DELAYING A SECOND CHANCE:
THE DECLINING PROSPECTS FOR PAROLE ON LIFE SENTENCES

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RESEARCH AND ADVOCACY FOR REFORM

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EXECUTIVE SUMMARY

Amid growing public support for criminal justice reform, policymakers and criminal justice practitioners have begun to scale back prison sentences for low-level, nonviolent crimes. Although the results have been modest—a 5% reduction in the overall U.S. prison population between 2009 and 2015—this shift follows almost four decades of prison expansion. But so far, criminal justice reform has largely excluded people in prison with life sentences. This growing "lifer" population both illustrates and contributes to the persistence of mass incarceration.

Most people serving life sentences were convicted of serious crimes.[1] Their incarceration was intended to protect society and to provide appropriate punishment. But many were sentenced at a time when "life with the possibility of parole" meant a significantly shorter sentence than it has become today. Many remain incarcerated even though they no longer pose a public safety risk.

Researchers have shown that continuing to incarcerate those who have "aged out" of their crime-prone years is ineffective in promoting public safety.[2] Long sentences are also limited in deterring future crimes given that most people do not expect to be apprehended for a crime, are not familiar with relevant legal penalties, or criminally offend with their judgment compromised by substance abuse or mental health problems.[3] Unnecessarily long prison terms are also costly and impede public investments in effective crime prevention, drug treatment, and other rehabilitative programs that produce healthier and safer communities.[4]

Despite this body of criminological evidence, the number of people serving life sentences has more than quadrupled since 1984—a faster rate of growth than the overall prison population.[5] Even between 2008 and 2012, as crime rates fell to historic lows and the total prison population contracted, the number of people serving life sentences grew by 12%. By 2012, one in nine people in U.S. state and federal prisons—nearly 160,000 people—were there under life sentences. Two factors have driven this growth: the increased imposition of life sentences, particularly those that are parole-ineligible,[6] and an increased reluctance to grant parole to the 110,000 lifers who are eligible.

This report documents the growing wait for parole among eligible lifers and identifies four factors producing longer prison terms for this population. The findings draw on a national survey in response to which 31 states and the federal government provided data for available years since 1980.[7] The analyses reveal that a variety of policy choices and practices at the state and federal levels have caused recently paroled lifers to serve longer prison sentences than their counterparts in the past. Specifically, and as elaborated in 32 in-depth jurisdiction profiles:

- In South Carolina, lifers paroled in 2013 had served an average of 27.5 years in prison whereas those paroled in 1980 had served 11.6 years.
- In Missouri, time served among paroled lifers increased steadily from 15.0 years in 1991 to 25.2 years in 2014.
- In eight jurisdictions for which data are available since the 1980s, average time served by lifers with murder convictions nearly doubled from 11.6 years for those paroled in the 1980s to 23.2 years for those paroled between 2000 and 2013.[8]

- In California, death before parole is not an uncommon outcome for lifers. A press spokesman for the corrections department has stated that "most lifers will die in prison before they get out on parole," and state records reveal that more lifers with murder convictions died in prison than were paroled between 2000 and 2011.[9]

Our examination of the 32 jurisdictions for which we were able to obtain data identifies four key drivers of the growth in prison terms for parole-eligible lifers:

1. Legislation:
   Lawmakers in several states have made parole much harder to obtain by delaying when lifers can receive their initial parole consideration and by increasing the wait times for subsequent hearings after parole is denied.

2. Gubernatorial Authority:
   Governors in some states have overhauled the composition of parole boards to appoint members who will reduce parole grants. In a few states, gubernatorial approval is necessary before parole boards can even review cases or for their recommendations to become final.

3. Parole Board Decisions:
   Parole boards now are evaluating lifers who have served longer sentences than their counterparts in the past. Yet despite a general understanding that older parole applicants pose a reduced risk of recidivism, parole boards have not increased, and sometimes have even reduced, their grant rates.

4. Parole Board Procedures:
   Most states afford only limited rights to incarcerated individuals during parole hearings and some recently have further narrowed these rights.

Lifer parole procedures have broad implications. According to the American Law Institute, the most severe penalties serve as an "anchor point," or a benchmark of severity, on which penalties are established for less serious crimes.[10] By placing upward pressure on prison sentences for people with less serious convictions, excessive prison terms for lifers have contributed to a major cause of mass incarceration.

To reduce excessive prison terms, The Sentencing Project has previously recommended that states and the federal government abolish sentences of life without the possibility of parole and limit most prison sentences to a maximum of 20 years.[11] Based on the findings of this report, we make four additional proposals. To reduce excessive sentences for parole-eligible lifers and to give rehabilitated individuals a meaningful opportunity for release from prison—as the Supreme Court now requires for those convicted as juveniles[12]—we recommend that policymakers and parole practitioners:

1. Expedite parole eligibility:
   Reduce the minimum number of years that lifers must serve before their first parole hearing and shorten wait times for subsequent hearings.

2. Depoliticize and professionalize parole boards:
   Distance governors from paroling authorities to enable parole decisions to be based on meaningful assessments of public safety risk.

3. Establish a presumption of release:
   Parole boards should assume that parole candidates are potentially suited for release at the initial, and especially subsequent, parole hearings unless an individual is deemed to pose an unreasonable public safety risk.

4. Improve the integrity of parole hearings:
   Expand the procedural rights of parole applicants, enable parole applicants to review the evidence used to evaluate their eligibility for parole, and allow the public to review decision-making criteria and outcomes.

This report is organized as follows: Section I presents key findings on lifer parole policies, practices, and outcomes across the country based on data provided by state and federal agencies and other organizations. Section II provides an in-depth look at a sample of four states: California, Georgia, Missouri, and New York. These states were chosen based on the size of their lifer populations, the representativeness of their lifer parole procedures and outcomes, geographic distribution, and availability of data. Sections III and IV summarize past research on people serving life sentences and on parole boards, respectively. Section V concludes by recommending reforms to depoliticize the parole process and reverse the excessive growth in prison terms for lifers. The Appendices present details on our methods of data collection and analysis. A supplemental document contains the profiles of all 32 jurisdictions for which we obtained data.

1 Nellis, A. 2013. *Life goes on: The historic rise in life sentences in America.* Retrieved from The Sentencing Project website: http://sentencingproject.org/wp-content/uploads/2015/12/Life-Goes-On.pdf
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5 Mauer, M., King, R., & Young, M. (2004). *The meaning of 'life': Long prison sentences in context.* Retrieved from The Sentencing Project website: http://www.sentencingproject.org/publications/the-meaning-of-life-long-prison-sentences-in-context/; Nellis, 2013.
6 The federal system, Washington, D.C., and the following seven states have entirely eliminated the possibility of parole as part of a life sentence for crimes committed by adults: Florida, Illinois, Iowa, Louisiana, Maine, Pennsylvania, and South Dakota. See Nellis, 2013 and the profiles on Florida and the federal system in this report. On the limitations of parole-eligible life sentences in Indiana, North Carolina, and Virginia, see Alper, M. E. (2016). *By the numbers: Parole release and revocation across 50 states.* Retrieved from the Robina Institute of Criminal Law and Criminal Justice website: https://robinainstitute.umn.edu/publications/numbers-parole-release-and-revocation-across-50-states.
7 The 32 jurisdictions that provided sufficient data to be included in this report are: Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Jersey, New York, North Dakota, Ohio, Oregon, Rhode Island, South Carolina, Texas, Utah, Washington, West Virginia, Wisconsin, Wyoming, and the federal system.
8 The jurisdiction-specific increases in time served for lifers with murder convictions between 1980-1989 and 2000-2013 were: Arkansas (59%), California (80%), Montana (67%), Nebraska (8%), South Carolina (88%), Washington State (215%), Wisconsin (66%), and the federal system (188%). These estimates are based only on the population that was released from prison, and omit the time served by those who were not paroled or who died in prison.
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I. KEY FINDINGS

DECLINING PROSPECTS FOR PAROLE ON LIFE SENTENCES

When former California Superior Court Judge Robert W. Armstrong sentenced Flozelle Woodmore to prison for 15 years to life in 1986 for killing her abusive boyfriend, he "had expected that she would serve 'much less' than 15 years, as was customary for second-degree murders in that era."[1] Yet Woodmore, now deceased, was not released until having served 21 years, after five gubernatorial overrides of the parole board's decision to grant parole—including after her victim's relatives asked for her release.[2]

Also in California, when 16-year old Frederick Summervilles accepted a 15-years-to-life sentence after pleading guilty to second-degree murder in 1982, he expected to serve 7 to 15 years—"15 would be [for] bad behavior."[3] But it took 33 years, and 13 parole hearings, for him to be granted parole. The decision came after a new law required the board to give greater weight to the youth of those convicted as juveniles and to their subsequent maturity.

In a 2002 State Bar survey in Michigan, the majority of judges stated that the possibility of parole was a factor in their sentencing decisions and that they had assumed that parolable lifers would serve no more than 20 years.[4] But in the past decade, Michigan lifers with non-drug convictions have on average served over 30 years before being paroled.[5]

These accounts reflect the dramatically altered landscape of parole-eligible life sentences in recent decades, which now affect over 110,000 individuals nationwide.[6] Many of these people were sentenced at a time when life with the possibility of parole meant a significantly shorter sentence than it has become. Over the years many legislators, governors, and parole boards have toughened lifer parole policies and practices, effectively increasing prison terms for these individuals.

Drawing on a national survey in response to which 31 states and the federal government provided data for available years since 1980, this report documents the growing wait for parole among eligible lifers and identifies the factors producing longer prison terms for this population.

POLITICIZATION OF THE PAROLE PROCESS

Many jurisdictions have enacted a variety of policies and practices that have made parole more elusive for lifers. This study identifies four key mechanisms that have increased sentences for those seeking parole:

1. **Legislatures in several states have delayed when lifers can first appear before parole boards and increased the wait times for subsequent hearings.**

   For example:

   - Georgia has enacted statutory changes since 1995 that delay parole eligibility for lifers convicted of serious violent felonies, known as the "seven deadly sins." Individuals whose crimes predate 1995 became parole-eligible after serving seven years while those convicted of the same crimes after 2006 only become parole-eligible after serving 30 years.
   - Missouri overhauled its sentencing laws in 1994 to require lifers convicted of a "dangerous felony" to wait 23 years for their first parole hearing—10 years longer than under the previous law.
   - Michigan lawmakers increased the waiting period for subsequent parole hearings from two to five years since 1993.

2. **Governors in some states have overhauled the composition of parole boards to reduce parole grants. In a few states, gubernatorial approval is necessary before parole boards can even review cases or for their recommendations to become final.**

For example:

- Massachusetts's recent Gov. Deval Patrick revamped the state's parole board and its procedures, thereby significantly reducing parole grants following a high-profile killing of a police officer in December 2010 and a *Boston Globe* analysis of parolee recidivism rates.[7]
- New York's former parole board chairman and commissioner, Robert Dennison, described the political pressure faced by parole board members: "If you let someone out and it's going to draw media attention, you're not going to be re-appointed."[8]
- Maryland's former Gov. Parris Glendening initiated a policy of uniformly denying all lifer parole grants from the state's parole board following a high-profile murder in 1993. The three governors in office between 1996 and 2014—Glendening, Robert Ehrlich, and Martin O'Malley—rejected all of the Parole Commission's parole recommendations and commuted only a handful of recommended cases. Glendening has since publicly expressed regret about his approach.[9]
- California governors reversed or modified over 75% of the parole board's grant decisions between 1999 and 2011. Current Gov. Jerry Brown has changed course and altered 19% of the board's decisions by 2013.
- Arkansas and Wyoming governors must first commute parole-eligible life sentences before parole boards can evaluate parole eligibility.

3. **Parole boards now are evaluating lifers who have served longer sentences than their counterparts in the past. Yet despite a general understanding that older parole applicants pose a reduced risk of recidivism, parole boards have not increased, and sometimes have even reduced, their grant rates.**

For example:

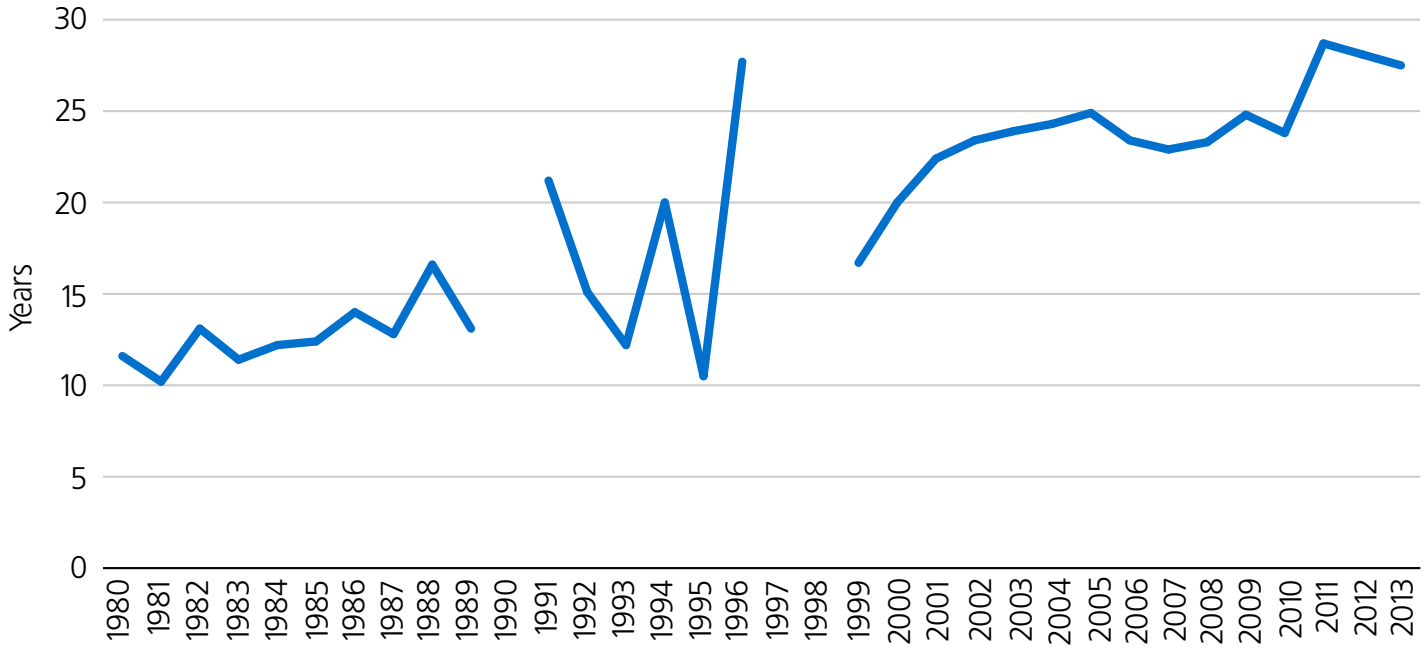
- Missouri's parole board granted parole in 18% of lifer parole hearings between 1991 and 1994. This rate dropped to 7% between 1995 and 2004 and returned to 16% between 2005 and 2013. Indeed, lifers convicted of a "dangerous felony" after the passage of the state's "truth-in-sentencing" law in 1994 have been excluded from these parole considerations because their time-served requirements have not been met.
- Minnesota's parole board has granted parole in 11% of lifer parole hearings between 1990 and 2013, even though legislative changes have excluded some lifers with more serious convictions from these hearings.

4. **Most states afford only limited rights to incarcerated individuals during parole hearings and some have recently further narrowed these rights.**

For example, while nearly all parole boards offer victims the opportunity to provide input through in-person interviews, few guarantee this opportunity to parole candidates.[10] More specifically:

- Wyoming, South Carolina, and Minnesota only allow lifers to participate in their hearings via tele-conference or video.
- Florida's life-sentenced individuals may not be present at their parole hearings but their legal representative and family or friends may attend.
- Kentucky and New Mexico prohibit parole applicants from being represented by legal counsel at parole hearings. States that allow it for those who can afford attorneys often impose restrictions such as limiting input to written statements in lieu of personal appearances.[11]
- In some states, parole applicants are not permitted to review the files that boards use to arrive at their decisions and parole boards are not required to provide a written reason for parole denial even to the applicant.[12]

Figure 1. Time Served for Paroled Lifers in South Carolina, 1980-2013



Note: No lifers were paroled in years that do not show data.

Table 1. Number of Paroled Lifers in South Carolina, 1980-2013

1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
11	3	13	7	5	9	13	4	6	3	0	4	4	3	3	1	1	0	0	1	60	47	22	14	31	24	24	13	6	8	20	8	17	14

Figure 2. Time Served for Paroled Lifers in Missouri, 1991-2014

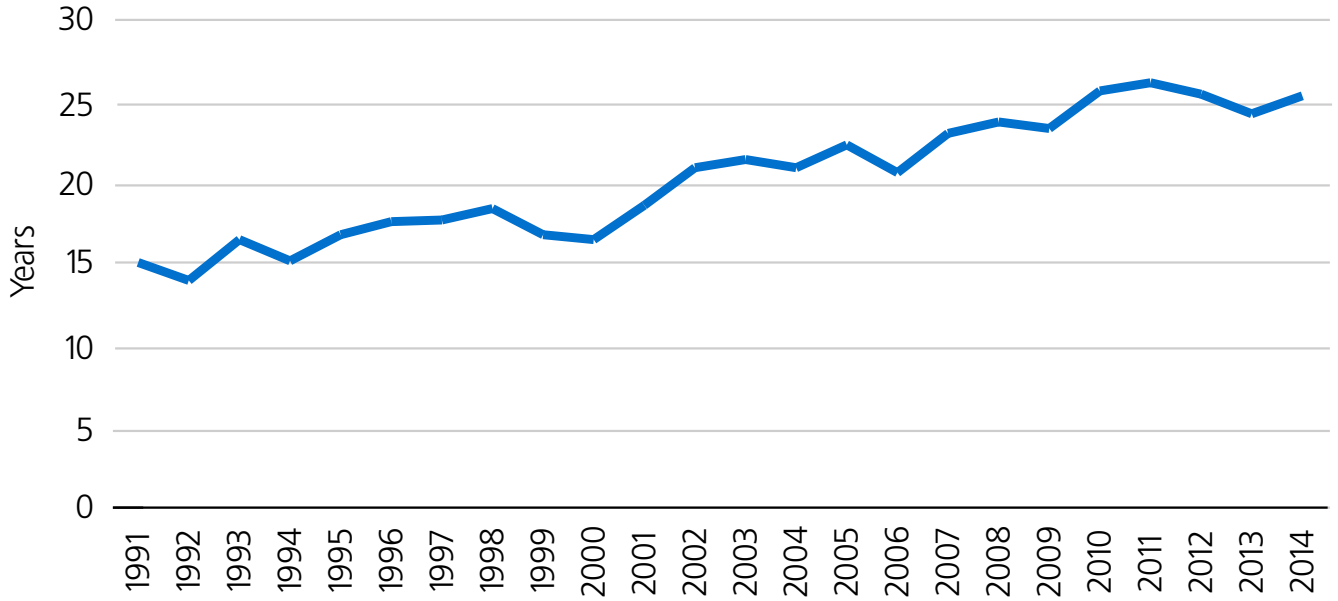


Table 2. Number of Paroled Lifers in Missouri, 1991-2014

1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
22	25	24	16	20	12	9	16	10	5	11	9	16	19	23	16	17	24	26	29	23	31	41	37

LIFER PAROLE OUTCOMES

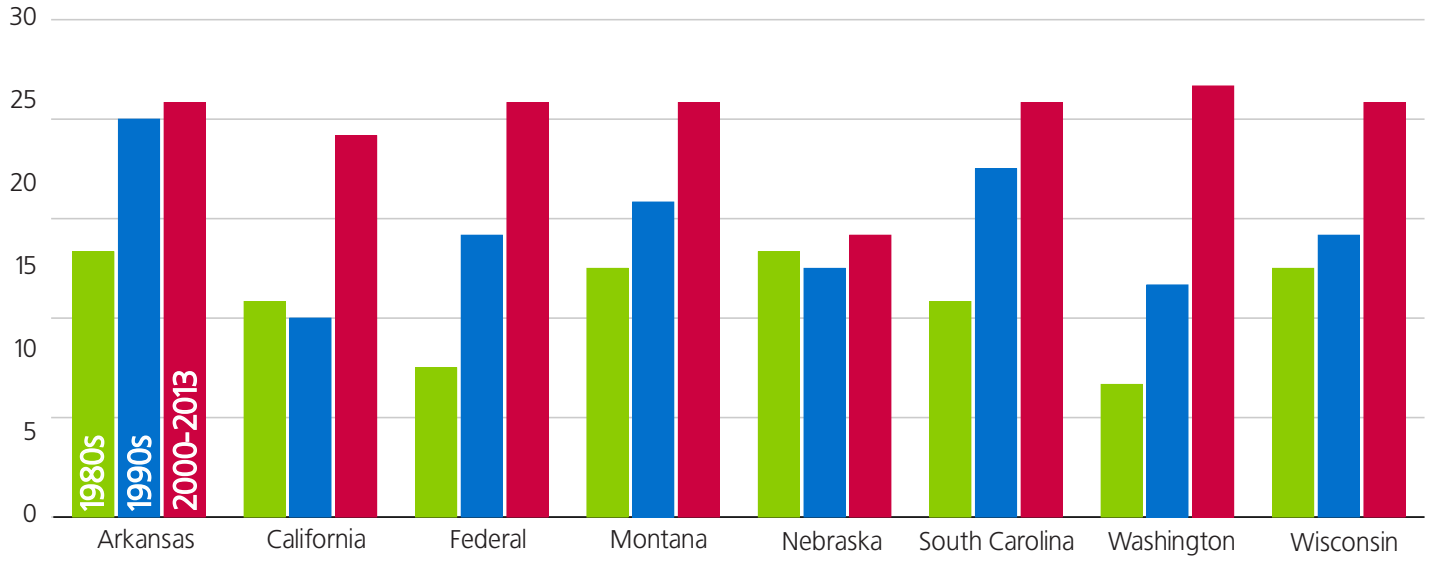
Changes in parole policies and practices have transformed the meaning of a parole-eligible life sentence. Across jurisdictions reporting historical data, recently paroled lifers have served longer prison terms than their counterparts in the past. For example, as illustrated in the charts on the previous page:

- South Carolina lifers paroled in 2013 had served an average of 27.5 years in prison whereas those paroled in 1980 had served 11.6 years.
- In Missouri, time served among paroled lifers increased from 15.0 years in 1991 to 25.2 years in 2014.

These trends are also evident across multiple jurisdictions for lifers with similar conviction offenses, as illustrated in the following chart.

Among eight jurisdictions for which data are available since the 1980s, average time served by lifers with murder convictions gradually increased from 11.6 years for those paroled in the 1980s to 23.2 years for those paroled between 2000 and 2013—nearly doubling across these periods.[13] Note that there is significant variation in the number of paroled individuals across these jurisdictions and time periods.

Figure 3. Time Served for Paroled Lifers with Murder Convictions, 1980-2013



Note: As described in the jurisdiction profiles, not all jurisdictions provided data for all years in the 1980s.

Table 3. Number of Paroled Lifers with Murder Convictions, 1980-2013

	1980-1989	1990-1999	2000-2013
Arkansas	5	2	5
California	359	208	1661
Federal	2	17	105
Montana	8	4	4
Nebraska	19	25	18
South Carolina	67	11	227
Washington	172	125	109
Wisconsin	5	65	93

These estimates exclude individuals who remained incarcerated and those who died awaiting parole. In California, death before parole is not an uncommon outcome for lifers. A press spokesman for the corrections department has stated that "most lifers will die in prison before they get out on parole," and state records reveal that more lifers with murder convictions died in prison than were paroled between 2000 and 2011.[14]

THE POSSIBILITY AND NECESSITY OF REFORM

Two factors have caused the "historic rise in life sentences" in recent years: the increased imposition

of life sentences, particularly those that are parole-ineligible, and an increased reluctance to grant parole to the 110,000 lifers who are eligible.[15] In 1984, 34,000 individuals were serving life sentences—with and without the possibility of parole.[16] This figure doubled by 1992, during a period in which the rate of violent crime rose by 40%.[17] But between 1992 and 2012, the lifer population more than doubled again, reaching nearly 160,000 people, despite violent crime rates falling by 49%.[18]

Prolonged punishment for parole-eligible lifers is not only ineffective; it is counterproductive for promoting public safety. Most people serving life sentences were convicted of serious violent crimes: 64% have homicide convictions and 14% were convicted of aggravated assault, robbery, or kidnapping.[19] Their incarceration was intended to protect society and to provide appropriate punishment for serious crimes. But continuing to incarcerate those who have "aged out" of their crime-prone years produces little public safety benefit. As Alex Piquero and colleagues write, existing studies show that "criminal careers are of a short duration (typically under 10 years), which calls into question many of the long-term sentences that have characterized American penal policy."[20] Researchers have also shown that long sentences are limited in deterring future crimes given that most people do not expect to be apprehended for a crime, are not familiar with relevant legal penalties, or criminally offend with their judgment compromised by substance abuse or mental health problems.[21] As Steven Durlauf and Daniel Nagin explain, "for the general incarceration of aged criminals to be socially efficient, it must have a deterrent effect on younger criminals . . . . Simply no reliable evidence is available that such an effect is sufficiently large to justify the costs of long prison sentences."[22] Unnecessarily long prison terms are also costly and impede public investments in effective crime prevention, drug treatment, and other rehabilitative programs that produce healthier and safer communities.[23]

Curbing excessive imprisonment for parole-eligible lifers is a crucial step toward ending mass incarceration. In 2010, the total prison population began its modest decline, after 37 consecutive years of growth.[24] But contrary to this trend, the tough-on-crime ethos still dominates sentencing for serious and violent offenses, as demonstrated by the continued growth in the lifer population.[25] As experts recognize, the United States cannot end mass incarceration as long as an exclusively punitive approach dominates for individuals convicted of serious and violent offenses.[26]

Ending excessively long sentences for parole-eligible lifers would not only reduce their numbers, it would also help to reduce sentence lengths for other incarcerated individuals. According to the American Law Institute, the most severe penalty serves as an "anchor point," or a benchmark of severity, on which penalties are established for less serious crimes.[27] In addition to abolishing the death penalty and life-without-parole sentences, recalibrating lifer parole is the next step in putting downward pressure on other sentences, thereby helping to undo a major cause of mass incarceration and preserving the human dignity of people being punished.[28]

> Two factors have caused the "historic rise in life sentences" in recent years: the increased imposition of life sentences, particularly those that are parole-ineligible, and an increased reluctance to grant parole to the 110,000 lifers who are eligible.

Some policymakers and criminal justice practitioners have already begun implementing modest reforms to reverse the excessive growth of prison terms for parole-eligible lifers. For example:

- The efforts of advocates and litigators in New York have led the courts, lawmakers, and the governor to seek to redirect the parole board's decisionmaking criteria away from static factors such as criminal history and the seriousness of the crime towards assessments of rehabilitation.
- California legislators have redirected individuals convicted up to the age of 23 to "Youth Offender Parole Hearings" which give greater weight to the impact of their youth at the time of the crime and their potential for change.
- In West Virginia, lawmakers have required the parole board to create new youth-specific criteria for parole eligibility.

To effectively curb the excessive growth of time served for parole-eligible lifers, policymakers and criminal justice practitioners will need to accelerate and expand on these efforts. This report concludes by making four recommendations. These proposed reforms would reinvigorate and reaffirm the work of corrections departments, recognize the rehabilitation and dignity of incarcerated individuals, and enable more effective public safety investments.

The following section provides an in-depth look at lifer parole policies, practices, and outcomes in four illustrative jurisdictions: California, Georgia, Missouri, and New York. Chosen based on the size of their lifer populations, geographic variation, and availability of data, these profiles demonstrate several of the key findings of this report. A supplemental document contains the profiles of all 32 jurisdictions for which we obtained data.

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15 Nellis, 2013; The federal system, Washington, D.C., and the following seven states have eliminated the possibility of parole as part of a life sentence for crimes committed by adults: Florida, Illinois, Iowa, Louisiana, Maine, Pennsylvania, and South Dakota. On the limitations of parole-eligible life sentences in Indiana, North Carolina, and Virginia, see Alper, M. E. (2016). *By the numbers: Parole release and revocation across 50 states.* Retrieved from Robina Institute of Criminal Law and Criminal Justice website: https://robinainstitute.umn.edu/publications/numbers-parole-release-and-revocation-across-50-states. See Nellis, 2013 and the profiles on Florida and the federal system in this report.
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20 Piquero, A., Hawkins, J., & Kazemian, L. (2012). Criminal career patterns. In R. Loeber & D. P. Farrington (Eds.), *From Juvenile Delinquency to Adult Crime: Criminal Careers, Justice Policy, and Prevention* (pp. 14–46). New York, NY: Oxford University Press, p. 40.
21 See Ghandnoosh, in press). Minimizing the maximum: The case for shortening all prison sentences. In C. Pettus-Davis & M. Epperson (Eds.), *Smart decarceration: Achieving criminal justice transformation in the 21st century.* New York: Oxford University Press.
22 Durlauf, S., & Nagin, D. (2011). Imprisonment and crime: Can both be reduced? *Criminology and Public Policy,* 10(1), 13–54, p. 38.
23 See Ghandnoosh, in press.
24 Mauer, M., & Ghandnoosh, N. (2013, December 20). Can we wait 88 years to end mass incarceration? *The Huffington Post.*
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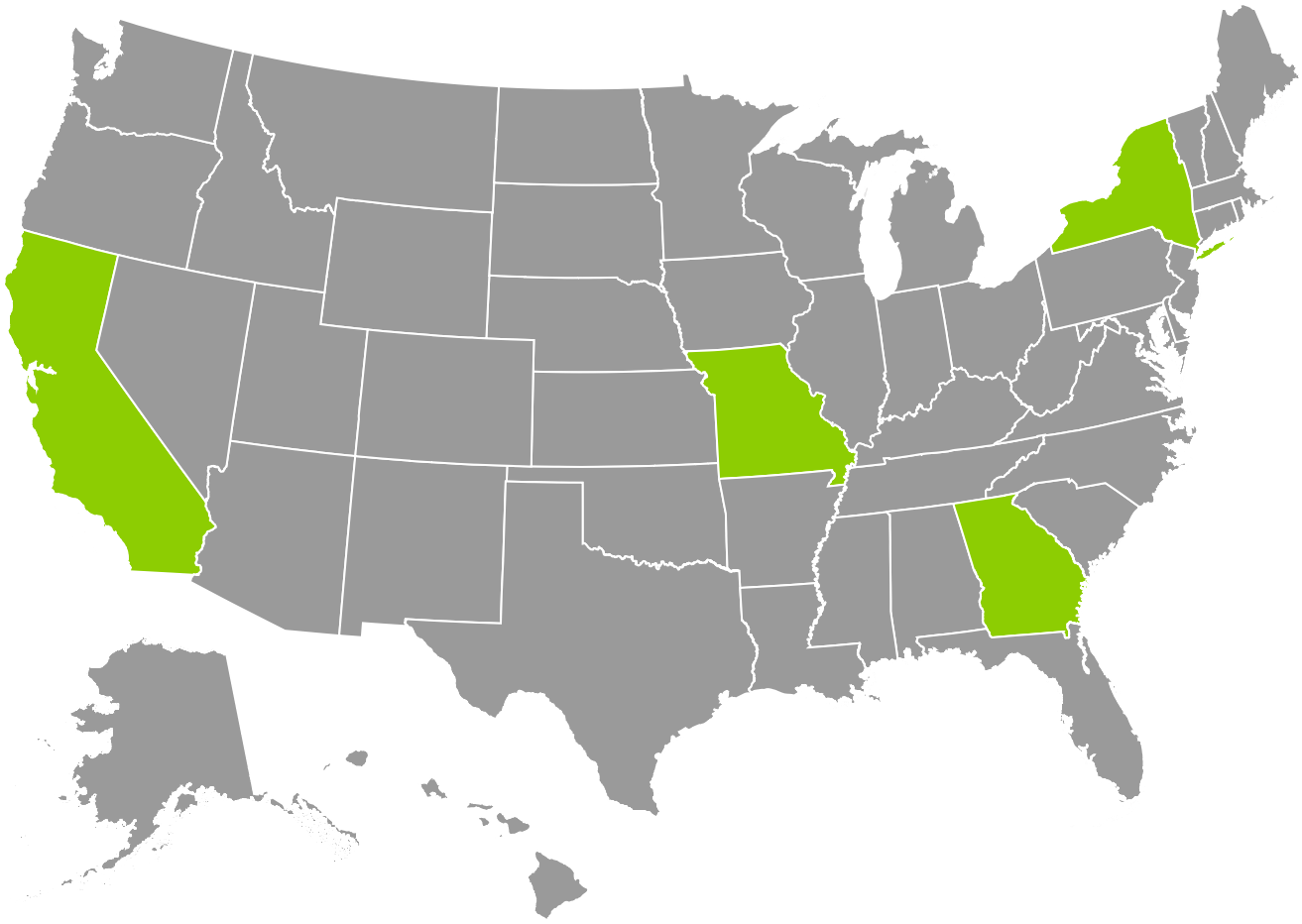
26 Mauer, M., & Cole, D. (2015, May 23). How to lock up fewer people. *The New York Times.* Retrieved from http://www.nytimes.com; Pfaff, J. (2015, July 26). For true penal reform, focus on the violent offenders. *The Washington Post.* Retrieved from https://www.washingtonpost.com; *The Economist.* (2015, July 20). The moral failures of America's prison-industrial complex. Retrieved from http://www.economist.com/blogs/democracyinamerica/2015/07/criminal-justice-and-mass-incarceration.
27 American Law Institute (2011). *Model penal code: Sentencing, tentative draft no. 2.,* Retrieved from The American Law Institute website: https://www.ali.org/publications/show/sentencing/#drafts, p. 11.
28 See Simon, J. (2014). *Mass Incarceration on Trial: A Remarkable Court Decision and the Future of Prisons in America.* New York: The New Press.

II. FOUR ILLUSTRATIVE JURISDICTION PROFILES: CALIFORNIA, GEORGIA, MISSOURI, AND NEW YORK



California

KEY FINDINGS

- California[1] leads the nation in the size of its parole-eligible lifer population, with over 34,000 individuals in 2013. The state's "three strikes and you're out" law increased the imposition of these sentences while policies such as increased minimum sentences before parole eligibility, gubernatorial review of the parole board's decisions, and increased wait times between hearings have delayed parole.
- Time served for released lifers with murder convictions remained relatively stable between 1984 and 2001, averaging 12.3 years across this period. Average time served then climbed dramatically, reaching 24.3 years for those paroled in 2013. State records reveal that more lifers with murder convictions died in prison than were paroled between 2000 and 2011.
- The parole board's grant rate for lifers increased from 3% to 16% between 2000 and 2009, and increased further to 29% by 2013. While earlier governors during this period reversed or requested reconsideration of between 73% and 98% of parole board grants, Governor Jerry Brown did so for just 19% of the board's decisions by 2013. While the number of hearings conducted climbed during the earlier part of this period, it has declined in recent years.
- The implementation of alternative parole hearings for people convicted under age 18 (later extended to those convicted under age 23) has marginally improved this group's parole prospects.

OVERVIEW AND POLICY HIGHLIGHTS

California has by far the largest parole-eligible lifer population in the United States: 34,070 individuals in 2013.[2] While parole-eligible lifers accounted for 7% of the total US prison population in 2012, they represented one-quarter of California's prison population in that year.[3] (In 2010, before the state began its "Realignment" policy to reduce the number of incarcerated individuals with low-level convictions, parole-eligible lifers represented 20% of the prison population.)[4] Half of these individuals were convicted of homicide, 27% were convicted of aggravated assault, robbery, or kidnapping, 12% of sexual assault, and 11% had property or drug convictions.[5] In addition, a significant number of people in California were serving parole-ineligible life sentences or were on death row.[6]

California leads the country in the size of its lifer population because of policies and practices that have both increased the imposition of this sentence and limited parole. In 1994, California voters approved the "three strikes and you're out" law, whereby people whose third felony conviction (of any type, until 2012's Proposition 36)[7] was preceded by two serious or violent felonies were mandated to serve a 25-years-to-life sentence. None of the "three strikers"—numbering 7,975 individuals in 2013—have so far come up for parole review.[8]

Long before the passage of the three-strikes law, California had begun to restrict parole for lifers. A series of roadblocks erected beginning in 1978 increased the minimum amount of time that these individuals have to serve before becoming eligible for parole (their "minimum eligible parole date," or MEPD).[9] Those convicted of life crimes prior to 1978 had a MEPD of seven years; afterwards, the MEPD for individuals convicted of first-degree murder became 25 years and the MEPD for those convicted of second-degree murder became

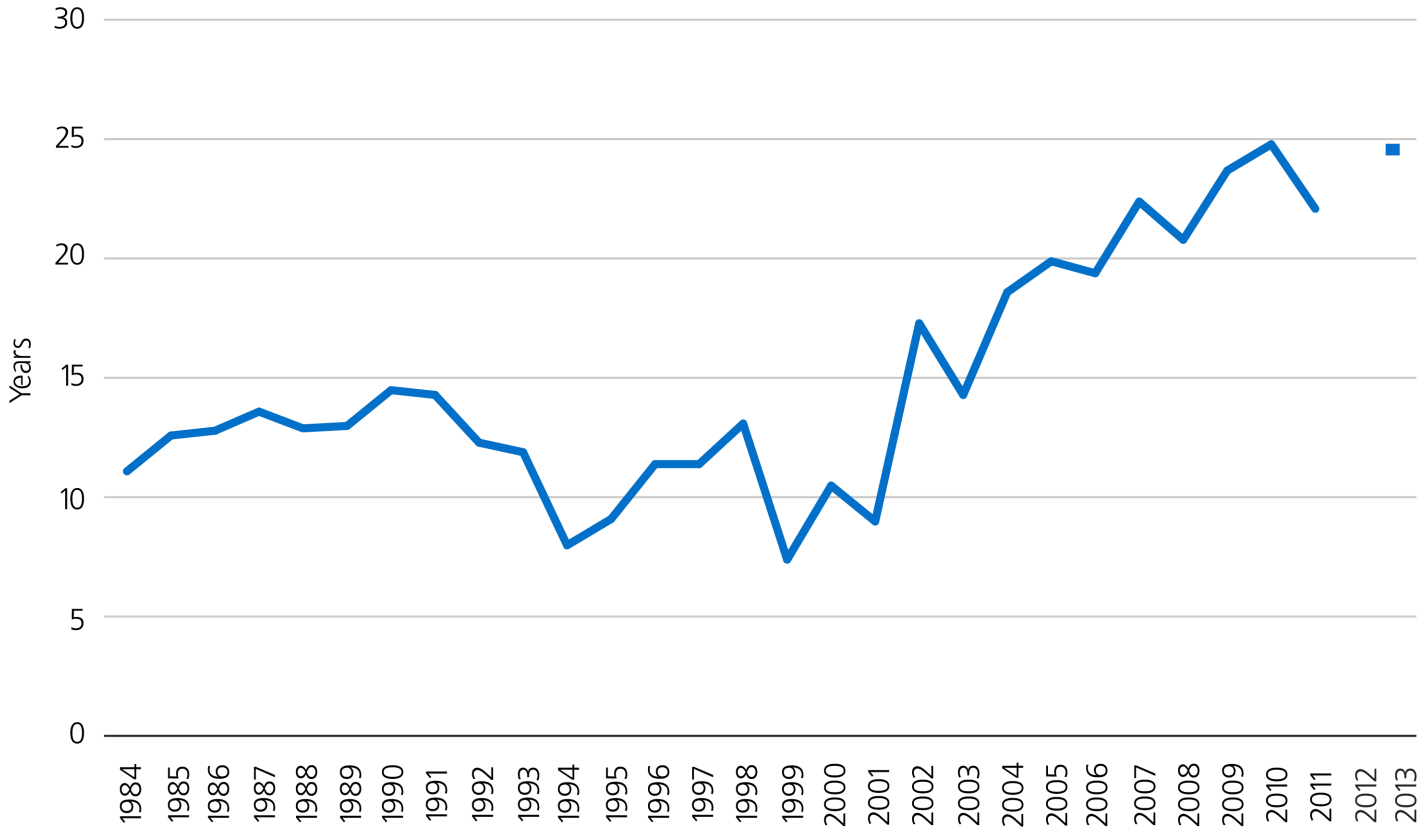
15 years.[10] The MEPD could be reduced by one-third for good behavior for many individuals, but a number of provisions have restricted this relief.[11]

The passage of Proposition 89 in 1988 allowed governors to overturn the parole board's parole grants for lifers convicted of murder and to demand additional review for others, a secondary review process used by only four other states.[12] More recently, Marsy's Law of 2008 (Proposition 9) has increased possible wait times between parole hearings from 1–5 years to 3–15 years.[13] In 2016, the 9th U.S. Circuit Court of Appeals reversed a district court ruling finding that Propositions 9 and 89 violated the *Ex Post Facto* Clause of the U.S. Constitution , which prohibits retroactively increasing prison sentences.[14]

Following *In re Lawrence* and *In re Shaputis* in 2008, parole denials cannot be based on the commitment offense alone, but rather on inadequate "insight" into the crime. Since the implementation of Senate Bill 260 ("SB 260") in 2014, lifers convicted of crimes under the age of 18 are given "Youth Offender Parole Hearings" which give greater weight to the impact of their youth at the time of the crime and to their potential for change.[15] In 2015, Senate Bill 261 extended this reform to those convicted under age 23.

Throughout this period, some incarcerated individuals have successfully challenged parole denials by filing writs of habeas corpus. In 2011, the United States Supreme Court limited the federal courts' ability to provide this relief.[16]

Figure 4. Average Time Served for Paroled Lifers with Murder Convictions in California, 1984-2013



Source: National Corrections Reporting Program

Table 4. Number of Paroled Lifers with Murder Convictions in California, 1984-2013

1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
69	64	53	71	49	53	42	33	17	14	14	13	12	27	21	15	12	14	10	22	70	49	36	49	86	177	261	388	NA	487

Source: National Corrections Reporting Program

NUMBER RELEASED AND TIME SERVED

Between 1984 and 2013, the number of lifers with murder convictions who were paroled has both declined and increased.[17] Between 1984 and 1989, an average of 60 such individuals were released each year. This figure fell to 21 between 1990 and 1999. This annual average number of releases increased to 53 in the 2000s and to 379 between 2010 and 2013.

Average time served for released lifers with murder convictions remained relatively stable in the late 1980s and in the 1990s, then began a dramatic ascent beginning in the early 2000s [18] Specifically, time served for these paroled individuals averaged 12.3 years between 1984 and 2001, then gradually reached double this level by 2013, at 24.3 years.

Given that these estimates are based on the population that is released from prison, they understate the increased punitiveness of the state by omitting the large number of people who died in prison before being paroled. In an interview with Nancy Mullane, a press spokesman for the corrections department stated that "most lifers will die in prison before they get out on parole," and state records reveal that more lifers with murder convictions died in prison than were paroled between 2000 and 2011.[19]

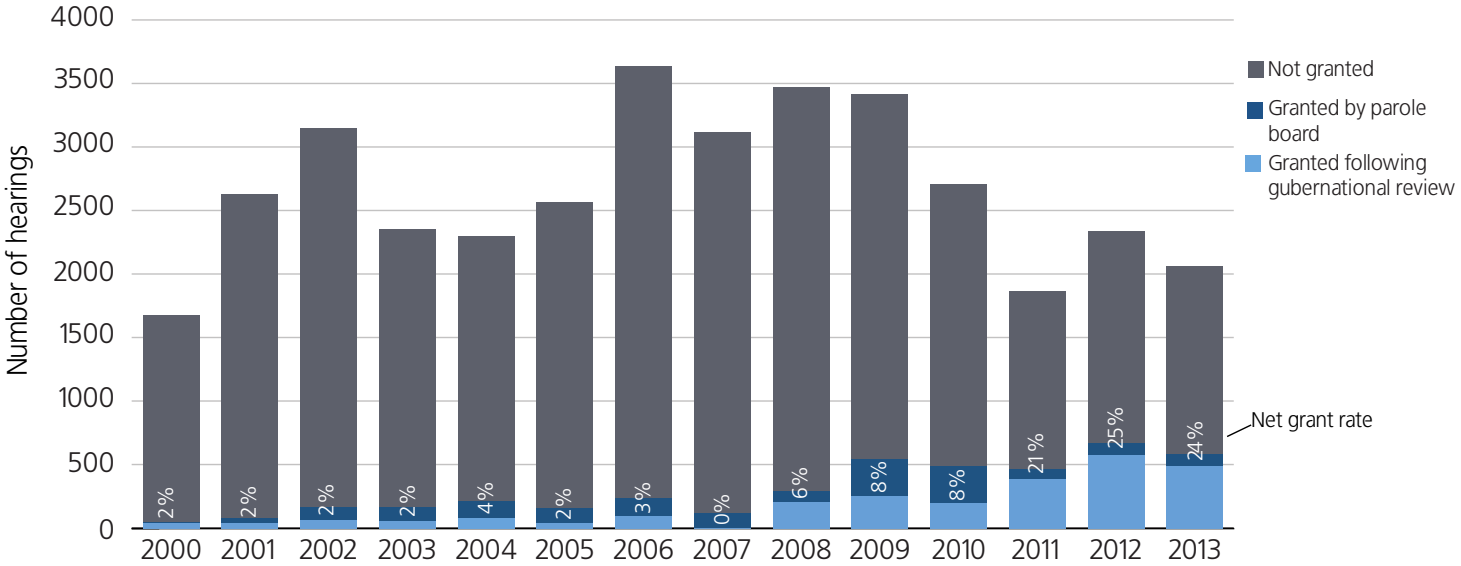
LIFER PAROLE HEARINGS AND GRANT RATES

Due to the limited availability of data, this analysis of lifer parole hearings and grant rates begins in the year 2000. Between 2000 and 2013, the parole board has increased its grant rate and governors—particularly Governor Brown—have reversed or requested reconsideration of fewer of these decisions. But while the number of hearings conducted climbed during the earlier part of this period, it has declined in recent years. The remainder of this section examines these trends in greater detail.

The parole board's grant rate increased from 3% to 16% between 2000 and 2009, and increased further to 29% by 2013. California governors have varied in their use of the power to challenge the parole board's grant decisions. Governor Pete Wilson (1991-1999) reversed or requested en banc reviews (in which the full board reconsiders a panel decision) for 27% of cases in which the parole board had granted parole;[20] Governor Gray Davis (1999-2003) did so for 98% of cases; Governor Arnold Schwarzenegger's (2003-2011) rate was 73%, and; Governor Jerry Brown's (2011-present) rate has been the lowest, at 19% by 2013.[21]

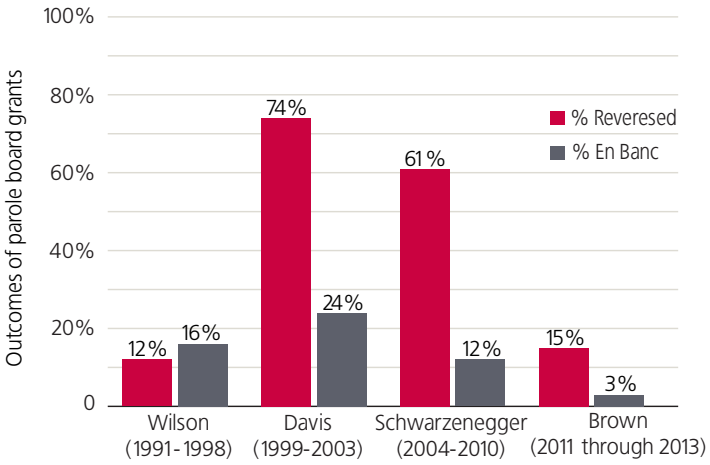
Although in recent years the parole board has increased its grant rate and the current governor has left the

Figure 5. Number of Lifer Parole Hearings Conducted and Grant Rates in California, 2000-2013



Sources: California Department of Corrections and Rehabilitation Suitability Hearing Summary, CY 1978 through CY 2012 and Lifer Prisoner Parole Consideration Hearing and Decision Information For Calendar Years 2009-2013; Office of Governor Edmund G. Brown Jr. (via Paul Elias of the Associated Press); Thomas Master provided the count of conducted hearings for years 2000-2008.

Figure 6. California Governor Rates of Parole Grant Reversals and En Banc Reviews, 1991-2013

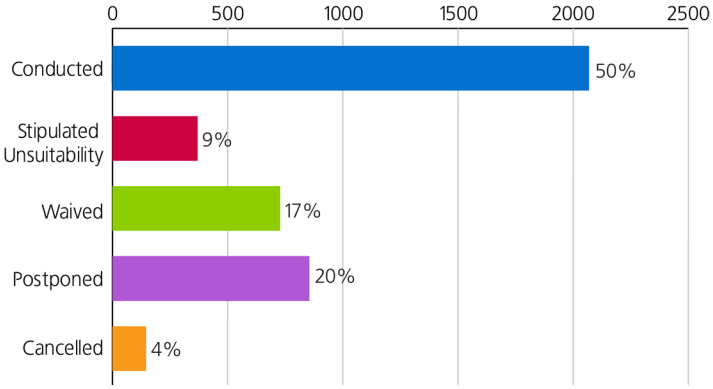


Note: Periods listed above are years of data that do not fully overlap with years in office
Source: Office of Governor Edmund G. Brown Jr. (via Paul Elias of the Associated Press)

majority of these decisions intact, the number of conducted hearings has been falling. The annual number of conducted hearings grew from 1,680 in 2000 to 3,640 in 2006, and then gradually fell to 2,069 in 2013.[22] The recent decline stems in part from: 1) a decline in the number of scheduled hearings; and 2) a decline in the proportion of scheduled hearings that are conducted. Marsy's Law of 2008, a victim's bill of rights statute passed at referendum, increased wait times between parole hearings and thus may be contributing to both of these trends:

- The number of scheduled hearings declined from 7,121 in 2009 to 4,171 in 2013. All else equal, an increase in the wait time between hearings reduces the number of scheduled hearings. One analysis found that the average wait until subsequent hearings more than doubled from 2.0 years in 2007 to 4.6 years in 2009.[23]
- Although most scheduled lifer parole hearings were conducted during the 1980s and 1990s, since 2000, a growing proportion of lifers have opted out of their hearings potentially to avoid a long wait for a subsequent hearing if they are denied parole.[24] In 2000, 78% of 2,164 scheduled hearings were conducted.[25] In 2013, the board conducted just 50% of its 4,171 scheduled hearings.[26] Twenty percent of scheduled hearings were postponed by either the parole board or the life-sentenced individual. In addition, lifers voluntarily waived 17% of hearings and stipulated their unsuitability for parole in 9% of scheduled hearings. Robert Weisberg and colleagues note that a key factor contributing to the growing decline in the proportion of scheduled hearings that are conducted "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."[27] Marsy's Law is one such disincentive.

Figure 7. Outcomes of Scheduled Parole Hearings in California, 2013



Total number of hearings: 4,171

JUVENILE LIFERS

Beth Caldwell's study of the 2014 reform diverting lifers convicted of crimes under age 18 to Youth Offender Parole Hearings found that at first the new policy "created at least marginally more meaningful opportunities for release."[28] The 109 individuals who had such hearings in the first six months of the year had served an average of 24.7 years in prison. Although the majority of these hearings resulted in denials, the 43% grant rate was higher than for hearings of those convicted as adults. The governor overturned 24% of these grants.

Those convicted under age 18 continued to have a higher parole grant rate than those convicted as adults for the first eleven months of 2014, but this trend reversed the following year. In the first four months of 2015, the parole board granted parole to youth offenders at a lower rate than it did to their adult-convicted counterparts. This may be partly attributable to the changing characteristics of youth offenders who had parole hearings during these periods.[29]

1 All California data presented here were either publicly available or retrieved from researchers, attorneys, or reporters, as specified. We did not undergo the requisite institutional review board process to directly receive data from the California Department of Corrections and Rehabilitation.
2 New York ranks second, with just under 10,000 people serving parole-eligible life sentences. California Department of Corrections and Rehabilitation Offender Information Services Branch. (2013, September). *Prison census data as of June 30, 2013* (Reference No. CENSUS1). Retrieved from http://www.cdcr.ca.gov/reports_research/offender_information_services_branch/Annual/Census/CENSUSd1306.pdf; Nellis, A. (2013). *Life goes on: The historic rise in life sentences in America.* Washington, DC: The Sentencing Project. Retrieved from: http://sentencingproject.org/wp-content/uploads/2015/12/Life-Goes-On.pdf
3 Nellis, 2013. In 2010, before Realignment reduced the number of people imprisoned with lower-level convictions, these lifers represented 20% of the state's total prison population. See: California Department of Corrections and Rehabilitation Offender Information Services Branch. (2011, February). *Prison census data as of December 31, 2010* (Reference No. CENSUS1). Retrieved from http://www.cdcr.ca.gov/reports_research/offender_information_services_branch/Annual/Census/CENSUSd1012.pdf
4 California Department of Corrections and Rehabilitation Offender Information Services Branch. (2011, February). *Prison census data as of December 31, 2010* (Reference No. CENSUS1). Retrieved from http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Annual/Census/CENSUSd1012.pdf.
5 Nellis, 2013.
6 California Department of Corrections and Rehabilitation Offender Information Services Branch, 2013
7 *Progress report: Three strikes reform (Proposition 36)*. (2013, September). Retrieved from Stanford Law School Three Strikes Project & NAACP Legal Defense and Education Fund website: http://www.naacpldf.org/files/publications/ThreeStrikesReport_v6.pdf
8 Weisberg, R., Mukamal, D. A., & Segall, J. D. (2011, September). *Life in limbo: An examination of parole release for prisoners serving life sentences with the possibility of parole in California*. Retrieved from Stanford Criminal Justice Center website: http://law.stanford.edu/wp-content/uploads/sites/default/files/child-page/164096/doc/slspublic/SCJC_report_Parole_Release_for_Lifers.pdf
9 Prison Law Office. (2016, January). *Life parole suitability information letter*. Retrieved from http://prisonlaw.com/wp-content/uploads/2016/01/LiferCNAJan2016-withHB.pdf
10 Mock, C. R. (2008). Parole suitability determinations in California: Ambiguous, arbitrary and illusory. *Review of Law and Social Justice, 17*(3), 889-918. Retrieved from http://weblaw.usc.edu/why/students/orgs/rlsj/assets/docs/issue_17/03_Mock_macro.pdf
11 Mock, 2008; Prison Law Office. (2016, January). *Life parole suitability information letter*. Retrieved from http://prisonlaw.com/wp-content/uploads/2016/01/LiferCNAJan2016-withHB.pdf
12 The other states are: Louisiana, Maryland, Oklahoma, and Washington. See Weisberg, Mukamal, & Segall, 2011; Washington State Office of the Attorney General. (2013, November 7). *Washington Supreme Court issues 9-0 ruling in parole review case* [Press release]. Retrieved from http://www.atg.wa.gov/news/news-releases/washington-supreme-court-issues-9-0-ruling-parole-review-case (see Wash. Rev. Code Ann. § 9.95.160)
13 California Proposition 9, Marsy's Law (2008). (n.d.). *In Ballotpedia*. Retrieved September 15, 2016, from https://ballotpedia.org/California_Proposition_9,_Marsy%27s_Law_(2008)
14 Walsh, D. (2016, February 22). Appeals court reverses judge's decision invalidating state parole laws. *The Sacramento Bee*, Crime. Retrieved from http://www.sacbee.com/news/local/crime/article61886167.html
15 UnCommon Law. (n.d.). *Frequently asked questions about Senate Bill 260* [Fact sheet]. Retrieved September 15, 2016, from UnCommon Law website: http://uncommonlaw.org/wp-content/uploads/2013/10/13.10.15-Frequently-Asked-Questions-about-SB-260.pdf
16 Swarthout v. Cooke, 562 U.S. (Jan. 24, 2011).
17 Based on data from the National Corrections Reporting Program
18 Based on data from the National Corrections Reporting Program. See also Weisberg, Mukamal, & Segall, 2011
19 Mullane, N. (2012). *Life after murder: Five men in search of redemption*. New York, NY: Public Affairs, p. 147.
20 During these years, the board scheduled an annual average of 1,985 hearings in contrast to the annual average of 4,813 hearings scheduled during subsequent administrations. During Wilson's administration, board granted parole in 1% of *scheduled* parole hearings (data were not available to determine the grant rate for hearings that were *conducted*).
21 Source: Office of Governor Edmund G. Brown Jr. (via Paul Elias of the *Associated Press*). The office did not have any Proposition 89 records from Governor George Deukmejian (1983-1991).
22 Lifer Prisoner Parole Consideration Hearing and Decision Information For Calendar Years 2009-2013; Thomas Master provided the count of conducted hearings for years 2000-2008.
23 Weisberg, Mukamal, & Segall, 2011
24 Weisberg, Mukamal, & Segall, 2011
25 Thomas Master; California Department of Corrections and Rehabilitation Board of Parole Hearings. (2013, April). *Suitability hearing summary: CY 1978 through CY 2012*. Retrieved from http://www.cdcr.ca.gov/BOPH/docs/BPH_Hearing_Results_CY_1978_to_2012.pdf. We consider conducted hearings to be those that resulted in denials, grants, split decisions, or continuances. For definitions of these terms, see: http://www.cdcr.ca.gov/BOPH/pshResults.html.
26 See: California Department of Corrections and Rehabilitation Board of Parole Hearings. (2014, August). *Lifer scheduling and tracking system: Lifer prisoner parole consideration hearing and decision information for the calendar year 2013*. Retrieved from http://www.cdcr.ca.gov/BOPH/docs/LSTS_Workload_CY2013.pdf.
27 Weisberg, Mukamal, & Segall, 2011, p.11
28 Caldwell, B. (2016). Creating meaningful opportunities for release: *Graham, Miller,* and California's youth offender parole hearings. *N.Y.U Review of Law & Social Change, 40*, 245-304, p. 272
29 Caldwell, 2016, p. 273

Georgia

KEY FINDINGS

- Georgia ranks fourth in the nation in the size of its parole-eligible lifer population. Since 1995, the state has enacted statutory changes that delay parole eligibility for lifers convicted of serious violent felonies, gradually increasing the required minimum sentence from seven to 30 years.
- In 2015, time served for paroled lifers with first-degree murder convictions was 27.2 years, slightly above the averages for the two preceding years for which data were provided.
- The state increased the average annual number of lifer parole hearings from about 700 between 2001 and 2008 to about 1,000 between 2010 and 2014. During these periods, the parole grant rate fell from 23% to 19%.

OVERVIEW AND POLICY HIGHLIGHTS

Georgia ranks fourth in the nation in the size of its parole-eligible lifer population, with 7,125 people serving this sentence in 2012—12.7% of the state's prison population.[1] In 2016, 4,852 individuals were serving parole-eligible life sentences for serious violent felonies, also known as the "seven deadly sins": armed robbery, kidnapping, rape, murder, aggravated sodomy, aggravated sexual battery, and aggravated child molestation.[2]

Since 1995, Georgia has enacted statutory changes that delay parole eligibility for lifers convicted of a "seven deadly sin":[3]

- If the crime was committed prior to 1995, the individual is likely eligible for parole after serving seven years.
- If the crime was committed between 1995 and July 1, 2006, the individual is eligible for parole after serving 14 years.
- If the crime was committed on or after July 1, 2006, the individual is eligible for parole after serving 30 years.

In a 1998 press release titled "More Violent-Crime Lifers Die in Prison than Are Paroled," the Georgia State Board of Pardons and Parole stated: "Parole for a life sentence is a rare commodity."[4]

Those who are convicted of a second "seven deadly sin" offense receive mandatory sentences of life without the possibility of parole.[5] A 2008 Department of Corrections report noted (emphasis in original):[6]

Georgia's 'Seven Deadly Sins' law, for those seven crimes, ***is the toughest in the nation***. Not three strikes, but two—and the second strike results in life without possibility of parole.

Figure 8. Time Served for Paroled Lifers with First-Degree Murder Convictions* in Georgia, 2013-2015

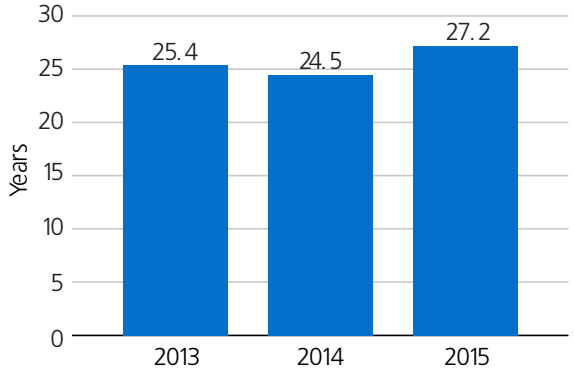


Table 5. Number of Paroled Lifers with First-Degree Murder Convictions* in Georgia, 2013-2015

2013	2014	2015
41	43	65

* "Murder" convictions are distinct from "second-degree murder" convictions in Georgia and are similar to "first-degree murder" convictions in other states.

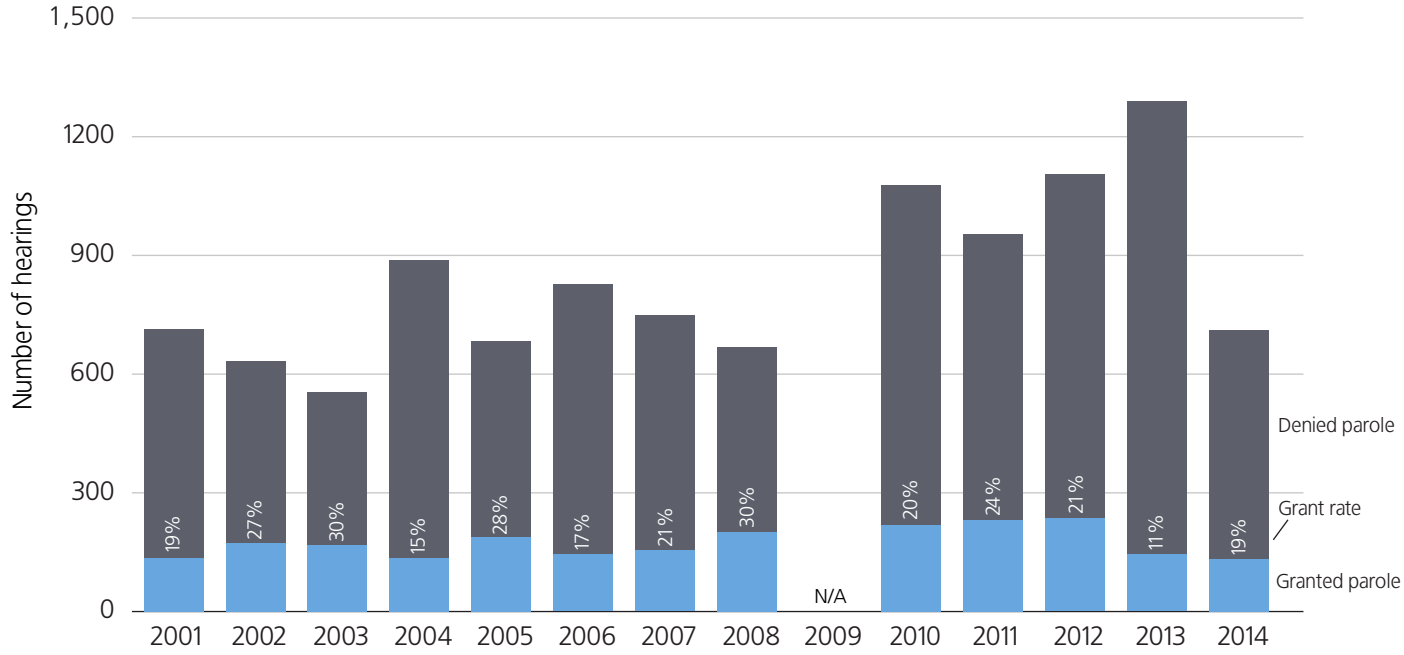
NUMBER PAROLED AND TIME SERVED

In Georgia, the crime of murder is distinct from second-degree murder and is comparable to first-degree murder in other states. Time served for lifers with such murder convictions paroled between 2013 and 2015 has averaged 25.9 years. The annual number of such individuals paroled increased from an average of 42 in 2013 and 2014 to 65 in 2015.

LIFER PAROLE HEARINGS AND GRANT RATES

Since 2001, the number of lifer parole hearings has increased while the grant rate has fallen.[7] Lifer parole hearings increased from an annual average of 714 between 2001 and 2008 to 1,027 between 2010 and 2014 (2009 data were unavailable). Between 2001 and 2008, annual parole grant rates fluctuated considerably between 15% and 30% (averaging 23%). This range has since fallen: between 2010 and 2014, grant rates have been between 11% and 24% (averaging 19%).

Figure 9. Number of Lifer Parole Hearings and Grant Rates in Georgia, 2001-2014



Note: Data not available for 2009

1 Only California, New York, and Texas have larger parole-eligible lifer populations. Nellis, A. (2013). *Life goes on: The historic rise in life sentences in America.* Washington, DC: The Sentencing Project. Retrieved from: http://sentencingproject.org/wp-content/uploads/2015/12/Life-Goes-On.pdf

2 Figure provided by Georgia Department of Corrections; O.C.G.A. § 17-10-6.1.

3 State Board of Pardons and Paroles. (n.d.). *The parole process in Georgia*. Retrieved September 30, 2016, from https://pap.georgia.gov/parole-process-georgia-0; State Board of Pardons and Paroles. (n.d.). *Life sentences.* Retrieved September 30, 2016, from https://pap.georgia.gov/life-sentences

4 News release, Georgia State Board of Pardons and Paroles, "More Violent-Crime Lifers Die in Prison than Are Paroled," June 1, 1998, quoted in Mauer, M., King, R., & Young, M. (2004). *The meaning of 'life': Long prison sentences in context*. Washington, DC: The Sentencing Project. Retrieved from https://www.opensocietyfoundations.org/sites/default/files/lifers.pdf

5 Carr, T. S. (2008, May 14). *"Truth in sentencing" in Georgia*. Retrieved September 30, 2016, from Georgia Department of Corrections website: http://www.dcor.state.ga.us/sites/all/files/pdf/Research/Standing/Truth_in_sentencing.pdf

6 Carr, 2008

7 Number of lifer parole hearings and grant rates were drawn from the annual reports of the Georgia Board of Pardons and Paroles.

Missouri

KEY FINDINGS

- In 1994, Missouri overhauled its sentencing laws to require lifers convicted of a "dangerous felony" to wait 23 years for their first parole hearing—10 years longer than under the previous law. Because none of these individuals had yet become parole-eligible by 2015, this analysis focuses on lifers convicted of violent offenses prior to this date. This includes individuals with first-degree murder convictions predating 1984, when the state abolished parole for this offense.
- Between 1991 and 2014, average time served for all released lifers grew by 68%, from 15.0 to 25.2 years. The growth in time served was even more dramatic for those with murder convictions: 83% for first-degree murder and 106% for second-degree murder.
- The state has increased its number of lifer parole hearings from an average annual of 113 between 1991 and 1999 to 185 between 2000 and 2013. The net parole grant rate has varied over time, averaging 13% during this entire period—this rate excludes the board's reversal of 24% of its initial grant decisions.

OVERVIEW AND POLICY HIGHLIGHTS

The 1,744 individuals serving parole-eligible life sentences in Missouri represented 5.6% of the state's prison population in 2012.[1] In addition, a significant number of people were serving parole-ineligible life sentences.

Individuals convicted of first-degree murder before 1984 could receive sentences of life with the possibility of parole.[2] After 1984, the sentence for that offense became life without parole or the death penalty.[3] Following the passage of SB 590 in 2016, anyone sentenced to life without parole for juvenile convictions before August 28, 2016, may petition for parole after serving 25 years.[4] Juveniles convicted after that date may be sentenced to life without parole, life with parole, or a term between 30 and 40 years; all can petition for resentencing after serving 25 years.[5]

The legislature's passage of a truth-in-sentencing law in 1994, SB763, significantly increased the minimum time that lifers have to serve before becoming eligible for parole. Under the new law, individuals convicted of a "dangerous felony"—arson 1, assault 1, forcible rape, forcible sodomy, kidnapping, murder 2, and robbery 1—would become parole-eligible after serving 85% of their prison term.[6] Lifers serving 85% of their time for a dangerous felony would be required to wait 23 years for their first hearing (and to serve 25.5 years before being released) whereas lifers convicted of violent offenses prior to this law had their first hearings scheduled at 13 years.[7] No lifer sentenced under the new law had been released by 2015.[8]

Missouri allows a select few individuals sentenced to "life with no parole for fifty years" or life without parole to become parole-eligible after serving 15 years.[9] These individuals must satisfy a variety of criteria to be eligible, including having no prior felony convictions and having a history of being victimized. These individuals are excluded from the analyses below, unless they were resentenced to life with the possibility of parole.

NUMBER PAROLED AND TIME SERVED

On average, 20 parole-eligible lifers were released annually between 1991 and 2014. This level fell by half between 1996 and 2002 but has since increased. The average time served for all paroled lifers grew by 68% between 1991 and 2014, from 15.0 years to 25.2 years. The growth in time served has been most dramatic for those with second-degree murder convictions—more than doubling from 11.9 years to 24.6 years during this period. Time served for first-degree murder grew by 83% across these years, from 16.6 years to 30.3 years. Throughout this period, lifers waited an average of 2.2 years to be released from prison after being granted parole.

Figure 10. Time Served for Paroled Lifers in Missouri, 1991-2014

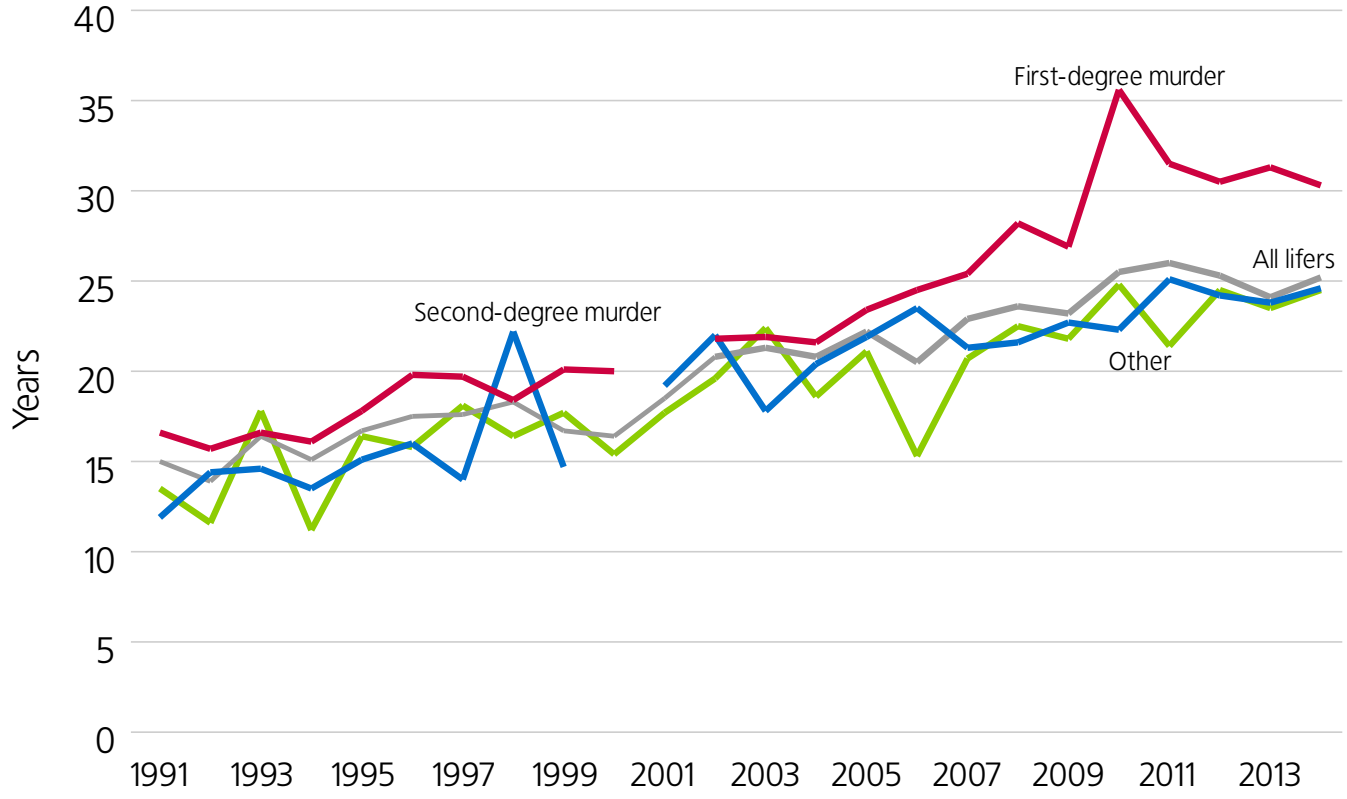


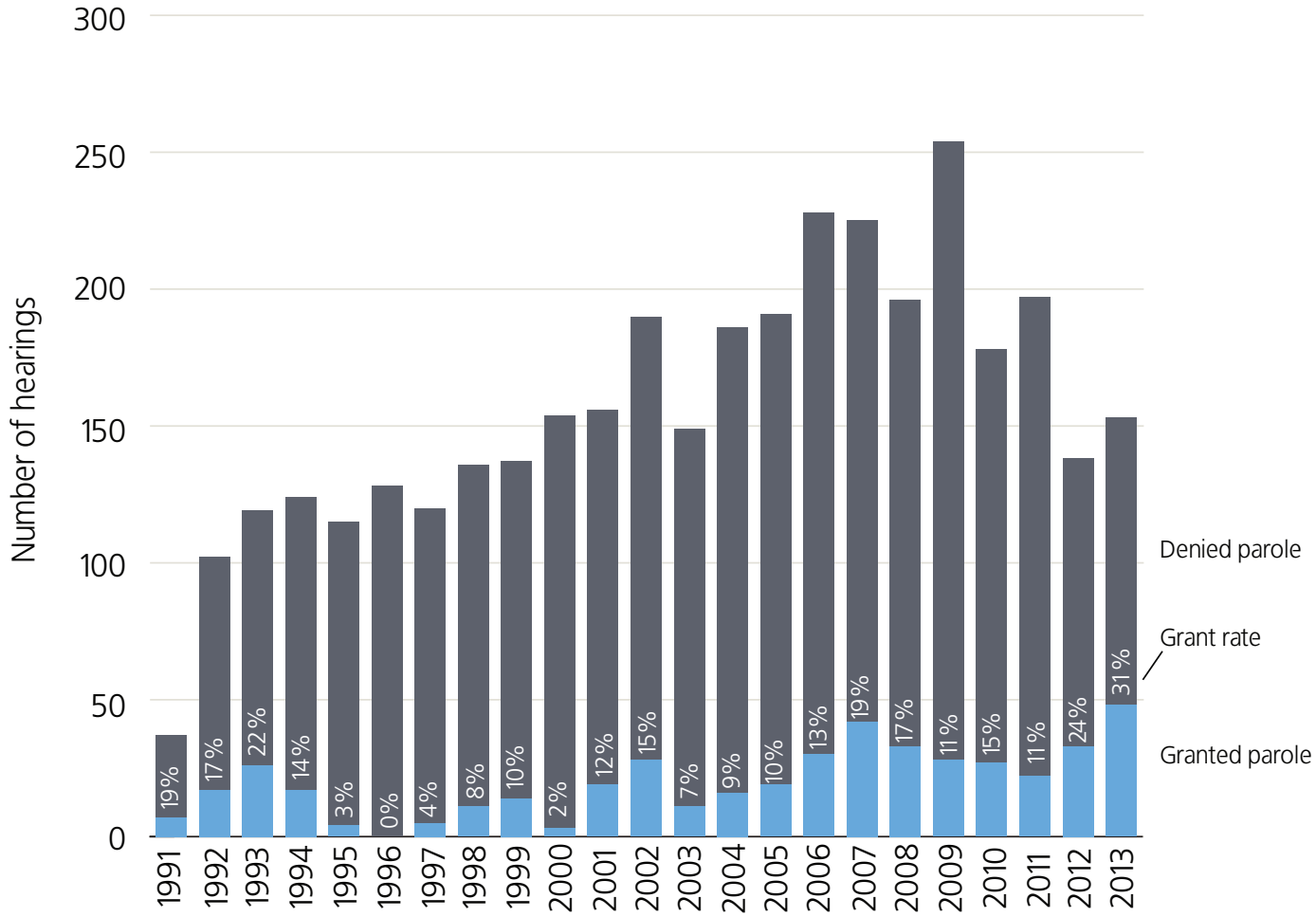
Table 6. Number of Lifers Paroled from Missouri Prisons, 1991-2014

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
First-degree murder	13	8	14	11	9	5	5	10	2	1	0	4	6	10	8	2	7	7	6	6	5	5	2	4
Second-degree murder	5	9	5	4	6	4	3	2	5	0	6	1	3	7	9	8	6	15	8	18	15	18	30	27
Other	4	8	5	1	5	3	1	4	3	4	5	4	7	2	6	6	4	2	12	5	3	8	9	6
All lifers	22	25	24	16	20	12	9	16	10	5	11	9	16	19	23	16	17	24	26	29	23	31	41	37

LIFER PAROLE HEARINGS AND GRANT RATES

One average, 113 lifer parole hearings were conducted annually between 1991 and 1999. This figure increased to 185 between 2000 and 2013. The net parole grant rate, excluding the board's reversal of its initial grant decisions, was 18% between 1991 and 1994; dropped to 7% between 1995 and 2004; and increased to 16% between 2005 and 2013. Of 606 grants between 1991 and 2013, 146 (24%) were reversed by the parole board for reasons including negative behavior during incarceration and the acquisition of a new sentence for an additional crime.

Figure 11. Number of Lifer Parole Hearings and Grant Rates in Missouri, 1991-2013



*Note: These figures exclude individuals sentenced to "life with no parole for fifty years" or life without parole unless they were resentenced to life with the possibility of parole. Grant rate is net of reversals.

1 Nellis, A. (2013). *Life goes on: The historic rise in life sentences in America*. Washington, DC: The Sentencing Project. Retrieved from: http://sentencingproject.org/wp-content/uploads/2015/12/Life-Goes-On.pdf
2 Missouri 79th General Assembly, 1st Regular Session and 1st Extraordinary Session 7-740, p. 720.
3 Missouri 82nd General Assembly, 1st Regular Session 7-980, p. 926.
4 Modifies Provisions Related to First Degree Murder, S. 590, 98th Gen. Assem., 2nd Reg. Sess. (Mo. 2016).
5 Missouri SB 590 (2016).
6 U.S. Department of Justice National Institute of Corrections. (1995, May). *State legislative actions on truth in sentencing: A review of law and legislation in the context of the Violent Crime Control and Law Enforcement Act of 1994* (LIS, Inc., Comp.). Retrieved from http://static.nicic.gov/Library/012259.pdf. People with dangerous felony convictions may also be considered for release when they reach age 70 and have served 40% of their time and elderly individuals in need of full-time care may be eligible for medical parole.
7 Personal correspondence with Missouri Department of Corrections
8 Personal correspondence with Missouri Department of Corrections
9 Mo. Stat. § 217.692

New York

KEY FINDINGS

- New York has the country's second largest population of parole-eligible lifers. Although in 2011 legislators required the parole board to give greater weight to risk assessments in parole decisions—effectively prioritizing rehabilitation over crime severity—the board disregarded these mandates for several years. After state courts repeatedly chastised and twice held the parole board in contempt for failing to follow these legislative reforms, the board proposed new regulations in 2016 in order to comply with the 2011 legislative mandate.
- People currently receiving life sentences for first-degree murder must serve a minimum of 20 to 25 years before parole-eligibility; those convicted of second-degree murder must serve a minimum of 15 years.
- The number of lifers with murder convictions paroled annually has increased substantially from 82 individuals in 2004 to 319 in 2013. During this period, average time served for those released increased from 16.4 to 21.1 years.
- The overall parole grant rate for lifers has stayed around 25% between 2004 and 2013. The annual number of lifer parole hearings has decreased slightly during this period, from 1,822 in 2004 to 1,599 in 2013.

OVERVIEW AND POLICY HIGHLIGHTS

New York has the second-largest population of people serving parole-eligible life sentences in the country. The 9,999 individuals serving this sentence comprised 18.4% of the state's prison population in 2012.[1] In 2013, 68% of life-sentenced individuals in the state had been convicted of second-degree murder.[2]

People convicted of Class A-I violent felonies (such as first-degree crimes of murder, attempted murder, second-degree murder, kidnapping, and arson) must be sentenced to at least life with the possibility of parole. Those convicted of first-degree murder, as well as one category of second-degree murder and some other categories of crimes may, or in some cases must, be sentenced to life without the possibility of parole.[3] New York's parole-eligible lifer population also includes people convicted of non-violent A-I felonies and A-II drug felonies—including some who were not resentenced after reforms to the Rockefeller Drug Laws—as well as other drug offenses and those deemed to be "persistent felony offenders."[4]

Parole-eligible lifers convicted of first-degree murder must serve a minimum of 20 to 25 years before parole-eligibility.[5] Those convicted of specified subdivisions of attempted murder in the first degree or attempted aggravated murder must serve a minimum sentence of 20 to 40 years before parole eligibility, as set by the court. Parole-eligible lifers convicted of other Class A-I violent felonies must serve a minimum of 15 years before becoming eligible for parole. Lifers are not eligible to earn good time allowance and, with the exception of those sentenced under the old Rockefeller Drug Laws, are prohibited from earning merit time.[6]

In 2011, the Legislature enacted a new parole statute requiring the board to:[7]

> establish written procedures for its use in making parole decisions as required by law. Such written procedures shall incorporate risk and needs principles to measure the rehabilitation of persons appearing before the board, the likelihood of success of such persons upon release, and assist members of the state board of parole in determining which inmates may be released to parole supervision.

According to Philip Genty, these changes sought to "shift the primary focus of Parole Board decisionmaking away from the static factors of criminal history and seriousness of the crime, to a more dynamic and nuanced set of risk-assessment 'procedures.'"[8] But the board resisted implementing these reforms. In testimony before the Assembly's Corrections Committee in 2013, the Correctional Association of New York stated that the board "denies parole release, often repeatedly to far too many people, frequently based on the nature of applicants' crimes of conviction or past criminal history while failing to consider people's accomplishments, readiness for reentry, or objective risk."[9] State courts have chastised the board for failing to follow laws guiding parole decisionmaking, and the board has twice been held in contempt of court for ignoring directives to give greater weight to factors other than the underlying offense and to provide its reasoning behind parole denials.[10]

In 2011, the Legislature also directed the parole board to develop and implement a risk assessment instrument.[11] After some delay, the board developed the COMPAS Reentry Risk Assessment Instrument but it has not consistently used the instrument or applied its results to guide its decisions.[12]

With pressure from the courts, advocates, and the Governor, the board proposed new regulations in 2016 to comply with the 2011 statutory requirements.[13] The proposed regulation requires that the parole candidate's risk and needs score guide the board's release decision and that the board provide an explanation when it departs from the risk assessment to deny parole. The regulation would also require the board to consider the reduced culpability and demonstrated maturity of lifers who committed their crimes under age 18.[14]

New York's parole board consists of up to 19 members[15] and is currently composed of fourteen members, all of whom are appointed by the governor and confirmed by the Senate. Members serve a six-year term. Robert Dennison, a former parole board chairman and commissioner, spoke with the media about an unwritten rule: "If you let someone out and it's going to draw media attention, you're not going to be re-appointed."[16] Thomas Grant, another former parole board commissioner who shares this view, has recommended instating a one-term limitation for parole board commissioners to eliminate their incentive to depart from the statute to maintain low parole rates and improve odds of reappointment.[17] In January 2016, nearly all members of the parole board had been appointed or reappointed by Governor Andrew Cuomo.[18]

Figure 12. Time Served for Paroled Lifers with First- Or Second-Degree Homicide Convictions in New York, 2004-2013

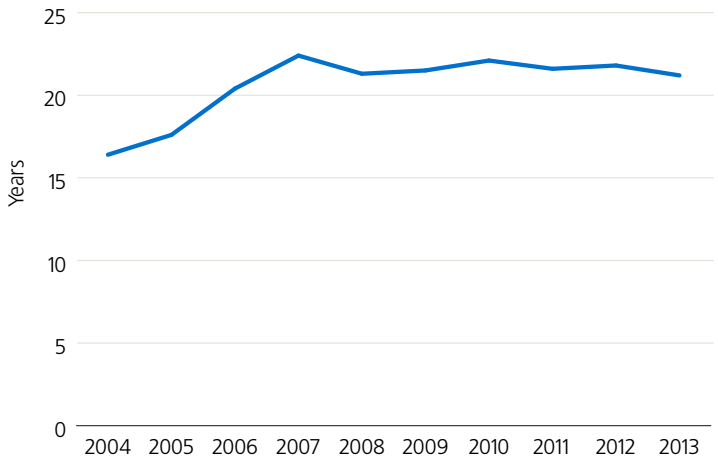


Table 7. Number of Paroled Lifers with First- Or Second-Degree Homicide Convictions in New York, 2004-2013

2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
82	92	146	230	213	215	288	262	336	319

NUMBER PAROLED AND TIME SERVED

The number of lifers paroled annually with first- or second-degree murder convictions quadrupled between 2004 and 2012, increasing from 82 to 336 individuals, and dropped slightly to 319 in 2013. Given that these data begin in 2004, during a gubernatorial administration that was averse to granting parole to people with violent convictions as described in the subsequent section, it is unclear how the more recent elevated levels of releases compare with earlier periods. The backlog created by this reluctance to grant parole likely contributed to the increase in average time served among those who were paroled: from 16.4 years in 2004 to 21.2 years in 2013, hitting a peak of 22.4 years in 2007.

These figures do not reflect the time served by individuals who remain incarcerated or who have died in prison. This group includes John MacKenzie, who was sentenced in 1975 to 25 years to life for killing a police officer after a burglary.[21] Despite evidence of rehabilitation, a notable record of accomplishments, and support letters from prison guards, judges, clergy members, and prosecutors, MacKenzie was denied parole for the tenth time in 2016. Days later, he killed himself in prison. At age 70, he had spent over 40 years incarcerated.

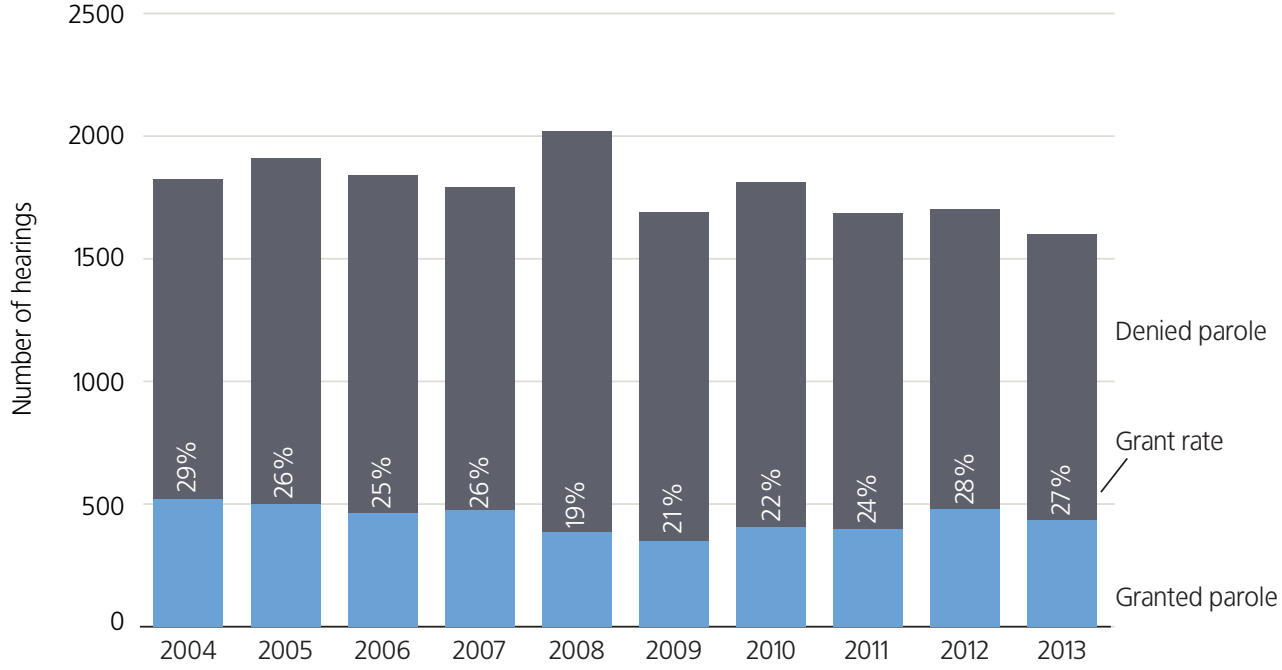
LIFER PAROLE HEARINGS AND GRANT RATES

The annual number of parole hearings for all lifers has decreased slightly between 2004 and 2014. An average of 1,877 hearings were conducted each year between 2004 and 2008. That annual average number of hearings fell to 1,698 between 2009 and 2013. An annual average of 325 scheduled hearings (15%) were postponed (until later that year or a subsequent year), and were therefore omitted from the grant rate calculations below.

The parole grant rate has hovered around 25% between 2004 and 2013, with a drop to 19% in 2008.[19]

Given that these data begin in the final years of Governor George Pataki's administration (January, 1995 – December, 2006), this level of parole grants may represent a significant reduction from earlier years. Governor Pataki's goal was reportedly to "make sure . . . that people convicted of violent crimes serve the longest possible sentences."[20]

Figure 13. Number of Lifer Parole Hearings and Grant Rates in New York, 2004-2013



1 Only California has a larger population of parole-eligible lifers. Nellis, A. (2013). *Life goes on: The historic rise in life sentences in America*. Washington, DC: The Sentencing Project. Retrieved from: http://sentencingproject.org/wp-content/uploads/2015/12/Life-Goes-On.pdf
2 The remaining lifers were convicted of aggravated assault, robbery, or kidnapping (12.7%), property offense (7.3%), first-degree murder (3.6%), other murder (1.5%), sex offense (3.0%), drug offense (1.4%), or other offenses (2.6%).
3 See N. Y. Penal Law § 70.00(5).
4 Correspondence with Alan Rosenthal; See N. Y. Penal Law § 70.00(5); N.Y. Penal Law § 70.40(1).
5 N. Y. Penal Law § 70.00
6 New York Department of Corrections and Community Supervision. (2010, November). *New York State parole handbook: Questions and answers concerning parole release and supervision*. Retrieved from http://www.doccs.ny.gov/Parole_Handbook.html
7 N.Y. Executive Law § 259-c(4)
8 *Hearings before the N.Y.S. Assembly's Standing Committee on Correction,* 2013 Leg. (N.Y.) (testimony of Philip M. Genty, Professor, Columbia Law School.)
9 *Hearings before the N.Y.S. Assembly's Standing Committee on Correction,* 2013 Leg. (N.Y.) (testimony of Scott Paltrowitz, Prison Vision Project.) Retrieved from http://www.correctionalassociation.org/wp-content/uploads/2013/12/CA-Parole-Testimony-12-4-13-Hearing-FINAL.pdf
10 Bedell, B. (2015, June 1). Parole board held in contempt for failure to explain denial. *New York Law Journal*. Retrieved from http://www.newyorklawjournal.com/id=1202727884570/Parole-Board-Held-in-Contempt-for-Failure-to-Explain-Denial?slreturn=20160820120842; Stashenko, J. (2016, June 1). Judge finds parole board in contempt for ignoring order. *New York Law Journal*. Retrieved from http://www.newyorklawjournal.com/this-weeks-news/id=1202758944784/Judge-Finds-Parole-Board-in-Contempt-for-Ignoring-Order?mcode=1202615036097&curindex=38
11 N. Y. Correction Law § 112(4)
12 Correspondence with Alan Rosenthal.
13 Department of Corrections and Community Supervision. (2016, September). *Rule making activities: Parole board decision making* (I.D. No. CCS-39-16-00004-P) (NYS Register). Retrieved from http://docs.dos.ny.gov/info/register/2016/sept28/pdf/rulemaking.pdf
14 Governor Cuomo announces proposal of new regulations to ensure consideration of risk and rehabilitation during parole decisions [Newsgroup post]. (2016, October 18). Retrieved from New York Office of the Governor website: https://www.governor.ny.gov/news/governor-cuomo-announces-proposal-new-regulations-ensure-consideration-risk-and-rehabilitation. For the case motivating this reform, see Hawkins v. DOCCS 140 A.D.3d 34 (3rd Dept. 2016).
15 New York State Corrections and Community Supervision. (2015, June). *Board of Parole* (No. 8600). Retrieved from http://www.doccs.ny.gov/pdf/Board-of-Parole-Directive.pdf
16 Hughes, B. (2014, September 17). Even model NYS inmates face step barriers to parole [Newsgroup post]. Retrieved from http://citylimits.org/2014/09/17/even-model-nys-inmates-face-steep-barriers-to-parole/; see also the history of Kathy Boudin's release and former commissioners S. Earl Eichelberger and Henri C. Raffalli's remarks: Caher, J. (2016, January 31). Dismantling parole: Parole release rates plunge under Pataki's tough policy. *New York Law Journal*. Retrieved from http://prisonaction.blogspot.com/2006/03/dismantling-parole-john-caher-01-31.html.
17 Schwartzapfel, B. (2015, July 11). How parole boards keep prisoners in the dark and behind bars. *The Washington Post*. Retrieved from https://www.washingtonpost.com/national/the-power-and-politics-of-parole-boards/2015/07/10/49c1844e-1f71-11e5-84d5-eb37ee8eaa61_story.html; Re-thinking Reentry. (2010). "The ones with life after their name": An interview with former New York State Parole Board member, Tom Grant [Blog post]. Retrieved from http://rethinkingreentry.blogspot.com/2010/10/ones-with-life-after-their-name.html
18 The Editorial Board (2016, January 15). Gov. Cuomo's push on justice reform. *New York Times*. Retrieved from http://www.nytimes.com/2016/01/16/opinion/gov-cuomos-push-on-justice-reform.html?_r=0
19 Alan Rosenthal and Patricia Warth estimated that in fiscal year 2009, the parole grant rate for lifers with A-1 violent felonies (of which there were over 9,100 people), was 8% at initial hearings and 13% at subsequent hearings. See Rosenthal, A., & Warth, P. (2011, September). *NYSACDL supports call for parole reform*. Retrieved from Center for Community Alternatives website: http://www.communityalternatives.org/pdf/ATTICUS-ParoleReform.pdf.
20 Caher, 2016
21 The Editorial Board (2016, June 13). A challenge to New York's broken parole board. *New York Times*. Retrieved from http://www.nytimes.com/2016/06/13/opinion/a-challenge-to-new-yorks-broken-parole-board.html?_r=1; Wegman, J. (2016, September 6). False hope and a needless death behind bars. *New York Times*. Retrieved from http://www.nytimes.com/2016/09/06/opinion/false-hope-and-a-needless-death-behind-bars.html

III. CHARACTERISTICS OF LIFE-SENTENCED INDIVIDUALS

LIFE-SENTENCED INDIVIDUALS

One in nine people in U.S. prisons face life imprisonment, two-thirds of whom—over 110,000 individuals—are eligible for parole.[1] The lifer population has more than quadrupled in size since 1984.[2] This section begins by describing lifers—when possible, focusing on just those who are parole-eligible. It is followed by an overview of the key characteristics of the parole boards that decide when, if ever, these individuals and others with indeterminate sentences will be released from prison.

CRIME OF CONVICTION

Most people serving life sentences (with and without the possibility of parole) were convicted of serious violent crimes. Nationwide, 64% of lifers were convicted of homicide and another 28% had other violent convictions including rape and robbery.[3] In 2012, over 10,000 people were serving life sentences for nonviolent offenses, with great variation in the representation of such lifers at the state level.[4]

Table 8. National Distribution of Crime of Conviction among Lifers

Crime	% Life-Sentenced
Homicide	64.3%
Aggravated Assault/Robbery/Kidnapping	14.1%
Sexual Assault/Rape	13.7%
Property Offense	4.0%
Drug Offense	2.0%
Other	2.0%

Source: Nellis, A. 2013. "Life Goes On: The Historic Rise in Life Sentences in America." Washington, D.C.: The Sentencing Project.

RACE, GENDER, AND AGE

Data from 2012 show that most of the population serving parole-eligible life sentences are people of color. 43% are African American, 34% are white, 17% are Hispanic, and 7% are identified as "other."[5] Men account for 97% of the parole-eligible lifer population. Among both men and women serving parole-eligible life sentences, 7% were under the age of 18 at the time of their crime.

> Researchers have shown that many of these individuals experienced extreme hardship before their incarceration.

Researchers have shown that many of these individuals experienced extreme hardship before their incarceration. A survey of incarcerated people sentenced to life without parole for crimes committed as juveniles revealed high rates of socioeconomic disadvantage, high levels of exposure to violence in their homes and communities, and high rates of physical and sexual abuse.[6] Among women serving life sentences for crimes in their youth, over four-fifths report having been sexually or physically abused.[7]

LOCATION

In 2012, the federal government and all states except Alaska and South Dakota held people serving parole-eligible life sentences in their prisons.[8] Individuals

serving this sentence made up 0.004% of Pennsylvania's prison population on the low end—a state where parole-ineligible lifers comprised 10% of the prison population. At the high end, parole-eligible lifers accounted for 28% of Utah's prison population—due to the state's heavy reliance on indeterminate sentencing for people with sex offense convictions. Nationwide, seven percent of people in prison were serving parole-eligible life sentences in 2012.

RECIDIVISM

Paroled lifers have very low recidivism rates, like other older people released from prison after serving long sentences even for serious or violent offenses.[9] For example, former California lifers with murder convictions have a "minuscule" recidivism rate for new crimes: among a group of 860 individuals convicted of murder who were paroled between 1995 and 2011, less than 1% were sentenced to jail or prison for new felonies, and none recidivated for life-term crimes.[10] This compares to the approximately one-in-three rate of re-incarceration for new crimes within three years of release for all formerly imprisoned individuals in California.[11]

1 Nellis, A. (2013). *Life goes on: The historic rise in life sentences in America.*8 Washington, DC: The Sentencing Project. Retrieved from: http://sentencingproject.org/wp-content/uploads/2015/12/Life-Goes-On.pdf
2 Mauer, M., King, R., and Young, M. (2004). The Meaning of 'Life': Long Prison Sentences in Context. Washington, D.C.: The Sentencing Project. Retrieved from: https://www.opensocietyfoundations.org/sites/default/files/lifers.pdf
3 Nellis, 2013.
4 Nellis, 2013. See also: ACLU Foundation. (2013, November). *A living death: Life without parole for nonviolent offenses.* Retrieved from: https://www.aclu.org/files/assets/111813-lwop-complete-report.pdf
5 Nellis, 2013.
6 Nellis, A. (2012, March). *The lives of juvenile lifers: Findings from a national survey.* Retrieved from http://sentencingproject.org/wp-content/uploads/2016/01/The-Lives-of-Juvenile-Lifers.pdf
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Alaska is also unique in not having anyone serving a parole-ineligible life sentence, although 8.9% of its prison population was sentences of fifty years or longer in 2012. See: Nellis, 2013.
9 See: Ghandnoosh, N. (in press). Minimizing the maximum: The case for shortening all prison sentences. In C. Pettus-Davis, & M. Epperson (Eds.), *Smart decarceration: Achieving criminal justice transformation in the 21st century.* New York: Oxford University Press.
10 Weisberg, R., Mukamal, D. A., & Segall, J. D. (2011, September). *Life in limbo: An examination of parole release for prisoners serving life sentences with the possibility of parole in California.* Retrieved from Stanford Criminal Justice Center website: http://law.stanford.edu/wp-content/uploads/sites/default/files/child-page/164096/doc/slspublic/SCJC_report_Parole_Release_for_Lifers.pdf, p. 17.
11 Fischer, R. (2005). *Are California's recidivism rates really the highest in the nation? It depends on what measure of recidivism you use.* Irvine, CA: UC Irvine Center for Evidence-Based Corrections.

IV. CHARACTERISTICS OF PAROLE BOARDS

During the era of mass incarceration, parole boards have been making parole release decisions for a growing number of individuals, even though this group represents a declining proportion of the expanded prison population.[1] This is because while the prison population has grown across all sentence types, the increase in the number of people with indeterminate sentences (whose release requires a discretionary parole decision) has been outpaced by the growth in the number of people with fixed-term sentences (those who have mandatory release dates). This section describes the composition and procedures of parole boards, as well as determinants of hearing outcomes for all parole candidates, of which lifers are one group.

> Parole board membership is typically a function of the state's political process.

BOARD COMPOSITION

Parole boards are typically composed of five or six full-time members and three part-time members.[2] Larger states have more parole board members; in California, for example, there are twelve members—called commissioners—who sit on the board, and parole hearings also include deputy commissioners who are civil servants. In smaller states, parole boards are more likely to be entirely part-time entities; this is the case in Idaho, Montana, New Hampshire, New Mexico, North Dakota, Oklahoma, South Dakota, Vermont, and Wyoming.[3] Parole board membership is typically a function of the state's political process. A 2007 survey conducted by the Association of Paroling Authorities International (APAI) found that governors appoint the members of most parole boards (85%), and membership on most boards (72%) also requires legislative confirmation.[4] A 2015 survey conducted by the Robina Institute, endorsed by the APAI, found similar results. Parole board members typically serve an average term of four to six.[5] Virtually all can be reappointed and most do not face term limits.

The educational and professional background requirements of parole board members vary considerably from state to state. Board members do not necessarily need to have expertise in corrections, or even related fields like criminal justice or social science. In Montana, for instance, the only professional requirement is that one member be a mental health professional. In Wyoming and Idaho, the only statutory requirement for board membership is a limit on the number of members who can be from the same political party.[6]

BOARD PROCEDURES

Parole boards meet regularly throughout the year to conduct hearings and consider who is eligible for release. Parole hearings usually include, or incorporate the results from, a brief interview with the parole candidate that is conducted either in person or via telephone or videoconference:[7]

- Nine of the 45 boards responding to a 2012 survey reported conducting interviews exclusively in-person while eight relied exclusively on videoconference and telephone conference. The remaining boards used a mix of the two methods.
- Alabama and North Carolina reported excluding parole applicants from the parole hearing process, providing them with no direct interaction with the board.

- In Florida, Virginia, and Georgia, parole board employees who do not make the final parole release decision conduct interviews with parole applicants.

Although limited by data constraints, research in this area suggests that parole is granted more frequently to individuals who receive in-person hearings as opposed to hearings via videoconference or telephone.[8] This may be because in-person hearings foster more intimate interactions and improve exchanges of information.

All parole boards around the country give victims opportunities to contribute to hearings, and a smaller number provide this access to other stakeholders such as the district attorney and the parole applicant's family or legal counsel:

- The Robina Institute's survey found that all participating parole boards accepted input from victims through written correspondence and 95% did so through in-person interviews.[9]
- A slightly smaller percentage of boards also allowed input from the parole applicant's family, the district attorney, judge, and law enforcement. Two states—New Mexico and Wyoming—do not consider input from prosecutors in their release decisions.[10]
- Kentucky and New Mexico prohibit parole applicants from being represented by legal counsel at parole hearings and most that allow it for those who can afford attorneys impose restrictions such as limiting input to written statements.[11]

In most states, parole boards weigh this gathered evidence without a formal burden of proof requirement, given that their proceedings are administrative hearings.[12] Several studies have found that victim opposition to parole, in particular, has a strong influence on parole board decision-making, especially when victims appear in person before the parole board.[13] This is despite the fact that victims are unlikely to have had enough contact with the parole applicant to help boards assess risk of future violence, especially in cases resulting in long sentences.[14]

In the APAI survey, over 90% of parole boards reported voting within a panel structure requiring an average of three members to vote on release decisions—four for violent and sex crimes in particular.[15] The Robina Institute's survey found that in eight states, parole releases can be based on the decision of just one board member.[16]

Once their determination has been made, just over half (59%) of parole boards make their reasons for denying parole available to the public.[17] In at least seven states there is no rule or policy requiring the provision of a written reason for parole denial even to the parole applicant. In eleven states parole applicants are not entitled to appeal the parole board's decision.

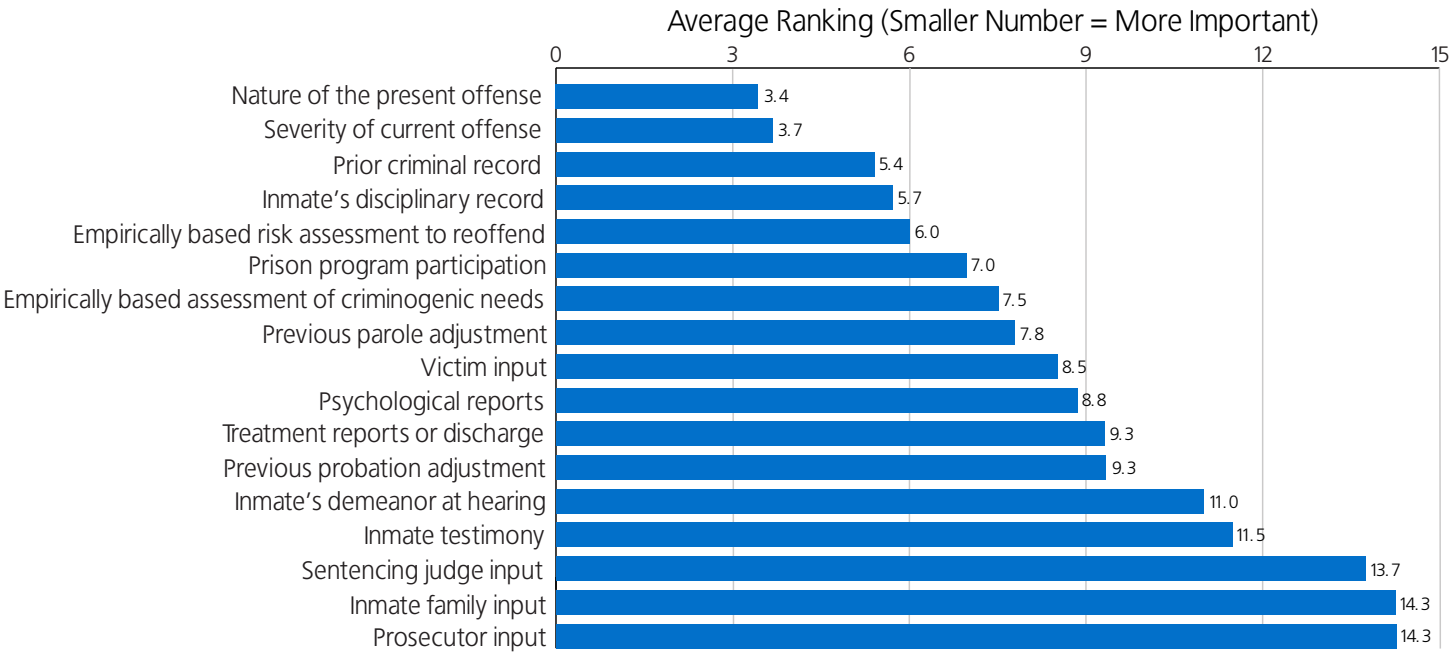
DETERMINANTS OF PAROLE DECISIONS

"In most states today, parole boards have authority to reevaluate any and all aspects of the judge's original sentence, including how much time a prisoner deserves to spend in prison for his or her offense and his or her criminal record."

In states with presumptive parole policies, incarcerated individuals who have completed their minimum sentences and met specified criteria are required to be released unless the parole board has cause to prolong their incarceration. When parole is not presumptive, the individual remains incarcerated until the parole board decides to grant them parole. With about half of the country's parole boards reporting having a presumption of parole for some incarcerated individuals—most often those convicted for property, drug, and public order crimes—these agencies exercise a great deal of discretion, particularly for those with violent convictions.[18] In 2007, the vast majority of boards (90%) reported using decision-making instruments or parole guidelines and by 2015, the same high percentage used risk-assessment instruments.[19] But as Sarah French Russell observes, "many parole boards follow unwritten and unpublished rules on significant matters."[20]

In particular, Edward Rhine and colleagues note that although boards should recognize that the retributive component of a sentence has already been met by the minimum term, "In most states today, parole boards have authority to reevaluate any and all aspects of the judge's original sentence, including how much time a

Figure 14. Releasing Authority Chairs' Ranking of Release Factors in Order of Importance



Source: Ruhland, Rhine, Robey, & Mitchell, 2016

prisoner deserves to spend in prison for his or her offense and his or her criminal record."[21] As described next, research on parole boards' self-reported behavior and on hearing outcomes demonstrates that boards place more emphasis on the static, or immutable, characteristics of parole applicants rather than on dynamic factors that reflect how individuals have transformed during their incarceration.

When asked to rank the significance of 17 factors for parole decisions in 2015, parole board chairs ranked three static factors as the most significant: nature and severity of the offense and prior criminal record. Two dynamic factors—disciplinary record during incarceration and prison program completion—trailed closely behind, as did the empirically based risk assessment to reoffend.

Several studies have confirmed the significance of crime severity[22] and criminal history[23] on parole hearing outcomes in specific jurisdictions. An experimental study conducted in 1999 found that the original conviction offense was the most influential factor in simulated parole decisions in New Jersey, even though the New Jersey Parole Act of 1979 listed this as a factor that is not supposed to influence parole decisions given that it was already incorporated into the minimum sentence.[24]

Studies on the impact of dynamic factors on parole outcomes have produced mixed results. Disciplinary infractions seem to reduce the likelihood of parole.[25] But while some studies suggest that positive behavior in prison (including the number of completed programs and the quality of a reentry plan) improves parole outcomes, others suggest that the relationship is inconclusive.[26]

Incarcerated people in many states also have difficulty meeting rehabilitative expectations of parole boards due to shortages in prison programming. Of the 47 parole boards that responded to the APAI survey questions on in-prison program completion, 44 required program completion as a condition of release, however only two reported having enough programs.[27] According to the responding boards, "delays in program completion" was the most common factor in delaying parole release.[28] Lack of access to prison programs is especially problematic for individuals sentenced to life without parole as juveniles who later gain parole eligibility. Exclusion from programming has been a common experience for these individuals,[29] and yet their lack of program completion may later impede their parole prospects.

Finally, it is important to consider the relevance of race and ethnicity, as well as innocence, on parole hearings. Research on the role of a parole applicant's race on parole board decision-making has yielded mixed results but suggests that race and ethnicity may play a role in parole board decision-making.[30] Claiming innocence diminishes one's chance of parole, even though as Daniel Medwed notes, there is no clear evidence that remorse is related to future risk of offending.[31]

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5 Ruhland, E. L., Rhine, E. E., Robey, J. P., & Mitchell, K. L. (2016). The Continuing Leverage of Releasing Authorities: Findings from a National Survey. Robina Institute. https://robinainstitute.umn.edu/publications/continuing-leverage-releasing-authorities-findings-national-survey.
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14 Rhine, Petersilia, & Reitz, 2015, p. 100.
15 Kinnevy & Caplan, 2008; see also: Ruhland, Rhine, Robey, & Mitchell, 2016.
16 Ruhland, Rhine, Robey, & Mitchell, 2016; Caplan, J. M. (2007). What factors affect parole: A review of empirical research. *Federal Probation (71)*1: 16-19.
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18 Ruhland, Rhine, Robey, & Mitchell, 2016; Kinnevy & Caplan, 2008.
19 Ruhland, Rhine, Robey, & Mitchell, 2016.
20 Russell, 2014, p. 376.
21 Rhine, Petersilia, & Reitz, 2015, p. 98.
22 Turpin-Petrinoso, C. (1999). Are limiting enactments effective? An experimental test of decision making in a presumptive parole state. *Journal of Criminal Justice, 27*(4), 328-329; Tewksbury, R. & Connor, D.R. (2012). Predicting the outcome of parole hearings. *Corrections Today.* June 2012, 55-56; Huebner, B. & Bynum T. (2008). The role of race and ethnicity in parole decisions. *Criminology, 46*(4): 907-938. See also: Morgan & Smith, 2005.
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28 Kinnevy & Caplan, 2008.
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V. RECOMMENDATIONS

During a historic address to Congress in September 2015, Pope Francis reiterated his call for the global abolition of the death penalty. Francis condemns capital punishment because it violates the sanctity of life and the dignity of convicted individuals, and because it fosters a sense of vengeance, rather than justice, among victims.[1] He is similarly opposed to life-without-parole sentences, calling them "a hidden death penalty."[2] Speaking to Congress, Francis noted: "A just and necessary punishment must never exclude the dimension of hope and the goal of rehabilitation."[3] This principle can also be extended to the excessive sentences examined here: Life sentences that unnecessarily delay parole foreclose hope and make rehabilitation irrelevant.

Reducing prison terms for lifers is both possible and necessary. It is possible because despite the severity of their crimes, many lifers have "aged out of" their crime-prone years, making their continued incapacitation ineffective in promoting public safety.[4] Researchers have also shown that long sentences are limited in deterring others from committing crime.[5]

It is necessary to reduce lifers' excessive prison terms because doing so would contribute to the goal of ending mass incarceration and would enable more effective investments to promote public safety. As the American Law Institute has explained, the most severe penalty serves as an "anchor point," or a benchmark of severity, on which sentence lengths for less serious crimes are based.[6] Recalibrating prison terms for lifers would therefore put downward pressure on other sentences, helping to undo a major cause of mass incarceration. The resulting savings could then be invested in effective crime prevention, drug treatment, and other rehabilitative programs that promote healthier and safer communities.[7]

To reduce excessive prison terms, The Sentencing Project has previously recommended that states and the federal government abolish sentences of life without the possibility of parole.[8] Life-without-parole sentences are costly and inhumane, ignoring the possibility of transformative growth. States and the federal government should therefore amend their statutes to make all life sentences parole-eligible.[9]

Based on the findings of this report, we recommend four reforms to address the excessive sentences served by parole-eligible lifers. These proposals draw heavily on a 10-point plan to revitalize discretionary parole release systems by three national experts: Edward Rhine, Joan Petersilia, and Kevin Reitz. Many of these recommendations can be applied to all parole hearings. But they are especially critical for those serving life sentences, given the scale of punishment in these cases. We recommend that states and the federal government:

> "For extremely long sentences, release eligibility should occur no later than 15 years."

1. **Expedite parole eligibility: Reduce the minimum number of years that lifers must serve before their first parole hearing and shorten wait times for subsequent hearings.**

   To empower paroling authorities to release individuals when they no longer pose an unreasonable risk to public safety, state legislatures should allow parole hearings to happen earlier and more often. This requires reducing the statutorily-required waits until initial hearings, which several states have increased since the 1990s. Joining the new Model Penal Code, Rhine, Petersilia, and Reitz propose: "For extremely long sentences, release eligibility should occur no later than 15 years."[10]

Legislatures should also reduce wait times between hearings, which several states have increased in recent decades. As Rhine, Petersilia, and Reitz recommend, subsequent reviews should occur annually, and can be extended to intervals of two years in exceptional circumstances.[11]

These reforms would move states and the federal government closer to a goal recommended by The Sentencing Project: establish an upper sentencing limit of 20 years. This maximum should be used sparingly and could be extended in exceptional circumstances for individuals who pose a persistent risk to public safety.[12]

2. Depoliticize and professionalize parole boards: Distance governors from paroling authorities to enable parole decisions to be based on meaningful assessments of public safety risk.

"The only ground for denial of release should be the board's finding, based on credible evidence, that the prisoner presents an unacceptable risk of reoffending if released," write Rhine, Petersilia, and Reitz, noting that the retributive component of a prison sentence has already been met by the minimum sentence.[13] To re-orient parole decision-making toward meaningful assessments of rehabilitation—based on credible evidence that an individual poses an unreasonable risk to public safety—parole boards should be independent and buffered from public and political pressure.

Members of paroling authorities should be civil servants, rather than governor-appointees, with relevant experience and professional training to enable them to fairly and effectively evaluate parole applicants. The few states that allow governors to reverse the parole board's recommendations or require them to commute sentences before the parole board can review cases should repeal this authority.

3. Establish a presumption of release: Parole boards should assume that parole candidates are potentially suited for release at the initial, and especially subsequent, parole hearings unless an individual is deemed to pose an unreasonable public safety risk.

Parole boards should develop guidelines to inform the decision-making of their members. In particular, to re-orient parole boards towards the goal of assessing rehabilitation, rather than exacting retribution in response to public and political pressure based on the crime of conviction, parole boards should establish a meaningful presumption of parole at the initial hearing. Presumptive parole dates would determine when incarcerated individuals who have completed their minimum sentences and met specified criteria would be required to be released unless the parole board has cause to prolong their incarceration. Parole boards should also heighten the presumption of parole at subsequent parole hearings, and develop processes to monitor compliance and enforce or revise guidelines based on hearing outcomes.[14]

> Parole boards should establish a meaningful presumption of parole at the initial hearing.

The Colorado legislature has established a presumption in favor of granting parole to certain individuals and Citizens Alliance on Prisons and Public Spending has been advocating for this reform in Michigan. In New York, advocates and litigators have led the courts, lawmakers, and the governor to require the parole board to prioritize assessments of rehabilitation, as New Jersey law has required of its parole board since 1979. Finally, the California legislature's creation of "Youth Offender Parole Hearings" for individuals convicted up to the age of 23—comparable to West Virginia's reform—emphasizes the potential for change among those convicted at a young age.

4. Improve the integrity of parole hearings: Expand the procedural rights of parole applicants, enable parole applicants to review the evidence used to evaluate their eligibility for parole, and allow the public to review decision-making criteria and outcomes.

The integrity of parole hearings would be improved by modeling procedural rights on original sentencing hearings, as recommended by Rhine, Petersilia, and Reitz.[15] At a minimum, parole applicants should be able to participate in their hearings in person. They

should also have effective legal counsel. As Rhine and colleagues suggest:[16]

> On principle, all prisoners eligible for release should have the right to effective representation by a lawyer just as they do at a judicial sentencing hearing. Short of that, however, appointed counsel should be provided at least for all subsequent hearings after an initial denial of release.

Parole boards should also limit victim input to the question of future risk and establish and elevate their burden of proof requirements.

Finally, parole boards should increase the transparency of their decision-making process, giving parole applicants and their counsel access to the contents of parole files so that they can challenge the evidence used to prolong their confinement. Parole boards should also increase the transparency of data on their outcomes, allowing the public to assess the extent to which their decisions are in line with the board's goals and guidelines, as well as broader principles of justice.

Such an evidence-based approach would mitigate the counterproductive effects of excessive prison terms, support investments in more effective crime prevention and drug treatment policies, and bring American prison sentencing more in line with other industrialized nations.

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10 Note that in concluding that parole boards are "failed institutions," the American Law Institute calls for a full shift to a determinate sentencing system in which sentencing discretion is reallocated to sentencing courts. See American Law Institute, 2011 p. 9; Rhine, E. E., Petersilia, J., & Reitz, R. (2015). Improving parole release in America. *Federal Sentencing Reporter 28*(2): 96-104, p. 97; Rhine, E. E., Petersilia, J., & Reitz, R. (2016). The future of parole release. *Crime and Justice.*
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13 Rhine, Petersilia, & Reitz, 2015, p. 97.
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16 Rhine, Petersilia, & Reitz, 2016

APPENDICES

A. METHODS OF DATA COLLECTION AND ANALYSIS

To understand whether and how parole policies and practices have increased prison terms for parole-eligible lifers in the United States, we conducted a survey of lifer parole outcomes across the country and investigated relevant policy developments.

Survey: Lifer Parole Hearing Outcomes and Time Served

We contacted the relevant agencies in 50 states and the federal government in 2014 for information about two aspects of lifer parole outcomes. Using the survey letter in Appendix B, we requested annual data from 1980 to 2013 on: 1) The number of lifer parole hearings that resulted in a parole grant or denial, and 2) Lengths of prison terms served by paroled lifers with first- and second-degree murder convictions.[1] The time-served data were requested for these particular convictions—disaggregated when possible—so as to account for the potentially changing composition of the paroled lifer population. For ease of data collection and for comparability, we only requested time-served data on those who were paroled and released.[2] This analysis therefore does not capture time served by lifers who either remained incarcerated or who died while awaiting parole, except for a few jurisdictions that chose to provide this supplemental information and those about which this information was readily available.

The survey letter was first submitted by e-mail in July 2014 to departments of corrections, parole boards, or other relevant agencies. Data collection ended in April 2016 and often involved several follow-up e-mails and phone calls to ensure receipt of data and to ask clarifying questions.

In sum, 31 states and the federal government are included in the analysis. Most of these jurisdictions provided data in response to our survey; the jurisdiction profiles note when data were collected from other sources such as public records or advocacy organizations. Few jurisdictions could provide data as far back as 1980 and some could only do so for the most recent year. While most jurisdictions generated figures that responded to our questions, approximately one-third provided individual-level data that we analyzed. Fiscal years were treated as calendar years in this analysis. Two states that did not respond to clarifying questions about their data were excluded from this analysis. We have no reason to believe that the 19 omitted states differed significantly from those that were included in the analysis.

Analysis of Survey Results

For the time-served analysis, we received or calculated the average time served among paroled lifers each year, disaggregated by conviction offense where possible. This information is reported with the corresponding number of paroled lifers in the jurisdiction profiles. Given our interest in prison terms associated with the original conviction offense, this analysis excludes any prison stays after parole revocations.

Section I of this report presents a historical analysis of time served among paroled lifers with murder convictions. This analysis is limited to jurisdictions reporting some data since the 1980s. The jurisdiction profiles specify whether these are first-, second-degree murder convictions, both, or a non-disaggregated murder category—as determined by sentencing laws and data availability.

The jurisdiction profiles also present an analysis of lifer parole hearing outcomes. This includes the number of all lifer parole hearings conducted each year—regardless of conviction offense—and the proportion that resulted in a parole grant. Given our interest in the outcome of hearings that could have resulted in a parole grant, scheduled hearings that were not conducted were

excluded from this analysis. When possible, their prevalence was noted. Given the difference between first-release hearings and those following revocations, the analysis includes only the former. Initial parole grants that were later reversed by the parole board or by the governor were treated as denials, as specified in the jurisdiction profiles.

Examination of Policy Landscape

The jurisdiction profiles also include descriptions of the changing landscape of lifer parole policies and practices. Although not exhaustive accounts, these sections highlight key elements such as the convictions that qualify for parole-eligible life sentences, laws determining wait times for the initial and subsequent lifer parole hearings, parole board characteristics and policies, and the scope of gubernatorial authority. Also noted are recent reforms that have expanded parole-eligibility or required alternative review processes for lifers convicted as juveniles.

Information for these profiles was found by examining the websites of parole boards or other government agencies, consulting relevant statutes and state session laws, and reviewing media coverage as well as reports from advocacy organizations and scholars, as noted.

1 In subsequent correspondence we requested the number of lifers paroled each year with these convictions.
2 When possible, the jurisdiction profiles note when individuals were paroled to begin a separate sentence.

B. SURVEY LETTER

Dear _____,

There has never been a national overview of parole rates for inmates sentenced to life with the possibility of parole. The Sentencing Project – a national non-profit organization that has been engaged in research on criminal justice issues for over 25 years – intends to address this research gap. We are developing an informational report documenting parole rates for life-sentenced inmates across the 50 states. This request will serve as the main foundation for that report. Your assistance is greatly appreciated.

Following is a brief set of questions about [state's] current and historical parole practices. I have limited my request to help expedite your response. Please contact me to clarify any of these items.

For each year starting in 1980 and through the end of 2013 (or the most recent year for which you have records), please provide the following information:

1. For life-sentenced inmates eligible for a parole review or hearing in a given year, please provide an annual count for each of the following parole review outcomes:

   a. parole was granted;

   b. parole was denied;

   c. parole was granted but reversed through later review, such as by the Governor;

   d. the inmate declined to be considered for review in that year; or

   e. the inmate did not qualify for a hearing based on a preliminary screening process.

2. Only among life-sentenced inmates granted parole with first-and second-degree murder convictions, what were the mean and median lengths of time served for inmates released in each year?

Alternatively, if aggregate data is too difficult to provide, I would welcome individual-level data (with individual identifiers removed) for the above questions instead.

Your assistance is greatly appreciated. I can be contacted by phone at _____, fax at _____, or by email at _____.

Sincerely,

_____

Delaying a Second Chance: The Declining Prospects for Parole on Life Sentences

Nazgol Ghandnoosh, Ph.D.

January 2017

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The Sentencing Project works for a fair and effective U.S. justice system by promoting reforms in sentencing policy, addressing unjust racial disparities and practices, and advocating for alternatives to incarceration.