corrections and Rehabilitation or Board of Parole Hearings in an equivalent class to Parole Agent III; (3) three years of experience in the field of administrative or criminal law plus equivalent to graduation from college; or (4) three years of experience in the administrative plus equivalent to graduation from college. Unlike the Commissioners, the list of Deputy Commissioners is not made public.

9 California Penal Code §§ 5075.5, 5075.6(b)(2).

10 California Penal Code § 5075.6(b)(1).

11 California Penal Law Code §§ 3041.5, 3041.7.

12 California Penal Law Code § 3041.7; 15 California Code of Regulations § 2256.

13 "Board of Parole Hearings "Lifer Attorney Packet' Application for Attorney Appointment Roster Life Parole Consideration Hearings" at page 5. Available at: http://www.cdcr.ca.gov/BOPH/attorney_employment.html

14 California Lifers Newsletter "The Parole Board Hires 'Your' Attorney" Volume 5, Number 6 at 10 (December 2009).

15 California Penal Law Code § 3041.7; 15 California Code of Regulations § 2030.

16 California Penal Law Code § 3043.

17 California Penal Law Code § 3043, as expanded by Proposition 9 or "Marsy's Law" (2008). Also

18 California Penal Law Code § 3041.5(a)(4).

19 15 California Penal Law Code § 3042(a).

20 15 California Penal Law Code § 3042 (f).

21 California Penal Code § 3041(b); 15 California Code of Regulations § 2402(a).

22 15 California Code of Regulations § 2281(d).

23 In particular, the regulations spell out the following factors that should be considered in determining whether the prisoner committed the offense in an "especially heinous, atrocious or cruel manner": "(A) multiple victims were attacked, injured or killed in the same or similar incidents. (B) The offense was carried out in a dispassionate and calculated manner, such as execution-style murder. (C) The victim was abused, defiled or mutilated during or after the offense. (D) The offense was carried out in a manner which demonstrates an exceptionally callous disregard for human suffering. (E) The motive for the crime is inexplicable or very trivial in relationship to the offense." 15 California Code of Regulations § 2281(c)(1).

24 15 California Code of Regulations § 2281(c).

25 California Penal Code §§ 3041.5, 3041, 5011.

26 *In re Powell*, 45 Cal.3d 894 (Cal. 1988) at 904.

27 *In re Rosenkrantz*, 59 P.3d 174 (Cal. 2002) at 222.

28 *In re Lawrence* (44 Cal. 4th 1181 (2008)) and *In Re Shaputis* (44 Cal. 4th 1241 (2008), See W. David Ball, *Heinous, Atrocious, and Cruel: Apprendi, Indeterminate Sentencing, and the Meaning of Punishment*, 109 Colum. L. Rev, 893, 900 (2009).

29 Cal. Const. Article V, Section 8(b). See also California Penal Code § 3041.1.

30 The other states are Louisiana, Maryland and Oklahoma. In 2009, Louisiana allowed offenders sentenced to life on certain heroin offenses to be eligible for parole. All other life sentences are imposed without the possibility of parole. The Governor must approve all parole decisions. Interestingly, the Texas Constitution was amended in 1984 to remove Governor review of parole decisions. See www.tdcj.state.tx.us/bpp/publications/PG%20AR%202010.pdf

31 *In re Rosenkrantz*, supra, 29 Cal.4th at p. 677-79. The factors to be considered in determining parole suitability as set forth in Title 15 of the California Code of Regulations, Section 2402, include "the absence of serious misconduct in prison and participation in institutional activities that indicate an enhanced ability to function within the law upon release are factors that must be considered on an individual basis by the Governor in determining parole suitability. The Governor also must consider any evidence indicating that the prisoner has expressed remorse for his crimes, as well as any evidence demonstrating that "[t]he prisoner has made realistic plans for release or has developed marketable skills that can be put to use upon release." (§ 2402, subd. (d)(8).) .

32 *In re Rosenkrantz*, supra, 29 Cal.4th at page 679.

33 As noted below, the differences between the number of hearings scheduled and conducted in a given year are primarily due to stipulations by the inmate to unsuitability for parole, waivers to the right of a hearing, cancellations by the Board, and postponements by either the inmate or the Board.

34 Prior to 2008, the governing regulation required the inmate to stipulate to unsuitability and waive his/her right to a hearing simultaneously. See 2 California Code of Regulations § 2253(b).

35 California Penal Law Code § 3041.5(b)(3) as amended by Marsy's Law (Proposition 9, 2008).

36 California Penal Law Code § 3041.5(b)(3).

37 The California Court of Appeals recently held that the application of the mandated denial periods enacted pursuant to Marsy's Law to inmates convicted prior to the effective date of Marsy's Law violates ex post facto principles and therefore cannot be applied. *In re Michael Vicks*, No. D056998, slip op. (Calif Ct. App., May 1, 11 2011). The decision is likely to be appealed.

38 California Penal Law Code § 3041.5(b)(4).

39 See Notice and Motion for Preliminary Injunction to Entire Class, *Gilman v. Schwarzenegger*, December 20, 2010

40 A person commits first-degree felony murder if s/he causes a death in the perpetration or attempt to perpetrate robbery, rape, burglary, kidnapping, mayhem, or sexual assault on a minor. A person commits second-degree felony murder if s/he causes death in the course of perpetrating or attempting to perpetrate certain other inherently dangerous felonies, such as providing heroin to a minor, distributing methamphetamine, or discharging a weapon in an inhabited building.

41 Because the individuals whose sentences comprise the mean may be serving terms under varying historical iterations of the California Penal Code that carry different punishments, there may be discrepancies between the punishment proscribed by current California Penal Code and the mean years served.

42 Blacks represent a much higher than their share of the resident population at 6.2 percent, whereas Hispanics comprise 37.6 percent of California's resident population. See U.S. Census Bureau: State and County QuickFacts at: http://quickfacts.census.gov/qfd/states/06000.html

43 This instrument computes the risk to re-offend by using static risk indicators: gender, age, and offense history. See: http://www.cdcr.ca.gov/Regulations/Adult_Operations/docs/NCDR/2010NCR/10-02/CSRA%2012-09.pdf

44 Frase, R. "Punishment purposes" *Stanford Law Review* 58: 67-83.

45 A study of females in Canada found that only 6.3 percent of paroled lifers recidivated. See Bonta, J., B. Pang, and S. Wallace-Capretta 1995 "Predictors of recidivism among incarcerated female offenders" *The Prison Journal* 75: 277-294. Also a study that tracked a group of "Furman inmates" who had their death sentences commuted to life in 1972 found very low recidivism rates for the subset that were eventually paroled (though the sample size – 47 individuals – was very small. See Marquant, J. and J. Sorensen 1988 "Institutional and postrelease behavior of furman-commuted inmates in Texas" *Criminology* 26(4): 677-693.

46 The data does not reflect any new misdemeanors committed or any crimes committed in other states by this cohort.

47 For releasees in FY 2005-6.

48 Sex crimes are somewhat anomalous, with a bimodal distribution: a peak in the teen years, then a drop, and then another rise, but that later rise is in the offender's late 20s.

49 See page 26 of *2010 Adult Institutions Outcome Evaluation Report* (October 11, 2010) at: http://www.cdcr.ca.gov/Adult_Research_Branch/Research_Documents/ARB_FY0506_Outcome_Evaluation_Report.pdf

50 Our sample includes transcripts of suitability hearings conducted before the implementation of Marsy's Law when commissioners could delay hearings for one or two years.

51 Inmates whose immigration statuses are "unknown" are likely U.S. citizens. In the vast majority of parole hearings involving noncitizens, citizenship status is explicitly discussed by the commissioners. In many hearings involving citizens, however, citizenship status is not discussed in the course of the hearing.

52 As of 2008, BPH stopped relying on the Axis V GAF. Risk-assessment tools now used include the PCL-R, HCR-20, LS-CMI, and STATIC-99-R.

53 562 U.S., _, 131 S. Ct. 859 (2011)