

Justice by the Numbers: States Turn to Software To Make Parole Decisions

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ABSTRACT

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FULL TEXT

At the age of 13, Michael T. Murphy went into the woods near his home in rural New York with the 10-year-old boy who lived next door and stabbed him to death. Last year, having rejected Mr. Murphy's application 11 times over his more than a quarter-century in prison, the New York State Board of Parole set him free.

This time, the parole board deemed Mr. Murphy, then 41, to be a low risk for committing future crimes, according to parole board documents. The board reached its decision using a computer software program called Compas, one of several designed to predict whether individual convicts will return to prison.

Driven to cut ballooning corrections costs, more states are requiring parole boards to make better decisions about which convicts to keep in prison and which to release. Increasingly, parole officials are adopting data- and evidence-based methods, many involving software programs, to calculate an inmate's odds of recidivism.

The policy changes are leading to a quiet and surprising shift across the U.S. in how parole decisions are made. Officials accustomed to relying heavily on experience and intuition when making parole rulings now find they also must take computerized inmate assessments and personality tests into account.

In the traditional system, factors like the severity of a crime or whether an offender shows remorse weigh heavily in parole rulings, criminologists say. By contrast, automated assessments based on inmate interviews and biographical data such as age at first arrest are designed to recognize patterns that may predict future crime and make release decisions more objective, advocates of the new tools say.

In the past several years, at least 15 states including Louisiana, Kentucky, Hawaii and Ohio have implemented policies requiring corrections systems to adopt modern risk-assessment methods, according to the Pew Charitable Trusts' Public Safety Performance Project. California is using computerized inmate assessments to make decisions about levels of supervision for individual parolees. This year, West Virginia began requiring that all felons receive risk assessments; judges receive the reports before sentencing with the option to incorporate the scores into their decisions.

Such methods can contradict the instincts of corrections officials, by classifying violent offenders as a lower recidivism risk than someone convicted of a nonviolent robbery or drug offense.

Criminologists say people convicted of crimes like murder often are older when considered for release, making them less likely to reoffend. Inmates convicted of nonviolent crimes like property theft, meanwhile, tend to be younger, more impulsive and adventurous – all predictors of repeat criminality.

The resulting parole decisions also often contradict the wishes of victims of violent crimes and their families. Mr. Murphy's release in June last year came as a shock to family members of his victim, Andrew Pitkin, and they criticized the decision sharply. They feared Mr. Murphy, who had stabbed Andrew 33 times, could kill again.

"The nature of the crime was impulsive, something spur-of-the-moment, and it makes you question what someone is capable of doing," said Rob Pitkin, Andrew's father. "Frankly, I think he should serve a lifetime."

Wider acceptance of computerized risk assessments, along with other measures to reduce state corrections budgets, has coincided with the first declines in the national incarceration rate in more than a decade.

The number of inmates in state and federal facilities fell nearly 1% in 2011 to 1.6 million, after edging down 0.1% in the prior year. The 2011 decline came entirely from state prisons, which shed 21,600 inmates, offsetting an increase of 6,600 federal prisoners. Preliminary 2012 data shows an even larger fall in state inmates of 29,000.

Experts say one reason for the decline is that fewer parolees are returning to prison. About 12% of parolees were re-incarcerated at some point in 2011 compared with 15% in 2006, representing the fifth straight year of decline, according to Justice Department data.

Texas, by reputation a tough-on-crime state, has been consistently using risk assessment longer than many states and is boosting the number of prisoners it paroles each year. With its current system, in use since 2001, it released 37% of parole applicants in 2012 versus 28% in 2005 – some 10,000 more prisoners released in 2012.

Officials in Michigan credit computerized assessments, introduced in 2006 and adopted statewide in 2008, with helping reduce the state's prison population by more than 15% from its peak in 2007 and with lowering the three-year recidivism rate by 10 percentage points since 2005.

Still, experts say it is difficult to measure the direct impact of risk prediction because states have also taken other steps to rein in corrections costs, such as reducing penalties for drug offenses and transferring inmates to local jails.

Michigan's assessments withstood a legal challenge in 2011, when prosecutors sought to reverse the parole of Michelle Elias, who had served 25 years for murdering her lover's husband. A lower court, siding with the prosecutor, ruled the parole board hadn't placed enough weight on the "egregious nature of the crime," court documents say. The Michigan Court of Appeals overturned the decision and upheld Ms. Elias's release.

Yet earlier this month, the same appeals court ruled the Michigan parole board had abused its discretion by releasing a man convicted of molesting his daughter. He hadn't received sex-offender therapy while in prison, but three assessments, including one using Compas, had deemed him a low risk of reoffending. The appeals court, in an unpublished decision that echoed a lower court, said that Compas could be manipulated if presented "with inadequate data or individuals who lie."

The Compas software designer, Northpointe Inc., says the assessments are meant to improve, not replace, human intelligence.

Tim Brennan, chief scientist at Northpointe, a unit of Volaris Group, said the Compas system has features that help detect lying, but data-entry mistakes or inmate deceptiveness can affect accuracy, he said. The company says that officials should override the system's decisions at rates of 8% to 15%.

Many assessment systems lean heavily on research by criminologists including Edward Latessa, professor at the Center for Criminal Justice Research at the University of Cincinnati. Parole boards, typically staffed with political appointees, have lacked the information, training and time to make sound decisions about who should be released, Dr. Latessa said. The process, he said, is one factor contributing to the population surge in the nation's prisons, including a fivefold increase in the number of prisoners nationwide from 1978 to 2009, according to the Department of Justice.

"The problem with a judge or a parole board is they can't pull together all the information they need to make good decisions," said Dr. Latessa, who developed an open-source software assessment system called ORAS used in Ohio and other states.

Ohio adopted ORAS last year as the result of legislation aimed at addressing overcrowded prisons and containing corrections spending. Dr. Latessa does paid consulting work with state corrections agencies but isn't paid for use of the system. "They look at one or two things," he said. "Good assessment tools look at 50 things."

Some assessments analyze as many as 100 factors, including whether the offender is married, the age of first arrest and whether he believes his conviction is unfair. In Texas, a rudimentary risk-assessment measures just 10 factors. Data gathered in interviews with inmates is transmitted to the offices of Texas parole board members, who vote remotely, often by computer.

Willie Gordon, 25, was convicted of burglary and placed on probation in 2010. Last year, after testing positive for smoking marijuana, his probation was revoked and he received a three-year prison sentence. In February, as part of his parole application at the Hutchins State Jail off the Lyndon B. Johnson Freeway in Dallas, he sat in a small office and answered a parole officer's questions.

Each response was worth a predetermined number of points, which would add up to his risk score. The more points, the higher the risk. A total of nine points would deem him a high risk for committing a new crime; 16 would put him in the highest-risk category.

"What was the last grade that you completed in school?" asked Mandi Honza, a 14-year veteran of the Texas parole system who administered the test. "I completed high school," Mr. Gordon said. Ms. Honza deducted a point.

Mr. Gordon's age at the time of his offense, 19, added one point. Research shows younger prisoners are more likely to return to prison. If he had been 17, he would have received two points; if 26, none.

His crime, a property theft, added another two points. Had it been rape or murder, he would have received none. Texas considers burglary offenders more likely to repeat because the crime typically reflects planning and intent rather than an emotional outburst characteristic of many violent acts.

"Some people are surprised to learn that offenders who we think of as the worst offenders – murderers and sex offenders – have some of the lowest recidivism rates," said Lee Seale, former director of internal oversight and research at the California Department of Corrections and Rehabilitation.

Mr. Gordon said his interaction with the judicial system seemed "electronic." He had hoped to tell the parole board how he had changed since the burglary, in which he and a friend had stolen electronics from an unoccupied home. Despite the failed drug test, he had enrolled in college, found a job and entered into a serious relationship, he said.

"Basically, I just have to have faith in the computer," he said, clutching a stack of letters of support from his family in support of his release.

Mr. Gordon's responses, combined with other factors, made him a moderate risk of reoffending under Texas parole guidelines. Last year, the Texas parole board released some 40% of inmates with that score. A Dallas County judge released Mr. Gordon on the condition that he complete five years of supervised probation.

Parole officials say assessment scores are just one factor they consider. Some experts say relying on statistics can result in racial bias, even though questionnaires don't explicitly ask about race.

Data such as how many times a person has been incarcerated can act as an unfair proxy for race, said Bernard Harcourt, a University of Chicago professor of law and political science. "There's a real connection between race and prior criminal history, and a real link between prior criminal history and prediction," Mr. Harcourt said. "The two combine in a toxic and combustible way."

Christopher Baird, former head of the National Council on Crime and Delinquency, said statistical tools are best used to help set supervision guidelines for parolees rather than determine prison sentences or decide who should be released. "It's very important to realize what their limitations are," said Mr. Baird, who developed one of the earliest risk-assessment tools, for the state of Wisconsin in the late 1970s. "That's lost when you start introducing the word 'prediction' and start applying that to individual cases."

Mr. Murphy was tried as an adult and convicted in the 1984 killing of his younger neighbor. The two boys were walking Mr. Murphy's dogs in the woods near Peru, N.Y., when the younger boy tripped on one of the dogs. Years later, Mr. Murphy told the parole board that Andrew had kicked the dog, which sent him into a rage. He disemboweled the boy with a folding knife.

Sentenced to prison for nine years to life, Mr. Murphy was first eligible for parole in his early 20s. Parole board members had denied Mr. Murphy 11 times, citing the grisly nature of the crime and his apparent lack of understanding of why he had killed.

Mr. Murphy delayed his 12th parole hearing last year so he could receive the Compas assessment, according to a hearing transcript. Through his attorney, Mr. Murphy declined repeated requests for comment for this story.

At the hearing, Mr. Murphy acknowledged his offense "stretches the limits of human understanding" but pleaded with the board not to let the crime define who he had become in the 28 years since.

Henry Lemons, one of two parole-board members who had voted to free Mr. Murphy, said the Compas assessment provided useful context.

"Making a decision on someone's life is extremely difficult," said Mr. Lemons, a former New York City Police Department detective who has since left the board. "You have to try to make a real quick decision during a 20-minute or half-hour interview with a person and consider his history and his likelihood of reoffending."

Joe Palazzolo contributed to this article.

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