

Extraordinary and Compelling: The Use of Compassionate Release Laws in the United States

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As the United States' prison population has increased in size and aged, the number of older inmates in deteriorating health has grown markedly. In 1984, federal *compassionate release laws* were established, allowing for the release of inmates given "extraordinary and compelling circumstances" not present at sentencing. Many states established similar laws. Despite possible financial and ethical benefits of compassionate release, few inmates have been released under these laws. This research explored why. In Study 1, to assess the scope of this legislation, we provided a compendium of relevant laws, including information on jurisdictions with such laws, criteria for release outlined in each law, and exceptions that may preclude release. Results demonstrated that as of 2016, 46 jurisdictions had a compassionate release law in place. The most frequently cited criterion for release was having a chronic illness. In Study 2, to assess the possibility that public sentiment presents obstacles to using these statutes, we probed members of the public and prison wardens on perceptions of the laws, including factors (i.e., criminal history and offense type) associated with willingness to recommend release of a chronically ill inmate. Both community members and wardens were generally supportive of compassionate release, especially for nonviolent inmates and those with no criminal history. To explain why these statutes are underutilized, we comment on the complexity and diversity of mechanisms involved in correctional bureaucracies and propose a cost-benefit framework in which the risk of reoffending and loss of retributive opportunity outweigh pragmatic benefits of release on compassionate grounds.

Keywords: compassionate release, prison, decision making, aging, decarceration

The United States incarcerates more people than any industrialized nation in the world (International Centre for Prison Studies, 2016), due in part to truth in sentencing laws, mandatory minimums, habitual inmate or "three-strikes" laws, and the "war on drugs" (Rikard & Rosenberg, 2007). Even more concerning, the federal system continues to incarcerate at such a rate that facilities operate at 35% to 40% over capacity (Samuels, La Vigne, & Taxy, 2013; U.S. Department of Justice, 2015). One way to reduce prison

populations is to implement compassionate release, a concept embedded in both federal and state statutes, that allows for the release of chronically ill and aging inmates prior to completing their sentence. Although these laws have existed for decades, are fiscally responsible, and, some argue, ethically justified, relatively few inmates have been released on compassionate grounds. This research asks why.

The objectives of our research were twofold. First, we compiled a comprehensive review of existing federal and state compassionate release laws to document eligibility criteria and to determine whether exceptions based on an inmate's circumstances may prohibit release (Study 1). Second, to assess the possibility that negative sentiments regarding compassionate release have a role in the laws' underuse, we examined opinions of the general public and of prison wardens about the decision to recommend releasing a chronically ill and aging offender on compassionate grounds (Study 2). An overarching objective was to provide systematic information to policymakers and prison officials that may influence their decisions about access to and implementation of compassionate release.

The Aging Inmate

Older inmates are the fastest growing population segment in U.S. prisons (U.S. Department of Justice, 2015). Inmates aged 50 and older made up approximately 17% of the federal prison

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population in 2011—up from 12% in 1994 (Kim & Peterson, 2014). With 9,000 older adult inmates in 1994 and 30,000 in 2011, federal facilities across the nation saw a 330% increase in this population (Kim & Peterson, 2014). State facilities also reflect this trend. From 1999 to 2014, the number of inmates aged 55 and older housed in state prisons increased 234% (Pew Charitable Trusts, 2014a). In addition to harsher sentencing guidelines that contributed to more prisoners in general, the increase in numbers of older inmates can also be attributed to advances in medical care, longer life expectancies, and an aging baby boomer population within the general population (Kim & Peterson, 2014; Rikard & Rosenberg, 2007). Consequently, more individuals are serving time in prison and are remaining in prison for longer periods of time, even though the likelihood of recidivating decreases with age (Bonczar, 2009; Hughes, Wilson, & Beck, 2001; Turley, 2007).

As a person reaches end-of-life, health complications often arise, a phenomenon especially true of those incarcerated. In a survey of U.S. prisons, researchers found that approximately 82% of inmates over age 65, as compared with 25% of the general population over age 65, have a chronic health condition leading to major limitations in activities of daily living (ADL; Sterns, Lax, Sed, Keohane, & Sterns, 2008). Inmates often experience an accelerated aging process when compared with noninmates because of a general lack of access to health care (particularly in childhood), drug and alcohol abuse, and patterns of unhealthy living prior to entering prison. Inmates often have health risks and medical complications similar to those 7 to 10 years older in the general population (Linder & Meyers, 2009; Mitka, 2004). As a result, although community members are often considered “older” at approximately age 65, inmates are considered “older” when they reach the ages of 50 or 55 (Rikard & Rosenberg, 2007; Snyder, van Wormer, Chadha, & Jagers, 2009). Correctional facilities are constitutionally required to provide medical treatment to prisoners (*Estelle v. Gamble*, 1976). Because of the additional costs and resources required to care for older and infirmed inmates, it is estimated that each inmate costs approximately 8% to 13% more per year than a younger inmate (Pew Charitable Trusts, 2014b; U.S. Department of Justice, 2015).

In addition to medical needs, there may be additional costs and issues associated with housing infirmed and older inmates. These inmates often require assistance from prison staff for ADLs including dressing, toileting, feeding, and moving about the prison facility, and PADLS (Prison ADLs), such as hearing orders, climbing onto top bunks, and standing for count (Williams et al., 2006), which may be difficult to accommodate due to understaffed facilities and lack of staff training. Moreover, the physical infrastructure of most prisons makes them ill-equipped to house older inmates. Prisons typically lack elevators and ramps necessary for safe movement by less mobile inmates, and often have uneven terrain and narrow pathways that affect ease of mobility (U.S. Department of Justice, 2015), which may be legally problematic and result in costly remodeling to accommodate inmates as required under the Americans with Disabilities Act (ADA, 1990).

Compassionate Release in the United States

In abolishing parole for federal inmates and recognizing the need for exceptions to sentencing guidelines in extreme circumstances, legislators and policymakers established *compassionate*

release under the Sentencing Reform Act of 1984 (U.S. Department of Justice, 2013a). Incarceration is based on four rationales for punishment: retribution, rehabilitation, deterrence, and incapacitation. Compassionate release derives from the idea that a change in health status may affect one of these rationales, warranting early release (Williams, Sudore, Greifinger, & Morrison, 2011). Under 18 U.S.C. § 3582(c)(1)(A) and 4205(g), prison sentences may be reconsidered based on “extraordinary and compelling circumstances” that were not present or foreseeable at the time the sentence was imposed. The guidelines also allow for release of inmates aged 70 and older who have served 30 or more years of a prison term for an offense that occurred on or after November 1, 1987 (U.S. Department of Justice, 2013b). Inmates may initiate a request for release with a petition to the warden that includes the circumstances that warrant consideration and a proposed release plan, including how medical costs will be covered. Similar laws exist at the state level (Chiu, 2010).

The implementation of compassionate release has been fraught with difficulty. The process of petition and approval can be quite lengthy, and few inmates are released under these statutes; a reality that directly challenges the portrayal of compassionate release in an episode of the popular Netflix Original series, *Orange Is the New Black*, which depicted it as routinized and expedient (Hess & McCarthy, 2014). In the show, the released character was suffering from dementia and becoming difficult for prison staff to manage. Within 1 week, she was released under what was referred to as compassionate release, to fend for herself without health care, social ties, or housing. In 2013, compassionate release was criticized by the Office of the Inspector General (OIG) of the Department of Justice. The OIG reported that while effectively utilizing compassionate release would reduce costs and prison overcrowding, the existing program was “poorly managed and implemented inconsistently, likely resulting in eligible inmates not being considered for release and in terminally ill inmates dying before their requests were decided” (U.S. Department of Justice, 2013a, p. I). The OIG noted that the Bureau of Prisons [BOP] did not have clear standards for evaluating release requests, resulting in inconsistent decisions across facilities. Furthermore, the BOP did not adequately track all requests and only recorded requests approved by the warden and regional director. As a result, data on the total number of requests, as compared with the number of approved requests, are not available. From data that *are* available, between 2006 and 2011, 211 requests received preliminary approval from a federal warden and were sent to the BOP Director for consideration (U.S. Department of Justice, 2013a). Of these, 142 were approved, averaging only 24 releases per year (U.S. Department of Justice, 2013a). Although we do not know the total number of requests, with 215,000 people incarcerated in federal prisons in 2011 (Glaze & Parks, 2012), that low number suggests that compassionate release was underutilized at the federal level during those years.

In an effort to expand eligibility criteria following the 2013 OIG report, the federal statute was amended to include two new provisions for release for inmates aged 65 and older. The first allowed for release of inmates who had a chronic or serious medical condition associated with deteriorating mental or physical health that substantially diminished their ability to function and that was unlikely to improve, provided they had served at least 50% of their sentence. The second, a nonmedical provision, applied to inmates

aged 65 and older who had served the greater of 10 years or 75% of their sentences. Data collected following these amendments (from August 2013 through September 2014) indicated that only two inmates had been released on the basis of age alone, and 83 inmates were released based on chronic or terminal illness unrelated to age (U.S. Department of Justice, 2015). While these numbers indicate an increase from the 2006 to 2011 data, they should be considered in light of the 2,621 requests for release that were made during this period (U.S. Department of Justice, 2015), meaning that only 3% of requests were approved.

Although most states have some provisions for compassionate release (Maschi, Kalmanofsky, Westcott, & Pappacena, 2015), eligibility criteria differ across jurisdictions, with some states modeling their laws after the federal statute and others creating new laws. Like the federal data, information documenting use of state-specific compassionate release is sparse and inconsistent. According to a Vera Institute for Justice report (Chiu, 2010), some states (e.g., Maryland) have provisions for release but no records of ever having released an inmate.¹ Other states release very few inmates per year. For example, Arizona released just nine inmates between 1992 and 2005 (Illinois General Assembly Legislative Research Unit, 2008). Yet other states utilize their statutes more frequently. For example, Texas releases approximately 170 inmates per year, and from mid-2008 to 2010, Michigan released 100 (Murphy, 2012). Still, given the number of state inmates eligible for consideration, these numbers are remarkably low.

Support for Compassionate Release

Scholars have suspected that politics and public sentiment may present obstacles to fully utilizing compassionate release statutes (Chiu, 2010). In the United States, public opinion and societal standards shape the laws and actions of policymakers, while public policy simultaneously shapes the attitudes and views of the public, a principle known as the opinion-policy link (Wlezien & Soroka, 2007). The punishment-related preferences of U.S. citizens and policymakers and their attitudes toward aging and infirmed inmates are relevant to understanding this exchange in the realm of compassionate release. But knowledge of public opinion regarding compassionate release is remarkably sparse.

A telephone survey of Pennsylvania residents found that 75% of respondents were generally opposed to the early release of chronically ill inmates (General Assembly of the Commonwealth of Pennsylvania, 2005). However, respondents were divided on whether they would choose to release terminally ill inmates who pose no threat to society, with 45% favoring and 47% opposing that action. In an experimental study, Boothby and Overduin (2007) evaluated students' opinions and found slight disagreement with the compassionate release of terminally ill offenders overall. However, respondents expressed more positive views when the inmate had not been convicted of a violent crime or was completely bedridden and they had less concern that the terminally ill prisoner would commit another crime if released. When asked to assume the role of a parole board member and rank order a list of considerations for release in terms of importance, participants' top three considerations were: (a) type of crime committed, (b) past criminal history, and (c) length of time the inmate was expected to live. These results are consistent with other research showing that, when assigning criminal responsibility and preferences for sen-

tencing, participants judge inmates more harshly when they have a criminal history (Allison & Brimacombe, 2010; Devine & Caughlin, 2014), particularly when previous offenses were similar to the present offense (Wissler & Saks, 1985), and they have committed sexual offenses (Rogers & Ferguson, 2011).

While there is a bit of research on the opinions of community members, at present, wardens' beliefs about these laws and the factors that would influence their decisions are completely unknown. According to federal law, wardens may consider such factors as the nature of the crime and inmates' criminal history, opinions of victim(s), whether a release plan is in place, offenders' violations and infractions while in prison, current age and age at the time of sentencing, and length of time served (U.S. Department of Justice, 2013b). But whether they actually *do* consider these issues, and whether the factors that influence their decisions align with public opinion, is an issue that warrants investigation.

In addition to case-related factors that may contribute to support for compassionate release, there are likely individual differences related to support. For instance, Boothby and Overduin (2007) found that positive and negative attitudes toward prisoners was significantly related to attitudes toward compassionate release. Compassion, described as "being moved by another's suffering and wanting to help" (Lazarus, 1991, p. 289), may be an underlying trait common to those willing to release older and infirm inmates. Common to most definitions of compassion, compassion is not only about feeling touched by a person's suffering, but also about acting to help them (Strauss et al., 2016). Research on compassion has noted that compassion (and related empathy) is linked to both prosocial behaviors (Sprecher & Fehr, 2005; Dovidio & Penner, 2001) and community action (Batson, Chang, Orr, & Rowland, 2002). Although these early release statutes are often called "compassionate" release, we know very little about whether compassion underlies the decision to release an inmate, or whether factors related to the case or justifications of punishment instead explain decisions to release.

Study 1: Analysis of Current Laws on Compassionate Release

Method

We conducted a review of compassionate release laws in the 50 states, the federal government, and the District of Columbia as of 2016. To locate any statute that would allow an aging or ill prisoner to be released, we searched legislative websites using the terms "compassionate release," "medical release," "geriatric release," "medical parole," and "medical furlough." Although we acknowledge that this search yielded statutes not specifically called "compassionate release," we collectively refer to them by that term for ease of discussion. We did not include statutes that specifically addressed the transfer of inmates in need of medical treatment because these are related to the temporary medical care of inmates. To assist in identifying specific statute numbers, we utilized Justia.com, a website intended to "advance the availability of legal resources for the benefit of society" (www.justia.com).

¹ This was confirmed during a phone interview with Ruth Ogle, Administrator in the Parole Hearing Department of the Maryland Department of Corrections, February 13, 2015.

To compare laws and policies across jurisdictions, we developed a coding scheme to determine eligibility requirements including: (a) who may grant compassionate release; (b) the basis and specific criteria for granting release; (c) whether any offense or sentence conditions may be a basis for ineligibility; (d) eligibility considerations based on medical issues prior to incarceration or foreseeable medical care issues postrelease; and (e) eligibility considerations based on an inmate's community risk and the specific language for determining that risk. Because some jurisdictions had more than one statute, the sample size included 52 statutes from 46 jurisdictions (44 states, the District of Columbia, and the federal government).

Results

Table 1 displays the jurisdictions with and without compassionate release laws, as well as the specific eligibility criteria from the text of the statute. Currently, 46 jurisdictions have some form of compassionate release and six jurisdictions do not have any type of release statutes (AZ, IL, IA, MA, SD, UT). Searches yielded more than one statute in six jurisdictions (CA, DC, LA, MD, NY, OK). For these jurisdictions, we coded each statute separately because the medical parole and compassionate release/geriatric release statutes fell under two separate statutes and each had unique requirements. Of the states that did not have compassionate release statutes, some had statutes for temporary release only (AZ, SD), while others had bills that were pending at the time of coding (IL) or had not passed in the legislature (IA, MA).

Who may grant release. The person or entity who may grant compassionate release varied across jurisdictions. The most common entity who could grant release was a parole board ($n = 32$; 55.2%), followed by the director of corrections ($n = 7$; 12.1%), the commissioner ($n = 6$; 10.3%), the governor ($n = 3$; 5.2%), the sentencing court ($n = 2$; 3.4%), the medical director or staff ($n = 1$; 1.7%), and the commissioner and the medical director ($n = 1$; 1.7%).

Basis for granting release. There are five factors that jurisdictions consider when reviewing release requests: age, chronic illness, terminal illness, mental health/dementia, and cost of care. Three states required all five criteria to be met for release (CO, TX, WY). Some jurisdictions cited multiple criteria for release. For example, Alabama's provisions require that prior to requesting release, the inmate must be 55 years or older *and* suffer from a chronic, life-threatening illness or chronic debilitating disease related to aging (Ala. Code §§ 14-14-1 to 14-14-7). Overall, the two most common eligibility requirements were those based on having a chronic illness ($n = 39$, 67.2%) and having a terminal illness ($n = 35$, 60.3%). Fewer statutes specifically mentioned age ($n = 18$, 31.0%) or mental health or illness as a factor ($n = 15$, 25.9%). Approximately one third of the statutes specified that an inmate could be released if the cost or burden for caring for that inmate in the correctional facility was too high or if the inmate would have adequate care outside of the facility ($n = 17$, 29.3%). In Indiana, for example, whether an inmate has a chronic condition is considered along with whether "the medical condition cannot be adequately treated" while the inmate is incarcerated (220 IAC 1.1-4-1.5).

If a statute listed age as a basis for granting release, we further coded for the specific age indicated, if specified. Of the 18 statutes

that specified age as a criterion, 12 statutes gave an eligibility age. The lowest age specified was 45 under Louisiana statute for an inmate who has served at least 20 years (La. Rev. Stat. Ann. § 15:574.4). The highest age specified was 70 under South Carolina (S.C. Code Ann. §§ 24-21-715) and the Federal statute (18 U.S.C. §§ 3582^(b)(1)(A)). In some states, two ages were indicated because the statute specifies release based on age and the years of an inmate's sentence already served. For instance, Virginia's statute indicates that a person may petition for release if the person "has reached the age of sixty-five or older and has served at least five years of the sentence imposed or has reached the age of sixty or older and has served at least ten years of the sentence" (Va. Code Ann. § 53.1-40.01). In other circumstances, two ages may be listed based on whether the elderly inmate has a medical condition in addition to having reached a specific age. Under the BOP provision, elderly inmates sentenced on or after November 1, 1987 aged "70 years or older who served 30 years of more of their term of imprisonment" may be released, while those with a chronic or serious medical condition may be released after serving at least 50% of their sentence (18 U.S.C. §§ 3582(c)(1)(A) and 4205(g)).

If a statute listed a terminal illness as a basis for granting release, we further coded for the medically determined amount of time the inmate has left to live as a result of the terminal illness, if specified. Of the 35 statutes in which having a terminal illness is required, 15 specify an expected amount of time and 20 do not. Two statutes require the life expectancy of the inmate to be 2 years (AR, SC), the federal statute requires 18 months or less, four states require 1 year (WY, NV, GA, KY), six states require less than a year (LA, MT, CA, NJ, RI, NM), and one state specifies 30 days (KS).

Ineligibility for release. In a few jurisdictions, the specific types of offenses or types of sentencing structures make the inmate ineligible for release. The two types of offenses that statutes indicated conferred ineligibility were sex offenses ($n = 7$, 12.1%) and murder ($n = 7$, 12.1%). Three jurisdictions included both types of offenses for ineligibility (NJ, NC, AL). More jurisdictions had exclusions based on the type of sentence or proportion of time served. In approximately one third of the statutes, an inmate was precluded from release if he or she was sentenced to life in prison or sentenced to death ($n = 20$, 34.5%) or was sentenced under certain sentencing guidelines such as mandatory minimums, sentencing grids, sentences that specified "without parole," and bifurcated sentences ($n = 21$, 36.2%). About one quarter of the statutes had a provision that requires inmates to have served a specified proportion of their sentence ($n = 14$, 24.1%).

Medical issues prior to incarceration and postrelease. Three jurisdictions (6.5%; AL, CA, Fed.) preclude an inmate from petitioning for release if the presence of a medical or mental health issue existed at the time of the offense or sentencing. For instance, the California statute for medical parole requires that "that incapacitation did not exist at the time of sentencing" (California Penal Code Section 3550). Four jurisdictions (8.6%; AL, DE, PA, Fed.) address whether the inmate will have access to medical care upon release, such as being eligible for health insurance (e.g., via Medicaid or Medicare) or having a family member who will assume the responsibility for medical expenses.

Community risk. The majority of laws indicated that the inmate's risk to the community should be considered prior to release ($n = 39$, 67.2%). In the broadest sense, the District of

Table 1
U.S. Compassionate Release Statutes

State and Statute	Granted by	*Basis for granting	If age is basis, specified age	If terminal, specified time to live	**Offense/ sentence noneligibility	***Pre- and postmedical issues	Community risk considerations
Alabama (AL) Medical Furlough: Ala. Code §§ 14-14-1 to 14-14-7	Commissioner	Age; chronic; terminal†	55	Not specified	Sex; murder; death/ life	History; med care	“risk for violence”
Alaska (AK) Special Medical Parole: AK Stat. § 33.16.085	Parole Board	Chronic; MH	—	—	Sex; sentence	None specified	“likelihood of . . . committing the same or similar offense is low”
Arizona (AZ) Order for Removal: AZ Title 31, Chapter 2, Article 2, § 31-233;	Director	Cost	—	—	None specified	None specified	None specified
Arkansas (AR) AR Code § 12-29-404	Parole Board	Chronic; terminal	—	2 years	Sex	None specified	“no longer a threat to public safety”
California (CA) 2 Medical parole: Penal Code Section 3550	Parole Board	Chronic	—	—	Death/life	History	“would not reasonably pose a threat to public safety”
California (CA) 2 Compassionate Release: Government Code if Counties 26605.6	Sheriff, or designee	Terminal	—	6 months or less	None specified	None specified	“would not reasonably pose a threat to public safety”
Colorado (CO) Special Needs Parole: 17-22.5-403.5; Special Needs Inmate: Colo. Rev. Stat. §§ 17-1-102;	Parole Board	Age; chronic; terminal; MH; cost	60	Not specified	Time	None specified	“not likely to pose a risk to public safety”
Connecticut (CT) Medical Parole; Compassionate Release: Conn. Gen. Stat § 54-131a-54-131k	Parole and Pardons Board	Age; chronic; terminal; MH	Not specified	Not specified	Death/life; sentence; time	None specified	“physically incapable of presenting a danger to society”
Delaware (DE) Eligibility for Parole: DE Code Chapter 11 § 4346	Parole Board	Chronic; MH; Cost	—	—	None specified	Med care	None Specified
D.C. 1 Medical Parole: D.C. Code § 24-464 (Medical parole)	Parole Board	Chronic; terminal	—	Not specified	None specified	None specified	“not incompatible with the welfare of society”
D.C. 2 Conditions for Geriatric Release: D.C. Code § 24-465 (geriatric release)	Parole Board	Age; chronic	65	—	None specified	None specified	None Specified
Florida (FL) Conditional Medical Release: FL Stat. Ann. §947.149(1)	Commissioner	Chronic; terminal	—	Not specified	Death/life	None specified	“not constitute a danger to himself or himself or other”
Georgia (GA) Medical Reprieve: O.C.G.A. §42.9.43(b)	Parole Board	Chronic; Terminal; MH	—	12 months	None specified	None specified	“an extremely low risk of physical threat to others or to the community”
Hawaii (HI) Medical Release: Cor.10.1G.11 (policy and procedure manual for Corrections Administration)	Dept. of Public Safety, Corrections Administration	Chronic; terminal; MH; Cost	—	Not specified	None specified	None specified	None Specified

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Table 1 (continued)

State and Statute	Granted by	*Basis for granting	If age is basis, specified age	If terminal, specified time to live	**Offense/ sentence noneligibility	***Pre- and postmedical issues	Community risk considerations
Idaho (ID) Medical Parole: ID Code § 20-223	Commissioner	Chronic; terminal	—	Not specified	Death/life	None specified	“reasonably believes the prisoner no longer poses a threat to the safety of society”
Illinois (IL) None	—	—	—	—	—	—	—
Indiana (IN) Special Medical Clemency: 220 IAC 1.1-4-1.5 (Administrative Code)	Commissioner	Chronic; cost	—	—	Death/life	None specified	“engaging in any future serious criminal activity”
Iowa (IA) None	—	—	—	—	—	—	—
Kansas (KS) Terminal Medical Release: 22-3729	Parole Board	Terminal	—	30 days	Sentence	None specified	“precludes the person from posing a threat to the public”
Kentucky (KY) Parole of Prisoners with Documented Medical Condition: KY Rev Stat § 439.3405	Parole Board	Terminal	—	1 year	Sentence	None specified	“would not pose a threat to society if paroled”
Louisiana (LA) 1 Medical Parole: La. Rev. Stat. Ann. § 15:574.20;	Parole Board	Chronic; terminal	—	less than 1 year	Death/life	None specified	“represents a low risk to himself or society”
Louisiana (LA) 2 General Parole Eligibility: La. Rev. Stat. Ann. § 15:574.4;	Parole Board	Age	45; 60 — depends on sentence	—	Murder; time	None specified	“obtained low-risk scores”
Maine (ME) Community Confinement Monitoring Program; Terminally Ill of Incapacitated Inmate: Sec. 6. 30-A MURDERSA § 1659-A	Sheriff	Chronic; terminal; cost	—	Not specified	Sex; time	None specified	“verified security classification level of ‘Medium’ or ‘minimum’ and scores ‘moderate’ or ‘less’ on a validated risk assessment tool”
Maryland (MD) 1 Medical Parole: Md. Code Ann., Correctional Services § 7-309	Parole Board	Chronic; MH	—	—	Sentence	None specified	“physically incapable of presenting a danger to society”
Maryland (MD) 2 Violent Crime: Md. Code Ann., Crim. Law § 14-101(f)	Parole Board	Age	65	—	Time	None specified	None Specified
Massachusetts (MA) None	—	—	—	—	—	—	—
Michigan (MI) Release of Prisoner on Parole: Sec. 791.235(10)	Parole Board	Chronic; MH	—	—	None specified	None specified	None Specified
Minnesota (MN) Conditional Medical Release: Minn. Stat. Ann. §244.05(8)	Commissioner	Chronic	—	—	Death/life; time	None specified	“poses no threat to the public”
Mississippi (MS) Conditional Medical Release: §47-7-4	Commissioner and Medical Director	Chronic, Cost	—	—	Sex; time	None specified	None Specified

(table continues)

Table 1 (continued)

State and Statute	Granted by	*Basis for granting	If age is basis, specified age	If terminal, specified time to live	**Offense/ sentence noneligibility	***Pre- and postmedical issues	Community risk considerations
Missouri (MO) Inmate with terminal disease or advanced age where confinement will endanger or shorten life, Mo. Rev. Stat. § 217.250	Probation and Parole Board	Age; terminal; cost	Not specified	Not specified	None specified	None specified	None Specified
Montana (MT) Medical Parole: 20.25.307	Parole Board	Chronic; terminal; cost	—	6 months or less	Death/life; sentence	None specified	"unlikely to pose a detriment to the inmate, victim, or community"
Nebraska (NE) Medical Parole: Nebraska Revised Statute 83-1,110.02	Parole Board	Chronic; terminal	—	Not specified	Death/life	None specified	None Specified
Nevada (NV) Residential Confinement or Other Appropriate Supervision of Inmates who are Physically Incapacitated or in Ill Health NRS 209.3925	Medical Division of Dept. of Corrections	Chronic; terminal	—	12 months	Death/life; sentence	None specified	"and likely will not in the future, pose a threat to the safety of the public"
New Hampshire (NH) Medical Parole: NH Rev. Stat. 651-A:10-a	Parole Board	Chronic; terminal; cost	—	Not specified	Death/life	None specified	"there is a reasonable probability that the inmate will not violate the law"
New Jersey (NJ) Medical Parole: N.J. R. Crim. R. 3:21-10; P.L.1997, c.214 (C.30:4-123.51c)	Parole Board	Terminal	—	6 months or less	Sex; murder	None specified	"permanently physically incapable of committing a crime if released on parole"
New Mexico (NM) Medical and Geriatric Parole Program: N.Mex. Stat. § 31-21-25.1	Parole Board	Age; chronic; terminal	65	6 months	None specified	None specified	"does not constitute a danger to himself or society"
New York (NY) 1 Release on Medical Parole for Terminally Ill Inmates: N.Y. Exec. Law §259-r	Parole Board	Terminal; MH	—	Not specified	Murder; sentence; time	None specified	"will live and remain at liberty without violating the law, and that such release is not incompatible with the welfare of society"
New York (NY) 2 Release on Parole for Inmates Suffering Significant Debilitating Illness: N.Y. Exec. Law §259-s	Parole Board	Chronic; MH	—	—	Murder; sentence; time	None specified	"will live and remain at liberty without violating the law, and that such release is not incompatible with the welfare of society"
North Carolina (NC) Medical Release of Inmates: N.C. Gen. Stat. §§ 15A-1369 to - 1369.5	Commissioner	Age; chronic; terminal	65	6 months	Sex; murder; time	None specified	"does not pose a public safety risk."

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Table 1 (continued)

State and Statute	Granted by	*Basis for granting	If age is basis, specified age	If terminal, specified time to live	**Offense/ sentence noneligibility	***Pre- and postmedical issues	Community risk considerations
North Dakota (ND) Home Detention and Monitoring for Certain Inmates: 12-67-01	Administrator of Correctional Facility	Cost	—	—	Sentence	None specified	None Specified
Ohio (OH) Release or Parole of Dying Prisoner: Ohio Rev Code § 2967.05	The Governor	Chronic; terminal	—	Not specified	Death/life; sentence	None specified	“Institutional confinement of the inmate does not offer additional protections for public safety or against the inmate’s risk to reoffend” None Specified
Oklahoma (OK) 1 Consideration for Parole: Okla. St. Tit. 57, § 332.7	The Director of Dept. of Corrections and Parole Board	Age	60	—	Sentence; time	None specified	None Specified
Oklahoma (OK) 2 Placement on Board Docket for Medical Reasons: §57-332.18	The Director of Dept. of Corrections and Parole Board	Chronic; terminal	—	Not specified	Death/life; sentence	None specified	“no longer an unreasonable threat to public safety”
Oregon (OR) Advancing Release Date of Prisoner with Severe Medical Condition Including Terminal Illness of Who is Elderly and Permanently Incapacitated: Ore. Rev. Stat. § 144.122(1); Ore. Rev. Stat. § 144.126	Parole Board and Post-Prison Supervision	Age; chronic; terminal	Not specified	Not specified	Death/life; sentence	None specified	“not incompatible with the best interests of the prisoner and society”
Pennsylvania (PA) Transfer of Inmate in Need of Medical Treatment: Title 42 - § 9777	Sentencing Court	Terminal; cost	—	Not specified	None specified	Med care	“does not pose an undue risk of escape or danger to the community” None Specified
Rhode Island (RI) Medical Parole Act: RI Gen L § 13-8.1-1 (2013)	Parole Board	Chronic; terminal; MH; cost	—	6 months	Death/life; sentence	None specified	None Specified
South Carolina (SC) Parole for Terminally Ill, Geriatric, or Permanently Disabled Inmates: S.C. Code Ann. §§ 24-21-715	Parole Board	Age; chronic; terminal	70	2 years	None specified	None specified	“and does not pose a threat to society or himself”
South Dakota (SD) Furlough for Medical Treatment							
Tennessee (TN) Grant of Furloughs to Inmates: TCA 41-21-227	The Dept. of Corrections	Chronic; terminal; MH	—	Not specified	None specified	None specified	“without substantial risk that they will commit a crime while on furlough” (table continues)

Table 1 (continued)

State and Statute	Granted by	*Basis for granting	If age is basis, specified age	If terminal, specified time to live	**Offense/ sentence noneligibility	***Pre- and postmedical issues	Community risk considerations
Texas (TX) Medically Recommended Intensive Supervisions: Tex. Gov't. Code § 508.146	Parole Board	Age; chronic; terminal; MH; Cost	Not specified	Not specified	Death/life; sentence	None specified	"does not constitute a threat to public safety"
Utah (UT) None	—	—	—	—	—	—	—
Vermont (VT) Release on Parole: 28 VSA §502 a (d)	Parole Board	Chronic; terminal	—	Not specified	Sentence; time	None specified	"unlikely to be physically capable of presenting a danger to society"
Virginia (VA) Conditional Release of Geriatric: Va. Code Ann. § 53.1-40.01	Parole Board	Age	60; 65—depends on sentence	—	Time	None specified	None Specified
Washington (WA) Release Prior to Expiration of Sentence: Wash. Rev. Code § 9.94A.728	Governor and Parole Board	Age; chronic; cost	Not specified	—	Death/life; sentence	None specified	"poses a low risk to the community"
West Virginia (WV) Medical Respite: policy 410.12 of Division of Corrections	Governor	Chronic; terminal; cost	—	Not specified	None specified	None specified	"do not pose a substantial risk to society"
Wisconsin (WI) Release to Extended Supervision for Felony Inmates not Serving Life Sentences: Wis. Stat. § 302.113(9g)	Program Review Committee	Age; chronic; cost	60; 65—depends on sentence	—	Sentence; time	None specified	None Specified
Wyoming (WY) Medical Parole: Wyo. Stat. Ann. § 7-13-424	Probation and Parole Board	Age; chronic; terminal; MH; cost	Not specified	12 months	Death/life; sentence	None specified	"not likely to abscond or violate the law if released"
Federal (Fed.) 18 U.S.C. §§ 3582(c)(1)(A) and 4205(g)	Sentencing Court	Age; chronic; terminal; MH	65; 70—depends on when sentenced	18 months or less	Sentence; time	History; med care	"pose a danger to the safety of any other person or the community"

* Age = condition is due to aging or specific age is mentioned; Chronic = condition is chronic condition; Terminal = condition is a considered a terminal illness; MH = condition related to mental health or dementia; Cost = cost of care for the condition is too costly for the correctional facility. ** Sex = noneligible based on sex offense; Murder = noneligible based on murder offense; Death/life = noneligible for inmates sentenced to death or life in prison; Sentence = noneligible for inmates sentenced under certain sentencing guidelines (mandatory minimum, sentencing grids, sentences without parole, bifurcated sentences); Time = provisions based on how much time has been served on the sentence. *** History = based on history of medical or mental health issues that were present at the time of the offense or sentencing; Med care = provision that requires the inmate have medical care, access to health insurance and/or family members who will assume the responsibility of medical expenses.

Columbia statute for medical parole says that releasing the inmate should “not [be] incompatible with the welfare of society” (D.C. Code § 24–464), with little mention of any specific standards for measuring risk (DC, NY1, NY2, OR). Some statutes indicate specifically that decision-makers should consider the risk to public safety and that the inmate should not pose a threat to “public safety,” “the public,” or “society.” Most statutes used likelihood terms such as “unlikely” to pose a threat, at “extremely low risk” of threat to others, or “not reasonably pose a threat” (AL, AK, AR, CA1, CA2, CO, GA, ID, KS, KY, MN, MT, NV, NH, NC, OH, OK2, PA, TX, WA, WV, Fed.). Some even considered whether the inmate was a danger to others and *himself* (FL, LA1, NM, SC).

In addition to posing a danger, some statutes included language in which the inmate’s risk of committing future crimes should be considered (IN, NY1, NY2, TN, WY). Indiana’s statute, for instance, states that the inmate should not be at risk for “engaging in any future serious criminal activity” (220 IAC 1.1–4–1.5). In some statutes, there is a direct connection between the inmate’s physical or mental condition, which renders the inmate “incapable” of committing future offenses (CT, KS, MD, NJ, VT). Only two statutes included more objective standards for assessing risk. For example, Maine’s statute relies on security classification in the correctional facility, while statutes in both Maine and Louisiana specifically state that the inmate should have low risk scores on some type of assessment tool.

Study 2: Decision-Making About Compassionate Release

If, as Study 1 showed, most states have provisions for compassionate release, why are these laws utilized so infrequently? There may be several reasons. One factor may be the cumbersome nature of the process that must unfold prior to release, involving multiple decision points, several decision makers, and a lengthy timetable. Relatedly, as we documented in Study 1, release criteria are vague and diagnoses and prognoses are complex. Another may be inmates’ lack of awareness that such an option exists or, if known to them, little assistance in seeing it through. A third may be that the notion of releasing prisoners—especially those who have committed serious crimes—prior to the completion of their sentence, is met not with understanding and compassion by the public, but with ambivalence or even derision, and that wardens and parole boards are simply reflecting those sentiments. But aside from the study that examined students’ beliefs (Boothby & Overduin, 2007) and the brief phone survey about compassionate release (General Assembly of the Commonwealth of Pennsylvania, 2005), we know little about how the public thinks of these laws. Therefore, in Study 2, we evaluated public sentiment about the release of a hypothetical offender, with case details that varied by crime type and the offender’s criminal history. Specifically, we evaluated the factors that members of the public consider when thinking about this process, and examined whether wardens, who, at least in some jurisdictions, are ultimately responsible for making these decisions, mirror those beliefs.

Hypotheses

Hypothesis 1: Based on previous research showing that jurors are more likely to convict defendants who have a prior criminal record (e.g., Devine & Caughlin, 2014) and who committed similar crimes in the past (Wissler & Saks, 1985), we

predicted (Hypothesis 1A) that students’ and community members’ willingness to release would be lower for inmates with criminal records than for those without. Similarly, based on research showing that laypeople view perpetrators who commit sexual offenses more negatively than those who commit nonsexual offenses (Rickert, 2010; Rogers & Ferguson, 2011) we predicted (Hypothesis 1B) that students and community members would be least willing to recommend release of the sexual offender and most willing to recommend release of the nonviolent offender.

Hypothesis 2: Based on previous research, we predicted that wardens would be less likely to approve release than the public because wardens generally have an interest in protecting the public and have reported incapacitation as the primary goal of incarceration (Cullen, Latessa, Burton, & Lombardo, 1993; Johnson, Bennett, & Flanagan, 1997).

Hypothesis 3: We predicted that decisions to approve or deny a request for release would be predicted by measures of participant’s individual differences. We anticipated that participants with greater compassion toward strangers would be more likely to favor release than those with less compassion for strangers. Based on research that compassion and ageist beliefs have an inverse relationship (Boswell, 2012), we predicted that those high in ageist beliefs would be less likely to support release than those low in ageist beliefs. We hypothesized that those with more knowledge of the prison system would be more likely to accept a release request than those with less knowledge because the former would understand issues related to prison overcrowding and costs. We predicted that those with more punitive attitudes regarding retribution, deterrence, and incapacitation would be less likely to favor release than those with less punitive attitudes. Finally, we also predicted that participants who perceived less risk in releasing the offender and less impact of the crime on the victim would be more likely to favor release.

Method

Participants.

Community participants. A national online sample ($n = 246$) was recruited through Mechanical Turk, a crowdsourcing tool for gathering research participants (for a review of Mechanical Turk, see Paolacci & Chandler, 2014) in exchange for \$0.50. The community sample was 57% female and 43% male. The average age of the sample was 40 years ($SD = 13.30$; range = 19 to 76). With respect to race/ethnicity, participants could select all the options that applied to them. Accordingly, 79% identified as Caucasian, 5% Hispanic, 10% African American, 5% Asian American, 3% Multiracial, 3% American Indian or Alaska Native, and 1% “other.” Most of the sample had some posthigh school education: 33% reported having some college, 38% reported having an undergraduate degree, and 14% reported having a postgraduate degree. About half of the sample reported being very liberal (15%) or somewhat liberal (35%), 22% were moderates, and one quarter were somewhat conservative (21%) or very conservative (6%). A large proportion of the community sample reported being not at all religious (45%), with the remaining reporting they were somewhat (20%), moderately (20%) or very religious (15%)

Student participants. To compare our general findings with those from Boothby and Overduin's (2007) study, we included an undergraduate student sample ($n = 244$) recruited from a midsized university in exchange for research credit participation. The student sample was 73% female and 27% male. The average age of the sample was 22 years ($SD = 6.14$; range = 19 to 76). With respect to race/ethnicity, participants could select all the options that applied. Thus, 78% identified as Caucasian, 15% Hispanic, 4% African American, 5% Asian American, 5% Multiracial, 3% American Indian or Alaska Native, and 2% "other." Most the student sample reported being politically moderate (41%), one-quarter as somewhat liberal (19%) or very liberal (6%), and one third as somewhat conservative (22%) or very conservative (10%). Most of the student sample reported being somewhat (30%), moderately (32%) or very religious (13%), and one quarter reported being not at all religious (24%).

Warden participants. The survey was distributed via e-mail to 211 prison wardens and executives who had completed a warden training program at Sam Houston State University within the past 5 years. As an incentive to participate, wardens who completed the survey could indicate a charity they would like to receive a \$75 donation (a raffle selected three charities). Thirty wardens and executives completed the survey (response rate = 14%). The warden and prison executive group included 18 state prison wardens, two private prison wardens, one state deputy warden, one assistant administrator, one mental health coordinator, four jail administrators, and three unreported. The warden sample was 32% female and 65% male. The average age of the sample was 50 years ($SD = 6.05$; range = 38 to 63). The sample was slightly more diverse than the community sample, with 68% who identified as Caucasian, 3% Hispanic, 23% African American, 3% American Indian or Alaska Native, and 3% "other." Most of the sample had an undergraduate degree or higher: 16% reported having some college, 52% reported having an undergraduate degree, and 23% reported having a postgraduate degree. The majority of the warden sample was somewhat conservative (43%) or very conservative (13%), one quarter reported being politically moderate (27%), and the remaining were somewhat liberal (10%) or very liberal (3%). Most wardens indicated they were somewhat (37%) or moderately religious (40%). With fewer indicating they were very religious (20%) or not at all religious (3%).

Wardens were asked additional questions related specifically to their knowledge and experience of compassionate release. Nearly half (48%) of the warden sample had at least some knowledge of compassionate release, and an additional third (29%) indicated they had quite a lot of knowledge of compassionate release. Almost two thirds (61%) of the sample had previously reviewed a compassionate release request.

Materials and Procedure

This was a 3×2 between-groups factorial design in which we manipulated crime type (nonviolent offense, violent offense, sexual offense) and criminal history (prior criminal record, no prior criminal history). Students and community participants completed an online packet that included a consent form, a vignette, all questionnaires, and a debriefing statement, posted on a university website and Mechanical Turk, respectively. Wardens and prison executives received and completed the packet through an e-mailed

survey linked to Qualtrics. After providing informed consent, participants read about the intent and rationale of compassionate release programs and were randomly assigned to one of the six vignette conditions. After reading the vignette, participants indicated whether they would recommend release of the inmate depicted in the vignette. Following that decision, they selected two reasons for their decision among the options provided. To reduce order effects, half of the participants completed the four attitude scales before responding to the vignette, while the other half completed the scales after responding to the vignette. Lastly, they provided demographic and professional information (as relevant).

Inmate vignettes. Based on the criteria for release that we noted in Study 1, and factors deemed relevant to release in other studies and that federal officials may consider, we constructed vignettes that described a hypothetical 68-year-old White male inmate requesting compassionate release from prison. The inmate was wheelchair-bound, had been diagnosed with terminal prostate cancer that had metastasized to other organs, had a predicted life expectancy of 9 months, and had served just over half of his sentence.

There were six versions of the vignette in which we varied the type of underlying offense for which the inmate was incarcerated and his criminal history. He was described as having committed either a nonviolent (i.e., burglary), violent (i.e., physical assault), or sexual offense (i.e., sexual assault). Descriptions of each of those offenses included details of the crime. For example, the burglary vignette described the perpetrator driving to the home of an acquaintance with the intent to break into her home and steal \$2,000 in cash he knew was hidden in the basement, his actions in breaking a window and entering the home while the victim was away, and a neighbor's report of the incident to the police. We also manipulated the defendant's prior record: He was described as either having an extensive criminal history including charges for similar crimes in the past or having no prior record. To control for issues mentioned in some compassionate release laws, the inmate was described as having adjusted well to prison life, having no significant disciplinary infractions, and having a place to live with a caregiver upon release. Each vignette also described the impact of the crime on the victim and included two pictures of the inmate, one ostensibly taken at the time of arrest and the other, taken recently. Vignettes ranged in length from approximately 400 to 450 words. (All vignettes are available from the second author.)

Release decision. Participants were asked to imagine being responsible for reviewing compassionate release requests from terminally ill offenders. They were told that based on the relevant compassionate release laws, the offender was eligible for release. They were told that if they approved the decision, it would move up the chain-of-command through the approval process before a definitive decision is made. They indicated their decision to approve or deny the request on an "approve" or "deny" dichotomized scale, then stated their confidence in the decision on a 6-point Likert-type scale from 1 (*completely unconfident*) to 6 (*completely confident*).

Reasons for release decision. Depending on whether they chose to recommend approval or denial, they were directed to a list of eight common reasons for approving or eight common reasons for denying the request, and asked to note the two explanations which best supported their decision. Reasons to approve the release request included "We should show compassion and forgive-

ness in his final days, regardless of his criminal past. Even inmates shouldn't die in prison alone and away from loved ones," and "Prisons are overcrowded. He should be released to make more room for inmates who are still a threat to society." Reasons to deny the release request included "He still has the ability to reoffend. Our first concern should be to protect the community," and "The victim(s) of his crime(s) have the right to know he has been adequately punished by serving his full prison sentence." Explanations were based on the BOP's procedures for implementing compassionate release (U.S. Department of Justice, 2013a), our analysis of online commentary to a National Public Radio (NPR) article about compassionate release (Johnson, 2013), and the purposes of punishment identified in Study 1.

Risk assessment. Compassionate release was established under the notion that changes in health may amend the justification for punishment—including whether there is further need for incapacitation and deterrence based on the inmate's risk for recidivating (Williams et al., 2011). Furthermore, many of the statutes identified in Study 1 included eligibility criteria regarding the risk of the inmate reoffending once released. To assess how participants perceived risk of reoffending, they were asked questions related to risk for future violence and risk for reoffending, and whether the inmate was a threat to society. Items were measured on a 7-point scale with higher scores indicating higher risk. These items were averaged to create a single risk assessment score (Cronbach's alpha = .95).

Victim impact. Because one of the purposes of punishment is retribution (e.g., Williams et al., 2011), there may be worries that victims' concerns are being superseded by consideration for inmates (Chiu, 2010). To assess whether participants considered the victim in their judgments, they were asked about perceptions of the impact of the crime on the victim at three points: at the time of the crime, 1 year following the crime, and 5 years following the crime. Items were measured on a 7-point scale with higher scores indicating greater impact on the victim. These items were averaged to create a single victim impact score (Cronbach's alpha = .84).

General compassion for strangers. Some proponents of compassionate release argue for release based on humanitarian grounds and some people may support compassionate release based on their general compassion toward others. The Santa Clara Brief Compassion Scale (Hwang, Plante, & Lackey, 2008) is a 5-item scale that measures trait compassion for strangers. Response options are on a 7-point scale, with higher scores indicating greater compassion for others (Cronbach's alpha = .92).

Beliefs about aging. Ageism toward older inmates may also affect judgments, such that older inmates would not be perceived as deserving of release. To measure ageism, participants com-

pleted the Fraboni Scale of Ageism (FSA; Fraboni et al., 1990), a 29-item scale that measures negative attitudes toward older adults along three dimensions including antilocution (antipathetic talk), avoidance (avoiding members of the group), and discrimination (excluding members of the group). Response options are on a 5-point scale, with higher scores indicating more ageist attitudes toward older adults after reverse coding some items. The FSA total score had low reliability with all 29 items (Cronbach's alpha = .60). When one item was removed ("I would prefer not to go to an open house at a seniors' club, if invited"), reliability increased (Cronbach's alpha = .68); thus, a total score based on the 28 items was included in the analysis.

Beliefs about punishment. The Sentencing Goals Scale (McKee & Feather, 2008) is a 20-item scale that measures attitudes about justice and the traditional rationales for punishment, including retribution, deterrence, incapacitation, and rehabilitation. For purposes of this study, the five items relating to rehabilitation were removed because they were largely irrelevant to our interests (i.e., few people consider a dying inmate's rehabilitative potential). Response options are measured on a 7-point scale, with higher scores indicating greater punitive attitudes related to retribution, deterrence, incapacitation (Cronbach's alpha = .91).

Knowledge about the prison system. We measured knowledge about aging inmates and overcrowding with a 7-item scale developed specifically for this study. Five questions directly measured knowledge about issues related to older inmates in the prison system and two questions measured issues related to U.S. prison overcrowding (see Appendix). Each response was coded as either correct (1) or incorrect (0) and a total score was created that ranged from 0 to 7.

Results

Decision to approve or deny release. Table 2 displays the percent of participants who indicated release based on crime type and criminal history. Across conditions, most community participants (85%), students (75%), and wardens (73%) approved the request for release. As predicted in Hypothesis 1A, students were more willing to recommend releasing an inmate without a criminal history than an inmate with a prior record, $\chi^2(1) = 7.56, p < .01$. Criminal history did not influence community members, however, $\chi^2(1) = 1.94, p = .11$. Consistent with Hypothesis 1B, students' and community members' willingness to release the inmate decreased in a stepwise fashion depending on the type of crime committed (students: $\chi^2(2) = 11.93, p < .01$; community members: $\chi^2(2) = 9.22, p = .01$). Chi-square Z tests (Bonferroni method), which compared column proportions, indicated that for

Table 2
Percent of Respondents Indicating Release Approval by Crime Type and Criminal History

	Crime type			Criminal history	
	Burglary	Physical assault	Sexual assault	No	Yes
Students	84% (68) _a	80% (65) _a	62% (51) _b	83% (102) _a	68% (82) _b
Community	90% (73) _a	89% (76) _a	75% (60) _b	88% (105) _a	82% (104) _a
Wardens	80% (8) _a	89% (8) _a	55% (6) _a	73% (8) _a	74% (14) _a

Note. Each subscript letter denotes a subset of either crime type or criminal history categories whose column proportions do not differ from each other $p < .05$. Subscripts that are different from each other denote column proportions within each variable that are significantly different $p < .05$.

both students and community members, there was not a significant difference for willingness to release between burglary and physical assault, but that both samples were significantly less likely to recommend releasing the inmate who committed a sex offense.

Decisions of community members and wardens. To test Hypothesis 2 that community and student participants would be less harsh than wardens and more likely to approve release, we estimated cell frequency differences using chi-square analysis. Contrary to this hypothesis, wardens were equally as likely to approve a request as both community members and students, possibly because of the small sample of wardens in comparing proportions. Community members were more likely to approve release than students, $\chi^2(2) = 7.76, p < .05$.

With respect to confidence, there was not a significant mean difference by decision, $F(1, 516) = .02, p = .88, \eta^2 = .01$. Participants who denied the request ($M = 4.76, SD = 1.04; n = 104$) were equally as confident as those who approved the request ($M = 4.78, SD = 1.01; n = 414$). A three-way ANOVA estimated whether confidence in this decision varied by crime type, criminal history, or sample. Overall, there were no significant interactions, and the only significant main effect was for sample, $F(1, 500) = 4.42, p < .05, \eta^2 = .02$. Although all samples were moderately confident in their decisions (community: $M = 4.91, SD = 0.97$; students: $M = 4.64, SD = 1.07$; wardens: $M = 4.77, SD = 0.77$), post hoc analyses revealed that neither students nor community members differed from wardens, but that community members were more confident than students.

Traits and attitudes related to release decisions. Hypothesis 3 predicted that decisions to approve or deny would be influenced by participants' traits and attitudes; specifically, that participants who were low in general compassion and knowledge of the prison system but high in ageist beliefs and punitive punishment attitudes would be less likely to approve a request for compassionate release than those who were high in general compassion and knowledge of the prison system but low in ageist beliefs and punitive attitudes. To test this hypothesis, we performed a logistic regression to assess the variables that predicted accepting or denying the release, including general compassion for others, ageism, knowledge of the prison system, and beliefs about punishment. Furthermore, we included two measures based on participants' perceptions of the

vignette: risk assessment, and perceived victim impact. Sample was included in the model as two dummy coded variables with the warden sample as the reference category (see Table 3).

The ability to predict the decision to approve or deny the release request was significantly improved when the six independent variables were entered into the model simultaneously compared to the model without the independent variables, $\chi^2(8, N = 520) = 219.61, p < .001$. The model correctly classified 86.5% of cases, and explained between 34.8% (Cox and Snell R square) and 55.2% (Nagelkerke R square) of the variance. Contrary to the hypothesis, two of the variables did not significantly predict accepting or denying the release request, including sample and the ageism scale. The strongest predictor was general compassion for others, estimating an odds ratio of 1.36. As predicted, those with more compassion had a greater likelihood of approving the compassionate release request. As predicted, those with greater knowledge of the prison system, and presumably a better understanding of the challenges related to overcrowding and housing older adult inmates, had a greater likelihood of approving the compassionate release request. The odds ratio for the knowledge of the prison system variable was 1.24. The remaining variables were all significant in the hypothesized direction. Participants with less punitive attitudes for retribution, deterrence, incapacitation were more likely to approve the release. With respect to the perceptions of the offender's and victim's situation as depicted in the vignette, participants who viewed the offender as less of a risk to release and who viewed less victim impact, were more likely to approve the request (see Table 3).

Factors influencing release decision. We examined the factors considered regarding whether to approve or deny the release request by providing eight common reasons for each choice and asking participants to select the two that factored most heavily into their decision. Each choice was weighted such that their top choice was assigned two points and their second choice was assigned one point. All options were then rank ordered based on the percentage of total points they received. Results are presented in Table 4. Of the community participants and students who chose to accept the release request, the most important factors were (a) the inmate's minimal threat to society given his age and terminal illness, and (b) the considerable cost to taxpayers to continue to house the ill

Table 3
Binary Logistic Regression Model of Punitive Attitudes, General Compassion, Ageist Beliefs, and Knowledge of the Prison System Predicting Sample Release Decision

	β	SE	Wald	df	Odds ratio	95% CI for odds ratio	
						Lower	Upper
Sample (1 = community)	.31	.81	.14	1	1.36	.28	6.69
Sample (1 = students)	.83	.81	1.06	1	2.31	.47	11.38
Risk	-1.39***	.15	81.24	1	.25	.18	.34
Victim impact	-1.02***	.18	31.88	1	.36	.25	.51
Punitiveness	-.53**	.18	9.00	1	.59	.41	.83
Compassion	.31**	.13	5.51	1	1.36	1.05	1.75
Ageism	1.07	.71	2.28	1	2.91	.73	11.65
Knowledge prison	.22*	.11	3.84	1	1.24	1.00	1.55
Constant	7.42	2.16	11.86	1	1667.67		

Note. CI = confidence interval.
* $p < .05$. ** $p < .01$. *** $p < .001$.

Table 4
Weighted Ranks for Reasons Given by Community and Warden Participants Choosing to Accept or Deny the Compassionate Release Request

Reason	Community			Students			Wardens		
	Pts.	%	Rank	Pts.	%	Rank	Pts.	%	Rank
Approve the request									
There is no longer a reason to hold T.J. Given his terminal illness, he is no longer considered a threat to society.	298	48%	1	205	37%	1	25	38%	1
T.J. is costing taxpayers a considerable amount of money. If his daughter is willing to pay his medical expenses, he should be released from prison.	81	13%	2	81	15%	2	14	21%	3
Release laws were put in place to consider extraordinary circumstances such as this and we should utilize them in T.J.'s case.	63	10%	3	68	12%	5	0	0%	6
We should show compassion and forgiveness to T.J. in his final days, regardless of his criminal past. Even inmates shouldn't die in prison alone and away from loved ones.	57	9%	4	66	12%	4	0	0%	7
The prison cannot provide the medical care that T.J. needs in his current state. Therefore, it is inhumane to keep him in prison.	37	6%	5	55	10%	3	23	35%	2
T.J. was well behaved while he was in prison—he has earned his freedom.	35	5%	6	26	5%	6	1	2%	5
T.J.'s functioning is so low he should be released—his prison may not be equipped to house dying inmates.	30	5%	7	26	5%	6	1	2%	5
Prisons are overcrowded. T.J. should be released to make more room for inmates who are still a threat to society.	26	4%	8	22	4%	8	0	0%	7
Total	627	100%		549	100%				
Deny the request									
T.J. was given a sentence based on the crime he committed. Regardless of his circumstances, he should serve his full prison sentence.	56	51%	1	69	38%	1	7	29%	1
T.J.'s crime was serious—we should not excuse his bad behavior, even if he was well behaved while he was in prison.	17	15%	2	31	17%	3	7	29%	1
The victim(s) of T.J.'s crime(s) have the right to know he has been adequately punished by serving his full prison sentence.	16	14%	3	35	19%	2	2	8%	4
We should not show forgiveness and compassion to T.J. It shows criminals in the community that we aren't tough on crime.	8	7%	4	8	4%	6	0	0%	5
T.J. still has the ability to reoffend. Our first concern should be to protect the community.	7	10%	5	23	13%	4	5	21%	2
Releasing T.J. alone will not save enough money to make the risk worth the potential for harm.	3	3%	6	3	2%	7	3	13%	3
If we accept T.J.'s request, the prison system will be overrun with requests for release from other inmates.	2	2%	7	9	5%	5	0	0%	5
Releasing T.J. may put an undue financial burden on other government agencies if his daughter fails to pay his medical expenses.	2	2%	7	2	1%	8	0	0%	5
Total	111	100%		180	100%		24	100%	

inmate. Of those who chose to deny the release request, the most important factor for both community participants and students was (a) a “do the crime, do the time” mentality. The second most important factor for community participants was (b) that bad behavior should not be excused, even if well behaved in prison. For students, it was (c) honoring the victim by ensuring the inmate serves his full sentence.

The warden responses varied slightly from the community responses in reasons to accept or deny the release request. Wardens indicated that their top two considerations for release were (a) the inmate's minimal threat to society given his age and terminal illness, and (b) the fact that laws were put in place for this purpose and should be utilized. In line with community attitudes, one of the prison wardens' main considerations in denying the release request reflected a “do the crime, do the time” mentality given the seriousness of the crime. They had the added concern that the inmate may reoffend, and indicated they would deny the request because protecting the community was of higher priority.

General Discussion

Public policies are developed and implemented on a two-way street—public opinion informs the extent to which new policies are implemented and regulated, and policymaking reflects societal and institutional values back to the public (Wlezien & Soroka, 2007). In theory, when public attitudes contravene policies or their implementation, changes should be made to align policies with the values of the public. Our findings suggest that the existence and acceptance of compassionate release options far exceed the extent to which compassionate release is granted. We found in Study 1 that the vast majority of states and the federal government have compassionate release laws in place, an increase from only three jurisdictions with such statutes in place in 1994 (Russell, 1993). And we found in Study 2 that the majority of both layperson and warden participants favored compassionate release under certain circumstances. Considered together, these factors suggest that compassionate

release could be implemented with some regularity. But it is not. Are there still other factors that explain why?

Study 1 sought to examine each jurisdiction's underlying rationale for compassionate release and whether underutilization could be explained within jurisdictions' statutory language. Approximately two thirds of jurisdictions had criteria specifying that an inmate needs to have a chronic or terminal illness for release, while advancing age and mental health/illness were mentioned half as often. These statutes, therefore, are rooted in the incapacitation and specific deterrence rationales for punishment (Berry, 2009; Murphy, 2012). Within the statutory language, criteria were often both vague and inconsistent, which undoubtedly causes difficulties for reviewing boards and inmates alike. For instance, although 35 laws listed terminal illness as a criterion, only 15 provided a specific life expectancy range. And of those that included a specific life expectancy, the range varied greatly from 30 days to 2 years. The age requirements within statutes were also vague and inconsistent. Among the 18 that mentioned age as a criterion, 12 specified what ages were eligible, with a range from 45 to 70 years of age. Of those statutes that mentioned release due to advanced age but did not give a specific number, it may be difficult for both prison officials and inmates to know who meets the criteria, especially when the rate at which older adults physically age can vary substantially (Rikard & Rosenberg, 2007).

Underutilization may also be due to the retributive function of punishment, and an interest in narrowly tailoring these laws so that those who commit the most heinous crimes or whose crimes would offend societal norms or victims' retributive desires, are not eligible (Murphy, 2012). We found that in a handful of jurisdictions, offenders who committed sex crimes and murder were ineligible for compassionate release. Approximately one third of the laws indicated ineligibility if the inmate was sentenced to life in prison, the death penalty, or some form of mandatory minimum sentence. Moreover, one in four had a provision precluding inmates who had not yet served a substantial portion of their sentence. In each of these sentenced-based criteria, there is recognition that the punishment should be proportional to what the inmate "deserves" and that unless he or she has met that threshold, compassionate release should not be granted.

Proponents point to cost savings to correctional facilities and alleviating the financial burden on facilities holding older or ill inmates (Pew Charitable Trusts, 2014b; Williams et al., 2011); however, only about one third of statutes had a provision to release an inmate if the cost of his or her care was too great or if they could receive adequate care outside of the facility. It is debatable whether the cost of care should be a viable rationale for compassionate release, but the expenses to correctional facilities are often considered in conjunction with other rationales for punishment: retribution, incapacitation, deterrence, and rehabilitation. It may be, however, that without explicit mention of this rationale in the statute, jurisdictions may be reluctant to release an inmate for this reason.

While the sparse use of compassionate release might imply that the general public and prison officials disfavor its use, results of Study 2 showed that the majority of laypeople and wardens supported release under certain circumstances. These numbers were surprising given that so few inmates are released under these laws, and previous research had noted disapproval of releasing terminally ill inmates in some circumstances (Boothby & Overduin, 2007; General Assembly of the Commonwealth of Pennsylvania, 2005). Perhaps, in the interval since those studies were conducted,

public sentiment has shifted as wardens and the public have become more aware of the relatively low risk of releasing older ill offenders and the high costs associated with housing them, factors supported by our data on the reasons for approving a request. All three samples indicated that the most important reason for release was that the inmate was no longer a risk to society, and both community members and students indicated cost to taxpayers as their second most important consideration. (Wardens selected cost to taxpayers as third.) Another explanation for discrepancies between our findings and earlier studies may be differences in punitive sentiments that emerge when comparing specific versus global attitudes toward public policy (Applegate, Cullen, Turner, & Sundt, 1996). Whereas participants in previous research provided global attitudes toward compassionate release without the consideration of a specific inmate (e.g., Boothby & Overduin, 2007), participants in our study read a scenario with detailed information about one particular inmate and indicated specific attitudes about him. Perhaps having details about the low threat posed by the inmate and his plan after release provided sufficient rationale for participants to recommend releasing him.

Although most participants were willing to grant release, they were also attentive to the nature of the offender's crime and his criminal history. Consistent with the results of previous research (Rogers & Ferguson, 2011), students and community members were more punitive toward offenders who had committed a sexual offense and were less willing to release, as compared to the nonsexual offenses. And, as previous studies have found (Allison & Brimacombe, 2010; Devine & Caughlin, 2014), participants were less willing to release an inmate who had a prior criminal record, though this was only the case for the student sample. Although previous meta-analyses have not found substantial differences between student and community participants on legal judgments (Bornstein et al., 2017; Devine & Caughlin, 2014), one explanation for the difference in this study is that the student sample was recruited from a mostly conservative location, whereas the community sample was recruited online via MTurk and likely represented a more diverse sample. Future research should more specifically examine how ideology impacts judgments related to release.

Our results did not support the hypothesis that wardens would be less likely to approve release than members of the public; however, the warden sample was too small to provide a meaningful comparison. In other realms, lay decision makers show more leniency toward criminal offenders than legal professionals (e.g., Diamond & Stalans, 1989; Eisenberg et al., 2005), a difference apparently attributable to differential importance attached to legal and procedural variables. Another possibility is that wardens responded to demand characteristics, choosing to accept the release request absent real-world implications, when they may not approve the request outside of a research study.

Our hypotheses that participants high in general compassion and knowledge of the prison system, and low in ageist beliefs and punitive attitudes, would be more likely to approve the release request was partially supported. We found that as knowledge of the prison system increased, the likelihood of approving a release request also increased. People with such knowledge may see the utility of releasing older adult inmates who are expensive to detain, pose a low risk for reoffending, and add to the problem of overcrowding. Punitive attitudes that place more value in retribution, incapacitation, and deterrence also significantly influenced the

release decision, as those higher in punitive attitudes were less willing to approve the release request than those with less punitive attitudes. Finally, those with more general compassion toward others were also more likely to approve the request than those lower on general trait compassion.

But contrary to our hypothesis, ageist beliefs did not predict the release decision. Participants in all three samples, on average, did not have negative beliefs toward older adults. In recent decades, research on the Stereotype Content Model (Fiske, Cuddy, Glick, & Xu, 2002) has noted that people have mixed-stereotypes toward older adults—that they are perceived as both warm and incompetent—resulting in overhelping and patronizing discriminatory behavior (Cuddy & Fiske, 2002), as opposed to outright antipathetic talk, avoidance, and exclusion behavior as measured by the Fabroni Ageism Scale. Future research should examine whether participants perceive older inmates as warm and incompetent according to the Stereotype Content Model (SCM)—which may result in more support for compassionate release because these dimensions may link directly to perceived risk for reoffending.

Limitations

A noted limitation of Study 1 is that the quality of state data was variable because desired information was often incomplete or unavailable. States organize their statutes differently from one another, so despite our careful review of each state's laws, supplemented by Internet searches with intentionally chosen keywords, we may have missed information for some states. The review is also limited to currently enacted statutes (in 2016), and is not an analysis of the evolution of compassionate release statutes across time. Although our data suggest that more states have created compassionate release laws than in the past, they cannot speak definitively to whether states have revised their criteria over time in response to the increasing numbers of older adult and ill inmates in their correctional facilities.

One limitation of Study 2 was the small sample of prison wardens and executives who responded to the survey, despite our best efforts to recruit them. This small sample did not provide enough statistical power to detect differences between groups. Also, the wardens who *did* respond may not be representative of their profession because they may have had more knowledge, interest, or experience on this topic than their colleagues. This study was also limited by the vignette methodology and the information in the vignettes. Regarding the latter, vignettes described a White male inmate who met all the criteria for release from the BOP. Although some inmates do indeed meet these criteria, we may have described a scenario in which the benefits of releasing the inmate too clearly outweighed the costs, resulting in a moderate ceiling effect. We anticipated this concern by including victim impact statements that described the adverse impact of the crime on the victims. Still, the high percentage of respondents who approved the release request, particularly among wardens, compared with the number of inmates who are released, may be a product of our vignette. In addition, the vignettes were relatively short, so they did not come close to providing the richness of detail about the inmate and crime that one would get when actually reviewing a release request. It lacked information such as personal interactions between the inmate, guards, and the warden, and details about adaptation to prison life, ailments related to aging or

illness, and other issues that would typically factor into a release decision. Additionally, there were no real consequences associated with this decision, so participants may have given responses based on idealism rather than realism.

Finally, asking citizens to evaluate releasing an inmate from prison obviously put these participants in an unfamiliar role without the requisite training or experiences. It is unclear how they would respond if they were more familiar with this role. However, because the willingness to release was comparable between warden and community participants, the absence of training is less concerning. In addition, others (e.g., Finkel & Duff, 1991; Greene & Evelo, 2013) have had success describing to laypeople a judgment typically made by legal professionals and then asking them to make such a judgment themselves.

Implications

These findings have several implications for public policy and the use of compassionate release. Although those in charge of implementing these laws may fear backlash from the public if they release inmates (Granse, 2003), the present study indicates significant public support for releasing certain eligible inmates, depending on their circumstances. Obviously, more research must be done on the pragmatic and public policy implications of compassionate release. Additional data should be collected using different methodologies to determine if the high approval rates for compassionate release shown here are indeed supported by the public. If they are, then pilot studies might evaluate the effects of placing inmates in assisted living or partially monitored home environments and assessing their rates of recidivism and quality of life before death. It would also be useful to have data on the number of petitions submitted within each state, procedural aspects of compassionate release requests (e.g., length of time from approval to request), and the fiscal implications of releasing a certain number of dying inmates. With streamlined procedures for requesting, releasing, and monitoring, along with more systematic data on benefits of compassionate release of older and dying inmates, this process could become the norm rather than the exception, providing advantages to the prison system, the public, and select inmates alike.

A Postscript

We have suggested that bureaucratic complexities inherent in the decision to grant compassionate release are one factor in the laws' underuse. Ultimately, though, underutilization may lie in decision makers' cost-benefit analysis, resulting in an unwillingness to make a risky choice in the face of uncertainty. Despite the fact that research shows low recidivism rates for this age group (Bonczar, 2009; Hughes et al., 2001; Turley, 2007), findings from both studies underscored a primary concern about inmate incapacitation, suggesting that the risk of reoffending may simply be perceived as too great a cost. In Study 1, we noted that statutes may be written to ensure that incapacitation and deterrence are achieved by allowing for the release only of chronically or terminally ill inmates who have little time left in their lives and little physical ability to commit crimes. In Study 2, we found that warden participants were particularly concerned with the risk of inmates reoffending. A secondary cost of release is the loss of retributive function of the underlying prison sentence. In fact,

another of the wardens' chief considerations in denying the release request was the retributive notion that an offender who has "done the crime should do the time." Releasing an inmate before sentence completion removes that function.

But our results also showed support for the utilitarian function of compassionate release, suggesting that participants were not unswayed by potential benefits of release. For example, layperson members with more knowledge of the prison system and the challenges they face were more likely to accept the release request, and they cited practical reasons to support this choice. A substantial proportion of layperson participants supported release due to its potential to save taxpayer money and because of the inmate's low likelihood of recidivism, both highly pragmatic considerations. Even wardens cited the practical reason that compassionate release laws are in place so should be utilized, as their primary rationale for release (which begs the obvious question of why they are not). But in the end, those in positions of power on whom any negative consequences of release will fall, understandably consider the risks associated with approving release requests. For many, those risks may simply outweigh any pragmatic benefits.

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(Appendix follows)

Appendix
Prison Knowledge Questions

(1) Disagree strongly (2) Disagree slightly (3) Disagree moderately (4) Agree moderately (5) Agree slightly (6) Agree strongly

1. Offenders age 65 and older are the fastest growing age group in prison systems.
2. Older offenders experience accelerated aging in prison, suffering from serious health problems at an earlier age than older adults in the general population.
3. On average, the financial cost is two to three times higher to maintain older adult offenders compared with younger offenders.
4. Federal prisons have been operating under capacity since 2011.
5. The majority of prisons are well equipped to accommodate older offenders.
6. The United States has the highest documented per capita prison population in the world.
7. According to national data, the likelihood to reoffend for offenders ages 18-29 is the same as for offenders ages 58-69.

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