



GREAT WEIGHT:

*A Review of California
Board of Parole
Hearings Transcripts to
Assess Frequency and
Consideration of Intimate
Partner Violence among
Women Convicted of
Homicide Offenses*

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Stanford Law School
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Executive Summary

The term “survivor” is often used to refer to people who have experienced or are currently experiencing intimate partner violence (IPV). But abuse from an intimate partner is not the only danger survivors face. There is another trauma that many survivors also endure: punishment by the criminal legal system.

Every day, survivors of intimate partner violence are criminalized for ordinary acts of survival—whether it be slashing the tires on an abuser’s car to escape without being followed, or self-medicating with drugs to cope with the abuse. In some extreme cases, survivors are led to kill, often in acts of self-defense against their abuser, or in acts of violence against others at their abuser’s direction. These complex, challenging cases, in which the experience of IPV leads survivors to commit a homicide, form the center of this study.

This report explores the experiences of criminalized survivors seeking parole in California after conviction for a homicide offense. It offers both quantitative and qualitative evidence documenting the unique challenges survivors entangled in the criminal legal system face.

Through a systemic review of over 140 parole hearing transcripts provided by the California Board of Parole Hearings (BPH), we found that approximately 23% of women incarcerated for homicide in California are serving time for a crime directly linked to their experience of intimate partner violence. While these survivors experience a parole grant rate nearly equivalent to that of the general prison population, they are, on average, serving over two decades in prison before being found suitable for parole. Our transcript review also revealed that over 90% of survivors incarcerated for IPV-related homicides had experienced other forms of trauma—such as child abuse or sexual violence—prior to their incarceration.

In addition to a quantitative analysis of how many survivors are currently incarcerated for homicide offenses, this study also makes qualitative observations about survivors’ experiences during the parole process, and offers both recommendations and future research directions to expand our knowledge about this vulnerable population. These recommendations include: 1) Providing additional and ongoing training to BPH commissioners and staff on the nature of IPV, and 2) Allowing formerly incarcerated survivors of IPV a greater voice in the parole process. We also encourage future research on a range of topics, including: the relationship between intimate partner violence and traumatic brain injury; how sentencing enhancements might disproportionately impact women; the role of formal intimate partner violence investigations in the parole process; the prevalence of previous sexual trauma among IPV survivors; and the role of District Attorneys in parole suitability hearings.

I. Introduction

The term “survivor” is often used to refer to people who experienced or are currently experiencing intimate partner violence (IPV). IPV may include physical or sexual violence, stalking, psychological abuse, and/or coercion by a current or former intimate partner. Thus, the term survivor captures what an individual in the midst or wake of IPV must do each day: survive.

But what happens when a person’s attempts to survive—the restraining order, the escape to an emergency shelter, the savings for financial independence—have failed? Survivors can be left with limited options to protect themselves and their children. In extreme cases, and in the face of unspeakable abuse, some survivors must choose between their own survival or that of their children and that of their abuser.

This report focuses on how the legal system, and in particular, the parole process, engages with survivors of IPV who have been convicted of a homicide directly linked their experiences of IPV. It is part of a broader research initiative—the Regilla Project—led by Stanford’s Criminal Justice Center. The Regilla Project is a multi-year national research project aimed at understanding the frequency with which women in the United States are imprisoned for killing their abusers. As part of this analysis, we are examining how states consider IPV in post-conviction decision-making, including at the stage of parole release.

The number of incarcerated survivors of IPV is likely higher than ever before. Women disproportionately experience IPV, and the size of the female prison population has exploded in the last 40 years.¹ Moreover, while the incidence rate of IPV in the general population is high—one in four women and one in 10 men—it is expected that survivors are overrepresented in the prison population due to law enforcement practices

that criminalize surviving abuse.² This phenomenon, often referred to as the “abuse to prison pipeline,” emphasizes how a survivor’s experience of abuse has an overwhelmingly negative impact on their experience in the criminal legal system.³

This report examines how these survivors, incarcerated for killing their abusers, are treated by legal system actors when they arrive at a potential door to freedom: the parole hearing. Given the unique nature of California’s parole laws and the consideration of intimate partner violence in suitability determinations, we were interested in reviewing how California Board of Parole Hearings (BPH) transcripts might shed light on the frequency with which IPV arises in the parole decision-making process. The hearings—which follow a pattern of questions about a person’s life circumstances, the controlling offense, their programming while incarcerated, and their current perspectives on the crime—are useful for studying IPV-related homicides and how BPH evaluates such cases when determining parole suitability. While procedural rules and BPH commissioner expectations frequently affect the way survivors present their experience of IPV—omitting or emphasizing certain details to present a viable case for parole—these transcripts provide insight into how certain officials in the legal system perceive and respond to survivors speaking about their experiences with abuse. The transcripts also shed light on how these survivors

1 The Sentencing Project, *Incarcerated Women and Girls* (May 12, 2022), <https://www.sentencingproject.org/publications/incarcerated-women-and-girls/>.
2 National Coalition Against Domestic Violence, *Domestic Violence* (2020), https://assets.speakcdn.com/assets/2497/domestic_violence-2020080709350855.pdf?1596828650457.
3 Alisa Bierria & Colby Lenz, *Defending Self-Defense*, SURVIVED & PUNISHED, (Mar. 2022), <https://survivedandpunished.org/defending-self-defense-report/>.

arrived in the criminal legal system in the first place, and raise questions about how our criminal legal system responds to survivors of IPV more broadly.

BPH provided us with transcripts for all hearings that took place in female correctional facilities in the state of California for 2021. We focused on individuals that the California Department of Corrections and Rehabilitation (CDCR) considered to be part of the female prison population and who were incarcerated for the crimes of first or second-degree murder, or manslaughter.⁴ Of this population, we found that 24% of individuals committed their crime due to circumstances directly related to their experience of IPV. At the time of their parole hearing, these survivors had spent an average of 20 years in a California state prison. For these cases, we reviewed each parole hearing transcript in detail and identified several trends.

We intentionally chose to focus on survivors of IPV, who are a subset of the population that experiences domestic violence (DV). DV is typically understood as any physical or sexual violence, stalking, or psychological aggression (including coercion) that takes place within a household or romantic relationship and may be experienced by romantic partners, parents, and children. IPV is a narrower term, used to identify the same type of abuse, but only within intimate relationships (i.e., spouse, boyfriend/girlfriend, dating partner, or ongoing sexual partner). When this report references DV, we are intentionally referring to the broader category of abuse. However, the results of this report focus on IPV only. This allows for targeted policy recommendations in addition to more specific insight into how a specific type of victimization can lead to incarceration.

Our specific recommendations center on ways to strengthen the parole process and include:

1. Additional IPV Training: Providing additional and ongoing training for BPH commissioners and staff on the nature of IPV, and

2. Embracing Survivor Voices: Allowing formerly incarcerated survivors of IPV a greater voice in the parole process.

Additionally, we hope this report will serve as a catalyst for future research into several identified trends. This includes further analysis on:

1. Traumatic Brain Injuries (TBIs): How can TBIs be more accurately identified by the criminal legal system and what is necessary to establish TBIs as a mitigating factor for criminalized survivors?
2. Disproportionately Harsh Punishment for Women: Are women punished more severely than men for similar crimes? What is the correlation between the crime of failure to protect and the experience of IPV?
3. Re-Evaluating the Role of IPV Investigations Prior to BPH Hearings: Do these investigations happen too frequently or not enough? When is IPV held as an aggravating factor in parole suitability determinations?
4. High Rates of Prior Sexual Abuse among IPV Survivors: Who is perpetrating this abuse and how, if at all, do survivors' trauma histories factor into BPH decisions?
5. The Role of Weapons-Related Sentencing Enhancements: Do women receive additional time in prison due to the increased likelihood that they need to use a weapon to defend themselves?
6. Re-Evaluating the Role of District Attorney's Offices in BPH Hearings: What are the tensions between the District Attorney's perceived roles at BPH hearings, and BPH commissioners' narrower analysis of current dangerousness?

While our review of BPH transcripts was detailed, our data set is not exhaustive. Because our review was limited to BPH transcripts, our research is informed by what the survivor and other participating parties in the parole hearings chose

⁴ As noted below in Part V: Results, while we included individuals convicted of either murder or manslaughter in our analysis, all survivors in our sample were convicted of murder in the first or second degree.

to share. A survivor may choose to omit important pieces of their history and the background that led them to commit the act responsible for their incarceration. For this reason, our sample may be underinclusive of the number of women incarcerated who would identify as survivors, and whose victimization contributed to their commitment offense.

Additionally, our sample size is limited. It only captures survivors who were charged with and convicted of murder or manslaughter and subsequently incarcerated for killing their abusers. We recognize that many, if not most, survivors are criminalized for lesser charges than homicide. Indeed, everyday acts of survival often subject to punishment. However, the focus of the Regilla Project, and this report, is to gather data of this particular subset of survivors, who are serving the lengthiest prison sentences, and about whom scholars have little to no data.

Accordingly, our sample only includes those survivors who were eligible for parole release (as opposed to those serving death sentences or life without the possibility of parole sentences), a total of 97 cases, and is limited to the state of California in a single year. While a significant number of these cases (23) were cases in which a survivor killed her abuser, or as determined by our analysis, committed a crime as a direct result of her experience of IPV, we recognize the limitations inherent in a data set of 23 cases. This small sample size necessarily limits how much we can extrapolate from our findings to estimate national trends in survivor incarceration rates. That said, the total volume of BPH transcripts we reviewed was rich enough to allow us to make larger observations about the parole process in general and expand our understandings of how survivors experience the criminal legal system.

We also acknowledge that we have treated what the survivors relate in the hearings to be their truth and consider these statements as fact, relying on the assumption that survivors appearing before BPH tell their stories in good faith. As such, our analysis reflects this orientation to their narratives.

Finally, a few notes on terminology we are using in this report. We regularly refer to the individuals incarcerated by CDCR who have experienced IPV as “victims” and “survivors.” In the Results section, however, we refer to the person(s) killed by the incarcerated survivors as “victims.” This is not intended to diminish the fact that the incarcerated survivor appearing before BPH is also a victim of IPV. Moreover, it is important to acknowledge that the victim/offender dichotomy is a simplified heuristic that often overgeneralizes who may be the perpetrator of harm.

In addition, this report primarily focuses on *women* who experience IPV. Because the Regilla Project is focused on how female survivors are treated by the carceral system after abuse, we often cite woman-specific data about the experience of IPV and DV. However, IPV and DV affect people of all genders, and our use of words such as “woman,” “female,” and “women” and the use of she/her pronouns to refer to people who experience DV and IPV does not diminish the high rates of IPV and DV experienced by survivors of other genders. Moreover, much of the statutory language related to IPV and DV specifically uses the term woman to refer to the victim of IPV or DV. In these cases, we did not change the language of statutes. Finally, it is important to underscore that the transcripts we read were given to us by CDCR, and thus reflect CDCR’s categorization of an individual as a woman. In many transcripts, the gender identity of the incarcerated survivor was not stated by the survivor, and we therefore make no conclusions about how each individual in our sample population identifies unless gender was explicitly addressed by the survivor.

This report begins with an overview of the impacted population, California homicide and self-defense laws, and the California Board of Parole Hearings process. We then summarize our methodology for analyzing hearing transcripts and present our findings. Based on these findings, we suggest several policy recommendations in addition to other areas of potential research.⁵

⁵ Throughout the report, we provide quotations from commissioners, people who are incarcerated, and attorneys pulled from the hearing transcripts we reviewed. To preserve privacy, we do not provide citations for these statements or name their speakers.

II. Background on IPV Population

Studying women who are incarcerated for killing their abusers can help illuminate several intersecting social problems: increasing incarceration rates of women, high rates of IPV, and the complicated intersection of victimization and criminalization that survivors face. Since 1980, the rate of women incarcerated in the United States has increased 475%.⁶ At the same time, one in four women and one in 10 men experience sexual violence, physical violence, and/or stalking by an intimate partner during their lifetime.⁷ In California, these rates are even higher: 34.9% of women and 31.1% of men experience physical violence, sexual violence, and/or stalking by an intimate partner before they die.⁸

Extensive research documents how difficult it is for survivors of IPV to leave an abusive relationship.⁹ And, because IPV abusers often coercively control the survivor through “microregulation, isolation, and threats,” it can be difficult for survivors to leave abusive relationships even when it may appear to an outsider that leaving the relationship is feasible.¹⁰ Additionally, those who witness marital violence as children have been shown to be more likely to experience IPV in their own relationships.¹¹

Criminalization of Survivors

In recent years, advocates and scholars have become increasingly aware of the ways survivors of IPV are

criminalized. Evidence reveals that IPV contributes to an “abuse to prison pipeline” where survivors are criminalized for using self-defense against abusers, “failing to protect” children from abusers, being coerced into illegal acts by an abuser, and using illegal drugs to cope with abuse.¹² Survivors are punished not just with criminal prosecution, but also removal of their children, without formal custody proceedings. Among the various ways survivors are criminalized, gender-distorted legal regimes and trauma-induced behavioral changes present particularly important areas of study. Self-defense and sentencing enhancements operate differently across genders;¹³ trauma sustained during IPV can also distort survivors’ memories¹⁴ and undermine their “reliability” in legal settings. Examining how

6 *Incarcerated Women and Girls*, *supra* note 1.

7 *Domestic violence*, *supra* note 2.

8 *Id.*

9 Jacquelyn C. Campbell et. al, *Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study*, 93 AM. J. PUB. HEALTH 1089, 1090 (July 2003) (finding that a woman’s risk of being killed by an abusive partner increases when she attempts to leave); see also Niwako Yamawaki, et al, *Perceptions of Domestic Violence: The effects of Domestic Violence Myths, Victim’s Relationship with her Abuser, and the Decision to Return to Her Abuser*, 27 J. INTERPERSONAL VIOLENCE 3195, 3196-97 (2012) (noting that survivors experience resource barriers that make leaving difficult, including financial struggles, a lack of help from police or other “formal support systems,” concerns about child custody, and a lack of housing or social support).

10 Larissa Barbaro & Chitra Raghavan, *Patterns in Coercive Controlling Behaviors Among Men Mandated for Batterer Treatment: Denial, Minimization, and Consistency of Tactics Across Relationships*, 9 PARTNER ABUSE 270, 271 (2018) (citing Gretchen Arnold, *A Battered Women’s Movement Perspective of Coercive Control*, 15 Violence Against Women 1432, 1435 (2009)).

11 Erika L. Lichter & Laura A. McCloskey, *The Effects of Childhood Exposure to Marital Violence on Adolescent Gender-Role Beliefs and Dating Violence*, 28 PSYCH. OF WOMEN QUARTERLY 344, 349 (2004).

12 Bierria & Lenz, *supra* note 3; see also Leigh Goodmark, *Gender-Based Violence, Law Reform, and the Criminalization of Survivors of Violence*, 10 INT’L. J. FOR CRIME, JUSTICE, AND SOCIAL DEMOCRACY 13, 19-21 (2021).

13 Mary Anne Franks, *Real Men Advance, Real Women Retreat: Stand Your Ground, Battered Women’s Syndrome, and Violence as Male Privilege*, 68 U. MIAMI L. REV. 1099, 1102-03 (2014).

14 Andrea N. Cimino et al., *The Effect of Intimate Partner Violence and Probable Traumatic Brain Injury on Mental Health Outcomes for Black Women*, J. AGGRESSION, MALTREATMENT & TRAUMA at 3 (2019).

survivors experience the criminal legal system is essential for understanding how it can better respond to survivors' unique needs and prevent unjust criminalization.

First, gender dynamics at play in self-defense laws are a significant mechanism for criminalizing survivors who kill their abusers. Because more than 75% of domestic violence incidents occur in or near a victim's home,¹⁵ traditional stand-your-ground laws that allow for physical self-defense instead of fleeing violent situations can play an outsized role in survivors' legal defenses. While California does not have a stand-your-ground law, it is useful to understand how these laws present unique challenges for survivors incarcerated outside of California. In Florida, for example, there is no duty to retreat from your own home, and meeting force with force within one's home is presumptively reasonable.¹⁶ But this presumption of reasonableness does not apply when the person against whom defensive force is used is also a lawful occupant and "there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person."¹⁷ This directly impacts victims of domestic violence: unless there is a protective order in place, victims may be denied a viable self-defense claim.¹⁸

Second, IPV survivors are further criminalized through sentencing enhancements that disproportionately impact women. Sentencing enhancements increase a person's sentence if certain special circumstances exist, such as

being involved in a gang or using a weapon in a homicide. In the 1980s and 1990s, California widely expanded its sentencing enhancement regime, including creating new enhancements for firearm use.¹⁹ As a result, using a firearm during the commission of a felony can add over a decade to one's sentence.²⁰ Studies have shown that women are "more likely to receive weapons enhancements because they are less able to commit homicide using personal weapons (fists, hands, and feet) compared to men."²¹

Research shows that female defendants are nearly twice as likely as male defendants to use a weapon during an incident of intimate partner violence.²² This can contribute to their criminalization in cases where they are unable to persuade the trier of fact that they acted in self-defense, especially if the state's self-defense statute requires meeting force with a similar level of force.

In addition to the weapons-based sentencing enhancements discussed above, California law provides for four-year enhancements for harm caused to children that results in death.²³ Although this enhancement generally does not apply to women incarcerated for killing their abusers, a growing number of women are incarcerated for participating in homicides of children that arise out of the woman's experience of IPV. Research reveals that these laws frequently, perhaps unjustly, punish women experiencing IPV.²⁴ Indeed, a number of these types of cases appear in our sample, as discussed further below.

15 Jennifer L. Truman et al., *Nonfatal Domestic Violence, 2003–2012*, U.S. Dep't of Justice, Bureau of Justice Statistics, 1 (Apr. 2014).

16 Fla. Stat. § 776.013(2) (2013).

17 *Id.*

18 Franks, *supra* note 13, at 1114–15 (noting that there are several reasons survivors may not seek protection orders or may be denied them: They may fear that doing so will escalate the violence against them, a judge may deny the order, or a granted order may be unenforced, rendering it toothless).

19 Elan Dagenais, et al., *Sentencing Enhancements and Incarceration: San Francisco, 2005–2017*, Stanford Computational Policy Lab 3 (2019).

20 CAL. PENAL CODE § 12022.5 (Deering 2022).

21 Ryan Elias Newby, *Evil Women and Innocent Victims: The Effect of Gender on California Sentences for Domestic Homicide*, 22 HASTINGS WOMEN'S L.J. 113, 115 (2011).

22 Erica L. Smith and Donald J. Farole, Jr., *Profile of Intimate Partner Violence Cases in Large Urban Counties*, U.S. Dep't of Justice, Bureau of Justice Statistics, 3 (2009).

23 CAL. PEN. CODE § 12022.95 (Deering 2022).

24 See Amanda Mahoney, *How Failure to Protect Laws Punish the Vulnerable*, 12 HEALTH MATRIX: THE JOURNAL OF LAW-MEDICINE 429, 431 ("Frequently, [failure to protect] laws are used to prosecute mothers who are also victims of the abuser, with evidence of their own abuse used against them in court.").

Finally, trauma sustained during IPV can contribute to survivors' criminalization when it interferes with memory and cognitive function. Head injuries and non-fatal strangulation during IPV that result in loss of consciousness can cause neurological changes indicative of traumatic brain injury (TBI).²⁵ TBI is a "brain pathology characterized by an alteration in brain function, cognitive impairment, and mental health disorders" that may involve symptoms like "neurologic deficits, loss of consciousness, decreased level of consciousness, changes in mental state, and/or memory loss."²⁶ Studies have found that between 40% and 92% of IPV survivors have sustained head injuries and nearly half have been strangled.²⁷ Though not all head injuries result in TBI, when they do, there can be legal consequences for injured survivors. Symptoms once attributed only to IPV-related mental health disorders may actually reflect brain injuries, especially when survivors have sustained multiple injuries, which is common in relationships involving IPV.²⁸

TBI incidence can have cascading implications in a legal context. First, women may inexplicably appear to remain in violent relationships when TBI-associated symptoms "make it difficult to think through or cope with the complex, often formidable organizational tasks required for battered women to stop the violence, disengage from violent partners, and/or establish independent lives."²⁹ Second, survivors with TBIs may suffer from memory loss that impairs their

ability to provide consistent testimony. This can call into question their credibility at trial and decades later in parole proceedings. Thus, "[t]he very symptoms that could be proof of neurotraumatic abuse—scrambled stories, irritability, memory gaps—cast doubt on their credibility."³⁰

Estimated Impacted Population

Recent data on the exact number of women who are incarcerated for killing their abusers is sparse, but what data there is suggests that women in this category may account for a large percentage of women serving sentences for murder or manslaughter. A 2005 study in New York found that 67% of women who were convicted of killing someone close to them had been abused by that person.³¹ A 1995 U.S. Department of Justice study found that 44% of wife defendants had been assaulted by their spouse at or around the time that they killed their partner.³² In California, a State Senator cited a statistic in 2012 during a floor session that 93% of women incarcerated for killing their partners in the state had been battered by those partners.³³

Today there are 3,699 people that the California Department of Corrections and Rehabilitation (CDCR) identifies as females incarcerated in state prison.³⁴ The rates of imprisonment for all genders of different races vary widely: 259 of 100,000 people in California are incarcerated , but the

25 Cimino, *supra* note 14, at 2.

26 *Id.*

27 Cimino, *supra* note 14, at 3 (citing Laura E. Kwako et al., *Traumatic brain injury in intimate partner violence: A critical review of outcomes and mechanisms*, 12 *TRAUMA VIOLENCE ABUSE* 115 (2011) and Amanda St. Ivany & Donna Schminkey, *Intimate partner violence and traumatic brain injury: State of the science and next steps*, 39 *FAMILY & CMTY. HEALTH* 129 (2016)).

28 Cimino, *supra* note 14, at 4 (citing Kwako, *supra* note 27 and Bushra Sabri et al., *Cumulative violence exposures: Black women's responses and sources of strength*, 31 *SOCIAL WORK IN PUB. HEALTH* 127 (2016)).

29 Helene Jackson et al., *Traumatic Brain Injury: A Hidden Consequence for Battered Women*, 33 *PRO. PSYCH. RSCH. AND PRAC.* 39, 43 (2002) (citing Kimberly K. Edy et al., *Health effects of experiences of sexual violence for women with abusive partners*, 16 *HEALTH CARE FOR WOMEN INT'L* 563 (1995)).

30 Christa Hillstrom, *The Hidden Epidemic of Brain Injuries From Domestic Violence*, *N.Y. TIMES* (Mar. 1, 2022), <https://www.nytimes.com/2022/03/01/magazine/brain-trauma-domestic-violence.html>.

31 State of N.Y. Dep't of Correctional Services, *Female Homicide Commitments: 1986 vs. 2005* 14 (2005).

32 Patrick A. Langan and John M. Dawson, U.S. Dep't of Justice, Bureau of Justice Statistics, *Spouse Murder Defendants in Large Urban Communities 2* (1995).

33 Noreen Evans, Senate Floor Session: AB 593 (C.A. 2012), https://www.senate.ca.gov/media/20120821_628_3/video. Note that we have been unable to locate the underlying source cited by Senator Evans.

34 Cal. Dep't of Corr. and Rehab., Div. of Correctional Policy Research and Internal Oversight, *Summary of Offender Data Points for Month-end February 2023*, <https://public.tableau.com/app/profile/cdcr.org/viz/OffenderDataPoints/SummaryInCustodyandParole>.

Black to white incarceration ratio is 9.2:1 and the Latinx to white incarceration ratio is 2:1.³⁵

California Homicide and Self-Defense Laws

In California, first-degree murder is defined as “the unlawful killing of a human being, or a fetus, with malice aforethought” and while using certain weapons; “willful, deliberate, and premeditated killing”; or a murder conducted during the course of certain other felonies.³⁶ It is punishable by death, a life sentence without the possibility of parole, or a sentence of 25 years to life in prison.³⁷ All other kinds of murders are considered second-degree, punishable by 15 years to life in prison.³⁸

Manslaughter is the “unlawful killing of a human being without malice,” including voluntary manslaughter, which is killing “upon a sudden quarrel or heat of passion.”³⁹ California law provides that bare fear may not justify killing, but a “reasonable fear” when “resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person” may be justified and thus unpunishable.⁴⁰ A homicide is excusable and unpunishable when committed “by accident and misfortune, in the heat of passion, upon any sudden and sufficient provocation, or upon a sudden combat, when no undue advantage is taken, nor any dangerous weapon used, and when the killing is not done in a cruel or unusual manner.”⁴¹

When someone is charged with homicide in California, state law allows for expert evidence on intimate partner battering and its effects to be introduced at trial.⁴² This change to the Evidence Code came in 1991 with the creation of § 1107, which was a response to years of advocacy by lawyers and activists.⁴³ Prior to the creation of § 1107, courts routinely rejected expert evidence on IPV and its effects in criminal trials, raising concern among advocates that important mitigating evidence was missing from survivors’ trials.⁴⁴ In 1996, the California Supreme Court held that evidence of battering was relevant to the “reasonableness” of a survivor’s self-defense claim, opening the door for more survivors charged with homicide to make use of expert testimony under § 1107.⁴⁵ This testimony may include describing “the nature and effect of physical, emotional, or mental abuse on the beliefs, perceptions, or behavior of victims of domestic violence, except when offered against a criminal defendant to prove the occurrence of the act or acts of abuse which form the basis of the criminal charge.”⁴⁶ Such evidence is not alone a defense but may support a justifiable or excusable homicide claim.⁴⁷

35 The Sentencing Project, U.S. Criminal Justice Data, <https://www.sentencingproject.org/research/us-criminal-justice-data/>.

36 CAL. PEN. CODE § 187 (Deering 2022).

37 *Id.* § 190.

38 *Id.* §§ 187, 190.

39 *Id.* § 192.

40 *Id.* §§ 197-199.

41 *Id.* § 195. This law implicates the gendered statute issues discussed in the Criminalization subsection because it protects those who kill without weapons, but punishes those who fit other aspects of the excusable homicide statute and do use weapons.

42 Cal. Evid. Code § 1107 (Deering 2022).

43 Carrie Hempel, *Battered and Convicted: One State’s Efforts to Provide Effective Relief*, 25 CRIMINAL JUSTICE, 1 (2011).

44 *Id.*

45 *People v. Humphrey*, 13 Cal. 4th 1073, 1087-88 (1996).

46 CAL. EVID. CODE § 1107 (Deering 2022).

47 CAL. PEN. CODE § 198 (Deering 2022).

III. Background on California Parole

To investigate the abuse-to-prison pipeline in California and explore how survivors fare in one area of our criminal legal system—parole—we undertook this study to learn more about California’s population of incarcerated women. The best source material available to us for this study was transcripts of parole hearings conducted by the BPH.⁴⁸

In formulating this report, we analyzed 140 BPH transcripts for all persons convicted of murder and classified as female by CDCR who participated in parole suitability hearings in 2021. While a limited sample, survivors’ narratives at parole suitability hearings are a useful starting point for estimating how many women incarcerated in California identify as survivors and learning more about how their victimization may have contributed to their crime.

In California, when a person with a life with the possibility of parole sentence has served a certain number of years as dictated by the minimum range of their sentence, a suitability hearing before BPH is scheduled and counsel is appointed.⁴⁹ Prior to the hearing, the incarcerated person undergoes a “comprehensive risk assessment” (“CRA”) with a forensic psychologist that may include evaluation of the “commitment offense, institutional programming, past and present mental state, and analysis of static and dynamic risk factors based on the inmate’s behaviors and relationships, emotions and attitudes, and perceptions and attributions.”⁵⁰

BPH’s Offender Investigations & Screening Division (OISD) also conducts “intimate partner battering/battered woman syndrome investigation[s]” to determine “the probability that a prisoner’s crime was the result of domestic violence or Intimate Partner Battering.”⁵¹ Not all women who have experienced intimate partner violence receive an OISD investigation. Rather, such investigations are initiated upon the request of the Governor or the Board of Parole Hearings. However when they are completed, California law requires the hearing panel to give “great weight to the IPB information” in cases prosecuted prior to 1996 once it has established that, the IPB information is “relevant” and “reliable.”⁵²

The incarcerated person’s assigned CDCR counselor also create a comprehensive summary of the survivor’s “historical institutional behavior and programming,” called a “central file,” to aid BPH commissioners in their suitability analyses.⁵³ The incarcerated person receives a copy of their central file as well and may, with their attorney, prepare materials to support their release to be presented to a BPH panel before

48 In the future, the Regilla Project intends to conduct in-person surveys with incarcerated women as an additional way to calculate how many incarcerated women in California are survivors of IPV and to better understand their experiences.

49 Cal. Dep’t of Corr. and Rehab., *Parole Suitability Hearings*, <https://www.cdcr.ca.gov/bph/parole-suitability-hearings-overview/>. Suitability hearings are also held for individuals with non-violent convictions sentenced to life with the possibility of parole sentences under sentencing regimes like Three Strikes, individuals who were under 26 at the time of their commitment offense who have served a certain sentence-determined term, and people who are over 50, have served 20 continuous years of a term, and are otherwise eligible for elder parole.

50 Cal. Dep’t of Corr. and Rehab., *Events Before a Parole Suitability Hearing*, <https://www.cdcr.ca.gov/bph/parole-suitability-hearings-overview/events-before-a-parole-suitability-hearing/>.

51 *Divisions – Board of Parole Hearings*, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, <https://www.cdcr.ca.gov/bph/divisions/>, (last visited Jul. 29, 2022); see also Cal. Dep’t of Corr. and Rehab., *Investigations*, <https://www.cdcr.ca.gov/bph/divisions/investigations/> (last visited Apr. 17, 2023).

52 *ADMINISTRATIVE DIRECTIVE NO: 2013-04 – Board of Parole Hearings*, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, <https://www.cdcr.ca.gov/bph/2019/07/30/administrative-directive-no-2013-04/> (last visited Jul. 29, 2022).

53 Cal. Dep’t of Corr. and Rehab., *Appendix A, Pre-Hearing Procedures*, <https://www.cdcr.ca.gov/bph/appendix-a/>.

and during the hearing.⁵⁴ So long as the incarcerated person does not postpone or waive their date, the hearing is held.⁵⁵

During a suitability hearing, a commissioner and deputy commissioner (the BPH “panel” for the hearing) listen to testimony from the incarcerated person, their attorney, and in some cases, statements from a district attorney and the victim or victim’s family.⁵⁶ Participation from these parties is optional; at least one county’s District Attorney’s office has adopted a blanket policy of not attending hearings,⁵⁷ though participation is common. The governing regulations authorize district attorneys to “comment on the facts of the case and present an opinion about the appropriate disposition.”⁵⁸ They may also ask the hearing panel to direct “clarifying questions” towards the inmate, but may not question them directly, nor render legal advice to the panel.⁵⁹

After the questioning portion of the hearing, the BPH panel deliberates and determines whether the individual is suitable for parole. If the person is found unsuitable for parole, the BPH panel decides when the individual’s next hearing will take place, which can be scheduled to occur anywhere from

three to 15 years after the denial.⁶⁰ BPH does not have a formal administrative appeals process. Instead, there are specific processes for filing grievances related to 1) disability accommodations during the hearing, 2) factual errors in the comprehensive risk assessment, and 3) denial of parole for people convicted of non-violent offenses. Incarcerated people and their attorneys may write informal letters to BPH requesting that errors made during the parole process be corrected, but “such informal appeals are rarely successful.”⁶¹

After a suitability hearing, there is a 120-day waiting period before the BPH panel’s determination is considered final, during which time the BPH’s legal office may review the proceeding.⁶² The legal office may review any proceeding, but must review all decisions in which the prisoner was found suitable for parole.⁶³ If a person was found suitable for parole and the underlying offense is murder, the Governor has 30 days after the 120-day review period to overturn the BPH suitability determination or to refer the decision to the full Board for review *en banc*.⁶⁴ If the Governor overturns the decision, a new hearing is scheduled for 18 months from the

54 *Id.*

55 *Id.*

56 BPH is composed of 21 Commissioners, appointed by the Governor, and confirmed by the Senate. CAL. PEN. CODE § 5075(b)(1) (Deering 2022). They serve 3-year terms, with each term beginning at the expiration date of a predecessor’s term. *Id.* Commissioners are eligible to be reappointed for additional terms. *Id.* The statute broadly commands the Governor and Senate to create a panel that, “as nearly as possible” reflects a “cross section of the racial, sexual orientation, gender identity, economic, and geographic features of the population of the state,” but does not place any additional limitations on Commissioner eligibility. *Id.* at §5075(b)(4).

57 The Los Angeles District Attorney’s Office adopted such a policy in 2020 under District Attorney George Gascón. See George Gascón, Special Directive 20-14 8 (Dec. 7, 2020), <https://da.lacounty.gov/sites/default/files/pdf/SPECIAL-DIRECTIVE-20-14.pdf>.

58 Cal. Code Regs. tit. 15, § 2030(d)(2) (2023).

59 *Id.*

60 Cal. Dep’t of Corr. and Rehab., What to Expect at a Parole Suitability Hearing, <https://www.cdcr.ca.gov/bph/parole-suitability-hearings-overview/what-to-expect-at-a-parole-suitability-hearing/> [hereinafter CDCR Expectations at Parole Hearing]. Prior to the passage of Marsy’s Law in 2008, two-thirds of prisoners found unsuitable for parole received a deferral of one to two years. See Robert Weisberg et al., *Life in Limbo: An Examination of Parole Release for Prisoners Serving Life Sentences with the Possibility of Parole in California*, Stanford Criminal Justice Center at 13 (Sept. 2011). Today, deferrals can be as long as 15 years, and studies indicate that most inmates found unsuitable for parole receive a three- or five-year deferral before their next hearing. *Id.*

61 Heather Mackay & The Prison Law Office, *The California Prison and Parole Law Handbook*, § 9.45 (2019).

62 Cal. Dep’t of Corr. and Rehab., *What to Expect After a Parole Suitability Hearing*, <https://www.cdcr.ca.gov/bph/parole-suitability-hearings-overview/what-to-expect-after-a-parole-suitability-hearing/> [hereinafter CDCR Expectations After Parole Hearing].

63 *Id.*

64 CAL. PEN. CODE § 3041.2 (Deering 2022). See also CDCR Expectations at Parole Hearing. The California Governor is fairly unique in having this authority to approve or overturn a BPH decision. Maryland recently took away the governor’s ability to revoke parole grants. See Ovetta Wiggins & Rebecca Tan, *Maryland revokes governor’s authority to overturn parole decisions involving people serving life terms*, WASH. POST (Dec. 7, 2021), <https://www.washingtonpost.com/dc-md-va/2021/12/07/maryland-parole-governor-criminal-justice-prison/>. If an incarcerated person has a conviction other than murder and the BPH panel designates them as suitable, the governor has up to 90 days before the person’s release to request that BPH review the panel’s determination, which may lead to affirmation or a board finding of unsuitability. CDCR Expectations After Parole Hearing.

hearing date.⁶⁵ Alternatively, if the Governor lets the decision stand, the individual is scheduled for release from prison.⁶⁶

Suitability Standards and Structured Decision Making Framework

A presumption in favor of granting parole exists in California. The California Penal Code directs that the BPH “shall grant parole to an inmate unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual.”⁶⁷ Importantly, the California Supreme Court has held that the Governor may not reverse a BPH suitability determination based only on the “immutable circumstances of the offense.”⁶⁸ In *In re Lawrence*, the court held that though the BPH and Governor “may rely upon the aggravated circumstances of the commitment offense as a basis for a decision denying parole, the aggravated nature of the crime does not in and of itself provide some evidence of *current* dangerousness to the public” absent other evidence in the record.⁶⁹

State parole suitability standards identify various factors that may and may not be considered when determining whether an incarcerated person is suitable for parole.⁷⁰ Among the factors the BPH panel considers, the California

Supreme Court has noted that “the presence or absence of insight [into the reasons for the crime] is a significant factor in determining whether there is a ‘rational nexus’ between the inmate’s dangerous past behavior and the threat the inmate currently poses to public safety.”⁷¹ Age may also be considered during suitability parole hearings,⁷² which usually benefits older people who are deemed less dangerous or people who were convicted when they were under 26 years old.

In addition to this caselaw and statutory guidelines, BPH has internally adopted the Structured Decision Making Framework (“SDMF”), developed by Dr. Ralph Serin, to guide hearing panels’ suitability determinations.⁷³ The SDMF is a decision-making tool used by parole boards in several states, including Connecticut, Kansas, Ohio, South Dakota, and Washington.⁷⁴ It was created to provide a standardized approach to parole analyses that produces consistent outcomes, and ensure that decision-makers are primarily guided by empirically-validated risk factors.

The SDMF considers an individual’s statistical risk assessment alongside dynamic factors that can aggravate or mitigate an individual’s static risk. In plain terms, more recent improvements an individual’s behavior, such as completing extensive programming, developing better self-control, and demonstrating good institutional behavior can

65 CDCR Expectations After Parole Hearing.

66 *Id.*

67 CAL. PEN. CODE § 3041(b) (Deering 2022).

68 *In re Lawrence*, 44 Cal. 4th 1181, 1226 (2008).

69 *Id.* at 1214.

70 CAL. CODE REGS. tit. 15, § 2281 (2023). Unsuitability considerations include the nature of the commitment offense, a previous record of violence, an unstable social history, sadistic sexual offenses, psychological factors, and institutional behavior. Suitability considerations include having no juvenile record, stable social history, signs of remorse, the motivation for the crime, Battered Women’s Syndrome, lack of criminal history, current age, plans for the future, and institutional behavior.

71 *In re Shaputis*, 53 Cal. 4th 192, 218 (2011).

72 CAL. CODE REGS. tit. 15, §§ 2281(d)(7), 2447 (2023).

73 Cal. Dep’t of Corr. and Rehab., *Appendix D, Structured Decision Making Framework Worksheet For Parole Hearings Conducted by the California Board of Parole Hearings*, <https://www.cdcr.ca.gov/bph/appendix-d/> [hereinafter CDCR Appendix D].

74 Ralph Serin, *Summary of the Structured Parole Decision Making Framework (SPDMF)*, Connecticut Official State Website (2018), <https://portal.ct.gov/-/media/BOPP/Research-and-Development/2018-Summary-of-SPDMF.pdf>.

counter-balance an individual's static risk assessment.⁷⁵ The seven "dynamic" factors that commissioners are asked to assess as either aggravating, mitigating, or neutral toward an individual's static risk are: i) criminal history, ii) ability to control behavior, iii) programming, iv) institutional behavior, v) offender change, vi) release plan, and vii) case-specific factors.⁷⁶ The SDMF factors used by BPH were selected developed through a review of "research-supported" risk factors and a state-specific survey of existing parole practices, risk assessment, offender information, and governing law.⁷⁷

The SDMF compels commissioners to consider these factors relevant to current risk, but does not assign points or weight to each factor.⁷⁸ Rather, commissioners retain the "full discretion" to weigh these factors as they see fit and make the ultimate suitability determination.⁷⁹

In the background of this dynamic analysis is the individual's "static risk," determined through their comprehensive risk assessment completed by BPH's Forensic Assessment Division (FAD). Static risk factors are those unchangeable, historical factors known to aggravate an individual's risk of recidivism, such as adverse childhood events. In 2021, one of the static risk assessment tools used by the FAD to conduct risk assessments was the Historical Clinical Risk Management-20 (HCR-20) Version Three, developed by Douglas, Hart, Webster, & Belfrage.⁸⁰ This is the most widely-used risk-assessment tool among mental health

professionals.⁸¹ The HCR-20 asks clinicians to assess risk factors within three categories: historical, clinical, and risk management considerations. The items within each category are scored on a three-point scale, based on the degree to which that factor is present.⁸² Historical factors comprise more than half of the assessment, with 10 historical items to assess and rate, compared to five clinical and five risk management factors. Among the historical factors assessed are "relationships" and "traumatic experiences," including both adult victimization and adverse childhood events.⁸³ After assessing each factor, the clinician "considers the totality of the item endorsement and renders a final judgment," assigning a total "low, medium, or high" risk score overall to the individual.⁸⁴

75 See Kaitlyn Wardrop et al., *Evaluating the Structured Parole Decision Making Framework in Three U.S. States*, 37 AM. J. FORENSIC PSYCH. 1, 4 (2019) ("[The SDMF] necessitates board members considering all pertinent risk factors with regard to how they alter the offender's (static) likelihood of recidivism. As such, this produces a comprehensive and defensible rationale for the final release decision.").

76 Serin, *supra* note 72.

77 *Id.*; see also Cal. Dep't of Corr. and Rehab., *Discretionary Parole in California, Report for the Committee on Revision of the Penal Code*, at 24 (Nov. 2020), <https://www.cdcr.ca.gov/bph/wp-content/uploads/sites/161/2021/10/Discretionary-Parole-in-California-November-2020.pdf>.

78 See CDCR Appendix D, *supra* note 71.

79 *Id.*

80 Cal. Dep't of Corr. and Rehab., *2021: Report of Significant Events* (Mar. 13, 2022) <https://www.cdcr.ca.gov/bph/wp-content/uploads/sites/161/2022/03/2021-Significant-Events.pdf>.

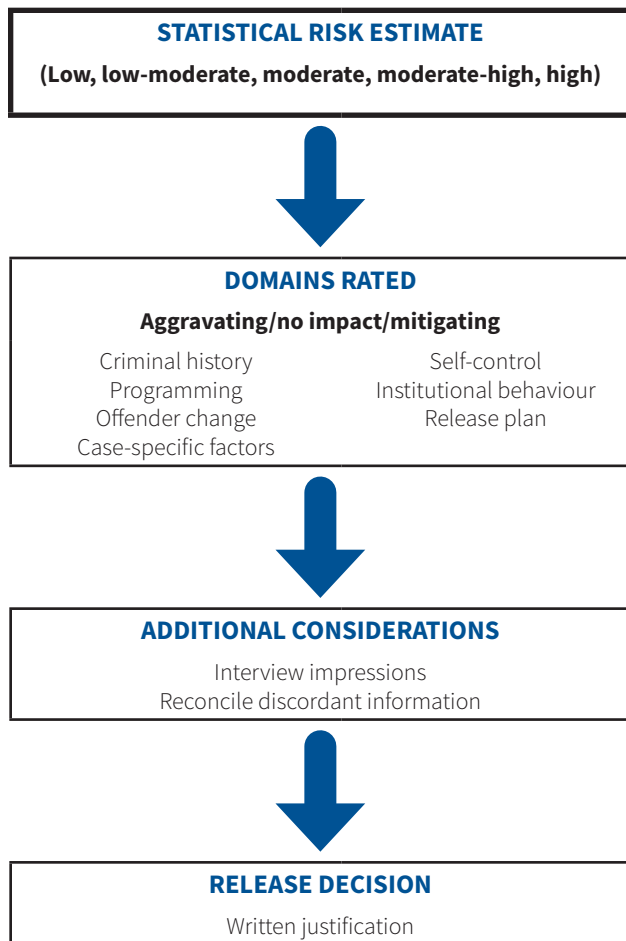
81 Cox et al., *An update and expansion on the role of the Violence Risk Appraisal Guide and Historical clinical Risk Management-20 in United States case law*, 36 J. BEHAV. SCI. LAW. 517, 519 (2020).

82 *Id.*

83 Douglas et al., *Rating Sheet for Version 3 of the HCR-20*, HCR-20 V3 (2013), <http://hcr-20.com/hcr/wp-content/uploads/2013/03/HCR-V3-Rating-Sheet-2-page-CC-License-16-October-2013.pdf>.

84 Cox, *supra* note 79.

Figure 1: Structured Decision Making Framework



Source: Serin, R. C., Gobeil, R., Lloyd, C. D., Chadwick, N., Wardrop, K., and Hanby, L. (2016) *Using Dynamic Risk to Enhance Conditional Release Decisions in Prisoners to Improve Their Outcomes*. *Behav. Sci. Law*, 34: 321– 336 (Figure 1).

Consideration of Intimate Partner Violence

BPH panels are required to consider whether the person appearing before them suffered from “Battered Woman Syndrome” (BWS) at the time of the conviction and whether BWS contributed to the offense.⁸⁵ BWS is defined as “[e]vidence of the effects of physical, emotional, or mental abuse upon the beliefs, perceptions, or behavior of victims of domestic violence where it appears the criminal behavior was the result of that victimization.”⁸⁶ As stated above, BPH may conduct an investigation to determine whether BWS played a role in the incarcerated person’s conviction,⁸⁷ but incarcerated people and their attorneys may opt not to have an investigation done depending on the circumstances.

By statute, suitability hearing panels must also give “great weight” to evidence of “the effects of battering” on any incarcerated person with a pre-1996 conviction.⁸⁸ This accounts for the addition of § 1107 to the California Evidence Code in 1991 and extension of § 1107 to cover self-defense claims in 1996, as discussed in Part II: Background on IPV Population.⁸⁹

Finally, California Penal Code expressly bars BPH from using a survivor’s testimony about intimate partner violence to find that she lacks “insight” into the causes of her crime.⁹⁰

85 CAL. CODE REGS. tit. 15, §§ 2000(7), 2281(d)(5). This report does not generally use the term BWS because, though it persists in California’s Code of Regulations, it has largely been abandoned in favor of phrases like “battering and its effects.” BWS is widely considered to be an inadequate articulation of the experiences of IPV survivors and in California has been largely replaced with the Penal Code’s “intimate partner battering and its effects” language despite its persistence in the Code of Regulations. For additional discussion of the shortcomings of BWS, see Mary Ann Dutton, *Update of the “Battered Woman Syndrome” Critique*, National Online Resource Center on Violence Against Women (2009).

86 CAL. CODE REGS. tit. 15, § 2000(7) (2022).

87 Intimate Partner Battering investigations may be ordered upon the referral of the Executive Office, a Commissioner, or Deputy Commissioners of the Board of Parole Hearings. The goal of these investigations is to determine whether “the criminal behavior was a result of that victimization.” If the investigation “substantiates” that the IPV caused the criminal behavior, the Board is empowered to make a recommendation to the Governor that the inmate’s sentence be commuted. Cal. Code Regs. tit. 15, § 2830 (2022).

88 CAL. PEN. CODE § 4801(b) (Deering 2022).

89 *Supra* note 43.

90 CAL. PEN. CODE § 4801(b)(3) (Deering 2022) (“The fact that a prisoner has presented evidence of intimate partner battering cannot be used to support a finding that the prisoner lacks insight into his or her crime and its causes.”).

IV. Methodology

Sample

Our sample began with 140 individuals who appeared before the California BPH for a parole suitability hearing (“parole hearing”). All but four (n = 136, 97%) of the individuals were serving time in a CDCR female correctional facility in 2021 (i.e., the California Institution of Women or Central California Women’s Facility). The other four individuals were serving their time in another state or in a federal facility (i.e., Sacramento Central Office, “SACCO”).⁹¹ Based on information provided by BPH, we narrowed the sample to include only cases that involved homicide (i.e., murder and manslaughter) convictions. This resulted in a sample of 97 cases (69% of cases) to code for case characteristics.

Pairs of independent student researchers (“coders”) read every transcript to identify whether the homicide was related to IPV, including whether the person incarcerated killed their abuser or whether the abuse directly contributed to the homicide (e.g., person incarcerated for failing to protect their child from their abusive partner). Because the focus of the study was on women who committed homicide as a result of IPV, we excluded cases where IPV was a contributing, but indirect, factor in the homicide (e.g., a survivor experiencing IPV killed a stranger, but that homicide was not coerced by her abuser, nor directly connected to her IPV experience). Similarly, we excluded two cases where the person incarcerated explicitly identified as a man or non-binary. It is important to note that some people in our data set may not identify as a woman, but if this was not made clear in the parole hearing transcript, they remained in the sample.

Coding

The coding guide (see Appendix) was created with input from the Executive Officer of BPH, experts in the field of IPV, advocates, and through group discussions during

coding. Development of the coding guide was finalized using intercoder reliability techniques, including having at least six coders code the same transcripts during the development of the coding guide, and having pairs code every subsequent transcript. All coding discrepancies between coders were resolved by discussion.

The coding guide was applied to parole hearing transcripts and captured the following information referenced during the transcripts: (1) risk factors in the life history of a person incarcerated (e.g., child maltreatment, substance abuse and mental health issues); (2) victim characteristics; (3) how the homicide was related to IPV; (4) information regarding formal IPV investigations; (5) information regarding the programming that the person who is incarcerated completed; (6) whether IPV was discussed in the BPH’s decision, and if so, how it was discussed; (7) whether BPH granted or denied parole; (8) indications of women experiencing traumatic brain injuries (TBI) or strangulation; and (9) the presence and participation of District Attorneys at parole hearings.

Because our only source material for this analysis was parole hearing transcripts, our coding was necessarily limited to what was discussed, on-record during the hearing. Thus, our coding was based on whether information was or was not mentioned during the hearing, rather than whether certain events ever occurred in the person’s life. For instance, if a person may have experienced childhood neglect, but it was not described in the BPH hearing, we did not code the neglect. We also incorporated CDCR data we received from BPH in the final dataset (e.g., whether it was an initial/ subsequent hearing, risk assessment scores, county of commitment, etc.).

91 None of the individuals who were incarcerated in SACCO were included in the final sample of 23 cases.

V. Results

Survivor Demographics

Our coding produced a final sample of 23 IPV-related homicides, representing approximately a quarter of the female homicide cases that came before BPH in 2021. While this is a significant number of women incarcerated for IPV-related homicide offenses, 24% is a lower rate of survivor incarceration than estimated in other studies, cited in Part II of this report.⁹²

Accordingly, it is worth noting how our sample might be underinclusive. Our methodology only enabled us to identify women as survivors of IPV based on their testimony before BPH transcripts. In some cases, particularly those in which the woman had already participated in multiple parole hearings, discussion of the actual crime was sparse. Moreover, as discussed below, there are many reasons for which a survivor might omit information about her experience with IPV. So, while our analysis identified 23 cases in which survivors *explicitly linked* their criminal behavior to intimate partner violence, we do not claim that these cases represent the *only* women appearing before BPH in 2021 incarcerated for an IPV-related crime.

In our sample of 23 IPV survivors, seven received a formal IPB investigation from BPH to consider the impact of IPV on her crime.⁹³ In the cases in which these investigations were ordered, they were not always discussed at the survivor’s BPH hearing: In three cases the IPB investigation was mentioned during the hearing.

The following demographic information was provided by BPH for the 23 women in our sample (see Table 3). The mean age at the time of the parole hearing was 53 years old (standard deviation = 12 years; range = 35 to 75 years old) and the mean age at the time of the controlling offense was 28 years old (standard deviation = 8 years; range = 18 to 42 years old). Over half (51%) of the survivors were 25 years old or younger at the time of the controlling offense.

Figure 2: Board of Parole Hearings Cases Analyzed

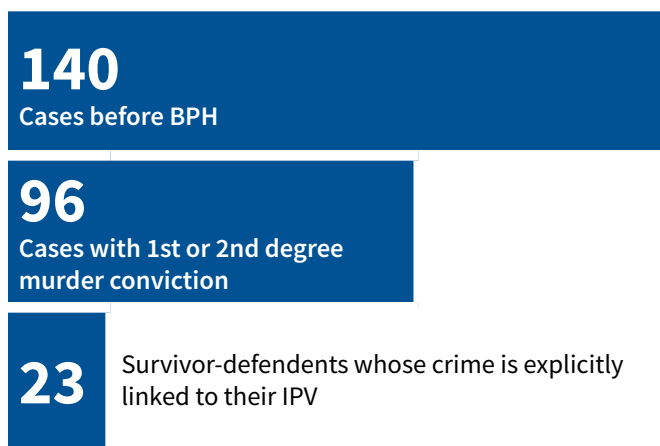


Table 3: Age Demographics of Sample Population

Age at Parole Hearing (mean)	53 years old
Age at Offense (mean)	28 years old
Survivors Under Age 25 at Offense	51%

⁹² See *supra* Part II: Estimated Impacted Population.

⁹³ More broadly, in the larger sample of 140 people, 13 women participated in a formal IPB investigation. As discussed in Part VI: Findings, 10 of the 13 women were convicted of murder or manslaughter; the remainder (three women) were convicted of other offenses.

Of the approximately 3,699 women currently in CDCR custody, roughly 30.8% are white, 25.3% are Black, and 35.7% are Hispanic.⁹⁴ Comparatively, our sample of survivors is 35% white (n = 8), 22% Black (n = 5), and 22% Hispanic (n = 5). An additional 4% (n = 1) identified as American Indian/Alaskan Native, and 17% (n = 4) identified as Other. Of those women found suitable for parole in our sample of 23 women, 37.5% (n = 3) were Black, 37.5% (n = 3) were Hispanic, and 25% (n = 2) were white. These comparisons are shown in Table 4.

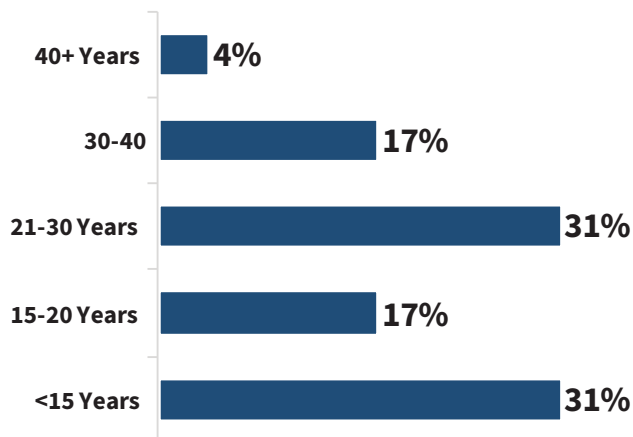
Table 4: Race/Ethnicity of Sample Population as Compared to Female CDCR Population

	Race/Ethnicity of		
	Female CDCR Population	Sample Population (N = 23 people)	Survivors in Sample Found Suitable for Parole
Black	26%	22%	38%
Hispanic	36%	22%	38%
White	31%	35%	24%
Other	7%	21%	-

As illustrated in Figure 5, at the time of their hearings, the people in our sample had served an average of 20 years (standard deviation = 7 years, range = 10 to 41 years) in prison. All 23 women had served at least 10 years behind bars, and over 60% (n = 14) had served 20 years or longer. The youngest survivor found suitable for parole was 37, and the oldest survivor found unsuitable for parole was 75 and had been incarcerated for 34 years. Forty-four percent (n = 10) of cases involved offenses committed prior to 1996.⁹⁵ Fifty-seven percent (n = 13) of women were convicted of first-degree murder and 44% (n = 10) of women were convicted of second-degree murder. This was the initial (i.e., first)

parole hearing for 30% (n = 7) of women and the second parole hearing for 35% (n = 8) of women. Two women had participated in 10 or more parole hearings.⁹⁶

Figure 5: Time Served in Prison by Number of Years (N = 23 people)



Twenty-one survivors in our sample suffered abuse at the hands of a male partner. Only two survivors in the sample were in abusive relationships with women at the time of the controlling offense. Of the two, one woman killed her romantic partner during a physical altercation, and the other participated in a crime at her partner's direction, fearing retaliation if she did not.

Almost 80% (n = 18) of the survivors included in this study mentioned their children in the hearing, and 57% (n = 13) disclosed that they had children with their abuser. Moreover, at least 48% (n = 11) of the incarcerated survivors reported that they had children with someone *who was not their abuser*, a factor that, according to the Danger Assessment, places victims of intimate partner violence at an increased risk of severe injury and death.⁹⁷ In an additional 17% of cases (n = 4), the survivor did not specify paternity.

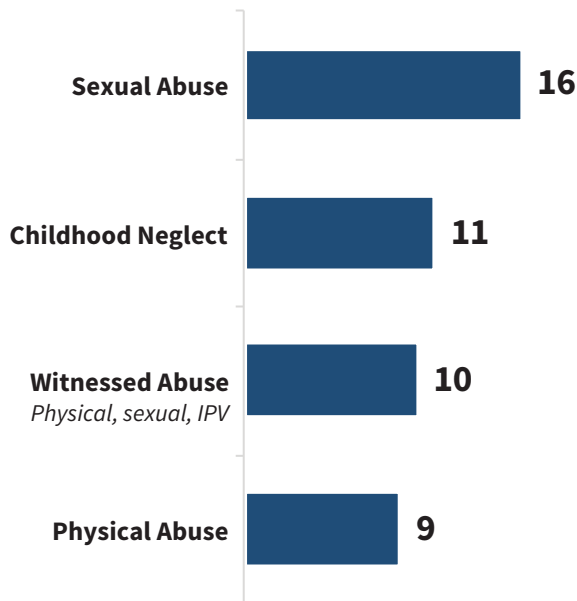
94 Cal. Dep't of Corr. and Rehab., Div. of Correctional Policy Research and Internal Oversight, *Summary of Offender Data Points for Month-end February 2023*, <https://public.tableau.com/app/profile/cdcr.org/viz/OffenderDataPoints/SummaryInCustodyandParole>. According to the most recent census data, the State of California is 41.2% white, 5.7% Black, and 39.4% Hispanic or Latino. 14.6% of Californians are biracial or multiracial. United States Census Bureau, *California: 2020 Census* (Aug. 25, 2021), <https://www.census.gov/library/stories/state-by-state/california-population-change-between-census-decade.html>.

95 As noted in Part III: Background on California Parole, BPH must give great weight to the effects of battering evidence for anyone incarcerated with a pre-1996 conviction.

96 As noted above, prior to the passage of Marsy's Law in 2009, deferral periods after parole denial were often only one to two years, which might the frequency of some survivors' appearance before BPH. See *supra* note 58.

97 The Danger Assessment is a tool used to determine the likelihood that a woman in an abusive relationship will be killed by her intimate partner. The Danger Assessment is used by court advocates, law enforcement, therapists, social workers, and shelters to determine which survivors of intimate partner violence are most at risk of severe injury or death. DANGER ASSESSMENT, <https://www.dangerassessment.org> (last visited Jul. 27, 2022).

Figure 6: Experience of Past Trauma
(# of individuals)



Notably, the vast majority of the survivors in our sample disclosed some form of past trauma prior to their incarceration (see Figure 6): 91% disclosed at least one of the past traumas we coded for, including childhood physical abuse, neglect, and witnessing domestic violence in the home.⁹⁸ Forty-eight percent of survivors experienced at least *two* forms of trauma prior to the intimate partner violence related to their life crime. Three women in our sample reported experiencing *all four* forms of past trauma for which we coded.⁹⁹ Seventy percent of survivors in our sample experienced sexual violence prior to their incarceration. And 57% of the survivors in our sample reported some form of current or prior mental illness.

These estimates of trauma history are likely conservative. Our initial observations suggest that a survivor’s trauma history often receives brief discussion in BPH hearings. We therefore hypothesize that survivors may have endured more traumatic experiences than they disclosed at their BPH hearings.¹⁰⁰

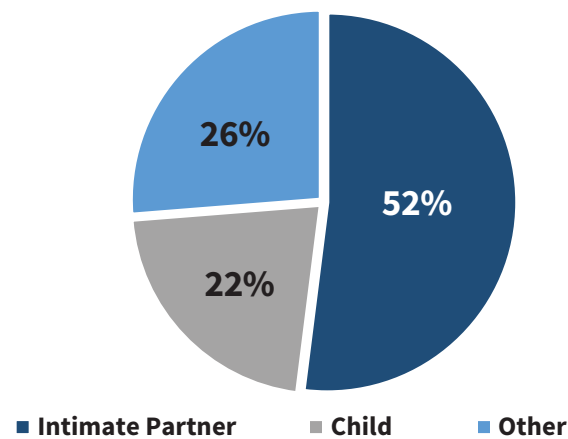
98 We coded for the following types of past traumas: 1. Survivor witnessed domestic violence in the home as children, 2. Survivor experienced non-intimate partner physical abuse prior to her incarceration, 3. Survivor experienced non-IPV sexual abuse, and 4. Survivor experienced intimate partner violence in a prior relationship.

99 It is worth noting that two of the three women who experienced every type of past trauma we coded for were found unsuitable for parole in 2021 and remain incarcerated today: One has served 26 years, and the other, 24 years.

100 There may be several reasons why survivors’ trauma histories do not play a central role in BPH hearings. First, perhaps commissioners choose not to linger on a survivor’s trauma history if they believe that history is unrelated to their life crime. Commissioners may also want to spare the survivor the re-traumatization of discussing their experiences in depth, particularly where something like an IPB investigation is available in the alternative. Or, commissioners may not discuss a survivor’s trauma history because they find it irrelevant to their assessment of the survivor’s current risk of danger. Alternatively, survivors’ themselves may be strategically silent on their trauma histories at BPH hearings, for fear that discussing these experiences might be interpreted by BPH as lack of accountability. These are only hypotheses based on early observations of this data. As noted in Part VI: Findings, Policy Recommendations and Future Research, additional research is needed to better understand why survivors’ trauma histories appear to play a somewhat limited role in a survivor’s parole consideration, and how this affects survivors seeking parole.

Victim Demographics¹⁰¹

Figure 7: Victim Demographics



Of the 23 survivors in our sample, 52% (n = 12) were convicted of killing a current or former intimate partner (see Figure 7). Eleven of these partners were men; only one partner-victim was a woman. Of our sample of survivors, 57% (n = 13) were married at the time of their life crime.

Five survivors in our sample were incarcerated for the death of their child (see Figure 7). In three of these cases, the survivor was not directly responsible for the child's death but was convicted for failing to protect them from an abusive partner. In the two other cases, where the survivor was found directly responsible for their child's death, they each attributed their actions in some way to the intimate partner violence they were experiencing. For example, one survivor shared that she abused her son because he reminded her of his father, who was abusive.

The remaining six survivors in our sample were convicted of killing someone with whom they did not have an intimate partner or parent-child relationship (see Figure 7). These cases were kept in the sample because our coders found that the crime was still directly related in some way to the survivor's experience of intimate partner violence. For example, one victim was the elderly father-in-law of a survivor whose husband was abusive. The survivor

described how the stress of the IPV with her husband increased the tension between her and her father-in-law, who lived with them. We found this case was still directly related to the survivor's experience of intimate partner violence because the survivor attributed her act, in part, to the bottled-up anger she felt towards her husband. Other cases include a survivor's pimp killing one of her clients, a survivor being coerced by her abusive partner to participate in the rape and murder of her friend, and a survivor participating in the robbery and murder of two strangers, also at the direction of her abusive partner. While these cases have unique fact patterns, they each involve a direct nexus between the survivor's experience of IPV and her participation in the crime.

Cases where a survivor committed a homicide apart and away from her abusive partner, for reasons unrelated to her experience of IPV, were excluded from the sample. For example, one excluded case involved a survivor convicted of vehicular manslaughter for a drunk driving accident that killed two strangers.

The Offenses

Accomplice Liability. Each of the survivors in our final sample was convicted of murder in the first or second degree. Interestingly, not one survivor in our sample was convicted of the lesser charge of manslaughter. Only two cases in our sample involved the death of multiple victims: In one case the survivor was coerced by her abusive boyfriend to take part in a robbery that led to the death of two people. In the other, the survivor was convicted of killing her abusive boyfriend in addition to killing an unrelated, non-intimate business associate some years earlier.

While the transcripts often did not provide rich detail about the crimes themselves, the facts we could glean often indicated that the survivor was not the actual killer of the victim. This prompted us to develop a simple code for whether a survivor was a "direct" cause of the victim's

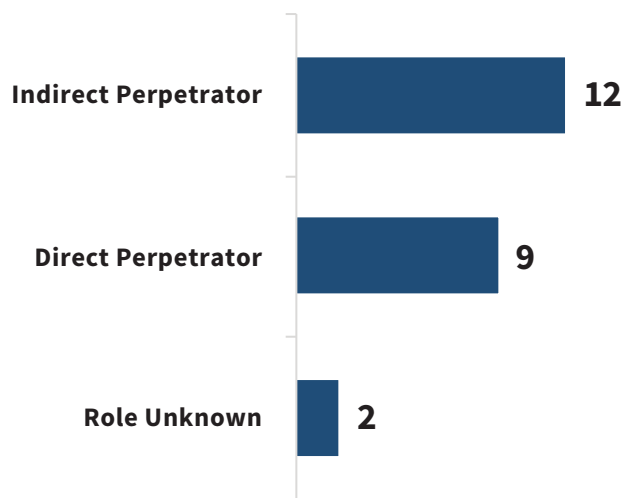
101 As discussed in the Introduction, for simplicity, we refer to the persons killed by the women in our sample as "victims" in this section. We recognize that many women in our sample are, too, victims of intimate partner violence and that the victim/offender dichotomy is often an imperfect way of thinking about who perpetrates harm.

death—meaning victim died by the survivor’s hands—or if the survivor was “indirectly” involved in the crime. Survivors who were “indirectly” involved in the crime may have played a role in the planning or aiding the homicide, but did not themselves perform the act that killed the victim. Many of these survivors were convicted under a legal theory of accomplice liability.¹⁰²

We recognize that a brief discussion of the life crime in a parole board hearing transcript may not provide a full picture of a survivor’s involvement in a crime. However, we considered this potential ambiguity in our review and coded two cases as “unknown” where the transcript did not provide enough detail for the coder to determine the nature of the survivor’s involvement.

Figure 8: Survivor’s Role In Crime

(# of individuals)



This coding revealed that in 52% of the cases (n = 12) in our sample, the survivor was not herself the direct cause of the victim’s death (see Figure 8). The extent of the survivor’s role in these crimes varies extensively. In five

of these cases the survivor was convicted of murder for hiring or commissioning of someone else to kill her abusive partner. As discussed above, in three cases the survivor was convicted for failure to protect her child from her abusive partner. In one case, discussed further below, a survivor was convicted for the homicide of her boyfriend after her brother shot and killed him, without the survivor’s assistance or consent.¹⁰³ In the cases where the survivor was a direct perpetrator of the homicide, the victim was more likely to be her intimate partner.¹⁰⁴

Weapons Enhancements. We also explored whether the individual used weapons that would serve as the basis for a deadly weapon enhancement (i.e., guns or knives). To begin with, in 35% of the cases (n = 8) the survivor’s actions alone resulted in the homicide: in two cases, survivors personally fired the gun used in their homicide; in three cases, survivors used a knife to stab their victim; and in one case, a survivor hit the victim with their car. In the remaining two cases in which the survivor alone caused the homicide, one involved the abuse of a young child and the other involved the strangulation of an elderly victim. Of the other 15 cases, 10 cases involved accomplices or hired individuals who assisted or fully committed the homicide, and five involved child abuse and neglect at the hands of both the survivor and their partner.

Notably, in every instance that a survivor used a weapon, the victim was her male abusive intimate partner. These observations could reflect the unfortunate truth that scholarly research and advocates have previously suggested, and that was earlier discussed in Part II of this report: women who commit homicide in self-defense against an abuser are more likely to receive weapons enhancements in sentencing than abusive men who kill their partners.¹⁰⁵

102 For example, California’s felony murder rule dictates that a person may be held liable for murder of the first degree despite not being the “actual killer,” so long as they were a “major participant” in an underlying felony during which the homicide occurred. CAL. PEN. CODE § 189(e)(3) (Deering 2022).

103 *Infra* Part VI: Findings, Policy Recommendations, and Suggested Future Research, *The Survivor’s Role in the Criminal Act*.

104 Fifty-two percent of the survivors in our sample were convicted of killing their intimate partner, but in 66% of the cases where the survivor was the direct perpetrator of the killing, the victim was her intimate partner.

105 See *supra* note 21.

Hearing Outcomes

Figure 9: Parole Suitability Hearing Results



Of the 23 survivors in our sample, who appeared before BPH in 2021, eight were found suitable for parole and 15 were found unsuitable (see Figure 9). This constitutes a grant rate of about 35%, nearly identical to BPH’s average suitability grant rate of 34%.¹⁰⁶

The average survivor found suitable for parole in 2021 was 48.9 years old, had spent 20.5 years in prison, and had appeared before BPH at least three times before being found suitable for parole in 2021. The youngest survivor found suitable for parole in 2021 was 37 and she had served 13 years; she was 22 at the time of her offense.

The average survivor found unsuitable for parole was 55.27 years old, had served 22.87 years in prison, and had appeared before the board at least twice before being found unsuitable in 2021. Four survivors found unsuitable for parole in 2021 had appeared before BPH at least three times before.

No survivor assessed as “high risk” in her comprehensive risk assessment was found suitable for parole. Seventy-five percent of the survivors found suitable for parole assessed as low risk, and 25% assessed as medium risk. A low-risk

assessment did not always equate with a survivor being found suitable for parole: 33% of the survivors found unsuitable for parole in our sample assessed as low risk.

Hearing Observations

We also collected data about the content of BPH hearings to help us understand survivors’ experience in BPH hearings and learn how hearings panels reach their outcomes. This included reviewing commissioners’ statements made on the record about their decisions, analyzing the form of questions asked by commissioners’ about IPV, and assessing the role District Attorney’s offices play in BPH hearings.

We first noted whether commissioners explained if IPV was a relevant factor in their decisions. IPV was mentioned as a relevant factor in the suitability determination in 19 of the 23 hearings in our sample. We then noted both when and how commissioners described the IPV. Commissioners typically announced their conclusions in a structured manner: they listed all the mitigating factors together before moving to aggravating factors, or vice versa. Thus, aided by context clues, it was relatively simple for coders to determine whether a woman’s experience with IPV was considered mitigating or aggravating.

For example, in “not[ing] a number of factors that demonstrated suitability,” one commissioner explained that “the Panel has received training, extensive training on intimate partner battery . . . And with that in mind, we gave you an appropriate weight based on the verifiable evidence provided.” Another commissioner, also discussing “factors that mitigate [the incarcerated woman’s] risk,” noted: “As you mentioned, you were in total denial and were afraid to escalate, I guess you could say, your husband’s violence towards you and your children.” Our coders considered these and similar mentions of IPV to be use of IPV as a mitigating factor.

On the other hand, commissioners also frequently mentioned IPV when listing aggravating factors. Based on both the positioning and content of such references, we

¹⁰⁶ Cal. Dep’t of Corr. and Rehab., *2021 Report of Significant Events*, 6 (Mar. 13, 2022), <https://www.cdcr.ca.gov/bph/wp-content/uploads/sites/161/2022/03/2021-Significant-Events.pdf>.

concluded that in 18 of the 23 parole hearings analyzed in this study, hearing panels considered the survivor’s experience of IPV as an aggravating factor in the suitability determination. Commissioners’ stated concerns regarding IPV can be divided into four categories: First, some commissioners expressed concern that survivors who speak about abuse are attempting to diminish their own responsibility for the crime. Second, commissioners often categorized IPV as contributing to, or being, an “unstable social history,” tending to show unsuitability for parole.¹⁰⁷ Third, commissioners diminished survivors’ victimhood by emphasizing that they had committed the “ultimate act” of violence against their abuser, making them an “abuser” as well. And finally, commissioners attributed some of the blame for the abuse on survivors for being unable to extricate themselves from violent relationships. Of the 18 women for whom experiencing IPV was considered an aggravating factor, seven were found suitable for parole. BPH did not consider IPV to be an *exclusively* mitigating factor in any of the cases we studied (in six cases, it was considered both mitigating and aggravating, and in one it was deemed neutral).

As discussed above in Part III: Background on California Parole, the District Attorney’s office that originally prosecuted a survivor’s case has the opportunity to appear at that survivor’s BPH hearing and express an opinion regarding the survivor’s suitability for parole. In 19 of the 23 cases in our sample, the District Attorney who prosecuted the survivor’s case sent an assistant to the survivor’s hearing. In one case the District Attorney’s office supported the survivor’s release; of the remaining 18 cases in which a representative from the District Attorney’s office appeared, in 17 cases they opposed the survivor’s release.¹⁰⁸ Of the four cases in which a district attorney’s office did not send a representative to the BPH

hearing, three were cases originally tried in Los Angeles County and one was a case heard in Shasta County.¹⁰⁹

Preliminary Findings Regarding Traumatic Brain Injury

Finally, we engaged in preliminary research to determine the prevalence of potential TBIs in this population of incarcerated survivors. We searched the transcripts for references to strangulation, head injuries, and other injuries that resulted in a loss of consciousness. In nine of the 23 cases, women either specifically mentioned a brain injury or referenced a form of abuse—i.e., choking—likely to result in traumatic brain injury. One woman, for example, reported that her abuser frequently put her in chokeholds, nearly killing her. Another woman explained that she suffered a head injury at the hands of her abuser two days before the murder took place. A third survivor reported frequent strangulation and multiple concussions.

We cannot conclude with any certainty which of these women, if any, have suffered a traumatic brain injury from reviewing the parole hearing transcripts alone. It is clear, however, that many survivors were at high risk for suffering a traumatic brain injury before they committed the act that resulted in their incarceration.¹¹⁰

In summary, while our sample size is small, our results begin to paint a picture of a diverse group of survivors with a broad set of lived experiences, complex narratives, and unique fact patterns. Yet the commonalities that unite these survivors are revealing: they were, on average, quite young when they committed their commitment offense (28 years old); they had likely experienced some trauma and violence prior to the IPV relationship that led to their commitment offense (over 91% of survivors reported *some* form of past trauma); and are serving lengthy sentences (on average, survivors in our sample had served 20 years at the time of their BPH hearing in 2021).¹¹¹

107 According to CAL. CODE REGS. tit. 15, § 2281, subd. (c), factors tending to show an inmate’s unsuitability for parole include: (1) particularly violent commitment offenses, (2) previous record of violence, (3) unstable social history, (4) prior sadistic sexual offenses, (5) psychological factors, including the prisoner’s history of mental problems related to the crime, and (6) institutional misconduct in prison or jail.

108 In one instance, the District Attorney’s office sent a representative and the person appeared, but did not comment.

109 Note that Los Angeles County has adopted an internal policy of declining to participate in parole hearings. See *supra* note 55.

110 *Supra* Part II. Background on IPV Population, *Criminalization of Survivors*.

111 These long sentences are consistent with the weighty crimes survivors are convicted of: In California, first degree murder carries a minimum penalty of 25 years to life; second degree murder, 15 years to life.

VI. Findings, Policy Recommendations, and Suggested Future Research

Through our coding and analysis, we identified patterns in the transcripts that we propose warrant further research and policy intervention. This section of the report will discuss some of the policy concerns raised by our study and the questions our research has left unanswered. To advance our understanding of how survivors of IPV are impacted by the criminal legal system, we recommend areas for future research. Where appropriate, we also suggest policy actions for legislators and criminal legal system actors to consider.

Board of Parole Hearings Findings

The findings summarized in this section detail some of the challenges we observed in the parole hearing process. It is helpful to consider these problems in four broad categories: the ambiguity of “unstable social history,” insight Issues, reliance on myths, and interviewing issues. We will discuss each challenge below, followed by our recommendations for how these challenges might be addressed. They include providing additional training for BPH commissioners and staff and expanding survivor voices in the parole process.

The Ambiguity of “Unstable Social History”

As mentioned above in Part V: Results, some BPH hearing panels considered a survivor’s experiences with IPV as evidence of an “unstable social history,” an aggravating factor weighing against parole suitability.¹¹² Under the Structured Decision Making Framework and the HCR-30 V3 risk assessment, “unstable social history” is a static, historical risk factor that is typically outweighed by more relevant, dynamic factors that relate more directly to an individual’s *current* dangerousness. However, our transcript review suggests that unstable social history may be playing an outsized role in panels’ suitability analyses. Accordingly, we suggest that

what constitutes “unstable social history,” and how it is used in the SDMF or HCR-30 analysis should be clarified, for the benefit of commissioners, survivors, and their advocates.

First, the frequent use of “unstable social history” as an aggravating factor in survivors’ BPH hearing decisions raises questions, because it is unclear from the transcripts or the SDMF materials and information provided on CDCR’s website what exactly qualifies as an “unstable social history.” In some cases, hearing panels appeared to define “unstable social history” as a history of multiple traumas or social challenges prior to their IPV victimization. For example, one commissioner explained, “[Y]ou experienced an unstable tumultuous social history including childhood traumas at a time that you were unable to extricate yourself from your environment, physical abuse, sexual abuse, you ended up leaving home early, you got pregnant and had a child at a young age.”

Yet in other cases, hearing panels appeared to consider a survivor’s experience of IPV *itself* as evidence of an “unstable social history.” In another example a commissioner shared, “You had an unstable social history, right before incarceration

112 *Infra* Part V: Results, *Hearing Observations*.

with [the victim, her abusive husband].” One commissioner, for example, concluded that a survivor “did have an unstable social history,” as evidenced by “the abuse that she was subjected to, the sexual abuse, the physical abuse.” In another hearing, a commissioner explained that a survivor’s history of “relationship dysfunction” put her at a greater risk of committing violent acts in the future.

In other cases, hearing panels provided no description at all of what informed their finding that the survivor had an “unstable social history.” For instance, a commissioner might instead say, “[A]nd you had an unstable social history before incarceration.” We make this observation with the necessary caveat that much of the hearing panels’ analyses of suitability happens before the hearing and during their deliberations off the record, so understandably the detail we have about the panel’s analysis is limited. Nevertheless, from what can be observed in the transcripts, there appears to be a lack of consistency among hearing panels in what constitutes “unstable social history.”

The ambiguity in how different hearing panels define “unstable social history” is potentially worrisome for two reasons. First, the aim and purpose of the Structured Decision Making Framework is to resolve such ambiguities and promote uniformity in the suitability analysis.¹¹³ Such clarity in parole decision-making is critical for enabling incarcerated individuals and their counselors to fully understand what is expected of them and how to appropriately prepare for their hearings.

Second, treatment of IPV victimization alone as a per se finding of “unstable social history” presents concerns, because it is untethered from existing literature about risk assessment and IPV victimization. While experiencing IPV may have mental health or behavioral impacts on some survivors that can indirectly lead to an increased risk of future crime,¹¹⁴ no direct empirical link exists between IPV victimization and future criminal acts.

To be precise, several studies have found that experiencing IPV can lead some survivors to commit crimes in the first instance, often as acts of survival or self-defense.¹¹⁵ Indeed, this phenomenon is at the center of this report. And at least one study suggests that experiencing IPV may make it harder for women already engaged in “criminal lifestyles” to extricate themselves from those behaviors.¹¹⁶ But while there is evidence that experiences of IPV can initially lead to crime, or make it harder for women already engaged in crime to desist from that lifestyle, we have not identified any studies that conclude that *past IPV victimization* itself is predictive of *future* criminal acts or recidivism.

Alternatively, if BPH is concerned that prior IPV victimization may lead to future IPV *victimization*, and that this victimization would again lead to homicide, this too, does not find robust support in the literature. Rather, research on whether IPV victimization is predictive of future abuse by another partner is inconclusive. As a 2022 literature review on the topic of risk factors for IPV victimization by multiple partners explained, “With only seven published studies, empirical research on risk for IPV revictimization by

113 Wardrop, *supra* note 73, at 3-4 (“[P]aroling authorities have been criticized in the past as it is not always clear how board members consider these factors in their release decisions. Thus, additional structured guidelines have been said to be necessary.”).

114 For example, many survivors experience PTSD as a result of the IPV they endured. See Mary Ann Dutton et al., *Intimate Partner Violence, PTSD, and Adverse Health Outcomes*, 21(7) J. INTERPERSONAL VIOLENCE, 955, 958 (2006). And, PTSD is associated, in some instances, with increased risk of criminal recidivism. See Naomi Sadeh & Dale E. McNiel, *Posttraumatic Stress Disorder Increases Risk of Criminal Recidivism Among Justice-Involved Persons With Mental Disorders*, 42(6) CRIM. JUST. AND BEHAV. 573, 582 (2015). But this is not to say that all survivors of IPV experience PTSD and therefore all survivors of IPV are at increased risk of recidivism.

115 See Kathleen Daly, *Women’s pathways to felony court: Feminist theories of lawbreaking and problems of representation*, 2(1) SOUTHERN CAL. REV. L. AND WOMEN’S STUD. 11, 35 (1992); see also Gregory L. Stuart et al., *Reasons for Intimate Partner Violence Perpetration Among Arrested Women*, 12(7) VIOLENCE AGAINST WOMEN 609, 614 (2006) (finding in a sample of women arrested for intimate partner violence Rhode Island, that 38% of women committed the violence as acts of self-defense).

116 See Robin Gålnander, *Being Willing but Not Able: Echoes of Intimate Partner Violence as a Hindrance in Women’s Desistance from Crime*, 5 J. DEVELOPMENTAL AND LIFE-COURSE CRIMINOLOGY 437, 439 (2019).

[multiple partners] appeared to be scarce and had limited recent development, and the wide diversity in study designs, measurements, definitions, and variables in these studies precluded drawing firm conclusions about risk factors.”¹¹⁷

Further, if prior IPV victimization is *per se* sufficient to constitute an “unstable social history,”¹¹⁸ this seems to be in tension with the spirit of California’s recent, pro-survivor parole reforms.¹¹⁹ Characterizing IPV victimization as an unstable social history creates a static finding of risk that the survivor must then *mitigate* with positive dynamic factors. This creates a scheme in which IPV victimization is a *burden* the survivor must overcome. But several statutory provisions suggest that IPV victimization be given precisely the opposite form of treatment—that IPV victimization is a factor that ought to be *mitigating itself*.¹²⁰

Of course, we recognize that past IPV victimization is not wholly irrelevant to future risk of danger. But we hope to amplify that this issue is complex. As such, we encourage BPH to consider carefully how – if at all – it weighs IPV victimization in assessing current risk. Based on our understanding of the literature regarding IPV and risk of crime, there is not a sufficiently corroborated link between IPV victimization and future risk of criminal activity to warrant treating IPV victimization as a static risk factor.

Insight Issues

As stated above in Part III: Background on California Parole, state law expressly prohibits BPH commissioners from using a survivor’s discussion of intimate partner violence at her

hearing to “support a finding that the survivor lacks insight into his or her crimes and its causes.”¹²¹ Yet throughout our review of the survivors’ hearing transcripts, we read commissioners and deputy commissioners engaging in reasoning that appeared close to this kind of prohibited analysis. Our research revealed the commissioners sometimes view survivors’ discussion of their IPV victimization as an effort to ‘shift blame’ from themselves or refuse to take accountability for their actions.

One case in our sample is particularly telling of this trend. The survivor had seemingly done nearly everything “right”—she was assessed as low risk, had completed extensive rehabilitative programming including domestic violence classes, and received a formal IPB report documenting her abuse. Yet she was found unsuitable for parole and seemed to have her discussion of IPV counted as an aggravating factor against her. One commissioner explained, “[Y]ou really do seem extremely tied to this issue regarding intimate partner battery. . . . But what we see now today is you really are relying on that way too heavily.”

In another case, a commissioner reprimanded a survivor for attempting to “mislea[d]” the panel through discussing her experiences with abuse, saying,

“You are in what’s called denial management, you know, managing your image so you appear to be taking full responsibility when you’re really not. . . . You blame the victim. ‘He pulled a gun on me.’ You say, ‘well this was about [an] abusive relationship’ . . . It wasn’t about [an] abusive relationship.”

117 Elisabeth Christie Ørke et al., *IPV Characteristics, Childhood Violence, and Adversities as Risk Factors for Being Victimized in Multiple IPV Relationships*, 37 J. INTERPERSONAL VIOLENCE (2022).

118 Again, we emphasize that it is not clear from either the transcripts or BPH materials that this is BPH’s official policy or understanding of “unstable social history.” However, in at least *some* transcripts we reviewed, it certainly seemed the IPV victimization itself was considered sufficient to be classified as “unstable social history.”

119 See CAL. CODE REGS. tit. 15, § 2239 (providing that the Board shall consider any evidence of Battered Woman Syndrome “to mitigate culpability for the offense for purposes of suitability for parole”); see also *id.* at § 2281(d)(5) (providing that a prisoner’s experience with battered woman syndrome is a circumstance tending to show suitability).

120 See CAL. PEN. CODE § 4801(a) (Deering 2022); Cal. Code Regs. tit. 15, § 2830; CAL. PEN. CODE § 4801(b)(3) (Deering 2022).

121 CAL. PEN. CODE § 4801(b)(3) (Deering 2022). The legislative history behind this provision shows that legislators also identified this problem at BPH hearings and hoped this provision would remedy it: “Currently, when a domestic violence victim is questioned by the parole board on the crimes they committed, the victim often discusses the history of their victimization and their prior abuse. The Parole Board often considers this acknowledgement of victimization as ‘lack of insight’ and denies their parole.” Assem. Com. On Public Safety, Author’s Analysis Bill No. AB1593 (Mar. 29, 2013).

Another commissioner suggested that while the survivor was clearly a “victim of domestic violence,” she had not taken full responsibility for the crime, because she continued to speak in a “victimized voice.” Other examples from hearing panels include:

- “You appear to have suffered from [intimate partner battery] . . . but then the other part of this, and this is sort of an insight question is what was the motivation for you committing this crime? . . . what I don’t see in here is financial gain.”¹²²
- “You really didn’t understand domestic violence today . . . [W]e found that you came across in a very self-centered manner today, uh, were thinking about yourself as opposed to [your victim].”
- “She was building an image of a victim. [Inmate] is anything but a victim . . . She had ample opportunity, ample opportunity to flee his control. She didn’t do that . . .,” and “[her hearing testimony] came across [as] a lot of minimization, a lot of blame shifting, and really it was a failure to take full responsibility for your actions. So, I would recommend that you really search and go through and, and stop the blaming, stop the external reasons why . . .”

Emblematic of this issue, one survivor appearing before BPH admitted to overstating her culpability at an earlier hearing for fear that if she did not, the panel would find she lacked accountability. The survivor explained that while she was neglectful towards her child (the victim), she was never physically abusive. And while her abusive partner was the person who inflicted the child’s fatal wounds, the survivor admitted that at earlier BPH hearings she falsely claimed responsibility for these injuries:

“I don’t know if it was the appeal or the progression report, but it was assumed [that] because I got all the bulk of the time I had, that I had did all this, personally afflicted these wounds, *but that’s not true*. But I came in every Board and every story I’ve ever written; I’ve tried to put myself in the place of being the one that afflicted [the injury that caused death] . . . because *I felt like I had to say that* because I got all the time.” (emphasis added)

Reliance on Myths

The transcripts also revealed that a few hearing panels occasionally appeared to rely on outdated myths about intimate partner violence in their analyses. First, some hearing panels expressed skepticism toward survivors whose claims of abuse did not involve physical violence. For example, one survivor explained that her partner’s controlling behavior was so severe that she could not leave the home without him and described feeling like a “hostage.”¹²³ The commissioner responded by asking if her boyfriend had ever been physically violent, to which the survivor answered no. The commissioner then said, “So, I’m not understanding why he *just following you*, um, would prevent you from [leaving and finding a phone outside of the house to call for help].” (emphasis added)

This minimizing of non-physical abuse contradicts both scholarly opinion on what constitutes abuse and California state law. Several studies have confirmed psychological abuse can have just as deleterious effects on survivors’ mental health as physical abuse.¹²⁴ What’s more, the California Legislature has adopted an expansive civil definition of “abuse,” which is “not limited to the actual infliction of physical injury of assault”¹²⁵ and includes acts of “coercive control,” such as isolating survivors from family,

122 It is worth noting that in this case, the survivor admitted that “part” of her motivation for killing her abusive husband was to collect his life insurance policy: “So, it would mean the kids would have the means to, the needs to, you know live[.]”

123 In the survivor’s own words: “Anytime I tried to walk towards the front door, he was there. Anytime I tried to walk towards the garage door, he was there. Um, he was just everywhere I went. He would not allow me to go anywhere without him.”

124 See generally K. Daniel O’Leary, *Psychological Abuse: A Variable Deserving Critical Attention in Domestic Violence*, 14 VIOLENCE AND VICTIMS, 3-23 (1999) (explaining that in many relationships, psychological abuse has just as great of an impact on survivors as physical abuse); see also Sen. Rules Com., Off. of Sen. Floor Analyses, Analysis of Assem. Bill. No.1141 (2019-2020 Reg. Sess.) as amended Aug. 5, 2020. (“For decades, academics and advocates have included coercive control in their definitions of intimate partner violence . . . Empirical studies have shown psychological intimate partner violence is equally as damaging to women’s health as physical abuse.”).

125 Cal. Fam. Code § 6203(b) (Deering 2022).

friends, relatives, or other sources of support,¹²⁶ depriving a survivor of basic necessities,¹²⁷ and controlling the survivor's communications, daily behavior, finances, or access to services.¹²⁸ Indeed, the regulations discussed in Part III: Background on California Parole obligate commissioners to give "great weight" to "intimate partner battering" for survivors' convicted pre-1996 include emotional abuse within the definition of "battering."¹²⁹

Even when commissioners recognized abuse in a relationship, some contended that a woman who killed her abuser—who "perpetrated domestic violence at the highest level"—could not also be a victim of intimate partner violence.¹³⁰ For example, in one hearing, the commissioner concluded that the survivor "didn't understand domestic violence" because she "saw [her]self as a victim, as opposed to seeing the obvious, which was that [she] killed [her] husband." In short, because these survivors committed the "ultimate act"—murder—they cannot claim victimhood in any meaningful sense.¹³¹ But this reasoning is complicated by the fact that acts of self-defense or survival are not themselves acts of intimate partner abuse.

Further, BPH commissioners often expected survivors to submit a relapse prevention plan that addressed how the survivor planned to "avoid" abusive relationships in the future. Indeed, an incarcerated person's "Relapse Plans" are one of the designated factors to be considered under the SDMF.¹³² While we understand the desire to help survivors safely plan for the future, and that governing regulations rightly require BPH to comprehensively assess a survivor's reentry plan, it is not clear that a relapse prevention plan for healthy relationships is valuable to assessing a survivor's current risk of danger. As discussed at length above,¹³³ there is no direct empirical link between IPV victimization and criminal recidivism; nor is there conclusive evidence that prior IPV victimization is predictive of future victimization by other partners. While some studies indicate that individuals might reduce their risk of abuse if taught to identify early warning signs of IPV, these warning signs can be difficult to spot in practice and still do not guarantee that someone will be able to leave an abusive relationship.¹³⁴

126 *Id.* § 6230(c)(1).

127 *Id.* § 6230(c)(2).

128 *Id.* § 6230(c)(3).

129 CAL. PEN. CODE § 4801(a) (Deering 2022) ("For purposes of this section, intimate partner battering and its effects may include evidence of the nature and effects of physical, emotional, or mental abuse upon the beliefs, perceptions, or behavior of victims of domestic violence if it appears the criminal behavior was the result of that victimization.")

130 See *In Re Ma.V.*, 64 Cal. App. 5th 11, 26 (2021) ("We expect such victims to be 'sweet, kind, demure, blameless, frightened, and helpless' and 'not a multi-faceted woman who may or may not experience fear or anger.' These are the preconceptions that judges and jurors bring with them into the courtroom when they assess the veracity of a victim-witness's story.' We encourage continued diligence and education to guard against such preconceptions.") (internal citations omitted).

131 See THE NATIONAL DOMESTIC VIOLENCE HOTLINE, *The Myth of Mutual Abuse*, <https://www.thehotline.org/resources/the-myth-of-mutual-abuse/> (last visited Jul. 18, 2022); Susan L. Miller and Patricia Becker, *Are We Comparing Apples and Oranges? Exploring Trauma Experienced by Victims of Interpersonal Violence and Abuse and by Court-Involved Women Who Have Used Force Relationships*, 36 J. Interpersonal Violence 6951, 6951 (2021) ("[M]uch of the extant research is unequivocal about the differences between when men and women engage in violence in intimate relationships (Dasgupta, 2002; Larance & Miller, 2017; Miller, 2005; Swan & Snow, 2003); when women do use force in adult intimate relationships, most of the time its use is not indicative of battering (Osthoff, 2002; Worcester, 2002)."); see also Debra Stark et al., *Properly Accounting for Domestic Violence in Child Custody Cases: An Evidence-Based Analysis and Reform Proposal*, 26(1) MICH. J. GENDER AND L. at 10 (2019) (explaining that studies purporting to show that mutual, or "situational couple violence" is the most common form of unhealthy relationship are burdened by "methodological flaws"); see also Suzanne C. Swan et al., *A Review on Women's Use of Violence with Male Intimate Partners*, NIH Public Access Author Manuscript (Nov. 2, 2010) (explaining that women's violence "usually occurs in the context of violence against them by their male perpetrators," and that "women's physical violence is more likely than men's violence to be motivated by self-defense and fear, whereas men's physical violence is more likely than women's to be driven by control motives.").

132 CDCR Appendix D, *supra* note 71.

133 *Infra* Part V: Results, *The Ambiguity of Unstable Social History*.

134 See Monica S. Kearney and Karen M. O'Brien, *Is It Love or Is It Control? Assessing Warning Signs of Dating Violence*, 36 J. INTERPERSONAL VIOLENCE 5446, 5463 (2021) ("Framed in protection motivation theory, college students in the sample did not perceive the warning signs of dating violence as serious health threats[.]").

In fact, scholars have hypothesized that it may be even harder for survivors of IPV to identify the warning signs of abuse in the future.¹³⁵ Even further, an ability to identify risk factors in a relationship is one competency, but having the power and resources to leave that relationship is an entirely different matter.

Requiring relapse prevention plans that place the onus on the survivor to “avoid” future abuse can come uncomfortably close to victim-blaming, implicitly suggesting that the survivor could have simply “avoided” the abuse she previously endured if she had made better decisions in the past, or tried harder to leave her abuser. We recommend further research into whether these IPV “relapse” prevention plans do, in fact, reduce recidivism or victimization among formerly incarcerated survivors. Alternatively, inquiring into the resources and social supports a survivor will have post-release might be a more sensitive and predictive way to assess her future safety.¹³⁶

We note that several commissioners asked survivors insightful questions about the “external triggers” that lead them into unsafe relationships: For example, how they now work through traumatic memories, and how they’ve come to understand power and control in relationships. We commend commissioners for these conversations that assess the safety barriers survivors faced prior to their incarceration, and how they’re working through their trauma today. Such compassionate discussions about trauma and healing may present an alternative way for commissioners to assess a survivor’s risk of re-victimization more sensitively than a “relapse plan.”

Interviewing Issues

Finally, survivors were often asked questions during BPH hearings that seemed to offer little probative value for assessing their risk level, while being deeply personal and embarrassing. For example, despite it not being apparent how or why a survivor’s sexual history is relevant to assessing

her risk of danger to the public, some survivors were asked about this aspect of their pasts. One survivor was faced with the following exchange: “You never knew [who the father of your children] is? Is that because of the number of intimate relationships that you were maintaining at that time?”

Another commissioner allowed an assistant district attorney to ask a survivor questions that suggested she benefitted from “sett[ing]” down with her abuser, because before she was under his control she was “promiscuous.” The assistant district attorney asked, “Commissioner, could the Board ask the inmate to clarify before she met [victim], she was promiscuous. She had more children by different men. She was living in the fast lane . . . Why did she decide she needed somebody? A man that would be there.” The commissioner then said to the survivor, “You understand that question . . . ? Basically, you were living the fast life and you decided to settle”

In another case, a survivor disclosed that she was sexually abused as a teen and ultimately became pregnant by her rapist when she was 15. After this trauma, she turned to drugs and alcohol to cope, and eventually entered sex work. The commissioner referred to this trauma response as the survivor’s “deviant behavior” and “flashy lifestyle.” The deputy commissioner asked, “So you were born into [faith] . . . What would cause a Muslim—a little Muslim girl to end up in San Francisco, and prostituting?” These questions evince disapproval for the survivor’s history in sex work and suggest that the commissioner believed it was the survivor’s own moral failures that led her to substance abuse and sex work, rather than her history of sexual trauma in childhood.

We recognize that the parole process may necessarily require commissioners to ask probing and uncomfortable questions in some cases. Nevertheless, some of the questions we observed in transcripts appeared needlessly invasive and reflected outmoded stereotypes that contributed little to the assessment of a survivor’s present risk of danger.

135 *Id.* (“[W]e hypothesize that people who experienced dating violence would have less ability to recognize warning signs of dating violence than those individuals without a history of dating violence.”).

136 See Deborah M. Capaldi et al., *A Systemic Review of Risk Factors for Intimate Partner Violence*, 3 PARTNER ABUSE (June 2012) (showing that contextual factors including financial stress, household income, and unemployment may increase a woman’s risk of IPV victimization, while positive context like social and emotional support may be protective against IPV victimization).

Board of Parole Hearings Recommendations

As this report reveals, the challenges facing criminalized survivors are great, and there are many spaces in which our legal system—not just parole processes—can be strengthened to achieve justice for survivors. That said, this study has focused on the parole process in particular, so we offer two, broad suggestions for how the California parole system might take better account of the unique needs of criminalized survivors. These recommendations are *directional*, rather than precise, to leave room for tailoring by experts in this field.

Recommendation #1: Enhance IPV Training for BPH Commissioners and Staff

We believe additional and ongoing training for both BPH commissioners and staff on intimate partner violence and the impacts of trauma would strengthen the parole process. In particular, myths that surfaced in commissioners' analyses included: the belief that non-physical abuse does not count as intimate partner violence, or is not serious and characterizing intimate partner violence as "mutual" and demanding that a survivor take ownership for her "role" in the abuse. We believe training and regular review of evolving social science in the field will help commissioners avoid these myths, and perhaps decrease the likelihood that IPV will be used to conclude a survivor lacks "insight" into the causes of their crime.

We recommend this ongoing training for all BPH staff, recognizing that commissioners are not the only BPH officials who are part of the parole decision-making process. For

example, in some transcripts, commissioners quoted from comprehensive risk assessments created by BPH staff, who also wrote that survivors' discussion of intimate partner violence signaled a denial of responsibility.

Additionally, we note that there is ample scholarship related to effective questioning strategies for individuals labeled as offenders, victims, or "dual-status."¹³⁷ As discussed above, we reviewed moments in the transcripts when commissioners appeared insensitive or unnecessarily hostile to the survivors they were interviewing. This approach may prevent survivors from openly telling their stories and send an inappropriate message about the standards being applied and the fairness of the process. Beyond limiting the depth of testimony, poor rapport during interviews can hinder survivors' abilities to make an adequate case for their parole release. Ongoing training on trauma-informed interviewing may help commissioners enhance the depth and accuracy of testimony survivors are able to give the board.¹³⁸

Commissioners remarked in several transcripts that they had received extensive training in domestic violence and understood its complexities in an effort to comfort survivors struggling to tell their stories. It is undoubtedly true that BPH commissioners receive extensive training on IPV.¹³⁹ In fact, DV training for BPH is required by California law.¹⁴⁰ We appreciate that commissioners are asked to participate in many trainings, and are tasked with becoming ad hoc social science experts on a litany of complex issues, including IPV. Because the number of trainings commissioners attend are many, the information they're expected to master is complex, and the number of hearings in which IPV is discussed at length are few. Given these challenges, BPH might consider

137 See, e.g., Ronald P. Fisher & R. Edward Geiselman, *Memory Enhancing Techniques for Investigative Interviewing: The Cognitive Interview*, U.S. Dep't of Justice (1992); MICHAEL E. LAMB ET AL., *Tell Me What Happened: Structured Investigative Interviews of Child Victims and Witnesses* (John Wiley & Sons Inc.) (2008); REBECCA MILNE & RAY BULL, *INVESTIGATIVE INTERVIEWING: PSYCHOLOGY AND PRACTICE* (Wiley) (2003); Agnieszka M. Nogalska et al., *Police Interviewing Behaviors and Commercially Sexually Exploited Adolescents' Reluctance*, 27 PSYCH., PUB. POL'Y, AND LAW 328 (2021).

138 See Melissa Milam et al., *The Survivor-Centered, Trauma-Informed Approach*, 65 U.S. ATT'YS BULL. 39 (2017).

139 For an overview of the extensive trainings and presentations BPH staff and commissioners received in 2021, see Cal. Dep't of Corr. and Rehab., *2021 Report of Significant Events*, 22 (Mar. 13, 2022) <https://www.cdcr.ca.gov/bph/wp-content/uploads/sites/161/2022/03/2021-Significant-Events.pdf>.

140 See CAL. PEN. CODE §5075.5 ("All commissioners and deputy commissioners who conduct hearings for the purpose of considering the parole suitability of prisoners or the setting of a parole release date for prisoners, shall receive initial training on domestic violence cases and intimate partner battering and its effects.").

developing a system for survivors of IPV to have their hearings before a specialized panel of commissioners appropriately trained to address their needs if expanding training universally is logistically untenable.

BPH already utilizes specialized panels for youth offenders,¹⁴¹ elderly incarcerated individuals,¹⁴² and permanently ill individuals seeking medical parole.¹⁴³ A more specialized panel that can cultivate real expertise on the nuances of IPV may be a more efficient way to ensure survivors are before panels that fully understand the unique challenges they've faced.

Should such a specialized panel system be adopted for IPV survivors, we would recommend BPH define eligibility to appear before this panel broadly. As mentioned above, we observed in the transcripts that commissioners frequently doubted the veracity of survivors' claims of IPV, often relying in part on outdated myths. It would be unfortunate if the same approach was used to deny survivors access to a specialized panel, dismissing their IPV allegations before the survivor has a chance to tell her story and describe her experiences, first-hand.

We would therefore propose that any incarcerated individual wishing to discuss their experiences with IPV at their parole hearing be invited to present themselves before the specialized panel. We would further recommend that appearing before such a panel be optional, allowing survivors and their attorneys the freedom to decide whether a history of IPV is something they would like to raise at the hearing.

Because we know that, statistically, many incarcerated individuals have likely experienced IPV,¹⁴⁴ regardless

of whether that history appears in their Central File, it would be ideal for *all* commissioners to receive robust training on IPV, so they are equipped with the tools they need to respond to potential disclosures of IPV during hearings. However, we also appreciate that administrative challenges may arise when new training is recommended and that a more specialized process may be appropriate, if designed with care, made voluntary, and with flexible eligibility requirements.

Recommendation #2: Expand Survivor Voices in the Parole Process

Our data supports what many other studies have shown: many incarcerated women have experienced some form of sexual or intimate partner violence.¹⁴⁵ Even if not all survivors' crimes are directly related to their experience of intimate partner violence, it is clear that nearly all incarcerated women appearing before BPH will have some history of trauma that warrants consideration, empathy, and careful treatment. One of BPH's stated goals is to develop programs that ensure for the "meaningful participation for parties interested in parole hearings and reviews"—surely formerly incarcerated or otherwise criminalized survivors are highly interested in the parole process.¹⁴⁶ Accordingly, we believe the parole process would be strengthened if survivors of intimate partner violence played a more active role in the parole process, and we recommend BPH create opportunities for survivor voices to be heard.

We recognize this is a somewhat imprecise recommendation and offer a few ideas on how BPH might achieve meaningful survivor participation in the parole process. First, if formerly incarcerated or criminalized survivors are not currently participating in commissioner training, it might be helpful to

141 Cal. Dep't of Corr. and Rehab., *Youth Offender Parole Hearings*, <https://www.cdcr.ca.gov/bph/youth-offender-hearings-overview/> (last visited Sept. 18, 2022).

142 Cal. Dep't of Corr. and Rehab., *Elderly Parole Hearings*, <https://www.cdcr.ca.gov/bph/elderly-parole-hearings-overview/> (last visited Sept. 18, 2022).

143 Cal. Dep't of Corr. and Rehab., *Medical Parole Hearings*, <https://www.cdcr.ca.gov/bph/mph-overview/> (last visited Sept. 18, 2022).

144 Approximately 1 in 4 women and 1 in 10 men have experienced some form of IPV in their lifetimes. CENTERS FOR DECISIONS CONTROL, *Fast Facts: Preventing Intimate Partner Violence* (2022) <https://www.cdc.gov/violenceprevention/intimatepartnerviolence/fastfact.html>.

145 NATIONAL CLEARINGHOUSE FOR THE DEFENSE OF BATTERED WOMEN, ABUSE HISTORY AMONG INCARCERATED WOMEN (2011), http://www.ncdsv.org/images/NCDBW_AbuseHistoryAmongIncarceratedWomen_updated_5-20-2011.pdf (summarizing the history of scholarly work documenting the high rates of domestic and sexual abuse among incarcerated women); see also Miler and Becker, *supra* note 129.

146 Cal. Dep't of Corr. and Rehab., *Commissioners*, <https://www.cdcr.ca.gov/bph/commissioners/> (last visited Jul. 18, 22).

invite some of these system-impacted survivors to present or speak at BPH trainings to provide a first-hand perspective. Or BPH staff might host listening sessions with currently incarcerated survivors to learn more about their experiences in prison, the availability of domestic violence programming, and the ways in which they are still healing from the trauma of intimate partner abuse.

Another way to increase survivor voices in the parole process is to lift barriers to formerly incarcerated persons serving on BPH as commissioners or as staff. The current composition of commissioners is diverse and includes representatives from nearly every corner of the criminal legal system: They include former corrections officials, a former police officer, former prosecutors, forensic psychologists, judges, and a social worker.¹⁴⁷ Yet one key group of stakeholders is absent from this roster: formerly incarcerated people. System-impacted individuals, including formerly incarcerated survivors, are a large constituency of stakeholders with important and informed perspectives on the criminal legal system. Their lived experiences with incarceration and parole may offer a rich source of institutional knowledge to BPH, including first-hand familiarity about the impact and availability of DV programs, the experience of life in prison, and the most effective tools for attainability stability and self-sufficiency upon release.¹⁴⁸

Similarly, BPH might consider hiring formerly incarcerated survivors to serve on staff—perhaps as advocates to survivors during their comprehensive risk assessments, or to assist with conducting official IPB Investigations, providing a first-hand perspective that might improve those assessments. An incarcerated survivor may feel more comfortable discussing her experiences with IPV if she knows one of the people listening is someone who has been in her shoes. This would not only facilitate a more supportive parole process for

survivors, but might also benefit BPH by leading to more trauma-informed investigations or risk assessments.

Additional Policy Recommendations and Future Research

In addition to recommendations related to the BPH hearing process itself, we propose further inquiry to the following topics as a way of strengthening the parole process: the impact of traumatic brain injury on IPV survivors; survivors' role in the criminal act; the role of IPV investigations in the parole process; the link between prior sexual abuse and IPV; weapons-related sentencing enhancements; and the role of District Attorney's offices in BPH hearings. We discuss each of these in turn.

Need for Richer Understanding of the Impact of Traumatic Brain Injury on IPV Survivors

As discussed above in Part II: Background on IPV Population, new research suggests that traumatic brain injury may impact how survivors appear in interviews, in court, and at board hearings. TBI can cause forgetfulness or confusion that impacts the way survivors tell their stories, leading system actors to mistake a survivors' cognitive symptoms for dishonesty or deception.¹⁴⁹ To equip decision-makers with the information they need to accurately assess survivors' credibility, we recommend ongoing and expanded training on the signs and impacts of brain injury and strangulation ("TBI") for all criminal legal system actors who work with survivors.

Thirty-nine percent (n= 9 women) of the survivors in our sample described injuries such as concussions and asphyxiation resulting in unconsciousness that could have

¹⁴⁷ *Id.*

¹⁴⁸ Further, additional research into how the demographic composition of the board impacts the quality of survivor testimony. Given new studies revealing how gender dynamics play a role in police interrogation of survivors, we are curious whether similar challenges are present in the parole process. Research is needed on whether survivors of intimate partner violence would be more open about their IPV experiences when speaking with women. See Janet Ainsworth, *When police discursive violence interacts with intimate partner violence*, 8 LANGUAGE & L. / LINGUAGEM E DIREITO 10 (2022), <https://digitalcommons.law.seattleu.edu/faculty/836> (discussing studies that show survivors of intimate partner violence may be more susceptible to police coercion resulting in false confessions). This research might further support a call for specialized IPV panels.

¹⁴⁹ Cimino, *supra* note 14, at 4.

led to a traumatic brain injury. In four of these cases, the transcript indicated that the survivor may have experienced more than one head injury, increasing the risk that the survivor has experienced some form of TBI. These numbers, while preliminary, are consistent with the emerging research about the prevalence of TBI in survivors of IPV.¹⁵⁰

In fact, it is possible that our limited survey *undercounted* the prevalence of head injuries in this population. Although some women recounted clear instances of head injuries, far more women were vague in their descriptions of the abuse that they endured. They used generic words like “hit” and “slap” and did not describe their resultant injuries.

Further research is needed to determine how many survivors of IPV actually experience traumatic brain injuries. Moreover, we recommend additional research related to how traumatic brain injuries present in survivors of IPV. While there is research on the impact of a TBI on general brain functioning, much of the current research is conducted on male brains and on individuals who have the opportunity to rest and heal.¹⁵¹ Survivors, many of whom are mothers, oftentimes experience routine violence and trauma and do not have the opportunity to rest.

Furthermore, more research is needed generally on the link between TBI and judgment, decision-making, and memory in survivors of intimate partner violence. In light of the emerging research linking head injuries to aggressive behavior,¹⁵² we encourage study on how the impact of a TBI on long-term memory might affect a survivor’s testimony,

particularly in what is required to be shared during a parole hearing, decades after the events in question.

Moreover, the few studies that have been conducted on TBI and crime reveal that many incarcerated people present with neurological abnormalities.¹⁵³ In fact, the United Kingdom now recognizes that, even after a violent crime has occurred, TBI should be taken into consideration during sentencing.¹⁵⁴

Research suggests that there are measures one can take, such as neurorehabilitation, to reduce the risk of violent behavior following a TBI.¹⁵⁵ Given that mild brain injuries can—and often do—heal, more fulsome exploration of the immediate and short-term impacts of TBI on behavior would also be helpful. As noted, one of the survivors in our sample reported experiencing a head injury at the hands of her abuser two days before the murder. Thus, we wonder whether a survivor is particularly prone to violent behavior in the days or weeks after receiving a brain injury from her partner.

The need for this research is evidenced by the import given to survivors’ narrative abilities during BPH hearings: One district attorney at a BPH hearing argued that the survivor was not “forthcoming” in her remarks because she took “long pauses” before giving answers and made “a lot of her statements didn’t make sense.” This example seems indicative of a problem we are just beginning to understand: The way a survivor communicates matters a great deal to DAs and other actors in the criminal legal system, but the effects of trauma and TBI might impair a survivor’s ability to

150 See Kwako et al., *supra* note 27, at 117 (reporting that the prevalence of TBI in IPV survivors seeking emergency shelter or treatment in the emergency department ranges from 30% to 74%).

151 Michelle O’Sullivan et al., *Traumatic Brain Injury and Violent Behavior in Females: A Systematic Review*, 25 *AGGRESSION AND VIOLENT BEHAV.* 54, 60 (2015) (“[T]he main conclusion is that there is insufficient evidence regarding a relationship between TBI and violence in females and that research addressing this question presents with methodological limitations.”).

152 See, e.g., Samuel Katzin et al., *Exploring Traumatic Brain Injuries and Aggressive Antisocial Behaviors in Young Male Violent Offenders*, 11 *FRONTIERS IN PSYCHIATRY* 5 (Oct. 2020).

153 W Huw Williams et al., *Traumatic Brain Injury: A Potential Cause of Violent Crime?*, 5 *LANCET PSYCHIATRY* 836 (2018). Another study indicates that “more than half of men in jail have experienced at least one traumatic brain injury (TBI).” Kim A. Gorgens et al., *Traumatic Brain Injury in Community Corrections: Prevalence and Differences in Compliance and Long-Term Outcomes Among Men and Women on Probation*, 48 *CRIM. JUST. & BEHAV.* 1679, 1679 (2021). More research is needed to determine if these statistics are similar for incarcerated women.

154 *Id.*

155 Williams, *supra* note 151, at 840.

communicate her experience. To ensure the symptoms of TBI aren't erroneously mistaken for deception or insincerity, the criminal legal system must investigate these testimonial challenges unique to survivors, like TBI, and explore ways to ensure survivors have a fair opportunity to tell their stories effectively.

As our understanding of traumatic brain injury and how it impacts survivors continues to grow, we encourage police officers, prosecutors, judges, and other legal system actors to receive training in traumatic brain injury. What's more, we recommend they follow best practices by doctors and scholars in work with TBI-affected survivors and implementing policies informed by relevant research.¹⁵⁶

The Survivor's Role in the Criminal Act

Several survivors with whom we spoke over the course of this study believed that men receive lesser punishments for crimes in which they played a more direct role. As indicated in Part V: Results, in over half the cases we analyzed, the survivor herself did not directly inflict the injury that resulted in the victim's death. Again, in at least three cases—and in a potential fourth—the survivor was convicted for failing to protect her child from her abusive partner. This seems to support what research has already shown: that in some cases women do end up serving significantly longer sentences for failure to protect than their abusive partners who were directly responsible for the child abuse.¹⁵⁷

The transcripts we reviewed underscored the importance of determining how many women nationally are convicted of homicide under the theory of failure to protect, how many

of those women are survivors of intimate partner violence, and how much time these mothers typically serve in comparison to their abusers. Preliminary research indicates that mothers who experience intimate partner violence are forced to choose between testifying about their own abuse and risking self-incrimination or staying silent and allowing their and their child's abuser to go free. For some mothers, then, testifying against the abusive partner is a "final sacrifice, one last protection they can give their child before they go to prison."¹⁵⁸ We recommend additional research into policy interventions that might curb the criminalization of survivors facing lengthy sentences for failure to protect.

Moreover, current research demonstrates that "more women than men have been charged and convicted of [failure to protect] signifying a reversal of usual patterns of prosecution and conviction."¹⁵⁹ This may be because failure to protect laws were derived from "patriarchal constructs of the ideal mother," an omnipresent woman whose sole responsibility is to nurture her children.¹⁶⁰ A woman who fails to mother "adequately"—even if she herself is a victim of abuse—is sometimes punished more severely than her physically violent partner.¹⁶¹ Ultimately, the same pernicious belief system that penalizes survivors for failing to leaving their abusive partners may undergird failure to protect laws. Thus, we recommend additional research and policy interventions geared toward providing immunity to survivors who testify about the abuse that they have faced in order to protect themselves and their children.

Even when children were not the victims, women who did not directly perpetrate the violent act were sometimes

156 See Christine E. Murray et al., *Practice Update: Assessment and Practice for Traumatic Brain Injury Among Survivors of Battering*, 17 *Trauma, Violence, & Abuse* 298, 300-04 (providing practice recommendations for "support people" who work with survivors) (2016).

157 Maggie Butzen, Comment, *A Parent's Final Sacrifice: Self-Incrimination in Failure to Protect Cases*, 51 *J. MARSHALL L. REV.* 377, 378-79. In 2004, Tondalao Hall took her son to the emergency room with several broken bones. Her boyfriend, Robert Braxton, was arrested for child abuse, and Hall was made his codefendant. Hall never saw Braxton abuse her son, but he frequently choked, punched, and threatened her, as she testified in court. She hoped that her testimony of intimate partner violence would keep Braxton in jail and away from her son. She was sentenced to 30 years for failure to protect. Braxton received a 10-year sentence, of which he served only two years. *Id.*

158 *Id.* at 406.

159 Sarah Singh, *Punishing Mothers for Men's Violence: Failure to Protect Legislation and the Criminalisation of Abused Women*, 29 *FEMINIST L. STUD.* 180, 181 (2021).

160 *Id.* at 184.

161 Butzen, *supra* note 157.

convicted under alternate theories of liability. One survivor, for example, was convicted of first-degree murder, conspiracy, and attempted murder after her abusive boyfriend pulled a gun on her and stole her car keys. The survivor, worried about how she would get to work the following morning, called her brother for help. The situation escalated, and her brother shot the victim. She did not know that her brother had a gun, and “would not have gotten him [involved] to begin with” had she known. “I just want[ed] my car keys back,” the survivor explained during her parole hearing, 20 years after the incident in question. She was ultimately found unsuitable for parole. Another woman bought bullets for her friends, and another objected while her pimp choked one of her regular clients to death. Some scholars indicate that women who commit violent crimes are punished more severely for their “double transgression” against both the criminal law and their gender role.¹⁶² Further research is needed to determine whether women—particularly those who do not directly engage in violent acts—are punished more severely than their male counterparts, both at the sentencing and parole stages.

The Role of IPB Investigations in the Parole Process

As discussed above in Part III: Background on California Parole, BPH conducts formal “intimate partner battering” investigations for survivors with pre-1996 convictions. Our data set indicates that five of the 10 women convicted prior to 1996 received investigations and two of the 13 women convicted after August 29, 1996, received IPB investigations. Overall, seven of the 23 survivors in our sample—all of whom we determined were convicted for an IPV-related murder—received an IPB investigation.

The survivors in our sample who both committed their controlling offense before 1996 (and therefore were entitled to have “great weight” assigned to their evidence of battering) and had an official IPB investigation were no more likely to be found suitable for parole than survivors without one. In our sample of 23 women, 10 were convicted before 1996; five received an IPB investigation and five did not.

All five survivors who were convicted before 1996 and who received a formal IPB investigation were found unsuitable for parole. In contrast, two of the five survivors who were also convicted before 1996 and did not receive formal IPB investigations were found suitable for parole.

This finding raises questions about IPB investigations and how the “great weight” requirement of Cal. Pen. Code § 4801(a) is operationalized: What evidence is relied upon in the IPB investigations, and does the paucity of record evidence from survivors with pre-1996 convictions pose challenges to corroborating these survivors’ stories? It seems possible that because pre-1996 convictions are those in which there won’t be evidence of battering in the trial record, it may be harder for BPH clinicians to substantiate survivors’ claims. If this is the case, are there other sources of evidence and support BPH can consult to fully understand these survivors’ experiences?

While the statutory authority for the investigations pertains to convictions prior to August 29, 1996, our analysis suggests that BPH might consider broadening its screening process to ensure it is comprehensively identifying survivors who committed a crime as a result of IPV. By our findings, an investigation may have been appropriate – and potentially helpful – for nearly a quarter of the women in our larger sample (i.e., women convicted of murder who appeared before BPH in 2021). OISD might even consider briefly screening *every* woman who enters CDCR custody for IPV history. Such a system would also allow officials to conduct IPV reports when necessary and provide BPH with a clearer picture of the role that IPV played in the controlling offense. As noted, the women in our 23-person sample had spent an average of 20 years (range = 10 to 41 years) incarcerated before their 2021 BPH hearings, at which point many struggled to remember the finer details of the offense. Conducting the IPV investigation upon intake might allow OISD to record a contemporaneous and likely more accurate testimony of the way in which IPV influenced survivors’ actions leading up to the crime.

162 Singh, *supra* note 159, at 184.

Importantly, however, advocates, attorneys, and formerly incarcerated survivors have relayed that OISD’s investigation process has shortcomings. One formerly incarcerated survivor explained that she felt re-traumatized and disbelieved during her investigation. Another noted that she was relieved that she did not have to participate in an investigation given what other survivors had told her about the process. Ensuring the investigations are conducted in a trauma-informed manner will enable commissioners to obtain the most accurate information possible about emotionally fraught periods in survivors’ lives.

Ultimately, BPH commissioners alone are tasked with interpreting the information provided by OISD. Commissioners, not OISD, decide whether or not a survivor’s controlling offense directly resulted from her experience with IPV. Given privacy constraints, we could not review the OISD reports. However, for six of the seven survivors who had investigations conducted, commissioners cited IPV as an *aggravating* factor (in one case, the commissioner did not discuss IPV as a factor in the decision).

We therefore encourage further research regarding OISD’s methodology and the impact of an IPB report on the parole process. In particular, it is important to determine how—and how frequently—BPH determines that IPV is, in fact, substantially related to the controlling offense, and the impact that information gathered by OISD has on that determination.

The Link between Prior Sexual Abuse and IPV

We found that a staggering 70% of the survivors included in this study had experienced non-IPV sexual abuse prior to committing the controlling offense. It is crucial that we understand when and how this sexual abuse occurs, particularly given the correlation between non-IPV sexual abuse and subsequent extreme intimate partner violence.

We also recommend additional research related to how BPH weighs a survivor’s history of prior sexual abuse. Specifically,

is prior sexual abuse considered an aggravating, mitigating, or neutral factor during parole hearings? As discussed in Part VI: Findings, Policy Recommendations, and Future Research related to “unstable social history”, it would be helpful to clarify whether a history of sexual violence is sufficient to constitute “unstable social history” under BPH’s current use of the SDMF.

The transcripts we reviewed suggest that some commissioners might be treating prior sexual assault as an aggravating risk factor. In one transcript, while discussing “historical aggravating factors,” a commissioner explained that the survivor exhibited “limited control over [her] environment and an inability to extricate [herself from dangerous situations]” suggesting that was in part because she had experienced “inappropriate sexual advances by grown men as a child.” In another hearing, a commissioner concluded that the survivor had an “unstable social history” given “the abuse that she was subjected to, the sexual abuse, the physical abuse,” indicating that experiencing sexual abuse made her less suitable for parole.

Based on these preliminary findings, there are grounds for concern that having been subjected to sexual violence might also be used as a “historical aggravating factor” in some BPH analyses. Given the prevalence of sexual violence in this particular population, this could have significant, and possibly inappropriate, impacts on the parole process.

Weapons-Related Sentencing Enhancements

As noted, in every instance in which a survivor in our sample used a weapon, the victim was her male abusive intimate partner. This finding suggests that women who kill their abusive male partners may receive longer sentences – due to weapons-related sentencing enhancements – than men who murder their female partners, as women are less likely to be able to defend themselves without a weapon. More research is needed to determine how often female survivors receive weapons enhancements in comparison to male abusers.¹⁶³

¹⁶³ As noted in *supra* note 21, at least one study of 73 appellate spousal homicide cases in California between 1990 and 2009 found that women are more likely to use weapons and be convicted of harsher sentences with weapons enhancements than men who kill their partners. Given the relatively small size of the dataset of the 2011 study, we urge that the research be replicate to confirm results.

Relatedly, we suggest additional research on gender-based disparities in sentence length, and the potential impact of inherent differences in strength and weapons enhancements on any potential disparity.

The Role and Orientation of District Attorney Participation at BPH Hearings

As discussed above in Part III: Background on California Parole, district attorneys are permitted, but not required, to participate in BPH hearings. And, as detailed in Part V: Results, in the majority of the cases in our sample (17 out of 23), the DA's office that prosecuted the survivor's case appeared at the survivor's hearing to oppose her release. Our analysis further revealed that DA's offices often opposed release regardless of current risk: in our sample population, DAs opposed the release of 10 individuals (out of 11) who were assessed as "low risk" by CDCR. In only one case did the DA's office appear to support the survivor's release. Our observations of DA's participation in parole hearings raises questions about their participation in role in the parole process, and how it might be improved.

An initial observation made from the transcripts was that some of the comments made by district attorneys at BPH hearings evinced a flawed understanding of the realities of IPV. Several appealed to the universally rejected myth that a survivor could have avoided the abuse if she just left her abuser ("She could have easily left [her husband]"). Others minimized the significance of emotional abuse, suggesting that if there was no "abuse in the relationship," if the abuse was not physical. Another suggested that the survivor's story that her husband threatened to kill her children was untrue because "why would [he] want to kill his own children?"—a line of questioning that overlooks the unfortunate reality that abusive men can, and often do, murder their children.¹⁶⁴

Additionally, district attorneys often argued that survivors' discussion of IPV at the hearing was a tactic to evade accountability, coming into tension with the mandate of California Penal Code § 4801(b)(3), which prohibits commissioners from using a survivor's discussion of IPV to find a lack of insight.¹⁶⁵ One district attorney said the prisoner was "minimizing" her culpability by "blaming" her abuser. Another called a survivor's emotion as she recounted the abuse "disingenuous crocodile tears." One more asked, "[W]hy is she still so angry and focused on [her abusive husband]?"

Moreover, assistant district attorneys participating in BPH hearings often focused their comments on the seriousness of a survivor's original offense, rather than evidence of current dangerousness to the public.¹⁶⁶ District attorneys are certainly deeply familiar with the underlying crime and its continued impact on the victim(s) and community. But the relevant inquiry for BPH must be broader than the underlying crime that took place.

We note these observations, because they illustrate the apparent tension between district attorneys' broad authority to participate in BPH hearings, and the narrower task of commissioners to assess current risk. As caselaw and statutes have shifted BPH away from an analysis that considers the seriousness of the original offense, the district attorney's stated role in the process has not similarly evolved.

For instance, the current statute governing district attorney participation broadly describes their role in the hearing as "comment[ing] on the facts of the case and present[ing] an opinion about the appropriate disposition."¹⁶⁷ The California District Attorneys Association Handbook on Lifer Hearings explains that "A prosecutor's primary role at the parole

164 See generally Bernie Auchter, *Men Who Murder Their Families: What the Research Tells Us*, Issue 266 NIJ JOURNAL (2010).

165 See *supra* note 88.

166 In re Lawrence, 44 Cal. 4th 1181, 1226 (2008). We acknowledge that one of the factors indicating unsuitability for parole release is the nature of the commitment offense. CAL. CODE REGS. tit. 15, § 2281 (2022).

167 CAL. CODE REGS. tit. 15, §2030(d)(2).

hearing is to keep the facts straight.”¹⁶⁸ It’s worth asking whether reviewing the facts of the case *should* be the district attorney’s primary task in parole hearings for IPV survivors, for three reasons.

First, the goal of the BPH hearing is not to re-litigate the trial or revisit the seriousness of the offense, but to assess whether the survivor poses an unreasonable risk of danger to society if released.¹⁶⁹ The question of whether a survivor’s claims of intimate partner violence at her trial were truthful might not always be probative of the survivor’s current risk of danger.

And, despite these perhaps competing views of the purpose of a BPH hearing, the SDMF expressly requires commissioners to consider the input of district attorneys. One of the factors in the SDMF is “Victim/DA Considerations,” which asks whether the “victim, victim’s next of kin, or prosecutor” provided information or arguments relevant to “the express issue of safety or current dangerousness.”¹⁷⁰ It is unclear how often and to what degree district attorneys’ comments influence BPH commissioners’ suitability determinations, but given that the district attorneys’ input is part of the SDMF, it stands to reason that if BPH is to rely on their comments, the district attorney and BPH ought to be aligned in their analytical goals.

Second, for survivors with convictions pre-1996, or who otherwise never raised the IPV during their prosecution, there likely *will be no facts on IPV* in the record. Where there was no evidence of IPV at trial, the district attorney may not be well situated to “keep the facts straight” – indeed, they might not have access to the facts themselves. In those cases, survivors necessarily must be given the opportunity to present facts about the circumstances of their crime, beyond what the district attorney can point to in the trial record.

And finally, some comments made by district attorneys in the transcripts we reviewed were inappropriate or offensive, likely causing harm to the survivors testifying. For survivors denied parole, comments like those we observed might fairly scare one away from talking about IPV in future BPH hearings, depriving them of a real chance to tell their stories, and robbing hearing panels of potentially relevant and helpful mitigating information.

Given these concerns, we encourage district attorneys’ offices across the state to re-evaluate their approach to BPH hearings and explore ways they might tether their comments more closely to the commissioners’ analytical task of assessing current dangerousness. When district attorneys decide to make a statement in support or opposition of parole, they should consider a full range of information available to them, rather than emphasizing only the seriousness of the offense. Providing district attorneys with more information about survivor rehabilitation might influence how they understand the *current* threat level of an individual appearing before BPH.

If district attorneys feel they are not adequately resourced to make a determination of current dangerousness – an inquiry that goes beyond a review of the underlying facts of the crime – their offices might consider adopting a default policy of declining to attend parole board hearings, as Los Angeles County has recently done. In adopting this policy of no longer participating in lifer parole hearings, Los Angeles County District Attorney George Gascon noted, “[w]e are not experts on rehabilitation . . . the value of a prosecutor’s input in parole hearings is . . . limited.”¹⁷¹ Alternatively, district attorneys might participate in parole hearings to support or to oppose release for survivors of intimate partner violence when they can speak to the survivor’s current dangerousness.

168 CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION, HANDBOOK ON LIFER HEARINGS 4-1 (2016).

169 CAL. CODE. REGS. tit. 15, §2281(a).

170 CDCR Appendix D, *supra* note 71. Transcripts also indicated that commissioners occasionally embrace DAs’ perspectives. In one instance, a commissioner stated, “I would also like to incorporate the District Attorney’s closing statement into my statements here today, uh, for review purposes, uh, and for in part review, uh, should this, um, hearing be reviewed, uh, in the future, because I, um, concur, um, with the DA’s, closing statement.”

171 George Gascón, *Special Directive 20-14 8* (Dec. 7, 2020), <https://da.lacounty.gov/sites/default/files/pdf/SPECIAL-DIRECTIVE-20-14.pdf>.

In one case in our sample, a district attorney appeared at a survivor’s hearing to support the survivor’s release, highlighting the numerous positive reference letters the survivor received, the extensive programming the survivor completed while incarcerated, and emphasizing the “community support” for the survivor’s release. This provided information useful to the Board’s assessment of the survivor’s risk to public safety, but abstained from relitigating the survivor’s case. This approach, focused on current risk factors and the survivor’s development, better serves both survivors and the public by aiding commissioners in their analysis, while also providing much-needed context and support for criminalized survivors.

VII. Conclusion

The criminal legal system has the opportunity to better understand and support survivors faced with a desperate choice: their survival or the survival of their abuser. Prior to and during the parole process, legal system actors can engage in practices and build upon existing statutes and policies that more effectively account for the severe physical and emotional trauma these survivors have suffered. Far too often, current practices and policies double down on punishing individuals who, moments before their crime, were the victims of crime our legal system aims to protect. By considering nuanced approaches to post-conviction decision-making that better reflect our understanding of the dynamics of IPV, we believe the criminal legal system can move closer to a future where victims and survivors of IPV are treated fairly and humanely.

Finally, while the scope of our study was limited to the parole process, we note that future research is needed on how survivors of intimate partner violence fare during charging, trial, and sentencing. Our data indicate that a consequential number of women incarcerated in California prisons are there because of their experiences with IPV. Better understanding how these survivors got to prison in the first place and analyzing the appropriateness of their charges and sentences appropriate are equally critical areas for inquiry and policy discussion.

VIII. Appendix: Coding Guide

Stanford Law School/California Board of Parole Hearings Transcript Analysis of Parole Suitability Hearings Conducted with Female Individuals in 2021

CODING SHEET

Note: In cases where the answer is unknown, not discussed, OR inapplicable, code U.

- CDC number
- THRESHOLD QUESTION: Should we keep this individual in the sample because it is a homicide crime and directly IPV related? (Y/N/Maybe (M))
 - If crime is not homicide and not directly IPV related (e.g., IPV abuser is homicide victim, co-conspirator coercion, etc.), **do not continue coding** (e.g., general vehicular manslaughter without any IPV does not need to be coded).
 - If you have a question about whether the case should be coded, err on the side of including it so we can have further discussion. All ‘maybes’ will be discussed to reach consensus.
- Gender: Female (F)/Male (M)/Non-binary (NB)/Unknown (U)
 - Default: Assume U if individual does not explicitly express gender.
- Brief crime description (Informal)
- Married at time of crime: (Y/N/U)

Past History

- Does the transcript mention mental health issues? (Y/N)
- Does the transcript mention drug/alcohol abuse? (Y/N)
- Does the transcript mention witnessing abuse? (i.e., physical, sexual, IPV) (Y/N)
- Does the transcript mention experiencing non-IPV physical abuse? (i.e., not at the hands of an intimate partner) (Y/N)
- Does the transcript mention experiencing non-IPV sexual abuse? (Y/N)
- Does the transcript mention experiencing non-IPV childhood neglect? (Y/N)
 - (Neglect = failure to meet a child’s basic needs, i.e., caregivers fail to provide food, clothing, education, or access to medical care.)

- Does the transcript mention experiencing IPV in a **prior** relationship? (Y/N)
- Does the transcript mention anger management issues? (Y/N)
- Does the transcript mention other related issues? (Y/N)
 - Specify _____.

Victim and Crime Information

- Number of victims in controlling offense: (i.e., in the homicide crime)
- Individual's relationship to homicide victim(s): Spouse, Dating Partner, or Ex-Partner(S) /Child (C) /Other (O)
 - Other: Specify _____.
- Gender of homicide victim: Female (F)/Male (M)/Non-binary (NB)/Unknown (U)
- Was the victim of the homicide a juvenile? (Y/N/U)
- If homicide victim was a juvenile, age of juvenile: (Code U if not a juvenile)
- Individual has children with abuser involved in controlling homicide: (Y/N/U)
 - U: abuser wasn't involved with controlling homicide
- Individual has children with someone other than abuser: (Y/N/U)
- Was the current victim an IPV abuser of the individual? (Y/N/U)
- Was the individual coerced to commit a crime by the IPV abuser? (Y/N/U)
- Was the individual the direct cause of the victim's death? (Y/N/U)
- Was the individual the indirect cause of the victim's death? (Y/N/U)
- Did the individual use a knife during the commission of the crime? (Y/N/U)
- Did the individual use a gun during the commission of the crime? (Y/N/U)
- Follow-up notes (if necessary).

IPV Investigations

- Was an IPV investigation discussed during the parole hearing? (Y/N)
- If IPV investigation was discussed during the parole hearing, did it refer to a past investigation that was already done? (Y/N/U)
- If IPV investigation was discussed during the parole hearing, did it refer to an investigation the commissioners were ordering to take place in the future after the parole hearing? (Y/N/U)
- If IPV investigation was completed before the current parole hearing, when was it done? Insert year. (U = was not discussed)

Programming

- Did the individual mention completing anger management programming? (Y/N/U)
- Did the individual mention completing female abuser programming? (Y/N/U)
- Did the individual mention completing anything specifically called domestic violence/IPV programming? (Y/N/U)
- If programming was mentioned, include names of completed programming identified (or leave blank if not discussed):

BPH Decision

- Was IPV mentioned as a reason for the BPH decision? (Y/N)
- Did the BPH commissioners discuss the individual's IPV experiences as an aggravating factor? (Y/N/U)
- Did the BPH commissioners discuss the individual's IPV experiences as a mitigating factor? (Y/N/U)
- Did the BPH commissioners discuss the individual's IPV experiences as a neutral factor? (Y/N/U)
- If denial, is IPV related programming requested? (Y/N)
 - If not denial, code U.
- If IPV related programming is requested, is anger management requested? (Y/N)
 - If not requested, code U.
- If IPV related programming is requested, is female abuser programming requested? (Y/N)
 - If not requested, code U.

Traumatic Brain Injury Coding

Search for the following words/phrases: strangle; choke; hands around neck; hit head/face/neck; hurt head/face/neck; loss of breath; stopped breathing; couldn't breathe; hands over mouth; unconscious; lose consciousness; pass out; suffocate; knock out; slam; push; shake; violent shaking; shove; head injury; brain injury; concussion

- Did the transcript refer to a potential TBI / strangulation as indicated by the above words?
 - **If yes, continue coding. If no, leave blank.**
- How many separate instances of a potential TBI (excluding strangulation/choking) did the person suffer that were perpetrated by someone other than the current IPV partner?
- How many separate instances of a potential TBI (excluding strangulation/choking) did the person suffer that were perpetrated by the current IPV partner?
- How many separate instances of potential strangulation/choking did the person suffer that were perpetrated by someone other than the current IPV partner?

- How many separate instances of potential strangulation/choking did the person suffer that were perpetrated by the current IPV partner?
- Indicate page numbers of transcripts that discuss potential TBI/strangulation.

District Attorney (DA) Coding

- Was a representative from the DA's office present at the survivor's hearing? (Y/N)
- What office (jurisdiction) did they represent?
- Did the DA speak at the hearing? (Y/N)
- Did the DA's office support or oppose parole for the survivor? (Y/N)