



**An eye on reform:
Examining decisions, procedures, and outcomes of the
Oregon Board of Parole and Post-Prison Supervision release process**

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EXECUTIVE SUMMARY

In an effort to empirically explore and identify potential areas of reform that might exist in the Oregon Board of Parole and Post-Prison Supervision (the Board) release process hearings and decision-making process, the Criminal Justice Reform Clinic at Lewis & Clark Law School (CJRC) launched a project funded by Arnold Ventures in November of 2020. This project aimed to understand how incarcerated potential parolees (petitioners) and parolees in the community are impacted by the Board's process using a large-scale mixed method (qualitative and quantitative) research study. Moreover, the purpose of the study is also to examine how the Board's decisions and processes may be related to certain outcomes (e.g., initial release and supervision failure). Where possible, special attention is given to differences in race/ethnicity of the parolee and subsequent outcomes of decisions and supervisions.

The key research goals of this study were to (1) determine if there are any patterns in Board decisions to release an eligible person to parole supervision, (2) determine if there are any differences across cases brought before the Board, (3) identify how the hearing and decision-making process impact eligible parties/parolees, and (4) examine the degree to which release decisions are accurate in determining a parolee's likelihood to reoffend. Below are summaries of each goal and a brief overview of the takeaway messages from each section.

Please note that the data and findings associated with each goal capture cases released over the last several years. They encompass laws that have changed as well as many Board member cohorts that have long since turned over during the analyzed timeframe. For this report, the Board is examined and discussed as a living institution, the scope of which can be impacted depending on who serves on it. Thus, none of the conclusions provided here are directed at any one cohort of Board members, including the current Board. In fact, limited data were available on decisions made by the current cohort for this report due to several reasons (e.g., COVID-19 disruptions and lack of staffing resources). All findings and conclusions are drawn from data and reflections that incorporate multiple Board cohorts and governor administrations. As a result, all recommendations made here are focused on reforms to improve the fairness, transparency, and legitimacy of the Board as an institution while maintaining the mission of public safety. Recommendations are provided to emphasize the fact that the Board's processes and policies transcend any single cohort of Board members and culture, and the codification of data-driven policies is the best way to safeguard fairness across Board cohorts.

Goal 1 Summary – Patterns in release

Data used for this goal captured 763 life-with-parole cases. The majority of releases were relatively recent, with most occurring between 2004 and 2016. (see Figure 2). While time-served and concurrent/consecutive violent convictions are the most important factors in predicting if a parole-eligible person will be released, race/ethnicity is an added factor that yields some distinct trends. Race/ethnicity and time-served/months to projected parole-eligibility date were the only two measures able to predict release with 80% accuracy. It is possible that some of the differences that arise between race/ethnic groups are products of the case-specifics and hearing information, both of which still need to be analyzed. This does not mean specific Board cohorts or members were expressing overt bias. Rather, the trends over time suggest the processes and expectations which create the foundation of a Board's decisions, appear to truncate the release probability for certain racial/ethnic subgroups. More recent data that was descriptively analyzed highlights the

potential differences in the most recent Board cohort hearings. Specifically, this analysis shows that recent efforts may have reduced racial/ethnic differences in the probability of release, but also highlights how the Board's process and decision-making is susceptible to member turnover. In other words, without further codification, the positive steps made by one Board cohort could be quickly undone by the next turnover.

Interviews highlighted three themes about how the Board decides between release or deny/“flop” a petitioner: (1) clarity in criteria, (2) fairness and consistency, and (3) socio-political pressures. Both victims and AICs need greater clarity and transparency about the Board's decision-making. This is not only critical for each party to understand a process of the justice system, but it is also essential to ensure that the process is viewed as legitimate. Weaknesses in transparency can lead to, and be exacerbated by, weaknesses in fairness and consistency. The fairness of decisions must be relayed through transparent application of consistent criteria, especially in a prison setting.

Issues in fairness and consistency could be remedied via two efforts: Ensuring that AICs and the victims³ have some form of representation, and requiring key trainings for the Board. Legal representation and/or support partners were highlighted as a critical factor to help people navigate the process and communicate their thoughts and concerns. Trainings were discussed as a way to increase fairness/interchangeability across cases and to increase consistency. Trainings should include common philosophies and approaches used by Boards across the nation, how more actuarial risk assessments (e.g., LS/CMI) could be integrated into decision-making, and how rehabilitation (specifically cognitive behavioral therapy) works to change human behavior. Such trainings are readily available through organizations like the [National Institute of Corrections](#) and the [Center for Effective Public Policy](#). The [Academy of Criminal Justice Sciences](#) also provides updated information on the science behind rehabilitation and associated metrics.

It is important to note that the current Board cohort makes a concerted effort to have more trainings and to make well-informed, evidence-based decisions. They frequently attend and present at practitioner and academic conferences (Association of Paroling Agencies International [APAI]) to stay up-to-date with best practices, including on issues related to disparate outcomes among racial subgroups by connecting with organizations that offer trainings and discussions of best practices (e.g., Center for Effective Public Policy's [National Parole Resource Center](#)). Another example is “Trauma Informed Tuesdays” which is a webinar put on by APAI for all members, where the Board and staff sign in to an informative discussion or presentation about trauma. These steps are admirable and consistent with a Board focused on best practices. However, the focus of the Board is dependent on the interests and scope of the Board's sitting Chair and who is governor at the time. Codifying this practice and expected trainings into a minimum expectation for all Board cohorts would safeguard against turnover.

Finally, fairness and consistency were also noted to fluctuate with Board member turnover, making issues inherently intertwined. Much of that is due to the lack of codified standards that a potential Board member must meet, as well as the lack of on-boarding and ongoing training for seated members. Oregon is one of 20 states that do not have statutory requirements for Board member qualifications. Turnover and member selection, unaided by statutory standards and training, leaves the Board susceptible to influence by socio-political pressures due to the (1)

³ Some may incorrectly believe that the presence of the district attorney is to be at the hearing on behalf of the victim. The DA is instead at the hearing to represent the community from which the petitioner was convicted. Victims must acquire their own representation, legal aid, or advocacy, although some advocacy is provided via the Board.

selection process for new members, (2) seated members' concern over maintaining their position, and (3) concern over next job opportunities when a member's term on the Board ends. These could be addressed by extending Board member terms by two years, installing a more robust selection process for new members, and not allowing people to run for elected office while serving on the Board.

Goal 1 Takeaway

Problem Foundational processes and expectations have shown potential bias toward release decisions.

Solution Improve and solidify fairness by requiring transparent communication of decisions and how criteria are applied for all parties who are subject to hearings.

Problem Key areas susceptible to turnover include the clarity in criteria used, fairness and consistency in decisions, and socio-political pressures.

Solution Safeguard against dramatic change between Board cohorts by requiring a minimum level of training for all new and seated members, as well as minimum qualification standards for new members.

Problem These areas can change dramatically with Board member turnover and uncertainty among seated members.

Solution Remove areas of concern that create potential bias in Board decisions by extending Board member terms by two years, installing a more robust selection process for new members, and not allowing people to run for elected office while serving on the Board.

Goal 2 Summary – Differences across cases that come before the Board

This section examined differences between AICs who have and have not experienced Board hearings. Such an analysis is important to identify policy areas to address and how to target informational campaigns. A large proportion of AICs, regardless of hearing experience, reported fearing the Board. Research has demonstrated for decades that fear often stems from a lack of understanding, increased insecurity, and increased anxiety about a process, all of which are rather common among AICs. Thus, with a high degree of fear, it is likely more information and resources need to be available for those who are preparing for the Board. Moreover, fear can be an antithesis to other factors such as respect and legitimacy, which are closely correlated. Legitimacy is particularly important because the Board is a body that could greatly motivate AICs and released parolees to change or seek more help in rehabilitation. A degradation in the legitimacy of the Board could result in a similar degradation in willingness to follow rehabilitative suggestions and recommendations made by the Board. To combat this, similar to Goal 1, greater clarity and transparency may go a long way to bolstering the legitimacy of the Board.

It is important to recognize that those who have not experienced the Board often live vicariously through those who have hearing experience. This means that if those who have gone before the Board (especially those who are ultimately released) do not understand the process, what the Board is looking for, and are unclear about how the Board reached its decision, then that delegitimization will filter out to those who have not experienced the Board. To help alleviate such issues among those who are hearing-experienced, policy makers and the Board should consider

including clear directional steps in documentation like the Board Action Forms (BAF). BAFs currently include an explanation of the decision, similar to a court opinion, in the Discussion section. While important to include, it does not provide much of a response to what the individual explained in the hearing or what new information was incorporated. The Discussion section will typically focus on the index crime and related behaviors in spite of the importance given to “articulating the rehabilitative experience” or demonstrating remorse. This is not to say that the goal is to ensure that the AIC is happy or particularly satisfied with the ruling. The important thing, as noted by countless studies on procedural justice and legitimacy, is that the individual felt as though they had a voice in a fair proceeding, and felt heard. Additionally, the BAF ends with a finding/decision, with little guidance on what steps the AIC should explore to improve their chances in the next hearing.

To lessen the influence hearing-experienced AICs have over those without hearing experience, an effort could be made to help provide all petitioners with what they need, and answer their questions in preparation for upcoming or past hearings. Several study participants provided their written correspondence with a Board where members answered the individual’s questions about how decisions are made or parts of the process. Such correspondence is a great example of how the Board can bolster legitimacy and fairness in preparation for the hearing. AICs without hearing experience could benefit from similar correspondence and preparation. Notices with concise and clear information about the process, things that will be considered, and how best to prepare could be sent to AICs on a recurring basis after the start of their parole eligibility. Additional guidance on how to correspond with a Board and find representation for their hearing would be helpful for all people as they approach their hearing date.

The current Board began a new practice in 2019 to attempt to address this shortcoming. The Board provides suggestions to the petitioners about how they can improve for their next hearing, such as writing their thoughts on remorse or programs in which to participate. Prior to 2019 it was up to the AIC to file for “Administrative Review,” which is a process of appeal, to learn about the ultimate decisions. The 2019 practice of providing reasons has reportedly cut down on the number of Administrative Reviews. While this is an important and positive practice, it should be enshrined in policy to ensure that future Board cohorts follow suit.

Goal 2 Takeaway

Problem Many AIC survey participants reported fearing the Board, which has been shown to stem from poor understanding, increased insecurity, and increased anxiety about a process. This can degrade the legitimacy and power of the Board over behavior and facilitating change.

Solution Require greater clarity and transparency through information campaigns regarding hearings and decisions, as well as improve correspondence with petitioners outside of the hearings, all to bolster legitimacy of the Board.

Problem Petitioners who perceive the Board and its process as unfair weaken the Board’s legitimacy, which then spreads to AICs without hearing experience.

Solution Require that all petitioners receive regular, recurring notices with concise and clear information about the process, areas considered by the Board, and how best to prepare basis after the start of their parole eligibility.

Goal 3 Summary – Process impact eligible parties/parolees

This section examined only the perceptions reported by AICs with hearing experience. One of the major findings from this goal is the need for more resources for the AICs and victims. The provision of more resources is often a difficult recommendation for justice agencies to absorb. No criminal justice agency has ever indicated that it had too many resources. Thus, when AICs report that they lack the resources to be successful at parole hearings, this information likely falls on unsympathetic ears. However, resources available for AICs often, if not always, run in tandem with the resources needed by justice agencies. A remedy for each of the responses is a strong informational/education campaign to inform all AICs of the appropriate statutes, how to prepare for hearings, how to contact the Board, and how to secure rehabilitative programming. Information campaigns spearheaded by the Board will require more resources for the Board in terms of personnel and greater digitization of records.

Greater resources are clearly needed for the DOC as well. A dearth of rehabilitative opportunities sets AICs up to fail when brought before the Board and infringes on the ability of AICs to rehabilitate. Assuming the mission of the Board, and the DOC as a whole, is to reform offenders rather than warehouse them, there must be a legislative effort to give these entities the necessary resources. Such efforts would be a substantial step towards ensuring public safety. Within this push for more resources is the reiterated need to improve the resources available to AICs and victims. Specifically, AICs and victims need better resources related to ensuring representation, pre-hearing information about the process and criteria, and ultimately more clearly justified decisions and next steps. All of these elements would help to improve the overall perception that hearing outcomes are forgone conclusions, while still providing ample voice to all parties involved.

Goal 3 Takeaway

Problem AICs report that they lack the resources to be successful at parole hearings

Solution A remedy for each of the responses is a strong informational/education campaign to inform all AICs of the appropriate statutes, how to prepare for hearings, how to contact the Board, and how to secure rehabilitative programming. Information campaigns spearheaded by the Board will require more resources for the Board in terms of personnel and greater digitization of records.

Problem Rehabilitation programs often required by the Board are not readily available for petitioners.

Solution Greater resources are needed for the DOC to ensure that the appropriate programs expected by the Board are actually attainable. At a minimum this includes incorporating the most efficacious domestic violence programs and sex offender programs.

Problem AICs and victims lack needed resources related to ensuring representation, pre-hearing information about the process and criteria, and ultimately more clearly justified decisions.

Solution In addition to making a codified information campaign standard protocol, there ought to be an “opt out” procedure for representation, making it required unless otherwise stated by the petitioner or victim.

Goal 4 Summary – Identifying parolee needs in their likelihood to reoffend

Goal 4 examines how well paroling processes can predict recidivism and identify other factors that might impact parolee performance in the community. An appropriate comparison group was identified using the available Recidivism Dataset (described in the Overview and Goal 4 section). Using a more compatible comparison group, the analysis demonstrates that traditional comparisons to recidivism rates among the post-prison supervision (PPS) population are naïve estimates. Naïve estimates of parole success suggest that parolees are more likely to succeed compared to the general PPS population. However, when an appropriate comparison group is applied, the analysis shows that parolees struggle more than the PPS population. Specifically, parolees have significantly more violations than those on PPS. Matched-group analyses also suggest that given an otherwise average case, parolees have a substantively higher probability of failure for every recidivism event except for reconvictions. This essentially means that if we were to take two similar cases, one paroled and one released via determinate sentencing, those on parole have a higher probability of failure following release.

These differences highlight a low risk population that is of the highest need in terms of services. Perhaps the most obvious difference that parolees experience is that of age and the difficulties in adjusting to a dramatically changed society than when the individual went into custody over 20 years ago. Reintegration into a new world of technology after the loss of social ties over the years was a major concern for several AICs and parolees alike. This can manifest in parolees having a difficult time following the conditions of their community supervision following decades in prison, demonstrating that the parolee population likely needs greater resources to improve their reintegration chances. Another reason for the differences could be that parole officers apply an exceptionally high degree of supervision and monitoring on those released via parole. Known in the discipline as “supervision effects,” such a practice demonstrates how parolees might experience greater scrutiny in the community than those on PPS. The degree of scrutiny, however, can depend on the county to which the individual is released. One major way that the Board can integrate decisions and foster standardization across county supervision providers is to incorporate a discussion of criminogenic needs when considering an individual’s potential success upon release or in exit interviews. Similarly, the Board can help to foster great standardization and improve connectivity to release/supervision plans by incorporating the LS/CMI into their decision-making and condition-setting protocol.

Goal 4 Takeaway

Problem Paroled populations have the highest need for services, but it is overlooked by erroneous comparisons to the general population on post-prison supervision.

Solution Reporting of parolee recidivism should be completed via a matched-comparison study, where parolees are compared to like cases and not the general PPS population.

Problem Community corrections supervision is far too idiosyncratic when it comes to supervising parolees.

Solution The Board should incorporate criminogenic needs and the LS/CMI when considering potential success upon release and condition-setting protocol.

Abbreviated Recommendations

A number of recommendations have been derived from the data and analyses gathered for this project. Readers are referred to the section on recommendations to provide greater detail for each of the recommendations provided here as well as for the supporting evidence for each. These areas of improvement fall into six key areas:⁴ (1) More resources for the Board, (2) Improve data collection and rely on empirical evidence to help decision-making, (3) Codify and reify abstract expectations of the Board, (4) Representation for hearings should be an opt-out procedure, (5) Standardize the approach to parolee supervision across the counties, and (6) Provide more specific transparency for AICs and victims.

More resources for the Parole Board

The following are specific areas of recommended investment by the state:

1. Implement a parole-specific data management system/protocol that is directly integrated into the DOC-400. Given the inherent dependence that exists between the Board and the DOC operations, particularly when it comes to release plans and disciplinary reports, there should be a much clearer, transparent, and direct process by which the Board and DOC can share data points.
2. Conduct a workload study for the Board. More data points ought to be collected on the Board's work and caseload (e.g., how much time is spent on which tasks?).
3. Track "what works" when knowing what to look for in rehabilitation and reentry. Such data needs to be tracked to provide more consistent information for the Board on a given AIC coming before the Board.
4. Expedited and sustained digitization of data and files for the Board. The Board is woefully behind when it comes to data digitization, as was indicated the Board's current staff and by past and present members. Temporary workers and supportive infrastructure could be hired to help scan and digitize all paper-based information which would immensely aid the digitization process.
5. Additional supporting personnel for the Board would aid in achieving additional transparency and fairness. These positions could include the following:
 - a. An additional data management analyst to help provide more written context to the Board's reports, which are not immediately digestible by the public.
 - b. It is highly recommended that there is someone on the Board's staff who can field and respond to CorrLinks (email) and written correspondence from AICs to the Board.
 - c. Personnel related to the Board should be tasked with and specialized in aiding with release plans – specifically working with release counselors and the county community corrections staff.
 - d. A Board staff person should be tasked with briefing (prior to hearings) and de-briefing (after hearings) AICs and victims involved in the hearings.
6. Consistent and ongoing training should be codified and required for all Board members. Such training should include, but is not limited to, mandatory onboarding for all new members and continuing education for seated members to take every three years.

⁴ These recommendations are provided numerically for the sake of ease in grouping and ease for reading. The list is not provided in any particular order, and are not meant to be taken as a prioritized list.

7. All parties (Board members, AICs, and victims) should have adequate access to trauma/grief counseling. The cases that come before the Board are inherently traumatic for everyone involved.

Improve data collection and rely on empirical evidence to help decision-making

The following list of reform recommendations highlights how and why certain data and empirical evidence should be better integrated into the Board's processes.

8. More targeted rehabilitative programming must be offered by the DOC, and it should be offered in a capacity and frequency that will satisfy the needs of the petitioner population and the Board's decision-making. This is especially critical for those programs the Board often expects to see participation in, such as more domestic violence and sex offender programming.
9. Information needs to be collected on how the 10 factors are considered in each murder review, and how the three core factors weighed into the decisions related to the Exit Interviews specifically.
10. The DOC and the Board need to engage in clearer and more useful tracking of rehabilitation information.
11. Use more actuarial risk information (e.g., LS/CMI and information about needs) and sociological information about social network/situation to supplement psychological evaluations. Currently, the Board relies on the Static-99 and one other dynamic tool for sex offenses, and the HCR-20 primarily for psychological evaluations and Exit interviews, but this should be expanded to include the LS/CMI (used in all counties to guide supervision and rehabilitation planning). Specifically, the LS/CMI should be used to help guide the process of setting conditions.

Codify and reify abstract expectations of the Board

The following recommendations are focused on ways to improve abstract definitions in order to address interpretations and expectations that can change from Board to Board.

12. Define the purpose of punishment in Oregon. Regardless of the state, when it comes to criminal prosecution and punishment, there will always be a constant need to balance the goals of punishment – retribution, rehabilitation, incapacitation, and deterrence. However, without a clear definition as to which goal is a priority in Oregon, the application of punishment will forever be idiosyncratic. Doing this will help restore perceptions of fairness, justice, legitimacy, and trust into the state, the corrections system, and the justice system as a whole.
13. Clearly define the explicit relationship between rehabilitation, supervision success, and the purpose of parole. Such definitions could minimize differences in interpretation between members and cohorts. This is important because differences in such interpretations degrade legitimacy and fairness in the system and thereby undermine decisions and power of the Board.
14. Define what it means to have a “fair hearing.” This information can be included in a briefing of AICs before they go to a hearing, as well as in a de-briefing after a hearing takes place.
15. Define “demonstrating insight” and what it means to be “rehabilitated.” Defining these two concepts can help to improve the rehabilitation of AICs as they seek to internalize what rehabilitation means to them well in advance of the hearing.

16. Explicitly define the role and purpose of the DA in hearings. Without Board members who are willing to interrupt or stop a DA from re-litigating the initial case, then at the very least, the legitimacy, fairness, and interchangeability of hearing decisions are at risk of being compromised.

Representation for hearings should be an opt-out procedure

Representation was identified in multiple findings as something that could be dramatically important for AICs and victims. However, it is not currently set up as something that is easily accessible. These two recommendations provide options to addressing this shortcoming.

17. Ensure that all parties involved in hearings are provided adequate representation if desired. This should be in the form of an opt-out process. Parole-eligible AICs going before the board should have automatic representation selected similar to how public defense counsel is for indigent clients. Similarly, all victims should be assigned counsel to help them navigate the parole process.
18. Greater investment should be made into representation. This may take the form of creating an office of parole representation in the Oregon Office of Public Defense Services who can help coordinate available counsel.

Standardize the approach to parolee supervision across the counties

19. Noted in multiple findings was the lack of consistency in supervision across county jurisdictions. There are currently far too many idiosyncratic differences between counties and their approach to supervision. Moving forward, it is recommended that the state establish minimum requirements for how supervision should be completed, especially for special populations. Funds from the Justice Reinvestment Act and gap analyses of services available in each county can help structure additional protocols and support systems to help counties achieve this.

Provide more specific transparency for AICs and victims

20. Relay expectations and justification information to AICs in a clear way. Generally, a larger effort to provide more information can take the form of reform efforts completed by other states. Similarly, improvements in transparency are important for victims. As noted by victim advocates' statements, there needs to be greater transparency in process and decision-making before and after hearings.

I. INTRODUCTION

Following the 1970s “punitive turn” for the United States criminal justice system, many states removed or restructured how parole boards were utilized. Several states opted to institute a determinant sentencing system with semi-structured guidelines, removing most Board discretionary power. Since the Board’s restructuring, states like Oregon added various complexities to hearings and decision-making processes, creating a labyrinth of layered laws and varying viewpoints of rotating members. Today, the Oregon Board of Parole and Post-Prison Supervision (the Board) oversees the discretionary release of approximately 1,300 adults in custody (AICs), none of whom have a guaranteed right to counsel to help navigate hearing complexities.

In an effort to empirically explore and identify problem areas that might exist in the Board’s hearings and decision-making process, the Criminal Justice Reform Clinic at Lewis & Clark Law School (CJRC) launched a project funded by Arnold Ventures. This project aimed to understand how incarcerated potential parolees and parolees in the community⁵ are impacted by the process using a large-scale mixed method (qualitative and quantitative) research study. Moreover, the purpose of the study is also to examine how decisions and processes may be related to certain outcomes (e.g., initial release and supervision failure). Special attention is given to differences in race/ethnicity of the parolee and subsequent outcomes of decisions and supervisions.

The key research goals of this study are to (1) determine if there are any patterns in the Board’s decision to release an eligible person to parole supervision, (2) determine if there are any differences across cases brought before the Board, (3) identify how the hearing and decision-making process impact eligible parties/parolees, and (4) examine the degree to which release decisions are accurate in determining a parolee’s likelihood to reoffend.

II. THE HISTORY OF PAROLE IN OREGON

1905-1939

In 1905, the 23rd Oregon Legislative Assembly enacted two laws which created the modern parole system. One of the bills signed into law, S.B. 233, provided for indeterminate⁶ sentencing of people convicted of certain felonies and granted authority to the Governor⁷ to parole

⁵ Broadly termed “parolees” to encompass all those eligible for a parole hearing at some point or have experienced a hearing and have been released.

⁶ Understanding the difference between determinate and indeterminate sentencing is essential to understanding the nature of parole. Determinate sentences have a defined period of time that the convicted person serves in custody, so when that person receives their sentence, they know from the outset the amount of time they will remain incarcerated. Determinate sentences cannot be altered by a parole board or other agency. Indeterminate sentences, however, provide a range of time for a person to serve in prison (“5 to 10 years”). Indeterminate sentences set minimum terms of incarceration for an individual to serve and allow that person’s release date to be determined by a body like a parole board.

⁷ The indeterminate sentencing bill was a recommendation from the Governor at the time, George E. Chamberlain, who said “there are in every prison many convicts suffering long sentences...who, if an opportunity were given them, would endeavor to restore themselves to useful citizenship...The Governor should be permitted...to parole prisoners for good conduct, and where in their opinion reformatations appears to be complete.” Governor George E. Chamberlain, Governor’s Message to the Twenty-third Legislative Assembly (1905).

the same people for good behavior after completing the statutory minimum period of confinement.⁸ The other bill, S.B. 152, enabled the circuit courts to parole people convicted of violations of Oregon law and supervise those same people during the parole period.⁹ Before the enactment of these two laws, a person in prison could leave by two means: serving the entirety of their sentence, or receiving executive clemency from the Governor.¹⁰ In the eyes of Governor George E. Chamberlain, the goal of this new legislation was twofold: first, to allow petitioners release on good behavior after serving a minimum period of confinement, and second, to provide an executive check on the uneven administration of justice.¹¹

To administer the new parole system, the State Parole Board was established in 1911.¹² The Board consisted of three members: two appointed by the Governor, and the third held by the superintendent of the Oregon State Penitentiary.¹³ The Board reviewed all cases resulting in indeterminate sentences, provided parole recommendations¹⁴ to the Governor, and maintained contact with persons released on parole.¹⁵ Briefly, the Board expanded to a five person membership; in addition to the superintendent of the Oregon State Penitentiary and the two members appointed by the Governor, additional members included the secretary to the Governor and the parole officer from the brand new office of parole.¹⁶ The parole officer enforced the conditions of parole and returned those who violated the conditions.¹⁷ After two years of the five-person Board, its membership returned to three members in 1917, the same year the Oregon Legislative Assembly abolished minimum sentences for felonies other than murder and treason.¹⁸

From 1911 to 1931, the Board, in its various formations, conducted reviews and offered recommendations on the disposition of various prisoners. The Board received letters from judges, spouses, sheriffs, and district attorneys. The Board also frequently interviewed petitioners. The Board created reports including the petitioner's name, crime, county, sentence, when received into custody, minimum sentence, age, and any other crimes and prior board actions.¹⁹ If a petitioner's

⁸ 1905 Or. Laws 318.

⁹ 1905 Or. Laws 306.

¹⁰ The Governor's clemency power derives from art. V § 14 of the Oregon Constitution which provides the power to "grant reprieves, commutations, and pardons, after conviction, for all offences (sic) except treason..." OR. CONST. art. V, § 14.

¹¹ In his 1907 address to the Legislative Assembly, Governor Chamberlain remarked on the variations in sentencing across the judicial districts of Oregon by concluding that "the administration of justice is uneven...It seems to me that it is part of the duty of the executive branch of the government to equalize, where conditions warrant, this apparent inequality in the administration of justice." Governor George E. Chamberlain, Governor's Message to the Twenty-fourth Legislative Assembly (1907). The theme of rectifying the "uneven administration of justice" through parole policy reforms spans the entirety of the parole system in Oregon; through the implementation of prison term hearings, this search for equity often leads to longer periods of incarceration and more punitive sentencing schemes.

¹² ARCHIVES DIV., OFFICE OF THE SEC'Y OF STATE, STATE OF OREGON, BD. OF PAROLE AND POST-PRISON SUP. ADMIN. OVERVIEW (2006) [hereinafter BOPPPS ADMIN. OVERVIEW].

¹³ *Id.*

¹⁴ This process of investigation and providing reports and recommendations to the governor is more akin to the work of a task force compared to the Board's work today: conducting hearings and acting as the decision-maker for whether a petitioner may serve the remainder of their sentence in the community.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ For example, Frank Kodat, no. 8391, was convicted of burglary and received into the Oregon State Penitentiary. He was sentenced to 5 years with no minimum; he had one prior burglary conviction. After coming for review by the Board on November 13, 1923, December 6, 1923, and January 3, 1924, and then at the request of the Governor, the

term of confinement was continued, it was often for a month or up to six- occasionally continued to the statutory “maximum.” As time went on, Board recommendations became more expansive in volume and scope, including: a statement from the Warden of the penitentiary as to whether the petitioner had a history of good conduct, more details from the prosecuting district attorney, sometimes a letter from the prison physician attesting to the petitioner’s good health. The recommendation also included a statement from the petitioner (when offered).

For example, Wm. P. Brown stated

If I am granted a parole I will do my best to uphold and live according to the rules of my parole at the same time helping my mother financially for she is aging and needs my help. On board ship at sea I am enabled to save money via allotment thereby I am not spending all I make as I was while ashore.²⁰

1939-1969

The State Parole Board and State Probation Commission were together replaced in 1939 with the brand-new State Board of Parole and Probation.²¹ Along with its new name, the Board underwent important changes during the late 1930s and 1940s. Significantly, the Board prepared case history records for petitioners as a backward glancing view of whether they should be granted parole or not.²² The 40th Legislative Assembly granted the Board the authority to establish rules and regulations about the conditions of parole, and to maintain work camps for parolees.²³ Additional legislation enacted in 1941 extended the responsibility and power of the Board to all petitioners confined to jail or a penitentiary for six months or more,²⁴ and in the 1950s the Board’s responsibilities grew to include supervision of all persons on probation, parole, or conditional pardon within Oregon.²⁵ The size of the Board increased in 1959 to five members who served for a term of five years; no more than two members were allowed to belong to the same political party, and all incumbent members were terminated from their positions on the Board.²⁶

From its creation in 1955 until its abolishment in 1965, both the Chairman of the Board and the Director of the Board sat on the “Corrections Classification Board,” a body designed to “classify inmates for reducing disciplinary and administrative problems, and supervise the transfer of petitioners between prisons.”²⁷ Upon the Corrections Classification Board’s termination and disbandment in 1965, the Corrections Division was established as part of the state Board of Control before moving to the Governor’s office and eventually the Department of Human Resources.²⁸ The Corrections Division provided administrative support to the State Board of Parole and Probation, a function that continues to this day.

Board recommended Mr. Kodat receive a conditional pardon to Tom Coliucais to gain employment. Frank Kodat, No. 8391, February 1924. Parole Bd. Actions. Dept. of Corr. Or. State Archives.

²⁰ Wm. P. Brown, No. 11590, January 1932. Parole Bd. Actions. Dept. of Corr., Or. State Archives.

²¹ *Id.*

²² 1939 Or. Laws 515.

²³ *Id.*

²⁴ BOPPPS ADMIN. OVERVIEW, *supra* note 7.

²⁵ 1955 Or. Laws 841.

²⁶ BOPPPS ADMIN. OVERVIEW, *supra* note 7.

²⁷ Or. Admin. Histories, Or. State Archives 61 (1988) [hereinafter ADMIN. HISTORIES].

²⁸ ADMIN. HISTORIES at 60.

1969-1989

In 1969, as part of a major governmental restructuring, the Board became a full-time endeavor, but was reduced to a three-person membership. The Governor terminated the terms of all incumbent members and appointed new members to four-year terms each of which required Senate confirmation.²⁹

Oregon reformed its criminal code in 1973 based on the Model Penal Code, and in so doing the law favored a presumption to parole.³⁰ In 1973, likely due to the enactment of the aggravated murder statute, the State Public Defender³¹ took on the additional responsibility of processing parole appeals.³²

The adoption of HB 2013 significantly impacted the administration of parole in 1977. Concerns about prison overcrowding and a lack of uniform sentencing in the 1970s culminated in HB 2013, which established the Advisory Commission on Prison Terms and Parole Standards.³³ The Commission proposed adopting guidelines to mitigate *ad hominin* variation in parole release decisions.³⁴ The guidelines set forth two meanings of determining a prison term: a “severity rating” of the commitment offense and a “history/risk assessment” based on an Adult in Custody’s criminal history.³⁵ The severity rating and history/risk assessment would intersect on an X-Y axis (“the matrix”), and the point of intersection set forth a range of time for a person to serve in prison.³⁶ The implementation of the matrix reflected “a concern with disparity, lack of due process protections, and a rejection of rehabilitation as the main criterion for parole release.”³⁷

While implementation of prison term guidelines was meant to increase uniformity in sentencing, the result of that uniformity included a boom to Oregon’s prison population. By 1985, a report authored by the Oregon Prison Overcrowding Project (OPOP) found that Oregon State Penitentiary operated at 153% of its single-cell capacity and Oregon State Correctional Institute operated at 206% of single-cell capacity.³⁸ OPOP understood the booming prison population as an

²⁹ Or. Rev. Stat. 144.015.

³⁰ Or. Rev. Stat. 144.175 provided in 1975 that “unless the board is of the opinion that... release should be deferred or denied because...” RICHARD KU, U.S. DEP’T OF JUST., NATIONAL INSTITUTE OF JUSTICE, AMERICAN PRISONS AND JAILS VOLUME IV: SUPPLEMENTAL REPORT – CASE STUDIES OF NEW LEGISLATION GOVERNING SENTENCING AND RELEASE. 122 (1980).

³¹ The State Public Defender is the former name of the Criminal Appellate Division of the Office of Public Defense Services, which also now includes a Juvenile Appellate Division in addition to divisions which manage contracting for trial-level public defense and administration.

³² ADMIN. HISTORIES at 307.

³³ ADMIN. HISTORIES at 107.

³⁴ *Id.*

³⁵ Adult in Custody is the statutory term for someone incarcerated at a correctional institution in Oregon. *Supra* note 1 at 1.

³⁶ *Id.*

³⁷ *Id.* at 109.

³⁸ OR. PRISON OVERCROWDING PROJECT, PUNISHMENT & RISK MGMT. AS AN OR. SANCTIONING MODEL, EXEC. SUMMARY (1985) [hereinafter OPOP]. Oregon State Penitentiary (OSP) is Oregon’s oldest prison facility, operating as “The Territory Jail” beginning in April 1842. The location moved several times before its current siting in Salem in 1866. OSP is a maximum-security facility with 2,242 bed capacity. OSP houses all 37 AICs sentenced to death and awaiting execution in the state. Santiam Correctional Institution (SCI) was built in 1946 as a part of the Oregon State Hospital in Salem, before it was sold to the Fairview Home in 1960 and renamed the Frederic Prigg Cottage. The Cottage was used in 1977 to alleviate some prison overcrowding, was converted into a release center in the 1980s, and finally became SCI in 1990. Oregon State Correctional Institute (OSCI), also in Salem, became operational in

intersection of two variables: how many people were sentenced to serve time in prison, and for how long did they stay before release.³⁹ At the time of OPOP's report, Oregon's population was approximately 2.684 million people (United States Census Bureau) and its prison population was 3562. Today Oregon's population is estimated to be roughly 4.2 million, and its prison population as of February 1, 2022 is 11,993 people.⁴⁰

Crime rates in the United States increased throughout the 1970s, with violent crime rates rising from 36 victimizations per 1,000 persons age 12 and older in 1973 to 39 victimizations per 1000 persons age 12 and older in 1981.⁴¹ According to a report by the Criminal Justice Commission in Oregon, violent crime increased by 680% from 1960 to 1979.⁴² Rising crime rates in the 1970s and the continued public perception of increasing crime throughout the 1980s eroded public confidence in rehabilitative justice models.⁴³

1989-Present

The loss of public faith in rehabilitation fortified punitive criminal justice reforms in the 1980s and 1990s. In 1989, the Oregon Legislature changed the sentencing structure for criminal convictions and moved from the indeterminate sentencing scheme to a determinate sentencing structure outlined in *sentencing guidelines*. The guidelines were a state-level implementation of the (then new) federal Felony Sentencing Guidelines and apply to crimes committed on or after November 1, 1989.⁴⁴ Since November 1, 1989, the only people whose sentences fall within the paroling function of the Board's jurisdiction are people convicted of murder or aggravated murder and those sentenced as dangerous offenders.

1959 with capacity for 880 AICs. Eastern Oregon Correctional Facility (EOCI) welcomed its first AICs on June 24, 1985. Prior to that, the facility had been used as a state mental hospital. EOCI has a maximum capacity for 1,682 AICs, split between 596 dormitory-style beds, 897 cells, 99 Disciplinary Segregation Unit beds, and 8 infirmary beds. Powder River Correctional Facility (PRCF) is a 336-bed transition and reentry facility in Baker City which opened on November 9, 1989—one week after Oregon's sentencing scheme switched from indeterminate to determinate. Columbia River Correctional Institution (CRCI) opened in 1990 in Northeast Portland. CRCI includes a drug and alcohol treatment program in a separate 50-bed dormitory away from the general population. CRCI has 595 total beds. Now closed, Oregon acquired Shutter Creek Correctional Institution in 1990. It had capacity for 260 AICs. Snake River Correctional Institution (SRCI) opened in 1991 with 648 beds. An additional 2,352 beds were constructed for \$175 million, the largest state general funded public works project to date at the time. Two Rivers Correctional Institution (TRCI) in Umatilla had a phased opening from December 1999 to September 2001. It has capacity for 1,632 AICs. Coffee Creek Correctional Facility (CCCF) opened in October 2001 as a minimum-security facility; a medium-security facility within the same complex opened in April of 2002. CCCF houses the state's intake center for adults in custody and contains 1,684 beds. Warner Creek Correctional Facility (WCCF) opened in September 2005 with 496 beds. Finally, Deer Ridge Correctional Institution (DRCI) is distinguished as Oregon's newest prison, opening its minimum-security facility in September 2007 and its medium-security facility in February 2008 in Madras. The facility has capacity for 1,867 adults in custody. See Oregon Corrections Division website, accessed 2.8.2022

³⁹ *Id.* at 7.

⁴⁰ U.S. CENSUS BUREAU, INTERCENSAL ESTIMATES OF THE TOTAL RESIDENT POPULATION OF STATES: 1980 TO 1990 (1996).

⁴¹ MICHAEL R. RAND, U.S. DEPT. OF JUSTICE, BUREAU OF JUSTICE STATISTICS, VIOLENT CRIME TRENDS, NCJ-107217 (1987).

⁴² CRIMINAL JUSTICE COMM'N, LONGITUDINAL STUDY OF THE APPLICATION OF MEASURE 11 AND MANDATORY MINIMUMS IN OREGON (2011).

⁴³ See REPORT OF THE GOVERNOR'S TASK FORCE ON CORRECTIONS (1976).

⁴⁴ 1989 Or. Laws 1301.

During the same period of transition in sentencing schemes, a citizens' initiative in 1994 ("Measure 11") established mandatory-minimum sentences for certain felonies.⁴⁵ Because mandatory-minimum sentences disallow judicial discretion for the imposition of criminal penalties after conviction, the measure shifted sentencing discretion from judges who imposed sentences upon conviction to prosecutors who could select charges that come with statutorily-mandated sentences if a criminal defendant is convicted.⁴⁶ Proponents of Measure 11 argued that the mandatory-minimums provided both "predictability of sentences" for crime victims and the community at large, and "comparable sentences"⁴⁷ for convictions of the same offense regardless of the sentencing judge. Even though the true "death" of parole occurred through the imposition of the sentencing guidelines, Measure 11 further blunted parole as a release mechanism by 1) instituting longer⁴⁸ minimum periods of confinement for people convicted of murder or aggravated murder, and 2) excluding people convicted of Measure 11 offenses from using accrued "good time" to discount the length of their sentences.⁴⁹

In 1996, Oregonians voted by a 2-1 margin to amend the State Constitution's provision on principles of criminal punishment to be "protection of society, personal responsibility, accountability for one's actions and reformation" and repeal the provision that criminal punishment be based on "reformation, and not of vindictive justice."⁵⁰ The same year, Oregonians also voted to incorporate into the State Constitution a provision providing for crime victims' rights.⁵¹

What Measure 11 did for people convicted of certain felonies by requiring them to serve mandatory-minimum sentences, the sentencing guidelines likewise prescribed presumptive sentences based on a person's criminal history and conviction at issue; both schemes replaced a sentencing ceiling⁵² with a sentencing floor.⁵³

As should be apparent from a comprehensive history of parole administration in Oregon, the functionality of the criminal legal system, and a parole system specifically, is entirely incumbent upon who sees themselves as its stakeholders. Today, the primary stakeholders in the parole system include the Board, crime victims and interested parties, petitioners seeking relief or release, and attorneys (defense attorneys, prosecutors, and victims' rights attorneys).

⁴⁵ OREGON STATE LIBRARY, 1994 Voters' pamphlet, State of Oregon general election (2000).

⁴⁶ Mandatory-minimum sentences operate differently than determinate sentences. Determinate sentences imposed under the new sentencing guidelines assign crime severity ratings based on the class of offense, in addition to consideration of a defendant's criminal history; mandatory-minimum sentences are prescribed by statute based on the specific offense, and do not take into consideration a defendant's prior criminal history.

⁴⁷ *Id.*

⁴⁸ OREGON STATE LIBRARY, 1994 Voters' pamphlet, State of Oregon general election (2000).

⁴⁹ *Id.*

⁵⁰ OREGON STATE LIBRARY, 1996 Voters' pamphlet, State of Oregon general election.

⁵¹ See OREGON STATE LIBRARY, 1996 Voters' pamphlet, State of Oregon general election. The Oregon Supreme Court later held the amendment invalid, *Armatta v. Kitzhaber*, 327 Or 250 (1998), because the measure included two or more amendments which each required votes independent of one another. Art. I, § 42 of the Oregon Constitution provides the state constitutional foundation for crime victims' rights. OR. CONST. art. I § 42.

⁵² Language such as "up to" or "no more than."

⁵³ Language such as "at least" or "defendant shall serve..."

III. STAKEHOLDERS AND THE PAROLE PROCESS

The Parole Board

At least three and no more than five members, one of whom must be a woman, compose the Parole Board.⁵⁴ The Governor appoints members of the Board to serve four-year terms.⁵⁵ Membership to the Board is subject to confirmation by the Senate,⁵⁶ unless membership falls below three people at which time the Governor may appoint a member to serve the remainder of the unexpired term with immediate effect.⁵⁷ The Director of the Oregon Department of Corrections (DOC) is an *ex officio* nonvoting member of the Board and does not count towards the “at least three, no more than five, at least one woman” requirement of board membership composition.⁵⁸ The Governor selects a board member to serve as chairperson and another as vice chairperson; each has specific duties and powers to aid in the administration of the Board’s work.⁵⁹ The Board counts amongst its current membership former a former prosecutor, a former banker, and former parole and probation officer.

Like other state agencies, the Board’s budget is set by the Oregon Legislature on a biennial basis. The Board’s proposed budget for the 2021-2023 biennium was \$10,769,785. The budget represents a 24% increase from the 2019-2021 budget.⁶⁰ The Board publishes three main types of documents relating to statistics and reports on its website. The Board publishes budgetary information going back to 2015.⁶¹ The Board also provides its Annual Performance Report going back to 2014, and its Affirmative Action Plan going back to 2017.⁶²

⁵⁴ ORS 144.005(1).

⁵⁵ ORS 144.005(2)(a).

⁵⁶ ORS 144.015.

⁵⁷ ORS 144.005(2)(b).

⁵⁸ ORS 144.005(5).

⁵⁹ ORS 144.025.

⁶⁰ OR. BD. OF PAROLE & POST-PRISON SUP., 2021-23 LEGISLATIVELY ADOPTED BUDGET.

⁶¹ This information includes the agency’s requested budget, the Governor’s budget, and the legislatively adopted budget, in addition to any reduction plans.

⁶² OR. BD. OF PAROLE & POST-PRISON SUP., STATISTICS AND REPORTS, <https://www.oregon.gov/bopp/PPS/Pages/Statistics.aspx> (last visited Apr. 30, 2022).

Victims and Interested Parties

Victims⁶³ have a constitutional⁶⁴ and statutory⁶⁵ right to receive notice in advance of and be present at parole hearings. Other individuals with a “substantial interest in the case”⁶⁶ may also be entitled to participate. Because most judgments imposing criminal sentences contain boilerplate language prohibiting contact between a petitioner and victim, parole hearings are often the first-time petitioners face the victims of their crime(s) since sentencing. Parole hearings are also often the first opportunity a victim will have to learn about how the petitioner has used their time in prison. Victims receive copies of documents submitted for the Board’s consideration prior to hearings.⁶⁷

The Board considers victims important stakeholders in the process and employs a victim’s advocate to assist victims navigate the parole process. On its website, the Board states explicitly that it does not “want to contribute to [victim’s] pain”⁶⁸ The Board states: “we encourage you to participate only to the extent appropriate for you and to seek information as needed.”⁶⁹

Options to participate include: attending the hearing and speaking at the hearing, attending a hearing and choosing to not participate, submitting a written statement in advance of the hearing, and asking a written statement to be read into the record at the hearing. Victims services staff are available to discuss the appropriate option depending on the needs of the victim.⁷⁰

⁶³ Chapter 255 of the Oregon Administrative Rules contains administrative rules relevant to the Board of Parole and Post-Prison Supervision. Or. Admin. R. 255-005-0005(59) defines victims broadly as

- (a) Any person determined by the prosecuting attorney, the court or the Board to have suffered direct financial, psychological, or physical harm as a result of a crime that is the subject of a proceeding conducted by the State Board of Parole and Post-Prison Supervision.
- (b) Any person determined by the Board to have suffered direct financial, social, psychological, or physical harm as a result of some other crime connected to the crime that is the subject of a proceeding conducted by the State Board of Parole and Post-Prison Supervision. The term “some other crime connected to the crime that is the subject of the proceeding” includes: other crimes connected through plea negotiations, or admitted at trial to prove an element of the offense. The Board may request information from the District Attorney of the committing jurisdiction to provide substantiation for such a determination.
- (c) Any person determined by the Board to have suffered direct financial, social, psychological, or physical harm as a result of some other crime connected to the sentence for which the offender seeks release that is the subject of a proceeding conducted by the State Board of Parole and Post-Prison Supervision. The term “connected to the sentence for which the offender seeks release” includes other crimes that were used as a basis for: a departure sentence, a merged conviction, a concurrent or a consecutive sentence, an upper end grid block sentence, a dangerous offender sentence, or a sentence following conviction for murder or aggravated murder. The Board may request information from the District Attorney of the committing jurisdiction to provide substantiation for such a determination.

⁶⁴ OR. CONST. art. I, § 42.

⁶⁵ Or. Rev. Stat. 114.750.

⁶⁶ Or. Admin Rule 255-030-0026 (f).

⁶⁷ *See generally* Or. Admin. R. 255-030-0035(3) (providing that “[t]he Board must receive any information pursuant to this section [relating to hearing procedures] at least fourteen days prior to the hearing. The Board may waive the fourteen-day requirement.”).

⁶⁸ <https://www.oregon.gov/boppps/Pages/Victim-Services.aspx>

⁶⁹ *Id.*

⁷⁰ *Id.*

Attorneys

Three main types of attorneys that operate within the context of parole: defense attorneys who represent petitioners (typically they are only provided to the petitioner in one type of hearing), prosecutors from the committing jurisdiction, and victims' rights attorneys.

Defense Attorneys

A petitioner only has a right to counsel at a parole hearing in limited circumstances. In the majority of hearing types, including Parole Consideration, Exit Interview, Parole Hearing and Personal Interviews, the petitioner is not entitled to counsel. The petitioner may hire a private attorney, bring a support person, or can represent themselves. In most instances, the petitioner appears on their own, *pro se*.

If the petitioner is appearing for a Murder Review hearing, they are entitled to counsel.⁷¹ Attorneys appointed to represent petitioners in Murder Review hearings receive a flat fee payment of \$1,900.⁷² There are very few attorneys that represent petitioners regularly before the Board. In most cases, the work requires 50-70 hours to do well. As a result, parole defense attorneys are compensated far less than even their public defense counterparts. The complexity of the case is not a consideration for the compensation provided. And there is no funding available for experts, investigators, administration, mental health evaluations, or travel which is available in all public defense cases.

The work of a parole defense attorney is complex. Attorneys representing petitioners must walk a delicate tightrope when advocating for their clients' best interests; attorneys must make a record of objectionable evidence submitted to the Board, direct the Board to relevant case law for each hearing and legal issue, and must do so while understanding that the Board sits both as factfinder and decisionmaker.

To be effective, attorneys representing petitioners must understand their clients' crime narrative, motivations behind the crime of commitment, and life in Oregon DOC custody for the decades preceding the hearing. The attorney has to build a relationship of trust and candor with their client to learn about the client's life, probe for more information where appropriate, and work with the client to tell their story in a way that is both digestible for the Board and consistent with the client's personal sense of truth.

Prosecutors

Prosecutors from the jurisdiction where the petitioner was sentenced may appear at parole hearings.⁷³ The Board's rules allow prosecutors to submit written and oral statements for the Board's consideration. The same rules specifically allow prosecutors to comment on their views regarding the petitioner before the Board and the crime at issue.

Prosecutors may submit information related to the underlying crime, including police reports and witness statements temporally related to the crime. Historically, prosecutors have provided information from arrest reports where the petitioner was never convicted, their own

⁷¹ See Or. Rev. Stat. 163.105(2)(b); Or. Rev. Stat. 144.317; Or. Rev. Stat. 144.343.

⁷² OR. BD. OF PAROLE & POST-PRISON SUP., STATUTES & ADMINISTRATIVE RULES, ATTORNEY FEES FOR APPOINTED COUNSEL, <https://www.oregon.gov/boppps/Pages/Statutes.aspx> (last visited Apr. 30, 2022). Prior to 2020, defense attorney were paid up to \$1500 per case.

⁷³ Or. Admin. R. 255-030-0026(4)(b).

closing arguments from trial decades prior, photos of the crime scene in the underlying murder, and discussion of their own personal experience of representing the State in the underlying crime.

Victims' Rights Attorneys

While the majority of victims participate in parole hearings through the prosecutor's office, some choose to utilize a victims' rights attorney to navigate the parole process. Like the prosecutors, the victims' rights advocate may speak at the conclusion of the hearing and offer information about the impact of the crime on the victim's family and community.

Petitioners

The primary way to identify petitioners in the parole system is to categorize them based on offense or sentence. Petitioners within the parole system currently can be grouped into three distinct categories. The first category consists of "legacy" parole cases; that is, petitioners who committed their crimes prior to November 1, 1989, before Oregon abolished its parole system. While legacy cases can include non-homicide felonies, the commitment offense for many legacy cases is usually homicide. This is partially attributable to the long minimum sentence imposed for criminal homicide.⁷⁴

The second category of people within the parole system pertains to people convicted of murder.⁷⁵ The penalty for someone found guilty of aggravated murder is set forth in Oregon's Constitution.⁷⁶ Like many other serious felonies, a conviction of murder carries with it a mandatory-minimum sentence that a petitioner must serve prior to petitioning for a Murder Review hearing.

The third category of petitioners within the parole system is people sentenced as dangerous offenders. Dangerous offender sentences were in place prior to the change from indeterminate to

⁷⁴ Despite combing the Board's website for publicly available information, websites for the Department of Corrections and Criminal Justice Commission, and private institutions' data studies, very little information is available regarding current demographics of petitioners within the parole system. In some cases, a petitioner could commit the offense at issue before November 1, 1989, have the offense constitute murder, and be sentenced as a dangerous offender; such a petitioner would belong to each easily identifiable categorization of parole cases. However, DOC statistics do not necessarily aid in parole analysis. The Department of Corrections publishes population demographics annually. Relevant here, DOC breaks down population demographics by offense "group." However, it is not clear if the offense group "homicide" includes manslaughter (which would not be an offense subject to parole). DOC's profile for Adults in Custody likewise provides data on how many Adults in Custody were sentenced as dangerous offenders in each correctional facility but does not delineate the underlying conviction for each dangerous offender sentence. Finally, DOC frequently measures community members released on parole or post-prison supervision but provides no breakdown within those demographics for how many are released on parole compared to post-prison supervision. OR. DEP'T OF CORR., Research & Statistics, <https://www.oregon.gov/doc/research-and-requests/Pages/research-and-statistics.aspx> (last visited Apr. 30, 2022). Despite having a multi-billion-dollar budget, it is not DOC's obligation to track these statistics for public usage. And unfortunately, while collating this information would benefit community stakeholders and the Board, the Board does not have adequate funding to track this information and make it publicly available.

⁷⁵ Including Aggravated Murder under Or. Rev. Stat. 163.095, Murder in the First Degree under Or. Rev. Stat. 163.107, and Murder in the Second Degree under Or. Rev. Stat. 163.115.

⁷⁶ Art. I, § 40 provides that "Notwithstanding sections 15 [explaining the foundational principles of criminal law to be "protection of society, personal responsibility, accountability for one's actions and reformation"] and 16 [relating to excessive bail and fines, cruel and unusual punishments, and the power of juries to determine facts] of this Article, the penalty for aggravated murder...shall be death upon unanimous jury findings as provided by law and otherwise shall be life imprisonment with minimum sentence..." OR. CONST. art. I, § 40.

determinate sentencing.⁷⁷ To sentence someone as a dangerous offender, the State must allege in its indictment and prove beyond a reasonable doubt that a defendant 1) is dangerous; 2) suffers from a severe personality disorder indicating a propensity toward criminal activity; and 3) an extended period of confinement is necessary to protect the public from the person being sentenced.⁷⁸

There will be a new fourth category of petitioners within the parole system over the coming years for those who were juveniles at the time of their offense and convicted in adult court. Under S.B. 1008 which went into effect in January 2020, these AICs will be eligible for a new juvenile parole release hearing.⁷⁹

Types of Hearings

The Board holds various types of hearings with petitioners consistent with its role in administering parole in Oregon. All parole board release hearings are open to the public.⁸⁰ The following details the various types of hearings conducted by the Board, along with the consequences of each hearing and the questions at issue in each. Hearings have different legal and factual standards, but the areas of inquiry by the Board remains somewhat consistent: Board members generally ask questions regarding a petitioner's crime of commitment, with particular emphasis on the personal motivations and environmental circumstances which caused the petitioner to commit the crime; members also inquire regarding a petitioner's programming history, employment, disciplinary record within the institution, parole plan and support network, and physical and mental health status. While the legal outcome of each hearing is different, the process is often fairly similar.

As opposed to other states where an individual appears before a parole board and it decides whether or not to release in one hearing,⁸¹ those eligible for release through one hearing are a minority of those appearing before the Board.⁸² Most must go through a bifurcated or even trifurcated process. For example, for those sentenced to "Life," after they serve their minimum, they must first be successful in a Murder Review hearing, where the petitioner has to prove by the preponderance of the evidence that they are likely to be rehabilitated within a reasonable period of time.⁸³ Then, if successful, the Board calculates their prison term, and determines a projected parole release date. Then, the Board holds another hearing, an Exit Interview, and orders a psychological evaluation where the Board must determine whether or not the potential parolee has a "present severe emotional disturbance" or whether they have a "present severe emotional disturbance that can be adequately controlled in the community."⁸⁴ If the individual has additional consecutive sentencing guidelines sentences, they also must go through another hearing, where the Board applies a risk assessment to determine the term of their incarceration. For those who appear

⁷⁷ See 1971 Or. Laws 743.

⁷⁸ Or. Rev. Stat. 161.725; Or. Rev. Stat. 161.735.

⁷⁹ Or. Admin. R. 255-033-0010.

⁸⁰ Or. Admin. R. 255-030-0026.

⁸¹ See: "A life prisoner shall be considered for parole for the first time at the initial parole consideration hearing. At this hearing, a parole date shall be denied if the prisoner is found to be unsuitable for parole under § 2281(c)." Cal. Code Regs. tit. 15, § 2280.

⁸² Release hearings include: Parole Consideration, Personal Interview, Parole Hearings, Juvenile Parole Hearings, Medical Release, and Exit Interviews in limited circumstances.

⁸³ Or. Rev. Stat. 163.105 (2).

⁸⁴ Or. Rev. Stat. 144.125 (3)-(4).

before the Board for multiple hearings prior to their release, the process is lengthy, arduous, and extremely duplicative.

Unfortunately, the rules and statutes that apply often do not illuminate the actual reality or procedures for the hearings. The legal standard may be so vague, the petitioner may not understand how to reasonably prepare. Or, if the standard is more defined, the questions from the Board may completely deviate from the standard at issue.

As an example, the CJRC represented multiple clients in the Prison Term context. The experiences from hearing to hearing could not have been more opposite. In one, the Board reduced the prison term by a significant margin, and the hearing lasted approximately an hour. For another, the Board duplicated the Murder Review hearing process. The hearing was extensive and was focused primarily on the underlying crime. Although the law seems to suggest the Board can honor mitigation evidence and reduce terms by a significant margin, the Board did so for one client and did not for another, even though both provided significant mitigation material and evidence of rehabilitation. Understanding this difference in practice is extremely important.

Murder Review

A Murder Review hearing occurs for petitioners convicted of aggravated murder or murder.⁸⁵ The Murder Review hearing is the most transparent hearing in terms of governing statute and administrative rules. After a petitioner serves the minimum period of confinement⁸⁶ for their murder conviction, they may petition the Board to hold a Murder Review hearing.⁸⁷ At the hearing, the petitioner must prove by a preponderance of evidence that they are “likely to be rehabilitated within a reasonable period of time.”⁸⁸ This is the only question at issue during a Murder Review hearing. This is the only type of release hearing where a petitioner is also afforded the right to have an attorney appointed on their behalf if they cannot afford one otherwise.⁸⁹ Attorneys appointed to represent petitioners receive payment from the Board.⁹⁰

The Board determines whether a petitioner has met their burden of proof by using a ten-factor non-exclusive list outlined in OAR 255-032-0020.⁹¹ The Board’s questions for the petitioner

⁸⁵ See Or. Rev. Stat. 163.105; Or. Rev. Stat. 163.107.

⁸⁶ See Or. Admin. Rule 255-032-0010.

⁸⁷ See Or. Rev. Stat. 163.105(2); Or Rev. Stat. 163.107(3)(a).

⁸⁸ Or. Rev. Stat. 163.105(2).

⁸⁹ Or. Rev. Stat. 163.105(2)(b); ORS 163.107(3)(b).

⁹⁰ Or. Rev. Stat. 163.105(2)(b). and refer to section on in report

⁹¹ The ten factors are

(1) The inmate’s involvement in correctional treatment, medical care, educational, vocational or other training in the institution which will substantially enhance his/her capacity to lead a law-abiding life when released; (2) The inmate’s institutional employment history; (3) The inmate’s institutional disciplinary conduct; (4) The inmate’s maturity, stability, demonstrated responsibility, and any apparent development in the inmate personality which may promote or hinder conformity to law; (5) The inmate’s past use of narcotics or other dangerous drugs, or past habitual and excessive use of alcoholic liquor; (6) The inmate’s prior criminal history, including the nature and circumstances of previous offenses; (7) The inmate’s conduct during any previous period of probation or parole; (8) The inmate does/does not have a mental or emotional disturbance, deficiency, condition or disorder predisposing them to the commission of a crime to a degree rendering them a danger to the health and safety of the community; (9) The adequacy of the inmate’s parole plan including community support from family, friends, treatment providers, and others in the community; type of residence, neighborhood or community in which the inmate plans to live; (10) There is a reasonable probability that the

often thematically follow the ten-factor list. If successful at the Murder Review hearing, the Board will convert the terms⁹² of a petitioner's confinement from life without the possibility of parole to life with the possibility of parole, post-prison supervision, or work release.⁹³ If individuals are denied relief, they are deferred for anywhere from two to 10 years, where they would have an opportunity to appear before the Board again.

Prison Term

Depending on the nature of the offense for which a petitioner is committed to Oregon DOC custody, when the petitioner enters a DOC facility, and the petitioner's sentence, the Board also conducts a "Prison Term" hearing.⁹⁴ A Prison Term hearing sets a projected parole release date, or provides an opportunity for the Board to choose not to set a parole release date⁹⁵ depending on the law at the time the offense was committed.⁹⁶

Prison Term hearings are one of the most technical kinds of hearings that the Board conducts. Calculating a petitioner's prison term involves assigning numerical values to a petitioner's crime and personal history through a series of exhibits to the Board's rules, and then ascertaining where the crime and personal history intersect on the matrix.

First, the Board will assign the petitioner's crime of commitment a "crime severity rating." Each crime in the Oregon Revised Statutes has a corresponding class rating from 1 to 8, with a rating of 8 being the most severe. Aggravated murder does not have a corresponding class rating. Exhibit A to the Board's rules contains the crime severity ratings.⁹⁷ After assigning the crime severity rating, the Board then turns to Exhibit B - Part 1, the "Criminal History/Risk Assessment under Rule 255-35-015." Exhibit B assigns numerical values to personal history categories including a petitioner's number of prior convictions, number of prior incarcerations, period in the community of being "felony conviction free" before the commitment offense, age at the time of the behavior which led to the commitment offense, prior failures to comply with a term of release, and documented substance abuse problems preceding the crime of commitment.⁹⁸

Because assigning the numerical values in Exhibit B can be so confusing, the Board sets forth additional instructions for how to code a petitioner's history in Exhibit B - Part 2. Part 2

inmate will remain in the community without violating the law, and there is substantial likelihood that the inmate will conform to the conditions of parole.

Or. Admin. R. 255-032-0020.

⁹² A prison term is different from a petitioner's sentence; the prison term is part of the person's sentence. A prison term refers to how long a person convicted of a felony must serve in a correctional facility. A person's sentence refers to all of the conditions and requirements imposed on that person by a judge after conviction.

⁹³ Or. Rev. Stat. 163.105(3).

⁹⁴ Or. Admin. R. 255-030-0100.

⁹⁵ The matrix guidelines allow someone with both a poor criminal history (0-2) and a murder conviction with certain facts (stranger to stranger; cruelty to; prior conviction of murder or manslaughter; evidence of significant planning or preparation) to receive a prison term of 288 months to Life. This means the Board can find someone likely to be rehabilitated in a reasonable period of time at a Murder Review hearing, and still keep that person in prison for the remainder of that person's natural life.

⁹⁶ OR. BD. OF PAROLE & POST-PRISON SUP., TYPES OF HEARINGS, <https://www.oregon.gov/boppps/Pages/Board-Hearings.aspx#hearingtypes> (last visited Apr. 30, 2022).

⁹⁷ OR. BD. OF PAROLE & POST-PRISON SUP., EXHIBIT A (1992).

⁹⁸ *Id.*

provides guidance to petitioners and their attorneys for what will count towards a petitioner's individual history/risk score.⁹⁹

Once a petitioner has a crime severity rating and a criminal history/risk assessment score, the Board then turns to Exhibit C, the "Time to be Served Under Division 35 - 255." The intersection of where the Crime Severity Rating and the Criminal/History Risk Assessment Score intersect on the matrix show a range, in months, from which the Board can set a prison term.¹⁰⁰

After determining a raw score on the matrix provided in Exhibit C, the Board may then determine by a vote of the panel hearing the prison term case, or by a vote of the full Board, to add to or reduce the prison term based on a series of aggravating and mitigating factors.¹⁰¹ Aggravating or mitigating factors may weigh in favor of or against a petitioner depending on when the crime of commitment took place.¹⁰²

As an example, consider the following scenario. A petitioner convicted of murder serves a statutory minimum before petitioning the Board for a Murder Review hearing. At the Murder Review hearing, the petitioner successfully proves by a preponderance of evidence that they are likely to be rehabilitated within a reasonable period of time. The petitioner then goes before the Board for a Prison Term hearing where the Board considers the petitioner's entire criminal history to set a prison term and future release date. In this scenario, even though the petitioner has already proved their rehabilitation, their prison term will be set based primarily on facts which took place prior to the petitioner's rehabilitation.

Exit Interview

Exit Interviews are exactly what the name suggests: a hearing held before a petitioner's release into the community or to other consecutive sentences. A petitioner may come to the hearing from a variety of different procedural contexts, but essentially, the Board reviews materials to determine whether the petitioner has a "present severe emotional disturbance such as to constitute a danger to the health and safety of the community."¹⁰³ Or, in the alternative, if the Board finds the "prisoner has a present severe emotional disturbance such as to constitute a danger to the health or safety of the community, but also finds that the prisoner can be adequately controlled with supervision and mental health treatment and that the necessary supervision and treatment are available, the board may order the prisoner released on parole subject to conditions that are in the best interests of community safety and the prisoner's welfare."¹⁰⁴

Prior to the hearing, the petitioner is mandated to provide the Board a parole plan.¹⁰⁵ The petitioner is not entitled to counsel for the hearing, so they must prepare for the hearing themselves,

⁹⁹ Or. Bd. of Parole & Post-Prison Sup., Exhibit B (1992).

¹⁰⁰ For example, for a Crime Severity Rating of "7" and a Criminal History/Risk Assessment Score of "Fair" (3-5), the matrix range is between 156-193 months. The Board can set a prison term at or above 156 months, and at or below 192 months. See OR. BD. OF PAROLE & POST-PRISON SUP., Exhibit C (1992).

¹⁰¹ See generally OR. BD. OF PAROLE & POST-PRISON SUP., EXHIBIT D (1992); OR. BD. OF PAROLE & POST-PRISON SUP., EXHIBIT E-1 (1992); OR. BD. OF PAROLE & POST-PRISON SUP., EXHIBIT E-2 (1992).

¹⁰² For example, the Board may consider evidence of "sustained effort to make restitution or reparation" as a mitigating factor for petitioners whose crimes were committed on or after July 1, 1988. OR. BD. OF PAROLE & POST-PRISON SUP., EXHIBIT E-2 (1992).

¹⁰³ Or. Rev. Stat. 144.125 (3)(a).

¹⁰⁴ Id. at (3)(b).

¹⁰⁵ Or. Rev. Stat. 144.125 (4).

hire counsel, or utilize a support person. The petitioner will undergo a Board-ordered psychological evaluation, which will include information from the petitioner's childhood onwards. Currently, the Board-ordered psychological evaluations include, but are not limited to, the Personality Assessment Inventory, Violence Risk Assessment, and Historical Clinical Risk Management-20, Version 3. The petitioner may employ an additional psychological expert at their expense.

During an Exit Interview, the Board may review the petitioner's release plan, psychiatric or psychological reports, conduct while incarcerated, post-sentencing report or any other relevant report, and victims' statements.¹⁰⁶ Like Murder Review hearings, prior to an Exit Interview, the petitioner receives a packet of information including evaluations, reports, and other relevant documents.¹⁰⁷

Parole Consideration

For those sentenced as "dangerous offenders," the Board holds Parole Consideration hearings.¹⁰⁸ The hearing assesses whether the petitioner is no longer dangerous, or in the alternative, whether they remain dangerous but can be controlled with supervision, mental health treatment, and if the requisite supervision and mental health treatment are available.¹⁰⁹ Two different sets of rules and laws govern the hearings depending on when the petitioner was convicted.¹¹⁰ If the Board determines the petitioner meets either ground, it sets a parole release date.

Personal Review and Personal Interview

The Board may hold a "Personal Review" hearing to determine if a petitioner's prison term warrants reduction based on outstanding conduct and achievement by the petitioner during confinement.¹¹¹ Personal Review hearings occur only when the Board receives a positive recommendation for reduction in a petitioner's prison term from DOC.¹¹² Petitioners sentenced for aggravated murder or as dangerous offenders are not subject to personal reviews, along with those who have come before the Board previously and were denied parole.¹¹³ The procedures hearing mirror the Prison Term hearing process or may be conducted administratively.¹¹⁴

The Personal Interview Hearing is a completely discretionary hearing. The Board's notice of rights to petitioners describes the hearing as "a discretionary hearing scheduled by the Board to review the progress of an inmate," however the Board does not cite any statutory authority governing the hearing.¹¹⁵ The Board has the ability to affirm the parole release date, move up the

¹⁰⁶ Or. Admin. R. 255-060-0006.

¹⁰⁷ Or. Admin. R. 255-060-0030.

¹⁰⁸ Dangerous Offenders are sentenced under ORS 161.725 and 161.735.

¹⁰⁹ Or. Admin. R. 255-037-0005; Or. Admin. R.255-036-0005.

¹¹⁰ Division 36 applies to those convicted of crimes before November 1, 1989. Division 37 applies to those occurring on or after that date.

¹¹¹ Or. Admin. R. 255-040-0005.

¹¹² Or. Admin. R. 255-040-0005(4).

¹¹³ Or. Admin. R. 255-040-0005(5).

¹¹⁴ Or. Admin R. 255-040-0010(1)(2)

¹¹⁵ Or. Admin. R. 255-030-0013.

release date, or release the petitioner. The hearings range in subject and in scope, but ultimately concern the same themes discussed in other hearing types.

Juvenile Parole Hearing

The Juvenile Parole hearing is a new parole hearing for those convicted in adult court for crimes committed as juveniles. In 2019, the Oregon Legislature enacted S.B. 1008 which abolished sentences of life imprisonment without the possibility of release or parole.¹¹⁶ The bill also created a process for people who were under 18 at the time of their commitment offense to have a hearing in front of the Board after serving 15 years of their sentence. During the hearing, the Board determines whether, in “consideration of the age and immaturity of the person at the time of the offense and the person’s behavior thereafter, the person has demonstrated maturity and rehabilitation” such that the Board should release the person on parole.¹¹⁷ The factors at issue in a Juvenile Parole hearing mirror the Murder Review process, with additional considerations for youth status.¹¹⁸ At the time of this writing, a Juvenile Parole hearing has not been conducted.

Medical Release

Within the Board’s webpage relating to statutes and administrative rules, a drop-down menu under “Board Policies” has a tab titled “Early Medical Release.”¹¹⁹ Though not a form of parole hearing *per se*, the Board may release certain individuals or categories of individuals who are either “suffering from a severe medical condition including terminal illness; or elderly and permanently incapacitated in such a manner that the petitioner is unable to move from place to place without the assistance of another person.”¹²⁰ Neither the statutory authority under which the Board may grant early medical release, nor the administrative rule specifying the process for such release¹²¹, provide guidance on what constitutes a severe medical condition, terminal illness, or incapacitation of mobility which would render a petitioner eligible to seek early medical release. Additionally, those convicted of mandatory minimum crimes or murder are ineligible for release through this mechanism, therefore limiting those who can access this remedy to a small portion of the custodial population.

¹¹⁶ S.B. 1008, 80th. Leg. Assembly, Reg. Sess. (Or. 2019).

¹¹⁷ *Id.*

¹¹⁸ Or. Admin R. 255-033-0030.

¹¹⁹ STATUTES & ADMINISTRATIVE RULES, *supra* note 66.

¹²⁰ STATUTES & ADMINISTRATIVE RULES, EARLY MEDICAL RELEASE, <https://www.oregon.gov/bopp/PPS/Pages/Statutes.aspx> (last visited Apr. 30, 2022).

¹²¹ Under administrative rules promulgated by the Board and incorporated into the Oregon Administrative Rules, a request for early medical release must include

- (a) A medical authority’s report, which attests to validity of the condition with reasons why continued incarceration would be cruel and inhumane; and
- (b) The institution superintendent’s recommendation; and
- (c) The Department of Corrections Director’s recommendation regarding whether resetting the release date to an earlier date is compatible with the best interests of the inmate and society; and
- (d) The Governor’s commutation for those sentenced to life in prison or death for aggravated murder.

Or. Admin. R. 255-040-0028.

The rule governing medical release requires a person, who is either seriously ill or unable to move about without assistance of another person, to collate together medical documentation and recommendations from the superintendent of a correctional facility *and* the Director of the DOC.¹²²

Process for Petitioner

For many of the hearing types, the procedures are fairly similar. Appearing at the Board can pose immense challenges for petitioners. Information about the parole process is not disseminated widely in the prisons, and petitioners must rely on others who go through the parole process or informal parole preparation workgroups facilitated by other AICs to learn what to expect and how to prepare for their hearings. Due to the length between sentencing and completion of their minimum sentence, many AICs may not even understand how to petition the Board for the hearing they are afforded. For some, it is difficult to even understand whether or not they are parole-eligible.

Months before eligibility, AICs must petition the Board in order to schedule their hearing. In response, the Board will set a hearing date and provide its draft Board file to the AIC or to their attorney (if they have Murder Review hearings and are appointed one or if they hire a private attorney).

The Board's file serves as the evidence in the hearing, and typically includes the petitioner's judgment from sentencing, a post-sentencing investigation or report, criminal history, descriptions of transactions from their institutional trust account, activity and conduct in custody, past Board orders, any psychological evaluations conducted at the time of the offense, and a Board-ordered psychological evaluation conducted for the hearing at issue when appropriate. For petitioners sentenced as "dangerous offenders," the file will also include additional information from their correctional counselor and statements from the petitioner about their attitude towards the district attorney and judge in their case. The file may also include past submissions from prior hearings if the petitioner has appeared previously before the Board. The file will then be disseminated to any additional parties. All parties end up the same record, unless any confidential information is reviewed in advance of the case.

In Murder Review hearings or any other hearings where the petitioner has an attorney, the attorney interviews the petitioner so they can draft a memorandum to the Board prior to the hearing. Concurrently, the attorney prepares the petitioner for their hearing.

At a minimum, the attorney must interview the petitioner about their underlying offense, criminal history, institutional behavior, programming, employment, mental and physical health, and the petitioner's release plan. It is almost always important to also learn about the petitioner's upbringing, family dynamics, and support system as well. The attorney must understand potential legal issues inherent in the process and strategize on how best to address them. The attorney must understand what areas of the petitioner's case will be at issue in the Board hearing, and work to help the petitioner explain those weaknesses to the Board in an effective manner. The attorney must also support the client in constructing a narrative about their life, the harms they have committed, and their subsequent transformation in custody. Not only is the attorney preparing the

¹²² The Director of Oregon DOC manages an agency with 4,700 employees and a biennial budget of \$2,000,000,000. The Director is also responsible for 14,700 incarcerated adults across fourteen prisons state-wide. OR. DEP'T OF CORR., DIV. & UNITS, OFFICE OF THE DIR., <https://www.oregon.gov/doc/divisions-and-units/Pages/office-of-the-director.aspx> (last visited Apr. 30, 2022). It is not clear from the rule how the Director might come to know incarcerated individuals well enough to provide (or decline to provide) a recommendation on early medical release.

memorandum for the Board, but the client must also experience the narrative as true, so they can speak authentically to the Board when the time comes. The work is deep, complicated, and nuanced. Often, petitioners have experienced significant trauma in their childhood, many have struggled with addiction, and most have trauma related to the experience of perpetuating the harm. An effective attorney facilitates a process by which the client can understand and communicate their act of violence, take ownership and accountability for their harms, and explain why the act of violence will never occur again.

If the petitioner does not have an attorney, their task is even harder as they are most likely appearing alone. Thus, they may operate as their own attorney, and they must navigate this process, prepare their memorandum and themselves for the Board with little or no information about what is expected of them. The petitioner must understand the standard at issue, but also the implicit criteria underneath the legal and factual standard. If any legal issues arise, the petitioner must be aware of them.

To best prepare for their hearing, the petitioner must cultivate a deep sense of self-awareness. The petitioner must prepare to demonstrate insight into the crime of commitment and have an ability to communicate their internal experience of the crime, often 25 or 30 years ago. If their childhood or young adult experience played a role in the crime, they must be prepared to discuss their background. They must ready themselves to articulate their emotions, thoughts, triggers, and behaviors – and be able to differentiate which ones are which. If they have struggled with their disciplinary conduct in custody, they must explain why. If they have an addiction history, they must provide their plan to prevent relapse. If mental health is a concern, they must describe how they have sought treatment or developed appropriate coping skills. If anger is an issue, they must describe anger management techniques that work for them in real time. If they are or have been gang-involved, they should ready themselves to explain what they secured from gang membership and why they are or are not gang involved today. Issues are varied and case-specific, and all require significant skill for the petitioner. They also need to be ready to answer difficult questions about remorse and accountability. They must understand the tone of the hearing and approach the Board member's questions with humility and appropriate expressions of vulnerability.

In most cases, petitioners also need to have participated in numerous programs that allow them to address anger, addiction, coping, trauma, remorse and accountability. They need to metabolize and subsequently apply and communicate to the Board what they learned in these programs. Unfortunately, many petitioners who go before the Board do not have access to important programming that addresses these issues due to lack of availability in their facilities and/or housing units among other things.

When a petitioner is afforded an attorney, the attorney plays the role of facilitator, counselor, and legal counsel. When a petitioner is not afforded an attorney, the petitioner must understand and fulfill the roles on their own, with a private attorney, or a support person.

The Hearing

At the hearing, the Board reads the notice of rights and explains the procedures of the hearing. The attorney or petitioner may offer an opening statement. Then, the attorney or petitioner may call witnesses or support persons on the petitioner's behalf. After the attorney or petitioner is done questioning each witness, the Board may ask questions of the witness. Then, the attorney will conduct direct questioning of the petitioner. The end of direct questioning is the conclusion of the

attorney's case in chief. This is followed by the Board asking questions of the petitioner. If no attorney is involved, the Board goes straight into questioning the petitioner.

Generally, the Board asks questions related to the 1) institutional trust account, 2) physical and mental health, 3) programming and reformation activities 3) the underlying crime and criminal history 4) disciplinary conduct 5) release plan.

The questions range in subject, structure, and in tone. A Board member may extract out a line from the materials submitted for the hearing and ask the petitioner to explain what it means, offer a hypothetical, or simply ask a direct question. A question could be theoretical: *What does remorse mean to you?* Or be more concrete: *What is a skill you've learned in programming you're most proud of?* A Board member may ask the petitioner if they would be open to feedback on the petitioner's responses or behaviors. A Board member may ask: *What do you think the impact of your crime is on the victim's family or the community?* or *Why do you deserve this opportunity?* A Board member may be more aggressive in questioning with a client who appears defensive, and may be softer if a client appears remorseful and reflective.

In any case, the petitioner's ability to understand the questions and to respond appropriately is often the most important aspect of the process. Thus, those with deficits or differences in the ability to communicate are at a distinct disadvantage, even when well-meaning Board members attempt to rephrase questions or re-direct the petitioner in those instances. The quality of communication necessary, especially about the crime of commitment, is quite sophisticated.

After the Board finishes, the district attorney from the committing jurisdiction may speak. If victims are present, they also have a right to participate. The attorney or petitioner may rebut or comment on the victim and district attorney's statements and offer a closing statement. The entire hearing generally lasts from 2-6 hours.

Decisions

After a hearing, the Board issues its decision in a written document called a Board Action Form (BAF). A BAF contains information about who was present at a parole hearing, how the hearing was conducted, and most importantly, the decision of the Board on the relevant question before it and the factual findings that support its decision. BAFs are numbered chronologically for reference and contain boilerplate language for a petitioner and/or their attorney on the procedures for administrative review.

The Board typically does not issue an oral decision immediately following the hearing but may in limited circumstances. When it does, the oral decision will then be memorialized in the BAF. The Board is mandated, by statute, to state in writing the detailed bases for its decisions.¹²³ The Board attempts to provide written decisions within 30-40 days after a hearing.

If the petitioner is successful, the decision tends to be brief. If the petitioner is unsuccessful, the decision is longer. The BAF is structured as a memorandum, where the Board provides "findings of fact," "findings of ultimate fact" and "discussion" sections. For example, if a petitioner is denied in their Murder Review hearing, the Board will apply the factors at issue in the Murder Review hearing to the evidence presented to come to its conclusion. Petitioners may appeal the decision through the administrative appeals process described later in this report.

¹²³ Or. Rev. Stat. ORS 144.135

IV. WHERE PAROLE FITS IN THE MODERN LEGAL SYSTEM

Legal Issues in Parole

Due Process

The primary legal protection for petitioners within parole is the Due Process Clause of the Fourteenth Amendment. The process due to petitioners in the parole context includes an opportunity to be heard at a fair hearing, and a written rationale for the Board's decision in a particular case.¹²⁴ The Court of Appeals for the Ninth Circuit held in 2011 that the language of Oregon's murder review statute creates a vested liberty interest for petitioners, requiring the Board in its process and decisions to conform with due process guarantees.¹²⁵ Where the language of a rule or statute includes the words *shall*, *subject to the following restrictions*, and *unless*, prior courts have identified vested liberty interests.¹²⁶ The liberty interest in parole, even though it is created by the language of a rule or statute, is quite limited compared to the due process guarantees of individuals pre-conviction.

Evidentiary Issues

Oregon Administrative Rule 255-030-0032 sets the parameters for evidence the Board may consider in a hearing.¹²⁷ If an attorney finds a question or response objectionable, the attorney must raise the objection to the Board contemporaneously to preserve the issue. Anything goes in terms of Board questioning. The Board has significant discretion in what they may choose to admit.

Moreover, the Board itself must reviews its own decisions before a petitioner can appeal a Board decision to a judicial body, attorneys who represent petitioners in parole face significant

¹²⁴ See *Swarthout v. Cooke*, 562 U.S. 216 (2011), *reh'g den*, 563 U.S. 930 (2011).

¹²⁵ *Miller v. Oregon Bd. of Parole & Post Prison Sup.*, 642 F.3d 711, 716 (9th Cir. 2011).

¹²⁶ OR. STATE BAR, MATTHEW J. LYSNE AND RYAN T. O'CONNOR, BARBOOKS, CRIMINAL LAW (2013 REV.), 26.2-1(A) RELEASE ON PAROLE.

¹²⁷ Or. Admin. R. 255-030-0032. The rule states

- (2) Evidence of a type that reasonably prudent persons would commonly rely upon in the conduct of their serious affairs shall be admissible in Board hearings, including:
 - (a) The information set forth in OAR 255-030-0035;
 - (b) Other relevant evidence concerning the inmate that is available.
- (3) Reliable, probative, and substantial evidence shall support Board orders. Substantial evidence is found when the record, viewed as a whole, would permit a reasonable person to make a particular finding.
- (4) The Board may exclude evidence if it is:
 - (a) Unduly repetitious;
 - (b) Not of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs;
 - (c) Provided by a person, other than a justice system official, without first hand knowledge of the circumstances of the crime that is the subject of the proceeding before the Board;
 - (d) Provided by a person, other than a justice system official, without first hand knowledge of the character of the inmate;
 - (e) Addressing only guilt or innocence; or
 - (f) Irrelevant or immaterial to the decision(s) to be made at that particular hearing.
- (5) The Board may receive evidence to which the inmate objects. If the presiding Board member does not make rulings on its admissibility during the hearing, the Board shall make findings on the record at the time a final order is issued.
- (6) Erroneous rulings on evidence shall not preclude Board action on the record unless shown to have substantially prejudiced the rights of the inmate.

barriers advocating that only evidence which answers the relevant question in a hearing be admitted. The evidentiary issues apparent in Board hearings create problems with few answers for petitioners who seek judicial review of adverse Board actions.

Exhibit O: administrative appeals and seeking judicial review

Oregon Revised Statute 144.335 sets out the statutory authority for a person under the Board's jurisdiction to appeal one of its decisions.¹²⁸ To appeal a decision by the Board, a petitioner must begin by seeking timely¹²⁹ administrative review.¹³⁰ Counsel is not appointed for navigating the administrative review process, so under-resourced parole counsel either complete the Exhibit O as a *pro bono* matter, or petitioner's seek assistance from the law librarian at the correctional facility. This is a crucial gap in representation for petitioners. If the issue at the hearing is not properly preserved, or the petitioner fails to preserve the issue in the Exhibit O, the petitioner will forfeit the issue.

Upon receipt of a request for administrative review, the Board may deny review, grant review and then deny relief, or grant review and grant relief from the decision at issue.¹³¹ The Board considers the following criteria in accepting or denying requests for administrative review:

- 1) The Board action is not supported by evidence in the record; or
- 2) Pertinent information was available at the time of the hearing which, through no fault of the offender, was not considered; or
- 3) Pertinent information was not available at the time of the hearing; or
- 4) the action of the Board is inconsistent with its rules or policies and the inconsistency is not explained; or
- 5) The action of the Board is in violation of constitutional or statutory provisions or is a misinterpretation of those provisions;
- 6) The action of the Board is outside its statutory grant of discretion.¹³²

If the Board grants relief from the BAF, the response to an Exhibit O will implement the relief requested or specify how the Board will go about implementing relief.¹³³

After seeking administrative review and receiving a response from the Board, a petitioner will have "exhausted their administrative remedies." Exhaustion of administrative remedies is a statutory prerequisite a petitioner must satisfy before they can appeal the Board's decision to a judicial body. A request for judicial review of an adverse decision by the Board begins with a petition filed in the Oregon Court of Appeals which reviews the Board's order on "the same basis as provided in ORS 183.482(8),"¹³⁴ the section of the Oregon Administrative Procedures Act setting forth the jurisdiction and scope of court authority for contested cases.¹³⁵

¹²⁸ Or. Rev. Stat. 144.335.

¹²⁹ Timely submission of a request for administrative review occurs on or before the 45th day after the mailing date of the relevant BAF. *See* OAR 255-080-0005(1).

¹³⁰ Or. Admin. R. 255-080-0005.

¹³¹ Or. Admin. R. 255-080-0005(5) and (6).

¹³² Or. Admin. R. 255-080-0010.

¹³³ *Id.*

¹³⁴ Or. Rev. Stat. 144.335(4).

¹³⁵ The Oregon Legislature amended Or. Rev. Stat. 163.105(2) to no longer require murder review cases to "be conducted in the manner prescribed for a contested case hearing under ORS 183.310 to 183.550..." 2007 Or. Laws 1876, in response to the outcome in *Larsen v. Bd. of Parole & Post-Prison Sup.*, 206 Or. App. 353 (2006) (holding

Although not subject to all of its provisions,¹³⁶ as an administrative agency the Board of Parole and Post-Prison Supervision is subject to parts of Oregon’s Administrative Procedures Act. Sections 7 and 8 of ORS 183.482 set forth the standards for review by the Court of Appeals of contested cases from an administrative body. Under section 7, the Court of Appeals is limited to the “closed universe” of the record that comes before it.¹³⁷ Because the Court of Appeals may not substitute its judgment as to issues of fact, factual findings by the Board may only be set aside when the Court finds that they are not supported by substantial evidence in the record.¹³⁸ The Court articulated in *Castro v. Bd. of Parole & Post-Prison Sup.*, 232 Or. App. 75, 85 (2009), that bare conclusions, without logic or explanation, require reversal when those conclusions announce rather than explain a decision.

Errors in procedure of the parole hearing require remanding the decision back to the agency to satisfy procedural due process requirements,¹³⁹ but errors outside of procedure such as consideration of irrelevant or unreliable evidence only enable the court to reverse the decision.¹⁴⁰ Once the Board provides a written explanation, including factual findings, for an adverse decision, that decision is nearly set in stone. Petitioners face an uphill climb to challenge Board orders, and when they are successful at the Court of Appeals, frequently find themselves in front of the Board on the same issue only to receive the same result as before, just with procedures or findings that support the decision.

that the statute as then written required aggravated murder review hearings to conform to the Administrative Procedures Act). Since the Legislature repealed the requirement that hearings conform to the manner of a contested case hearing in Or. Rev. Stat. 183.482, the Oregon Court of Appeals has not articulated the manner in which parole hearings must proceed.

¹³⁶ Or. Rev. Stat. 183.315(1) expressly exempts the certain provisions of the Oregon Administrative Procedures Act (OAPA) from applying to the Board of Parole and Post-Prison Supervision in its functions under Or. Rev. Stat. 161.315 to 161.351 (relating to persons found guilty except for insanity of a crime). Interestingly, Or. Rev. Stat. 183.315(5) exempts certain provisions of the OAPA from applying to persons committed to DOC custody pursuant to Or. Rev. Stat. 137.124. The exemptions include Or. Rev. Stat. §§ 183.415 to 183.430 (relating to notice of right to hearing, procedure in contested case hearing, depositions or subpoena of material witness and discovery, hearing on refusal to renew license; exceptions), 183.440 to 183.460 (including subpoenas in contested cases, subpoena by agency or attorney of record of party when agency is not subject to ORS 183.440, evidence in contested cases, representation of agencies at contested case hearings, representation of Oregon Health Authority and Department of Human Services at contested case hearings, representation of persons other than agencies participating in contested case hearings, non-attorney and out-of-state attorney representation of parties in certain contested case hearings, representation of home care worker by labor union representative, examination of evidence by agency), 183.470 to 183.485 (regarding orders in contested cases, preservation of orders in electronic format and fees, judicial review of agency orders, jurisdiction for review of contested cases, procedure, scope of court authority, jurisdiction for review of orders other than contested cases, procedure, scope of court authority, decision of court on review of contested case) and finally 183.490 to 183.500 (when an agency may be compelled to act, awarding costs and attorney fees when finding for petitioner, and appeals). It is curious that an assortment of these provisions apply to the Board of Parole & Post-Prison Supervision, but not petitioners under the Board’s jurisdiction. Case law in Oregon does not address how Or. Rev. Stat. 183.315(5) pertains to petitioners seeking relief within the context of parole.

¹³⁷ See Or. Rev. Stat. 183.482(7) (requiring that “Review...shall be confined to the record, and the court shall not substitute its judgment for that of the agency as to any issue of fact or agency discretion.”).

¹³⁸ Or. Rev. Stat. 183.482(8)(c) defines substantial evidence as enough evidence “to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding.”

¹³⁹ Or. Rev. Stat. 183.482(7) (“The court shall remand the order for further agency action if the court finds that either the fairness of the proceedings or the correctness of the action may have been impaired by a material error in procedure or a failure to follow prescribed procedure.”).

¹⁴⁰ Or. Rev. Stat. 183.482(8)(a) “The court may affirm, reverse, or remand the order.”).

Due to the barriers associated with the review process, many issues are not preserved, issues are not appealed, and thus there is rarely new parole caselaw. This means that the standards, practices, and procedures never get clarified for those coming before the Board. Key insight that drove the initiation of this project came from the navigation of the standards by the CJRC. From 2020-2022, the CJRC represented AICs in approximately 27 hearings before the Board. Each case provided significant insight into challenges of the parole process. Later in this report, the Board's historical decision-making is assessed. It is noteworthy that the contemporary Board is not the same the historical Board, but the same structures, procedures, and potential issues exist.

V. OVERVIEW: EMPIRICAL EXAMINATION OF PAROLE PROCESSES

In order to achieve each of the goals set for this project, several data points were collected consisting of both quantitative and qualitative data.¹⁴¹ Each of the goals required primary and secondary data collection. It is important to reiterate that the data and findings associated with them capture cases released over the last several years. They encompass ranging laws that have changed as well as many Board member cohorts that have long since turned over during the analyzed timeframe. For this study/report, the Board is examined and discussed as a living institution, the scope of which can be impacted depending on who serves on it. Thus, none of the conclusions provided here are directed at any one cohort of Board members, including the current Board. In fact, limited data were available on decisions made by the current cohort for this report due to several reasons (e.g., COVID-19 disruptions and lack of staffing resources). All findings and conclusions are drawn from data and reflections that incorporate multiple Board cohorts and governor administrations. As a result, all recommendations made here are focused on reforms to improve the fairness, transparency, and legitimacy of the Board as an institution while maintaining the mission of public safety. Recommendations are provided to emphasize the fact that the Board's processes and policies transcend any single cohort of Board members and culture, and the codification of data-driven policies is the best way to safeguard fairness across Board cohorts.

Quantitative Data

Ideally, to fully address the research questions/goals, the datasets used would consist of all aspects considered by the Board when making release decisions at both the murder review hearings as well as the exit interviews, for every case. Unfortunately, for a number of reasons, including the fact that the Board requires a great deal of updating and digitization resources, such a dataset does not exist. The best datasets available for this project were two from the DOC and one primary data collection effort. The two datasets from the DOC comprised of two different samples, and were subsequently used for two different purposes.

LWP Dataset. The first dataset is one compiled by the CJRC in a separate study and partnership with Portland State University.¹⁴² The dataset consisted of 763 adults who were convicted of murder, aggravated murder, and rape, with a penalty of life with the possibility of parole (LWP), making them eligible to be considered for parole via board hearings. Conviction dates within the data spanned from August 1978 to September 2019, when the information was pulled to be analyzed. The PSU report provided to the CJRC comprises of descriptive statistics discussing the sample characteristics which include the potential-parolee's / parolee's sex, race/ethnicity, date of birth (used in calculating age), index/instant offense(s), county of conviction, current status at the time of the data pull (i.e., incarcerated, died, released), as well as if the person was released. Excluding the one case in which the person's sentence was vacated and 40 deaths in custody, there were 107 releases since 1995. To make the initial sample was appropriate to use to answer the questions at hand (e.g., Are there patterns in the Board's release decisions?), the 40 deaths in custody and one vacated case were removed. This left a total sample size of 722.

¹⁴¹ All data collection and analyses were completed by or overseen by Dr. Campbell. Active CJRC attorneys were not involved in the data collection or analyses, and were not allowed access to the data outside of the LWP dataset. This was to maintain independence in the analysis and scientific findings.

¹⁴² Eve, C., Yajaira, J., Chynna-Lee, M., Journey, P., & MacKenzie, W. (2020). *Oregon Probation and Parole Data, 1989-Present*. Portland State University.

Recidivism Dataset. The other secondary dataset used was relied on largely to address Goal 4 – examine how accurate the Board’s release decisions are in determining a parolee’s likelihood to reoffend. Similar to the LWP dataset, this is also from the DOC and consisted of all people released from prison onto community supervision between 2011 and 2017, with at least a three-year follow-up period for all cases. Initially, the sample size for this dataset consisted of 32,085 cases, with 28.8% being imprisoned for a person (i.e., violent) crime. In order to ensure that the cases used would be most similar to those cases the Board would have authority over, the eligibility criteria for this dataset required all cases to be (1) convicted as a person or sex crime as their most serious offense (removed 19,069 cases), (2) spent at least five years in prison (congruent with Ballot Measure 11 [BM11] mandatory minimum sentences, removed 8,296 additional cases), and (3) must have no missing or problem data on key measures (e.g., gender, race/ethnicity, removed five additional cases). This resulted in a dataset comprised of 4,715 cases broken out by the person’s status when released in one of five ways listed in Table 1. These groups are essentially comparison groups to which those who are paroled by the Board can be compared in their community-based performance (i.e., recidivism behavior).

Table 1. Initial truncated sample release reason/status for Recidivism Dataset.

Release reason	Frequency	Percent	Analysis
Paroled - released through the parole process	95	2.20%	Included
Post-prison supervision (PPS) determinate sentence	4,154	88.16%	Included
Multiple supervision statuses	49	1.04%	Removed
Short-term trans-leave (STTL)	271	5.75%	Removed
Second look cases	75	1.59%	Removed
Sentence expiration – released without supervision	71	1.51%	Removed
Initial sample total	4,715	100.0%	

From Table 1, only two statuses were determined to be particularly comparable – those released directly due to the parole process, and those released to post-prison supervision (PPS) via a determinate sentence. These two groups would receive similar supervision upon release. Given the narrowing of the eligibility criteria discussed above, these two groups provided the foundation from which the analysis could be conducted. Expanded upon further in the section on Goal 4, a balancing technique was used to further reduce the sample included to only those cases with characteristics that are most similar to the paroled cases are included.

The Recidivism Dataset also includes a host of information research has shown to be helpful in predicting the likelihood of success on supervision. Specifically, this includes data on releasee demographics, index offense details (e.g., length of stay, BM11 conviction, crime severity score), prior community supervision information (e.g., prior revocations), criminal history (e.g., number of prior person convictions, or age at first arrest), misconduct and disciplinary segregation information during the most recent incarceration, and visitation information (e.g., how often and how many people came to visit the individual while incarcerated). Recidivism in this dataset is captured in four dichotomous indicators if an event occurs within three years of release: Any violation, rearrest for a new offense, reconviction, and reincarceration. Using arrest data, rearrests were broken out further by person and property offenses.

Survey Dataset. The third quantitative dataset used was collected via primary data collection, and was focused primarily on Goal 3 – identify how the hearing and decision-making process impact eligible parties/parolees, but was also used in Goal 2. Using extant research, a survey was developed and administered to parole-eligible AICs capture the perceptions of individuals eligible¹⁴³ for parole toward the Board, perceived likelihood of release, and to reflect on their experiences before the Board (if any) as well as the process. With great cooperation from the DOC and the individual facility contacts, we successfully administered and collected AIC surveys in a secure and orderly fashion across five facilities deemed as holding the most parole-eligible AICs. A list of the targeted facilities and expected sample sizes are shown in Table 2.

Due to COVID-19 issues and spread, no facilities were allowing external researchers to come in for face-to-face administration, which left mailing the surveys via the United States Postal Service to be the only viable option. As in virtually all prisons across the nation, mail protocols require DOC staff to open and read all mail sent to and from the AICs. Such protocols would neither foster legitimacy to the study in the eyes of the AIC respondents, nor would it allow for us to maintain confidentiality of our respondents. Thus, to ensure the administration/collection of the survey maintain the confidentiality of the respondents, we worked with the DOC research staff to allow for lock-boxes to be placed in the law library in each of the five facilities. Using funds from the grant, we purchased six tamper-proof, lock-boxes ranging from 38 to 96 pounds.¹⁴⁴ The size of the boxes were based on estimates of the sample size needed at each facility. Initial estimates based on the work of the CJRC assumed 10% of the DOC population is potentially LWP or dangerous offender status, making them potentially eligible to be in a parole board hearing at some point in their sentence. This suggested that there may be approximately 1,299 AICs who may fit this eligibility, based on a [2020 DOC population report](#). From that, we estimated a random 40% to target, plus an additional 10% to account for non-response buffer, which put our initial estimate at approximately 520 respondents across the five facilities on which to base the box size.

While the boxes were being purchased, the actual sample to target was identified with the help of DOC research personnel. The research team provided the location for anyone in the five targeted facilities who were convicted of life with the possibility of parole or dangerous offender status, producing a list of 710 individuals to be solicited for participation. The survey and consent language informing the AICs about the study and what to do upon completing the survey, were mailed to each AIC identified. To increase response rates, we offered \$5 to be deposited into participant accounts upon completion of the survey to



Figure 1. Survey lock-box at OSP

¹⁴³ It is important to note that parole “eligibility” has a distinct definition in the law, identifying when someone is actually allowed to be considered for release by the Board. For the purposes of this study, we label AICs as being “eligible” for parole based on the type of offense committed and the fact that the person will be eligible for parole at some point.

¹⁴⁴ Coffee Creek Correctional Facility was initially part of the planned sample, but our contact went cold after purchasing the lockbox.

use in the canteen. The boxes were shipped to the facilities weeks ahead of the surveys being mailed. Surveys were mailed to the AICs by May 16, 2022 leaving the AICs roughly two weeks to complete and submit the survey to the lockbox. On June 2, the boxes were shipped back to the study Principal Investigator (PI, Dr. Campbell), thereby circumventing potential breaches in confidentiality. All five boxes were received by June 16, 2022. It took roughly four weeks to process and digitize the surveys were opened.

Table 2 shows the distribution of response rates across the targeted facilities. Of the 710 surveys sent, nearly 50% (354) were returned and completed. Response rates across the facilities ranged from 42.5% (OSCI) to 57.2% (SRCI). Given the mailed administering of this survey, and the solicited population, this is a rather sizable response rate. Eventually, the survey data will be supplemented with administrative data from the DOC records (e.g., demographics, criminal history, and disciplinary history). As of the writing of this report, we are still waiting to receive the administrative data. Consequently, the findings reported here are focused only on the information available in the two-page survey.

Table 2. Sampling plan for the AIC survey.

	Solicited for participation	Submitted responses	Response Rate
Total targeted and received survey solicitation	710	354	49.9%
Snake River Correctional Institution (SRCI)	173	99	57.2%
Oregon State Penitentiary (OSP)	245	114	46.5%
Two Rivers Correctional Institution (TRCI)	124	61	49.2%
Eastern Oregon Correctional Institution (EOCI)	88	46	52.3%
Oregon State Correctional Institution (OSCI)	80	34	42.5%

Qualitative Data

While quantitative data is important to capture prevalence, magnitude, and relational effects, it falls short in providing context. To provide that necessary context to the quantitative data, we attempted to collect qualitative information from three sources: (1) Board documentation, (2) interviews with past and present Board members, and (3) interviews with parole-eligible AICs as well as parolees. These were supplemented with a few hearing observations conducted by the PI.

Board Documentation. In an effort to learn more about nuanced yet potentially patterned differences in parole hearing decisions, public records requests were submitted for the packet of forms completed by the Board which includes: Board Action Forms (BAF), Board Review Packets, and Exit Interviews. Working closely with the Board members and staff, a systematic and feasible process was delineated to pull these records for the Board staff to redact. Our sample consisted of a random sample of electronic versions only since 2017. To avoid the COVID lockdown time period, we excluded those between March 2020 and December 2020. Three aims guided this systematic process: To capture decisions made in the 2015-2017 range to overlap with the Recidivism Dataset mentioned above; to capture decisions made just prior to the COVID-19 shutdown of March, 2020; and to capture decisions made since the pandemic shut-down. Ultimately, we agreed on randomly pulling roughly 30 total cases with 10 during the overlapping years, 10 just pre-Pandemic (2019), 10 post-Pandemic shutdowns (after December 2020). The packets average 150 pages per packet. As of the writing of this report, we are still waiting for the redacted packets. Because Goal 2 relies primarily on this dataset in particular, findings for this goal will be limited.

Interviews. Between March and May, 2022, the PI interviewed seven Board members (past and present), probing for focal concerns and perceptions of the process. Along with the Board members, a few advocates/representatives of victims¹⁴⁵ were also interviewed. Over the same period 10 interviews were completed of parole-eligible AICs and successfully paroled individuals in the community. Using members of the parole defense team from CJRC, clients were approached by CJRC attorneys and asked to participate in an interview. All interviews will be conducted by a CJRC affiliate who is not directly working with the interviewee’s case. All interviewing CJRC members completed CITI training for social science certification, and were trained by the PI on how to conduct a social science interview and ensure that consent language is provided appropriately. After the first interview, feedback was provided to the interviewers on how to improve. The interviews were transcribed if recorded or field notes were collected and both were analyzed for their relationships with the findings of the quantitative data and any other areas that may provide greater context for the report.

¹⁴⁵ The term “victims” is used throughout to refer to both the direct victim (person who experienced the crime directly) and indirect victims involved with the case (i.e., the victim’s family).

VI. GOAL 1 FINDINGS: IDENTIFYING PATTERNS IN RELEASE DECISIONS

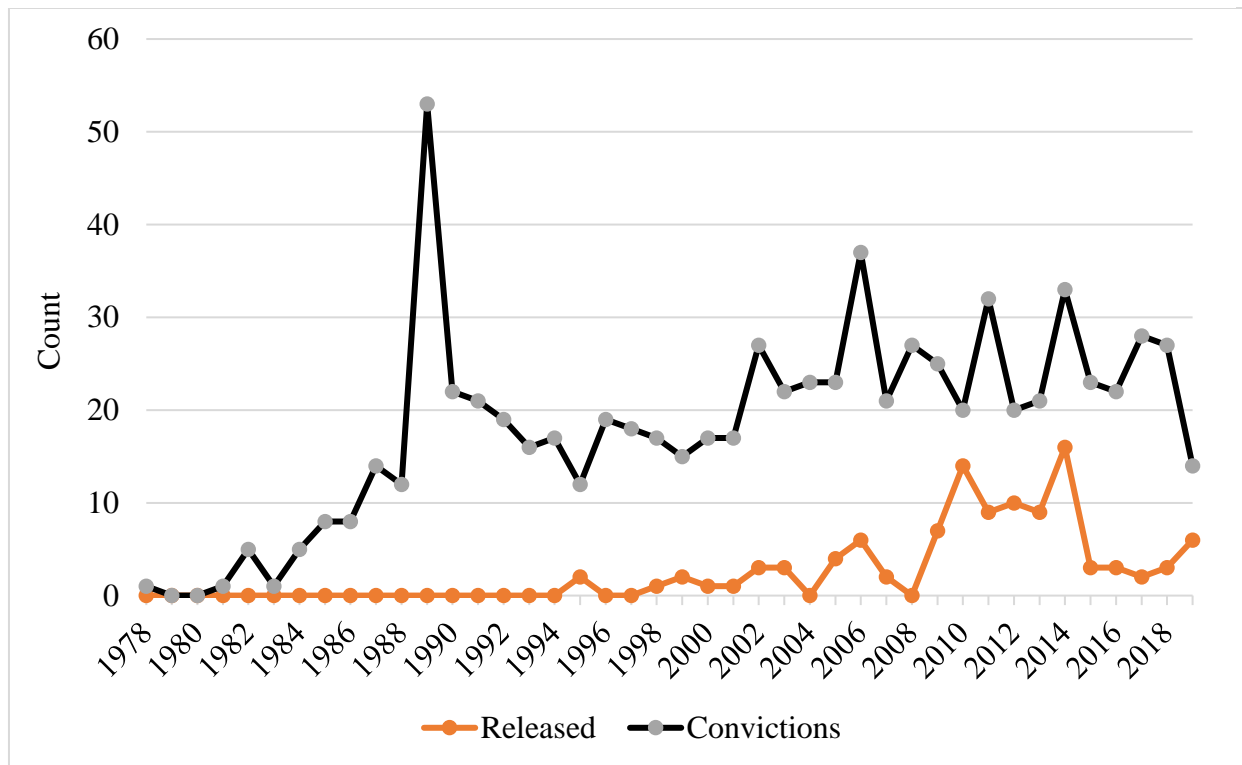
To identify any patterns that might exist in release decisions by the Board, both quantitative and qualitative analyses were conducted with the available data. For the quantitative data, a number of procedures were used to test for the presence of relationships between measures. As this is exploratory in nature (i.e., there is no driving hypothesis available due to limited or non-existent scientific evidence of such relationships), only correlative analyses (e.g., t-tests and chi-square tests) are used to assess the relationship between extra-legal factors (e.g., demographics), legal factors (e.g., number of convictions), and the decision to release an individual to parole supervision or postpone one's release. For the qualitative data, the interviews were transcribed and examined for patterns related to the topics that arose from the quantitative examination, as well as any additional issues that the quantitative data could not capture.

Patterns via Quantitative Analyses

Trends in LWP data. As a baseline examination of the prevalence of releases, measures from the LWP dataset were plotted over time. Figure 2 shows the annual counts of releases along with the count of convictions with a penalty of life with the possibility of parole, over time. This figure depicts a few notable trends. First, parole releases were quite rare leading up to 2006, when the annual count reached six releases. While releases continue to be a rather rare occurrence, there is a clear, upward trend in releases among the Board over the last two decades, with the greatest number of releases occurring between 2010 and 2014, peaking at 16 releases. While it appears that there were rather few paroled people prior to 1995, the lack of releases has more to do with missing/unrequested data than actual non-releases. Additionally, the large spike in convictions for serious crimes (murder or aggravated murder) during 1989 was similar to that observed by much of the country during the 1980s and early 1990s.

When examining a trend graph like this, we should think about what we expect to see given some baseline assumptions about parole and the system. If the sentence of “life with the possibility of parole” is indeed one that offers the possibility of redemption and rehabilitation, then we would expect that the spikes observed among the conviction trends should be similar to the spikes seen in the releasing trend to some degree, but to a lesser extent. That is to say, that once people have served their time, and assuming they have made a successful effort to be rehabilitated, then we should expect to see those people be released onto parole 20 years later. That being said, the graph shows that parole is not really used in this way. Understandably, granting parole is a rather arduous process, and prior to 2000, it was not uncommon for U.S. prison systems to offer far fewer rehabilitative programming than what is seen today. The population that the Board must review is also one that are among the most serious of crimes, making it particularly difficult to gauge if and when someone is truly rehabilitated. In examining Figure 2, we see that the trends have some similarities, but are not necessarily a lagged version of the same shape. That being said, it is possible that the spikes in releases from 2009 to 2014 reflect the 1989 spike in convictions. Similarly, the trough in releases from 2015 to 2019 may be reflecting the slight dip in convictions from 1989 to 2001. More datapoints over time would help explain more of these trends.

Figure 2. Count of eligible convictions, parolee releases, and deaths in custody over time



Baseline relationships. Diving further into the LWP dataset, Table 3 provides a descriptive breakdown of this dataset and the measures collected. Overall the sample consisted of individuals who were 92.0% males, 68.8% White, and 23.7% coming from Multnomah County. The average age at conviction was 38, with the average person spending 14.8 years incarcerated before their release date or at the time the data was pulled.

Table 3 also provides a bivariate analysis of the proportion of those cases released compared to those not released. Bivariate analyses are used to determine if there are relationships between two measures, and do not account for other factors when gauging that relationship. The column furthest to the right shows the associated *p* value with the chi-square or t-test, which tests for statistical differences between the group released and those not released. These *p* values provide an indication of strength of evidence against the null, being no relationship.¹⁴⁶ As *p* approaches zero, there is a greater likelihood that there is a significant relationship between the row measure, and release. From Table 3, there are several differences to highlight – Race/ethnicity, age/time-served, OJD circuit of conviction, and other convictions the individual has in addition to the index crime (i.e., the crime for which the person is incarcerated).

First, incorporating 722 LWP cases (first release in 1995), Hispanics make up a significantly lower percentage of parolees (6.5%) than those denied parole/not released (15.6%, *p* = .013). Black individuals also comprise a lower percentage of those released (9.4%) than not released (11.4%), but to a lesser extent (*p* = .536). In contrast, White adults make up a notably higher proportion of

¹⁴⁶ Cumming, G. (2010). Understanding, teaching, and using *p* values. International Conference on Teaching Statistics. Cumming, G., & Calin-Jageman, R. (2016). *Introduction to the New Statistics: Estimation, Open Science, and Beyond* (Reprint edition). Routledge.

parolees (76.6%) than those who are not released (67.5%, $p = .059$). This suggests that there may race/ethnicity may be an important factor in the likelihood of release. Race/ethnicity has been found to be a significant predictor in some analyses of parole board release decisions in other jurisdictions,¹⁴⁷ but not in others.¹⁴⁸

Table 3. Descriptives of life with the possibility of parole CJRC data

	Total	Not Released	Released	χ^2 or t P
<i>Sample N</i>	722	615	107	
Male	92.0%	92.2%	90.7%	.588
Race / Ethnicity				
Asian / Native Amer. / Pacific Isl.	5.8%	5.5%	7.5%	.427
Black	11.1%	11.4%	9.4%	.536
Hispanic	14.3%	15.6%	6.5%	.013
White	68.8%	67.5%	76.6%	.059
Avg age at conviction (standard deviation, SD)	38.3 (10.1)	40.9 (8.3)	23.0 (3.5)	<.001
OJD Circuit of Conviction				
Lane	9.3%	9.1%	10.3%	.699
Marion	13.9%	15.0%	7.5%	.039
Multnomah	23.7%	21.6%	35.5%	.002
Clackamas	6.7%	7.2%	3.7%	.190
Washington	9.8%	10.6%	5.6%	.112
All others	36.7%	36.6%	37.4%	.874
Additional convictions at index				
Other violent offenses (e.g., assault)	15.9%	16.4%	13.1%	.384
Murder or manslaughter	7.9%	8.9%	1.9%	.012
Rape / sexual assault	1.8%	2.0%	0.9%	.465
All other (e.g., property)	22.7%	22.1%	26.2%	.356
Avg years incarcerated (SD)	14.8 (8.7)	13.4 (8.4)	22.7 (6.8)	<.001

Second, and unsurprisingly, there is a clear, significant relationship between age, time-served, and release. The average age at conviction is substantially lower among those who are released (23.0) compared to those not released (40.9, $p < .001$). This coincides with time-served, which is significantly related to release. As expected according to law (e.g., mandatory minimums and truth-in-sentencing efforts of the 1990s), and according to prior scholarship (e.g., Morgan & Smith, 2008), those who serve more of their sentence are more likely to be released. In this sample, those who were released served an average of 22.7 years (standard deviation of 6.8 years) which was significantly more of those who were not released (13.4 years, $SD = 8.4$).

Interestingly, two OJD circuits stood out as having a relationship to release at the bivariate level – Circuit 3 (Marion County) and Circuit 4 (Multnomah County). Specifically, those convicted in Circuit 3 comprised a significantly smaller proportion of releases (7.5%) than those not released (15.0%, $p = .039$). This is interesting because this circuit is one of the largest contributors of cases in this dataset, second only to Circuit 4, which yielded the opposite relationship, making up a greater proportion of releases (35.5%) than non-releases (21.6%, $p = .002$). This suggests that

¹⁴⁷ Huebner, B. M., & Bynum, T. S. (2008). The Role of Race and Ethnicity in Parole Decisions. *Criminology*, 46(4), 907–938.

¹⁴⁸ Morgan, K. D., & Smith, B. (2008). The Impact of Race on Parole Decision-Making. *Justice Quarterly*, 25(2), 411–435.

the county of conviction may be important in how a potential-parolee is released. Discussions with parole board members (past and present), suggest that this may be due to how involved a District Attorney's office is when it comes to objecting to a person being released on parole. If a Deputy District Attorney (DDA), or even the original prosecutor of the case, comes to argue on behalf of the victim and the state, then that may have more weight with some members. On the other hand, other board members (past and present) cautioned that there are a multitude of factors that are considered in these decisions, and the DDA's statements are just one, smaller part.

Finally, people who were convicted of other violent crimes (particularly murder or aggravated murder) in addition to the most serious crime made up a much lower percentage of those released than those not released. Similar to the observation on age and time-served, this is not surprising given that a primary concern of the Board is public safety, and multiple violent crimes/convictions weighs heavily.

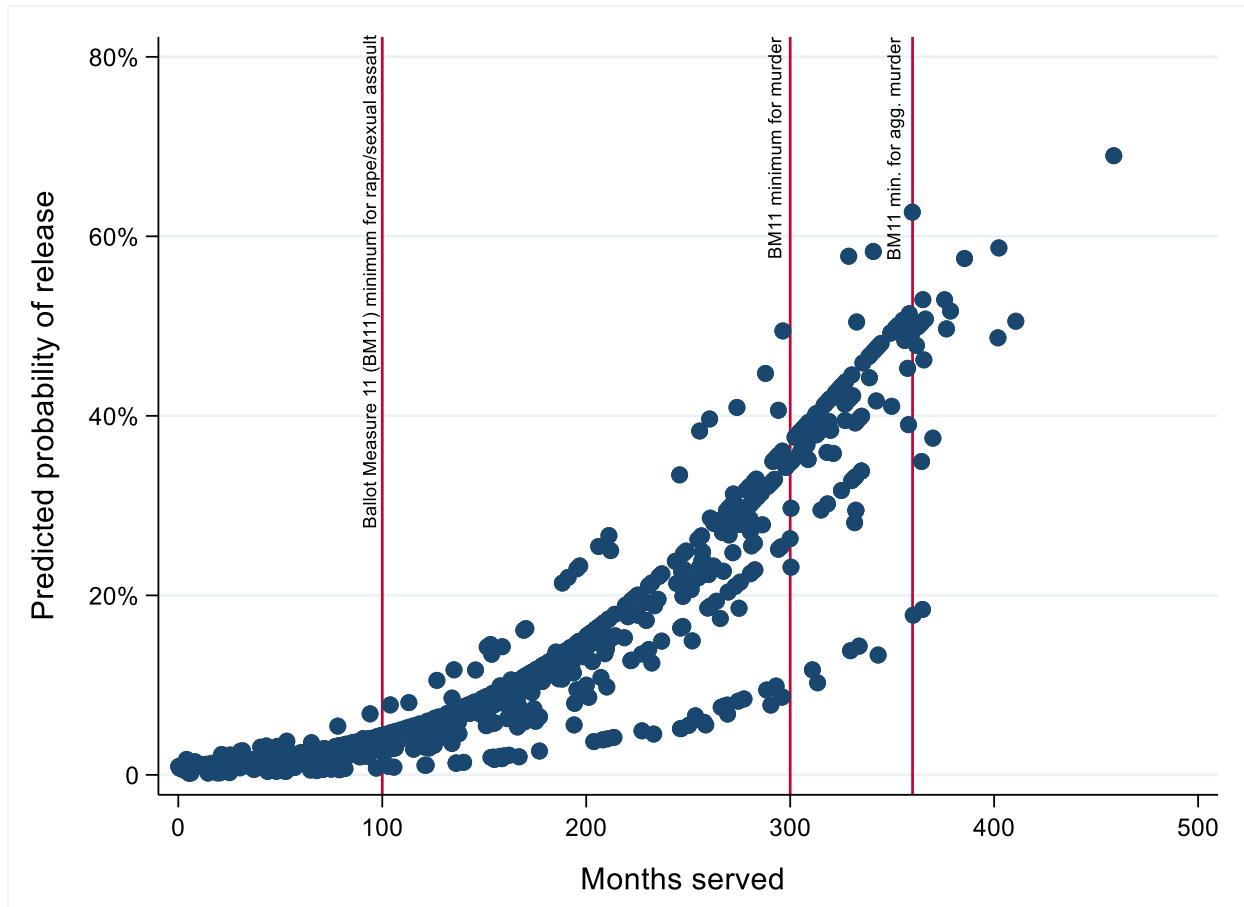
Complex relationships. To further examine the relationships discussed above, binary logistic regressions were used to test the relationships while holding other measures constant. In other words, the regressions allow us to know if the relationship between time-served and the likelihood of release still holds when we account for other things, such as sex of the AIC. The models included five measures: Sex, race, months served and its quadratic, and the type of additional convictions.¹⁴⁹

The regressions revealed that after accounting for other factors available in this dataset, two measures stood out as the most predictive of release – additional convictions for murder, manslaughter, or rape, and months served. Specifically, being convicted of an additional violent crime decreased a person's odds of being released by 79.9% (odds ratio = .201, $p = .023$), compared to having no additional convictions. In terms of time-served, the models indicated that for every month incarcerated, the odds of release increase by 1.7% (odds ratio = 1.02, $p = .010$), or when tested as years it equates to a 22.4% increase for each year incarcerated (odds ratio = 1.22, $p = .006$).

Figure 3 plots the predicted probability of release for each case given the values of the five measures in the model. Reference lines have been added to show where Ballot Measure 11 (BM11) mandatory minimum months are set for rape/penetrative sexual assault (100 months, 8.3 years), murder (300 months, 25 years), aggravated murder (360 months, 30 years). Although the majority of the cases released were sentenced prior to BM11 taking effect, the minimum range provides a good estimate of likely parole-eligibility marks for each case, given the most serious conviction. This graph shows that there appear to be some tracks that diverge around 150 months (12.5 years) to 200 months (16.7 years). These deviations suggest that some subgroups may possess different probabilities that may influence their likelihood of release.

¹⁴⁹ It is worth noting that multiple regressions were tested. The tests include those with 50 bootstrapped replications of the standard errors and with inverse probability weights to account for the sparsity of releases (14.8%) in the data. All models fit the data well according to standard diagnostics (e.g., Hosmer-Lemeshow test), and the pseudo R^2 ranged from .20 to .25.

Figure 3. Baseline predicted probability of release by months served



To dig slightly further into the potential differences between groups, a measure was created that captures the simulated estimate of likely parole-eligibility date for each case, given the most serious conviction (i.e., captures the reference lines shown in Figure 3). The new measure (simulated months to parole eligibility), and its quadratic, were included in three logistic regressions testing each interaction with the categorical measures (sex, race/ethnicity), and additional conviction types. The relative predictive accuracy of each model was then assessed using the saved predicted probabilities and a receiver operating characteristic area under the curve statistic (AUC), which provides an estimate of accuracy. An AUC of .5 suggests a scale or model is about 50% accurate in predicting a given binary outcome (e.g., release), which is no better than a coin-flip. According to disciplinary standards of predictive accuracy, an AUC of .556 to .639 are relatively weak, .639 to .714 is moderately strong, and anything over .714 is strong.¹⁵⁰ Table 4 provides each model’s AUC and the relative strength compared to the other three models using the simulated parole date.

¹⁵⁰ Rice, M. E., & Harris, G. T. (2005). Comparing effect sizes in follow-up studies: ROC Area, Cohen’s d, and r. *Law and Human Behavior*, 29(5), 615–620.

Table 4. Comparison of relative predictive accuracy of months to simulated parole date

Model	AUC	1 <i>p</i> value	2 <i>p</i> value	3 <i>p</i> value
1. Months to simulated date (M-SD), only	.794	-	-	-
2. Sex * M-SD	.798	.337	-	-
3. Race/Ethnicity * M-SD	.805	.068	.283	-
4. Additional Conviction * M-SD	.812	.030	.107	.506

Each of the model AUC statistics shown in Table 4 indicate that they all have a strong degree of accuracy in predicting release. The first thing to highlight here is that the AUC for the model using *only* the simulated months to projected parole date measure and its quadratic, predicted release with 79.4% accuracy. This is rather remarkable because this is a measure constructed solely from the BM11 statute. It does not account for any of the 10 factors the Board is required to evaluate (OAR 255-032-0020), nor does it account for the three major factors used in exit interview decisions.

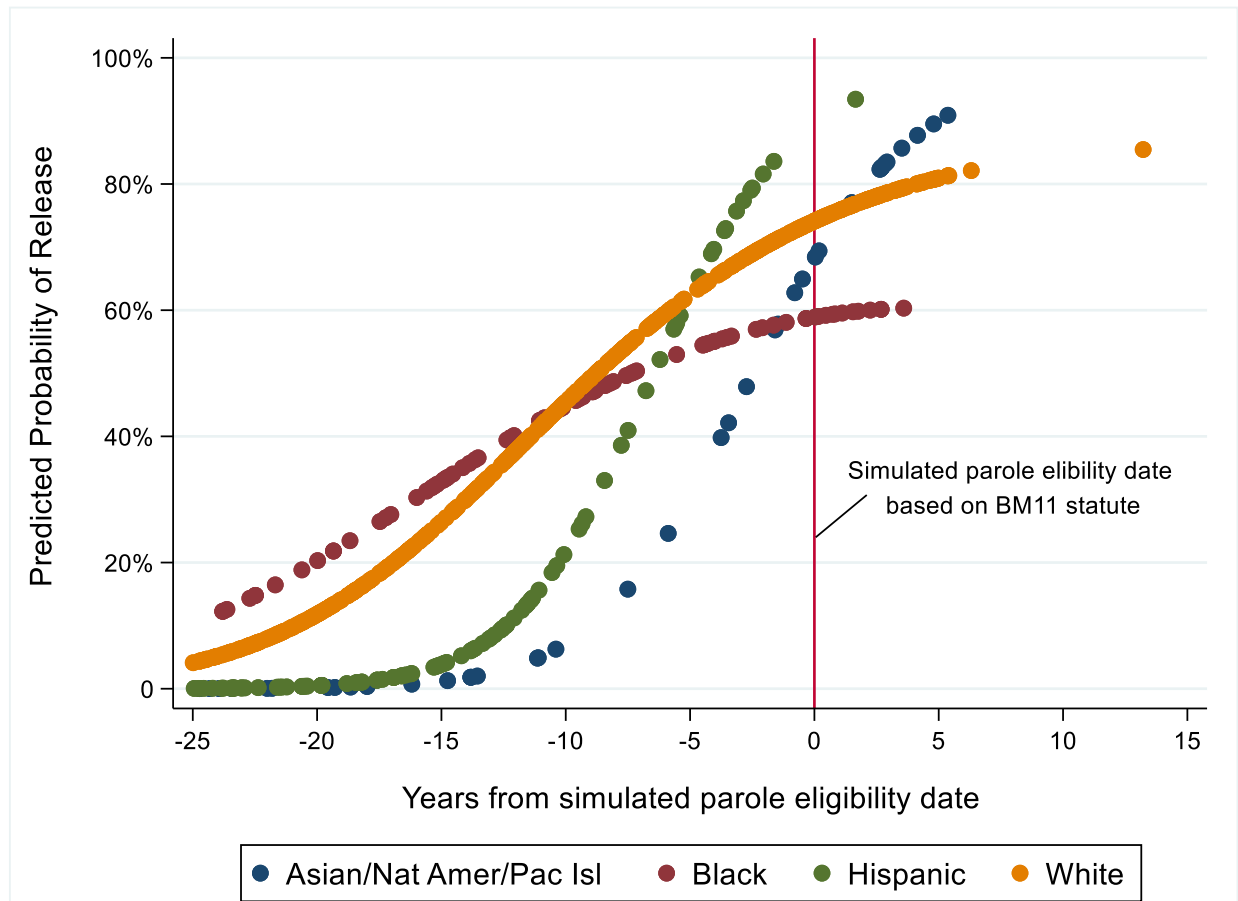
When examining the other three factors in conjunction with the months to simulated date measure, the models become incrementally more accurate, albeit in varying degrees. Including sex as an interaction with the months measure, the accuracy only slightly increases from .794 to .798 ($p = .337$). Including the parole-eligibly/parolee race/ethnicity interaction increases the model's accuracy to 80.5%, which is a statistically notable change ($p = .068$). As expected, the largest increase to 81.2% was interacting with the additional conviction type.

Next to the noted strength of the simulated measure, the most notable aspect of Table 4 is the importance of race/ethnicity in predicting release when interacting with the simulated measure. These findings suggest that across all the observed releases from 1995 to 2019, race/ethnicity may have some degree of influence in the relative release decisions. To capture how the race/ethnic groups differ in their predicted probability of release, the race/ethnicity model (Model 3 in Table 4) is plotted using years instead of months and shown in Figure 4, below. The different lines in Figure 4 depict each racial/ethnic group's baseline predicted probability as it relates to the simulated time to parole-eligibility date measure. The reference line place at the x-axis value of zero, signifies the simulated parole-eligibility date. Negative values to the left of zero signify months/years before the simulated date. For example, a value of -5 would mean five years prior to the simulated parole eligibility date.

The figure shows that while all subgroup probabilities of release increase as they approach the simulated parole eligibility date, there appear to be different probability patterns by race/ethnic subgroups. White AICs have a clear, smooth trend beginning near zero at 25 years out from the simulated date and incrementally increasing as they approach the date, especially between 15 and five years out, and then peaking at around 80% five years post the simulated date. In a more emphasized increase, AICs who are of the Hispanic and Asian/Native American/Pacific Islander subgroups follow a similar trajectory to one another in terms of their predicted probability of release – virtually zero probability between 25 and 15 years out, and a steep increase in the probability around five years out, and peaking about two to five years after the simulated date. Perhaps most notable here is the trend of Black AICs, which has a more tempered arch, with a steady, but less dramatic increase in the probability of release, and peaks around 60% in the few

years following the simulated date. It is important to note that this does not mean a specific Board cohort or members were expressing overt bias. Rather, the trends and captured cases over time suggest that the processes and expectations that create the foundation of a Board’s decisions appear

Figure 4. Baseline predicted probability of release by race/ethnicity
to truncate the probability of release for certain racial/ethnic subgroups.



In working with the Board to ensure the accuracy and scope of the findings, we were sent more recent hearing information capturing hearings, which help to contextualize the recent efforts made by the current Board cohort. From January 2019 through September 2022, the Board sat on 302 hearings with the majority split across three types: 42.7% being Exit Interviews with a psychological evaluation, 27.5% being Murder Reviews, and 11.9% being Parole Consideration hearings. Just under 200 (196) individual petitioners populated the hearings, consisting of 15.8% Black petitioners, 3.1% Hispanic, 5.1% Indigenous, and 75.5% White. Since 2019, it appears as though the probability of release for Black petitioners may have increased. In this recent dataset, 58.1% of Black petitioners were released which is slightly higher than that of White petitioners (52.7%). Moreover, the proportions of the hearing populations remain constant if not slightly greater – Black petitioners make up 17.8% and White petitioners make up 77.2% of all releases.

Before concluding anything from this most recent data pull, we must highlight that these data are different from those analyzed in Figure 4. While they are capturing a similar population,

they were not pulled in the same way or even capture the same cases. As a result, we cannot say that these new data negate or replace the conclusions made above regarding Figure 4. Furthermore, the analyses used above are more robust than the descriptive analysis used in these last two paragraphs. That being said, we can conclude two things. First, it appears that the most recent Board cohort has improved the proportional probability of release for Black petitioners as they now slightly outpace their proportion of the hearing population (17.8% compared to 15.8%, respectively). Second, when juxtaposed with the analysis from the historical trends, the efforts of the most recent Board cohort are a clear demonstration that decision-making are susceptible to member turnover. If the probability of release for a subgroup can change to a meaningful degree within the span of a cohort change, then the process and decision-making protocols is unlikely to be consistent from cohort to cohort; thus, highlighting the volatility of a process that needs further codification.

Qualitative Analyses of the Board's process, decision-making, and influences

Sans the Board's documentation and more complete data on those released versus denied, there are a number of topics that arose across the interviews of parolees, AICs, past/present Board members, and victims' advocates. In order to unpack discernable differences across release decisions, one area to examine is the criteria used by the Board to make such decisions. Among the five primary hearing types (prison term, murder review, prison term reduction, parole consideration, and exit interviews), the Board must address some question regarding if the AIC has actually been rehabilitated. Thus, any patterns that may be observed in releases or decision-making likely stems from the interpretation of rehabilitation and the accompanied criteria.

To address any question related to rehabilitation, there are a number of aspects the Board must consider, most of which are laid out in OAR 255-032-0020 detailing the purpose of a murder review hearing. Recall that the aspects include:

1. The AIC's involvement in correctional treatment, medical care, educational, vocational or other training;
2. Institutional employment history;
3. Institutional disciplinary conduct;
4. Maturity, stability, demonstrated responsibility, and any apparent development in conforming personality;
5. Past use of narcotics or other dangerous drugs including alcohol;
6. Criminal history;
7. Conduct during prior probation or parole;
8. Having a mental or emotional disturbance, deficiency, condition or disorder predisposing them to be a danger to the community;
9. Adequacy of the AIC's parole plan (e.g., community support from family, friends, treatment providers), as well as residence, neighborhood or community in which the AIC plans to live; and
10. A reasonable probability that the AIC will remain in the community without violating the law or the conditions of parole.

Although each of these are explicitly for murder reviews, for the most part they are the criteria often considered regardless of the hearing. Some additional criteria are included for other hearings like the exit interviews where the Board is expected to consider the psychological evaluation for

which the Board pays to have done for each AIC by a Board-appointed psychologist months before the hearing.

In many ways, each of these listed are rather straightforward. Indeed, at first request to interview past/present members of the Board, the solicitation was met with the following email response: “After talking with the Board Members they are not interested in participating with in an interview. The laws and rules the Board follows related to their release decisions can be found in ORS 144 and OAR 255.” Certainly, the governing rules are extensive in areas, and outline many aspects of decision-making. However, if there was no room for subjective thought and interpretation of these criteria, in particular, there would be no need for a Board or hearings as it could be an automated process. After discussions with the Board about the purpose of the study, both past and present members were more willing to discuss these criteria and the subjective interpretation of them among many other things. Similarly, both AICs and individuals recently paroled were asked similar questions about how decisions are made and the criteria used.

Everyone interviewed (members, AICs, parolees, and advocates alike) recognized that part, perhaps the largest part, of the Board’s purpose was steeped in public safety. Ensuring, to the best of their ability, that those who are considered for release are not released until the risk to the public is minimal by way of rehabilitation efforts.¹⁵¹ Interviewees indicated that the manner in which the Board concludes release or denial for two or more years (colloquially known as “flopping”) seems to lean on three themes: (1) clarity in criteria, (2) fairness and consistency, and (3) socio-political pressures.

Clarity in criteria

Interviewees were largely in agreement that the Board has come a long way in transparency and clarity regarding how it makes decisions. Past Board cohorts and policies would leave both the AIC and the victims largely “in the dark” about how the hearings were structured, how decisions were made, what the next steps were, and why they were happening. With that being said, all interviewees noted that there is still a lot of work to be done. Transparency in decisions in the context of the Board can be understood as referring to the explanations that might accompany hearing conclusions. The AIC and victims typically receive some form of documentation about the decision, however, both parties have indicated that what is provided generally leaves a lot to be desired. Specific issues in transparency were raised with knowing the criteria being used prior to the hearing, and how such criteria were ultimately interpreted before participating in the hearing.

On the surface, we might expect that AICs would be the most critical of the Board, and transparency related to the criteria used. While those AICs interviewed were indeed critical, they were not without recognizing a number of important issues when it comes to the Board’s purpose and criteria used. For instance, AICs highlighted how the job of a Board member is particularly

¹⁵¹ Although the interviews did not touch on compassionate release explicitly, interviewees did bring it up as a point that ought to be a point of reform for the Board. For instance, one past/present member highlighted this directly, stating “I do agree that the Board’s limited authority on medical releases needs to be reformed. So, for those who are truly incapacitated, not able to care for themselves, and/or maybe near the end, creating a better process to move those individuals out of prison and back into the community. DOC provides the same standard of health care as everyone in the population, but they are not a nursing facility. They are not designed for all levels of care that some people may need. So, I do think that system needs to be changed. Only about one person a year gets released, while many die in custody who pose no risk to the community, but the DOC spends great amounts of time, energy, and money to care for them only for them to die in prison. They probably could have been more comfortable, and spent that time in a facility better equipped for that, and maybe even with family.” (25 years of experience working in criminal justice)

difficult, and that the onus of rehabilitation is largely an internal process for the person going before the Board.

Murder is about as devastating of a crime as there is and it hurts a lot of people so there are some political elements in their decision. If someone shows that they're not going to be a risk to the community but the victim's family shows up and says that they don't want the AIC out, I feel like the Board is inclined to not let the AIC out. As far as determining if someone is rehabilitatable, it's a tough decision. (White AIC, over 50 years old, experienced one hearing before the Board, incarcerated over 25 years)

It's our burden to provide proof that we're rehabilitated. I take that very seriously. If I'm willing to do the work, hopefully they're willing to see that I have changed. It's so important to show that you're willing to do the work. It took a lot of years for me to figure out what I did what I did. It took a lot of classes and digging on a personal level to figure out why I did what I did. (White AIC, over 45 years old, experienced one hearing before the Board, incarcerated over 25 years)

However, interviewees could not speak about the Board making difficult decisions without also noting concern over the criteria used. Concerns over transparency in criteria and decisions were apparent in the way AIC thinks about the Board. As AICs highlight, the potential that the Board may not be using the criteria in the ways expected is both possible and too disconcerting to consider, and instead finding some solace in the belief in a just world and system.

It's kind of hard to say what's going on in another person's mind, but I think that it's a very serious decision and if they make the wrong decision there are potential victims who will suffer from the result. I think they do as much as humanly possible to be fair, but I also feel like in anything involving human beings there are going to be errors. We can't separate our own internal bias and perceptions of the world from decisions that we make, they are as much a part of us as our arms and legs and anything else. I don't think the process is perfect, but I think that they work they try to be as fair as they can possibly be to all parties. [Interviewer] Why do you think that? Because that's what I hope. I would hope that the individuals in these positions aren't just making arbitrary decisions, based on whether or not they like the people sitting in front of them. It's part of our justice system, and I choose to believe that people will tend to be more fair than not. It doesn't really do me any good to think otherwise. (White AIC, over 50 years old, experienced one hearing before the Board, incarcerated over 35 years)

Parolees also emphasized the Board's purpose being an important one of public safety generated via rehabilitation. Although, common points of skepticism and confusion were identified as to how the Board reaches the conclusion about what it means to be rehabilitated. Parolees and AICs noted that the reasons for the person's recent release or deferment were not only unclear, but with seemingly little emphasis placed on the rehabilitative efforts made:

When you go to prison, you have some choices to make, you know. Do I want to better myself in the hopes of getting out of prison and being a member of the community again? I was told when I was first incarcerated, "you do everything you're supposed to do, and you'll be out in 20 years." So, I did that. I dove right in. I went to college. I got vocational trades. I learned marketable job skills. I had

a couple hiccups. Nothing major along the way. But, I really did things to change me. I did programming, cognitive, anger management, you know, all that stuff. And, when it came time to see the Parole Board, it's like none of that mattered, ya know? I feel that they don't always weigh everything. A lot of it falls back to the crime, then you're put back on trial again. Between the [last two times] I went to the Board, nothing changed in my life except that I did two more years in prison. (White parolee, over 55 years old, experienced five hearings before the Board, incarcerated over 30 years)

From my personal experience and from what I've heard from other men who have been to the board, they kind of seem to harp on crime. At least that's what they did with me, and that's what I've heard from other people as well. When I went to the board, it wasn't really a matter of what I've done to better myself, my plans to get out of prison, it was more going over the facts of my case. (Latino parolee, over 40 years old, incarcerated over 20 years)

Other parolees emphasized confusion and frustration over not really understanding why the Board released them in spite of being successful. Particularly highlighted by those released were passed experiences at hearings where they felt attacked in questioning, and as a result, they would feel as though they were giving up hope.

Similar concerns about transparency in criteria were shared by victim advocates. For instance, one advocate explained how victims rely on the information they are provided by the Board, but that such information is not readily accessible or clear.

For the victims that do participate in the hearings, I think it is important for them to know that there are certain things that the Board is looking for. [Interviewer] Do the victims or victim's family know what the Board is looking for? No. Usually, they don't. That is one area that the Board has improved on, is their transparency with the victims. Not too long ago, it was hard to get information out of the Board, and it was really hard for victims who were unrepresented to get information. There were times in which the Board would hold hearings and the victims wouldn't even be notified. If the victim calls the Parole Board, they can get more information because they do have a victim advocate there, but it takes a very proactive victim to get that. (Victim advocate)

Clarity for both victims and AICs are not only critical to provide so each party to understand a process of the justice system, but it is also critical to ensure that the process is viewed as legitimate. Social science has long demonstrated and established that transparency and clarity in decision-making have profound impacts on the legitimacy of a public institution.¹⁵² The Parole

¹⁵² Bottoms, A., & Tankebe, J. (2012). Beyond procedural justice: A dialogic approach to legitimacy in criminal justice. *The Journal of Criminal Law and Criminology*, 102(1), 119–170.

Casper, J. D., Tyler, T. R., & Fisher, B. (1988). Procedural Justice in Felony Cases. *Law & Society Review*, 22, 483–508.

Dollar, C. B., Ray, B., Hudson, M. K., & Hood, B. J. (2018). Examining changes in procedural justice and their influence on problem-solving court outcomes. *Behavioral Sciences & the Law*, 36(1), 32–45.

Franke, D., Bierie, D., & Mackenzie, D. L. (2010). Legitimacy in corrections. *Criminology & Public Policy*, 9(1), 89–117.

Board is one such entity that must rely on this relationship more so than others in the justice system because it is well after the adversarial court process and the notorious slow process of reforming Board mechanisms generally.¹⁵³ Such perceptions are closely linked to those of fairness and consistency.

Fairness and consistency

To a large extent, weaknesses in transparency can both lead to and be exacerbated by weaknesses in fairness and consistency. In order to ensure that involved parties accept the process as being fair and consistent, there must be transparency in decision-making. On the other hand, in order to ensure that discretionary decisions made via a systematic process are indeed fair and consistent, there must be a clear and transparent way to document them to demonstrate that they are based on the statutory criteria manifested in explicit ways within the case. Relaying the degree to which decisions fair must be accomplished through exemplifying consistency in the criteria that are made clear, especially in a prison setting. This notion of relaying fairness through consistency has been demonstrated in various studies on prisoner perceptions of officials, disciplinary proceedings, and punishment.¹⁵⁴

As discussed in the following section related to the survey findings and Goal 2, many of those who have and have not experienced hearings, have significant concerns over fairness in particular. This was apparent among interviewees as well, where the lack of fairness was expressed in terms of the criteria being considered:

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- ¹⁵³ Caplan, J. M. (2012). Protecting Parole Board Legitimacy in the Twenty-first Century: The Role of Victims’ Rights and Influences. *Victims & Offenders*, 7(1), 53–76.
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- ¹⁵⁴ Beijersbergen, K. A., Dirkzwager, A. J. E., Eichelsheim, V. I., Van der Laan, P. H., & Nieuwbeerta, P. (2015). Procedural justice, anger, and prisoners’ misconduct: A longitudinal study. *Criminal Justice and Behavior*, 42(2), 196–218.
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- Bickers, I., Crewe, B., & Mitchell, R. J. (2019). Offender Supervision, Prisoners and Procedural Justice. *The Howard Journal of Crime and Justice*, 58(4), 477–495.
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- Reisig, M. D., & Mesko, G. (2009). Procedural justice, legitimacy, and prisoner misconduct. *Psychology, Crime and Law*, 15(1), 41–59.

[Interviewer] How fair do you think the Board is in making their decisions? *Not really fair. There's no concept of fairness. They're plenary. They damn near do what they want to do. It's all so subjective. Parole Boards have very little oversight. Prisoners don't have a constitutional right to early release, but Oregon creates liberty interests, so Oregon Parole Board can and should be held to a different standard.* (Black parolee, over 40 years old, experienced four hearings before the Board, incarcerated over 25 years)

I feel they're very poor at it. I was paroled [a few years ago] but was brought back for a [low level technical violation] sanction after 18 months. I got [multiple] years back in prison about that. If I was on post-prison supervision, would've only gotten 5-10 days. (Native American AIC, over 55 years old, experienced more than 10 hearings before the Board, incarcerated over 30 years)

The lack of fairness was also expressed among interviewees discussing the Board's expectations related to communication. One of the more frustrating issues among those who experienced multiple hearings was the difficulty they had in “articulating their rehabilitation” or “demonstrated insight” for the Board. These are common aspects the Board expects of all AICs at hearings in order to be successful. According to Board members,

“Demonstrating insight” typically means that the AIC can articulate the lessons they have learned through institutional programming. For instance, if the AIC has taken anger management class, the Board would expect them to be able to articulate something they learned from the class. It also means that the AIC can demonstrate a baseline level of remorse for the harms they have caused, show empathy for others, and take accountability for their past crimes. The Board also understands that different crimes can involve different degrees of culpability for the defendant, and there may be variations in language and cognitive abilities of AICs who appear before the Board, and we strive to take those issues into consideration when we deliberate cases. (Past/present Board member)

All interviewees discussed how “articulating their rehabilitation” or “demonstrated insight” were both critical in the process and yet very difficult to achieve, often due to poor communication skills.

At some point it's important and believes that it's important to articulate what you did and how you got to the point you did to show that you wouldn't do it again. But at the same time, the Board has a record of everything you've done and not everyone has the ability to speak in front of a panel of people. When you can't communicate that, it can make them feel like they don't know what to say. It feels like this shouldn't be something you have to practice—the Board makes it feel like if you don't practice, you're going to fail. (White AIC, over 55 years old, incarcerated more than 30 years)

[Interviewer] How important do you think it is to articulate your rehabilitation to the Board? *Man, that's vital! There's nothing more important. You know?*
[Interviewer] What about what it means to “demonstrate insight” on your offense? *I know what it means to me. It's reflected in how you live. Like the lessons you learn from the destruction that you cause, that I caused, you know, I learned a lot of lessons. [...] I've grown into a person who regrets the harm I've caused in the past,*

but understand that there's nothing I can do about it to change it, but I can do good from this moment forth. And that's an insight that demonstrated it. But, [demonstrating insight] an obscure fuckin term for them, it could be anything. It's 100% subjective, and the Board has discretion to make subjective decisions all day long. [Interviewer] And how would you describe your communications skills? Uhhh poor. You know, room for improvement. (Black parolee, over 40 years old, experienced four hearings before the Board, incarcerated over 25 years)

When considering the importance of “articulating rehabilitation” and “demonstrated insight,” the potential that having poor communication skills may impact the fairness of hearing outcomes is plausible. The issue was posited to past/present members to gauge their thoughts on the matter. Interviewees indicated that it is certainly possible that poor communication skills could influence decision-making and therefore impact fairness and consistency.

I can certainly see how they would be at a disadvantage. It is incumbent on me, as a Board member, that if the question I was asking wasn't answering the question I wanted answered, then I needed to rephrase that. For some of our individuals who come before us, I would recognize very quickly that I wrote my questions at a 12th grade level, and I need to reduce them to a 3rd grade level. And to break them apart. And not to ask three questions on top of one another. It's hard enough for some of us to track. (Past/present Board member with over 20 years of experience in criminal justice)

Others noted that such a disadvantage is not only plausible, but may actually be present among more cases than just those who may be intellectually disadvantaged. Such instances seem to involve more privileged individuals exhibiting a sense of entitlement. One interviewee explained that this is likely because other important characteristics that ought to be exhibited during the hearings were related to being vulnerable and showing humility:

The other thing is, to be more successful before the Board, requires accommodation of humility and vulnerability, and AICs have pointed this out before because humility and vulnerability are not good things to show in a custodial environment. I can understand that. I can wrap my mind around that. Sometimes people how had more education, were more successful, were of a non-minority racial culture, really struggled with the Parole Board. They were incredibly entitled, and they had a mother who was a lawyer and a father who was a doctor, and maybe they were now in their 50s, and they had a career. It galled them that anyone could hold them accountable, or that they could be in this position. (Past/present Board member with over 15 years of experience in criminal justice)

Past/present members also indicated that issues in fairness and consistency, particularly among the “demonstrating insight” disadvantages, might be remedied via two efforts: Making sure that both sides have some form of representation, and requiring key trainings for the Board. In terms of representation, interviewees (AICs, parolees, members, and advocates alike) were all in agreement that attorney representation and/or support partners were a critical factor to help people navigate the process and communicate their thoughts and concerns.

I also see how for individuals who struggle to communicate, or are dealing with disability, that's where an attorney can be extremely helpful. Or that's where the AIC would bring someone else out to coach them or talk for them. I think that is a

really important piece. (Past/present Board member with over 15 years of experience in criminal justice)

The role of an attorney can be very important in helping the AIC tell their story, prepare for the hearing, highlight the AIC's accomplishments, inform the Board about what factors to focus on, provide explanations for why certain factors should not weigh against the AICs that may not be apparent from the record, help the AIC gather information for the hearing, and be a voice for the AIC if they get flustered during a hearing. (Past/present Board members with over 30 years of experience in criminal justice)

Certainly, there are a number of individuals who, especially if it is their first hearing, can come across very defensive. A good attorney can help redirect their response. [The AIC] can be argumentative with the Board, and they could use someone on their team to say, "Can we take a time out? I need to talk to my client for a second." And as a board member, you're saying "Absolutely." Because you know that if it continues the way it's going, this individual doesn't stand a chance. And that doesn't always have to be an attorney. I think it is good to have a support person there. The support person can give us a description of a person from a different lens. Sometimes it's another AIC, saying "this person has been my cellmate for the last 15 years, no one knows me better than he does." And that can be really helpful. (Past/present Board members with over 20 years of experience in criminal justice)

In terms of training, multiple interviewees suggested that more training would benefit the Board to increase fairness/interchangeability across cases, and to increase consistency. For instance, past/present members discussed how there is no standardized training beyond administrative functions necessary to serve as a member (e.g., understanding and using the DOC data system). Any additional training is at the discretion of the Board's chair. There have been past member cohorts whose chair required that all Board members engage in a training provided by the [National Institute of Corrections](#). Such trainings have since become online, and familiarize members with common philosophies and approaches used by Boards across the nation. Other trainings could be considered that cover how more actuarial risk assessments (e.g., LS/CMI) could be integrated into decision-making, and/or how rehabilitation (specifically cognitive behavioral therapy) works to change human behavior. These types of trainings are available through organizations (e.g., [Center for Effective Public Policy](#)) that partner with or are recognized by the National Institute of Corrections or the Academy of Criminal Justice Sciences, could provide updated information on the science behind rehabilitation and associated metrics.

Beyond trainings related to key functions of the board, other trainings were mentioned that may benefit everyone involved in Parole Board hearings. Every violent case that comes before the Board is quite tragic and impactful. Each deep with trauma shouldered by the victims, the AIC, and via second hand, the Board as well. Multiple interviewees recognized that trauma-informed training would substantially help the Board in how they improve the consistency in their approach and questioning of AICs and approach to victims.

I also think that it is important for the Board to be very trauma-informed in their proceedings and their questioning. Typically, we would think about that as just for the victim or the victim's family who is there for the hearing, which is important.

But this is also important for the person coming before the Board. It's extremely stressful. The Board has the ability to defer a person for between two and 10 years. I don't know of anything that I've ever faced in my life, where it's a matter of how I answer today could have a ten-year impact on my life. That's a little stressful to think about. So, being very clear in our articulation of the questions and be very direct when the question is not being answered. Board members need to be creative in their approach. So, a disadvantage for someone who can't clearly articulate, yes. But a greater responsibility for the Board member to find ways to get ways to get the same information. If it can't be obtained directly from them, then to seek it out elsewhere. (Past/present Board members with over 30 years of experience in criminal justice)

[Interviewer] Do you feel like there is any place for the Board to have a mandatory trauma-informed care training? *I think they should. Their interactions with the victims are pretty limited. I think it would be really good for them to have an understanding of the trauma and impact that something like a homicide has on families for generations. And understanding the nature of that kind of trauma. There is evidence that their brain is permanently changed from that kind of trauma. I think it is important that anyone dealing with victims, even to the limited extent that the Board does, to understand that. I think there should be training there for the Board to understand how this trauma may have affected them. It is also probably pretty traumatic for the Parole Board. I think they could probably use that training to help cope with secondary trauma as well. (Victim advocate)*

Perceptions of fairness and consistency became a central part of discussions with all interviewees. In some ways it was expected that fairness was one of those central areas, because two of the 15 to 16 questions asked to each interviewer were questions about fairness specifically. Consistency was only alluded to in one question asking about interchangeability in decisions – essentially, whether similar approaches and elements are considered the same way for similar cases.

In an effort to address the shortcoming of a lack of trainings, the current Board cohort makes a concerted effort to have more trainings and to make well-informed, evidence-based decisions. They frequently attend and present at practitioner and academic conferences (American Parole and Probation Association [APPA] and Association of Paroling Agencies International [APAI]) to stay up-to-date with best practices, including on issues related to disparate outcomes among racial subgroups by connecting with organizations that offer trainings and discussions of best practices (e.g., Center for Effective Public Policy's [National Parole Resource Center](#)). Another example is "Trauma Informed Tuesdays" which is a webinar put on by APAI for all members, where the Board and staff sign in to an informative discussion or presentation about trauma. Additionally, they attend (and at times present at) conferences, workshops, and trainings related to several salient topics for the Board.¹⁵⁵ These steps are admirable and consistent with a

¹⁵⁵ These topics include, but are not limited to: What is Meaningful Review? Considering Children Sentenced to LWOP (very timely discussion given the passage of Oregon SB 1008); Offender Risk: Necessary but Insufficient for Understanding Parole Suitability (a review of risk assessments and parole decision-making); What is Discretionary Parole for Lifers...An International Comparative Analysis (a review of international variations in discretionary parole board processes for evaluating persons serving life-term sentences); Supervision of individuals who committed sexual offenses; Domestic violence diversion programs; Native American Reentry Programs; Accountable, Independent,

Board focused on best practices. However, the focus of the Board is dependent on the interests and scope of the Board's sitting Chair and who is governor at the time. Codifying this practice and expected trainings into a minimum expectation for all Board cohorts would safeguard against turnover.

Socio-political pressures

Two areas in which fairness and consistency arose that was unexpected, was in questions about the core foundation of the Board's purpose and individual mission of past/present members, as well as in response to a question about things to consider when there is turnover in the Board. Through follow-up questions, it became apparent that the reason for this is because both the purpose/mission of the members as it relates to fairness and consistency can be subjugated by the process of turnover and seating new members, making issues inherently intertwined. Much of that is due to the lack of codified standards that a potential Board member must meet, as well as the lack of on-boarding and ongoing training for seated members.

Members and victims' advocates highlighted how the Board is of course charged with gauging a person's rehabilitative progress and what that means for release. However, an underlying assumption that must be present with a member – there must be a willingness to believe that people who come before you can be rehabilitated, and are therefore releasable because they have served their time and are no longer pose a threat to society. One past/present member indicated that the potential for release is a cornerstone of parole in Oregon.

[Interviewer] What is the purpose or mission for you as a Parole Board member? I think the first part of that answer for me, is that we have a system in Oregon that ensures that just about everyone is going to get an opportunity for release. That's been designed through the parole system, whether we are seeing someone from the 1973 guidelines, the 1982, the '87, '89, the '92 post, a Board member needs to ensure that the statute allows an individual to present themselves and for the Board to make a determination. Each and every Board member must take the time to learn the rules and statutes that apply for a given individual, and what criteria have been outlined and should be considered in making a determination regardless of the hearing type.

Second, and yet equal to that, is the fact that we are part of a larger public safety system. This is about public safety. Certainly, for me as a Board member, the best way we achieve that is through behavior change. So, how are we as a system allowing and creating the opportunity for that change to occur. It can be a challenging balance to determine what change has been done while they are incarcerated, and what's in the community for them to continue that.

If my decision-making had to be based on the question "Are they 100% ready today with no risk?", well then nobody is getting out. Nobody. I would had to vote no on every case. So, it's about understanding that prison and supervision play a combined role in creating that success. As a Board you're trying to recognize have they had enough of one to transition to the other so this individual can continue this progress forward, or have they not taken advantage of their incarcerated time in

order to continue on to “phase 2” if you will, which is the supervised period back in the community. (Past/present Board member with over 20 years of experience in criminal justice)

The Board’s mission is one of community safety, and also to ensure that the correctional system is working as it should and people we are sending to prison are being appropriately rehabilitated and able to be released into the community. Often the makeup of the Parole Board determines how closely they adhere to their mission. In some iterations of the Parole Board, they have clearly thought about community safety as their priority, and other iterations not as much. It is really dependent who is on it at the moment. (Victim’s advocate)

The notion that potential release is a cornerstone expectation that all members should recognize is one steeped in the existence of parole boards in the US dating back to 1870 when the country began using such discretionary release systems.¹⁵⁶ With this in mind, it begs the question – without a codified baseline of minimum qualifications of who sits on the Board, and without a standardized process to train the Board, how can this cornerstone assumption be guaranteed in the transition of one Board cohort to the next? It seems as though the willingness of the Board to consider release, and the manner by which they deliberate on the release criteria, can easily ebb and flow depending on Board membership at a given time. Moreover, the potential of release and the way criteria are considered can be eroded or severely swayed.

By statute (ORS 144.005) a new member is seated through an appointment by the governor, and serves for four-year terms. There is a vetting and interviewing process that has been developed over the years that relies on a hiring committee (which can include current and past members). Such short terms, in a trauma-laden and often publicly-unpopular job, that essentially serves at the pleasure of the governor, sets the stage for turnover to be rather common, and depend on who is in the governor’s office.¹⁵⁷ Turnover and member selection, unaided by standards and training, allow the Board to be influenced by socio-political pressures (e.g., politics¹⁵⁸) due to the (1) selection process for new members, and for seated members (2) concern over maintaining the position among members, and (3) concern over the next job after the person’s term on the Board.

These influences are not lost on AICs and parolees who experience multiple iterations of the Board. Navigating the Board every two years or more, which may be a new cohort, can then be confusing as the expectations and interpretation of the criteria can change with the membership

¹⁵⁶ Christianson, S. (1998). *With Liberty for Some: 500 Years of Imprisonment in America*. Northeastern University Press.

Johnson, R., Rocheleau, A. M., & Martin, A. B. (2016). *Hard Time: A Fresh Look at Understanding and Reforming the Prison* (4th edition). Wiley-Blackwell.

¹⁵⁷ See [Duara, 2013, https://katu.com/news/local/parole-board-reverses-cancels-cop-killers-release](https://katu.com/news/local/parole-board-reverses-cancels-cop-killers-release)

¹⁵⁸ In the process of searching for information related to the Oregon Board, one news article found ([Zaitz, 2012](#)) discussing the Board’s recent turnover. At the end of the article, the author noted that the Board’s chairman had been elected as district attorney the prior spring. This suggests that the person was able to run a political campaign to be a county district attorney, emphasizing efforts to “aggressively, effectively, and efficiently prosecute criminal activity, support crime victims, and enforce the laws of Oregon with consistency and integrity,” while also acting as a member of a body who is expected to vote on whether or not to allow people convicted of murder to be released into the community. Without viewing the voting record, it is not possible to say that this campaign was related to the approach to each case, but it is highly unlikely the two are not correlated. This example is discussed here to show that when members concerned over their next job, particularly those who are motivated to serve in an elected role, the Board decision-making is susceptible to socio-political pressures.

cohorts. For instance, in spite of being released, one parolee explained that he did not know how the Board makes the decisions except that they were likely based on the Board's concern of political and social pressures.

Liability, first and foremost. They are concerned about making a mistake, and what it might mean. So, they are sensitive to media. They are sensitive to victims. The more attention they have on them, the more sensitive they become. I think they have certain prisms or lenses, or they have a particular mold they try to fit everyone in regardless of culture, regardless of education level, regardless of numerous factors. Even though they have those ten-point criteria, they're not really judging everybody by those criteria fairly. There seems to be a profile of the people who get passed the Parole Board. (Black parolee, over 40 years old, experienced four hearings before the Board, incarcerated over 25 years)

It is important to note that although turnover as a *concept* is problematic due to the lack of regulation to ensure consistent decision-making, this is not to speak about the current make-up of the Board. That is not the purpose of this study or report. In fact, recent changes in the Board have also been highlighted by some interviewees as being improvements.

I think the Board has changed for the better to be kinder and looking at people as who they are now. I think they're a good judge of character this time but something has been done to make it feel like they're not judging people and it seems like they're more willing to give a chance than they have been. (White AIC, over 45 years old, experienced four hearings before the Board, incarcerated over 25 years)

Goal 1 Summary

As we interpret these findings, it is important to keep in mind what is being represented by the quantitative data in these graphs and tables. For instance, these data points are capturing cases released over decades, and that laws as well as many Board members have changed over that timeframe. Both factors have an influence on the Board's decisions that are not directly observable in these analyses. This means that the findings here cannot, and ought not, be pinned on any one cohort of Board members. That said, the majority of releases occurred relatively recently, between 2004 and 2016 (see Figure 2). Additionally, if we were to include the unobserved measures (e.g., the 10 factors used in murder review hearings) not accounted for in the multi-variate models discussed (e.g., Figure 4), they could only account for around 20%, at most, of the remaining predictive accuracy left by these latter models. This suggests that while time-served and concurrent/consecutive violent convictions are the most important factors in predicting if parole-eligible person will be released, race/ethnicity are an added factor that yields some distinct trends. It is possible that some of the differences that arise between race/ethnic groups are products of the case-specifics and hearing information, both of which still need to be analyzed. This does not mean specific Board cohorts or members were expressing overt bias. Rather, the trends over time suggest the processes and expectations which create the foundation of a Board's decisions, appear to truncate the release probability for certain racial/ethnic subgroups. More recent data that was descriptively analyzed highlights the potential differences in the most recent Board cohort hearings. Specifically, this analysis shows that recent efforts may have reduced racial/ethnic differences in the probability of release, but also highlights how the Board's process and decision-making is susceptible to member turnover. In other words, without further codification, the positive steps made by one Board cohort could be quickly undone by the next turnover.

Interviewees indicated that the manner in which the Board concludes release or flop/denial for two or more years seems to highlight three themes: (1) Clarity in criteria, (2) fairness and consistency, and (3) socio-political pressures. Greater clarity and transparency are needed for both victims and AICs as it relates to the Board's decision-making is not only critical for the purpose of each party to understand a process of the justice system, but it is also essential to ensure that the process is viewed as legitimate. Weaknesses in transparency can both lead to, and be exacerbated by, weaknesses in fairness and consistency. Relaying the degree to which decisions are fair must be accomplished through exemplifying consistency in the criteria that are made clear, especially in a prison setting.

Issues in fairness and consistency (e.g., “demonstrating insight” disadvantages), could be remedied via two efforts: Ensuring that AICs and the victims (apart from the district attorney) have some form of representation, and requiring key trainings for the Board. Attorney representation, and/or support partners, were highlighted as a critical factor to help people navigate the process and communicate their thoughts and concerns. Trainings were discussed as a way to increase fairness/interchangeability across cases, and to increase consistency. Trainings related to common philosophies and approaches used by Boards across the nation, how more actuarial risk assessments (e.g., LS/CMI) could be integrated into decision-making, and how rehabilitation (specifically cognitive behavioral therapy) works to change human behavior. Such trainings are readily available through organizations like the [National Institute of Corrections](#), the [Center for Effective Public Policy](#), or the [Academy of Criminal Justice Sciences](#) could provide updated information on the science behind rehabilitation and associated metrics.

It is important to note that the current Board cohort makes a concerted effort to have more trainings and to make well-informed, evidence-based decisions. They frequently attend and present at practitioner and academic conferences (Association of Paroling Agencies International [APAI]) to stay up-to-date with best practices, including on issues related to disparate outcomes among racial subgroups by connecting with organizations that offer trainings and discussions of best practices (e.g., Center for Effective Public Policy's [National Parole Resource Center](#)). Another example is “Trauma Informed Tuesdays” which is a webinar put on by APAI for all members, where the Board and staff sign in to an informative discussion or presentation about trauma. These steps are admirable and consistent with a Board focused on best practices. However, the focus of the Board is dependent on the interests and scope of the Board's sitting Chair and who is governor at the time. Codifying this practice and expected trainings into a minimum expectation for all Board cohorts would safeguard against turnover.

Finally, fairness and consistency were noted to also be subjugated by the process of Board member turnover and seating new members, making issues inherently intertwined. Much of that is due to the lack of codified standards that a potential Board member must meet, as well as the lack of on-boarding and ongoing training for seated members. Oregon is one of 20 states that do not have statutory requirements for Board member qualifications. Turnover and member selection, unaided by statutory standards and training, leaves the Board susceptible to influence by socio-political pressures due to the (1) selection process for new members, and for seated members (2) concern over maintaining the position among members, and (3) concern over the next job after the person's term on the Board. These could be addressed by extending Board member terms by two years, installing a more robust interviewing/selection process for new members, and not allowing people to run for elected office while serving on the Board.

Goal 1 Takeaway

Problem Foundational processes and expectations have shown potential bias toward release decisions.

Solution Improve and solidify fairness by requiring transparent communication of decisions and how criteria are applied for all parties who are subject to hearings.

Problem Key areas susceptible to turnover include the clarity in criteria used, fairness and consistency in decisions, and socio-political pressures.

Solution Safeguard against dramatic change between Board cohorts by requiring a minimum level of training for all new and seated members, as well as minimum qualification standards for new members.

Problem These areas can change dramatically with Board member turnover and uncertainty among seated members.

Solution Remove areas of concern that create potential bias in Board decisions by extending Board member terms by two years, installing a more robust selection process for new members, and not allowing people to run for elected office while serving on the Board.

VII. GOAL 2 FINDINGS: DIFFERENCES ACROSS CASES BEFORE THE BOARD

In order to determine if there are notable differences across cases that go before the Board, key data that must be analyzed include the Board Action Forms (BAF), Board Review Packets, and Exit Interviews. These would provide a more nuanced, qualitative assessment of the types of cases and the formalized basis of decision-making. Without this data, the analysis provided here still provides meaningful information, but in a slightly different light. Specifically, the analysis and discussion provided here relies on the survey data.

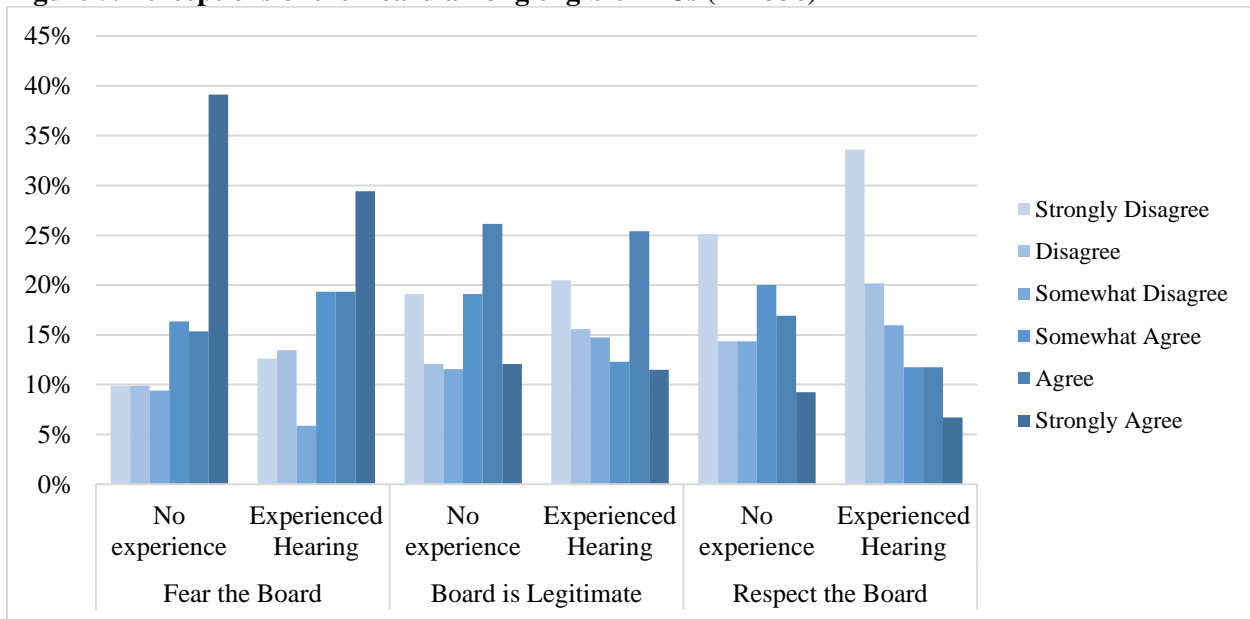
Among the 336 respondents, 37.5% (126) indicated that they had been before the Board at least once, leaving 62.5% (210) without experience. Each were asked to answer a series of closed-ended, 6-point Likert questions gauging their perceptions about the Board, the processes, hearings, and decision-making regardless of whether they had been before the Board. This comparison can be helpful for a number of reasons, none the least of which are to determine what experiencing the Board does to impact one's perceptions of legitimacy and fairness. Prior research has shown that perceiving criminal justice agents (e.g., the Parole Board) as legitimate and fair increases the perceiver's likelihood of complying with rules, regulations, and directives, as well as potentially influence post-prison outcomes once released.¹⁵⁹

In the present survey data, a number of differences emerged between those who do and do not have experience in a Parole Board hearing of any kind. One important distinction are the perceptions of the Board. Figure 5 shows the distribution of respondents across three questions asking the degree to which they agree or disagree with the statements "Overall, I fear the Parole Board.", "Overall, the Parole Board is a legitimate authority.", and "Overall, I respect the Parole Board." Regardless of their hearing experience, the majority of respondents indicated that they feared the Board to some degree. Nearly 70% of the whole sample (69.8%, 224 respondents) reported fearing the Board. Contrasting this, a little over half of respondents (54.2%, 174) reported viewing the Board as legitimate, and 40.1% reported respecting the Board.

Gauging these perceptions is relevant because they can impact how we identify potential areas to address in terms of policy. For instance, works in psychology have long shown that fear often stems from a lack of understanding, increased insecurity, and increased anxiety; all of which are rather common among AICs. Thus, with a high degree of fear, it is likely more information and resources need to be available for those who are preparing for the Board. This will be expanded on in more detail below. More importantly, fear can be an antithesis to other factors such as respect and legitimacy. In Figure 5, we see that the percent of respondents that respect the Board is substantially lower than the percent of respondents who fear the Board. This is not a coincidence – 68.1% of those who indicated that they feared the Board also indicated that they did not respect the Board, while 61.0% of those who indicated they do not fear the Board also noted that they respect the Board ($p < .001$). Similarly, 61.6% of those who found the Board to be legitimate also reported that they respected the Board ($p < .001$).

¹⁵⁹ Beijersbergen et al., 2015; Bickers et al., 2019; Bierie, 2013; Franke et al., 2010

Figure 5. Perceptions of the Board among eligible AICs (n = 336)



In addition to questions about perceptions about the Board, respondents were also asked about their perceptions regarding the Board’s decision-making and process. Responses to these questions are provided in Figure 6, broken out by whether or not they have experienced a hearing in the past, organized from top to bottom, largest differences to smallest. Here we see that the largest differences between those who have experienced hearings versus those who have not is knowing what to expect in the process and what the Board is looking for in a case. As one would expect, a significantly higher percentage of those who experienced hearings report knowing more about the process and decision-making in general. Interestingly, this reported percentage, however, is less than 70% for both questions among the experienced group.

Several questions received responses over 60% in the affirmative. Around 70% of both groups reported believing that the Board would never give a fair hearing. Over 70% of both groups indicated that they believed the outcomes of hearings were pre-determined. Perceptions of a fair and non-deterministic hearing are critical aspects when considering one of the original intents of parole – motivating individuals to change while imprisoned. Similar to perceptions of legitimacy, if AICs do not view the hearing process and Board to be fair or even feasibly attainable, then there is little reason to believe that the potential of parole will motivate them to seek change. Moreover, recall that when asked, “what would you say your broader mission or purpose is as a Board member?,” past/present members indicated that their task was

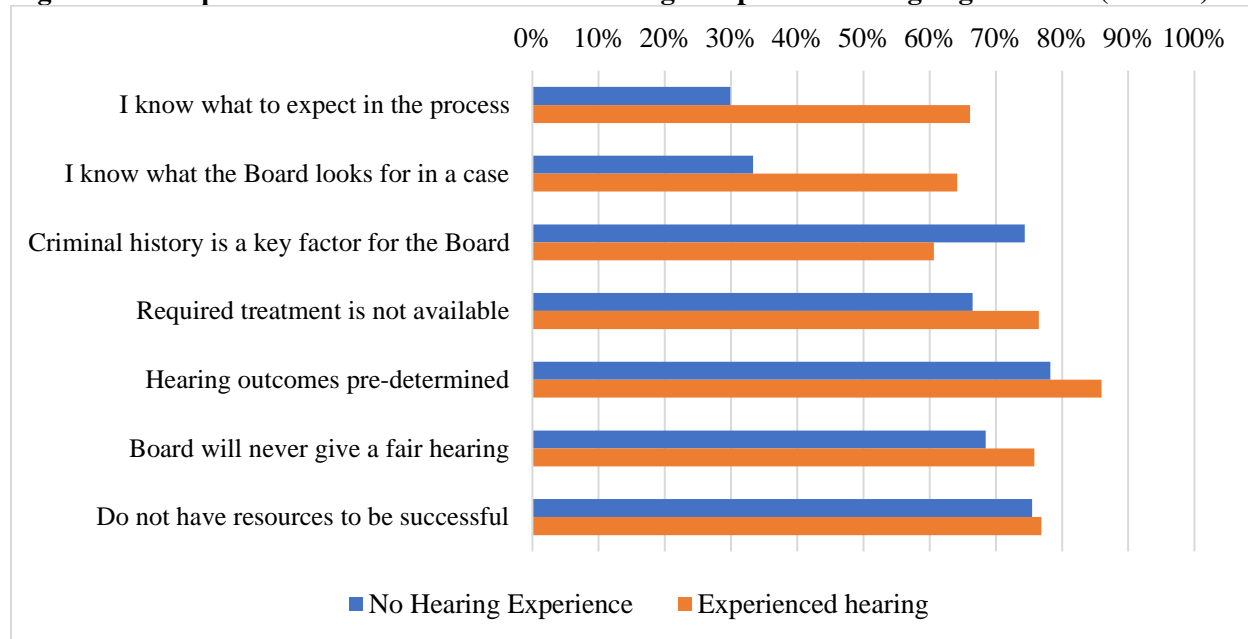
To hold fair hearings, keep the public safe, hold justice involved individuals accountable, and recognize and promote rehabilitation. (Underline emphasis added.)

If this is indeed a primary concern for the Board, then addressing these concerns among AICs would foster an increase in legitimacy perceptions toward the Board, and potentially increase AIC buy-in to suggestions made by the Board to further one’s rehabilitation. Similarly, when asked about experiences related to interchangeability (i.e., comparable across like cases), past/present members stated that they strive to “*treat all AICs fairly*” and to promote interchangeability they

focus on following “the general structured decision-making procedures for all AICs where we cover the same topics of discussion for AICs that appear before us. For instance, we always talk about institutional programming, criminal history, supervision history, institutional behavior, substance use, and release plans at each hearing.”

Here, the emphasis for interchangeability is placed on the topics covered in the hearing. In many ways, this is the best the Board can be expected to do – ensure that all AICs are given the same structure and topics discussed. However, other forms of interchangeability and perceived fairness are anchored on more subjective portions of the Board’s decision-making, such as in determining the importance of the crime’s severity and the degree to which someone is rehabilitated, to name two.

Figure 6. Perceptions of the Board’s decision-making and process among eligible AICs (n = 336)



Most notably, over 65% of both groups indicated that they did not have the resources needed to be successful in Board hearings, and even more indicated that the treatment often required of them is not available. As mentioned previously, an underlying expectation of the Board’s purpose is that they determine if someone has been rehabilitated in order to increase the safety to the public should the person be released. However, if the Board expects to see improvement in a particular area (e.g., domestic violence or anger management), but there are no such programs available to the AIC in the person’s lodging facility, then the potential parolee is set up to have another failed hearing. This highlights a disconnection between the DOC and the Board in terms of rehabilitative services. When asked what areas are currently problematic/barriers in the parole process, past/present members noted:

Lack of programming opportunities for adults in custody serving life sentences due to their age, length of sentence, and lack of a firm release dates. Lack of sex offender programming.

Although this is identified as a key issue, there were several past/present Board members who indicated that this did not impede their ability to apply an apt decision for a given AIC. For

instance, in response to the question, how does the Board evaluate a release plan when they do not have a lot of the expected services that are a key component on the parole plan?, a past/present member noted:

Generally, what matters is that the AIC has put in effort and thought into developing a plan. The Board understands that services may be limited depending on where the AIC is releasing to. The Board also pays to attention to the “internal” aspects of a parole plan, such as relapse prevention plans if the AIC has a history of substance abuse. Having a good release plan is also a way for the AIC to demonstrate that they can establish pro-social relationships, plan ahead, and demonstrate their ability to achieve stability.

The only area those without hearing experience had a higher proportion was in believing that criminal history was a key factor for the Board when making decisions about rehabilitation and release. Although criminal history was indicated as being important to the Board by both groups as well as among interviewees, those who have experienced the Board appear to recognize that it is not as big a factor as believed by those who have no experience. Hearing-experienced AICs recognizing the diminished importance of criminal history accents how information about the hearings only spreads so far via word-of-mouth. With little to go on besides the account from others who have gone before the Board already, inexperienced AICs must vicariously piecemeal what to expect in hearings.

Goal 2 Summary

This section examined differences between AICs who have and have not experienced Board hearings. Such an analysis is important to identify policy areas to address and how to target informational campaigns. A large proportion of AICs, regardless of hearing experience, reported fearing the Board. Research has demonstrated for decades that fear often stems from a lack of understanding, increased insecurity, and increased anxiety about a process, all of which are rather common among AICs. Thus, with a high degree of fear, it is likely more information and resources need to be available for those who are preparing for the Board. Moreover, fear can be an antithesis to other factors such as respect and legitimacy, which are closely correlated. Legitimacy is particularly important because the Board is a body that could greatly motivate AICs and released parolees to change or seek more help in rehabilitation. A degradation in the legitimacy of the Board could result in a similar degradation in willingness to follow rehabilitative suggestions and recommendations made by the Board. To combat this, similar to Goal 1, greater clarity and transparency may go a long way to bolstering the legitimacy of the Board.

It is important to recognize that those who have not experienced the Board often live vicariously through those who have hearing experience. This means that if those who have gone before the Board (especially those who are ultimately released) do not understand the process, what the Board is looking for, and are unclear about how the Board reached its decision, then that delegitimization will filter out to those who have not experienced the Board. To help alleviate such issues among those who are hearing-experienced, policy makers and the Board should consider including clear directional steps in documentation like the Board Action Forms (BAF). BAFs currently include an explanation of the decision, similar to a court opinion, in the Discussion section. While important to include, it does not provide much of a response to what the individual explained in the hearing or what new information was incorporated. The Discussion section will typically focus on the index crime and related behaviors in spite of the importance given to

“articulating the rehabilitative experience” or demonstrating remorse. This is not to say that the goal is to ensure that the AIC is happy or particularly satisfied with the ruling. The important thing, as noted by countless studies on procedural justice and legitimacy, is that the individual felt as though they had a voice in a fair proceeding, and felt heard. Additionally, the BAF ends with a finding/decision, with little guidance on what steps the AIC should explore to improve their chances in the next hearing.

To lessen the influence hearing-experienced AICs have over those without hearing experience, an effort could be made to help provide all petitioners with what they need, and answer their questions in preparation for upcoming or past hearings. Several study participants provided their written correspondence with a Board where members answered the individual’s questions about how decisions are made or parts of the process. Such correspondence is a great example of how the Board can bolster legitimacy and fairness in preparation for the hearing. AICs without hearing experience could benefit from similar correspondence and preparation. Notices with concise and clear information about the process, things that will be considered, and how best to prepare could be sent to AICs on a recurring basis after the start of their parole eligibility. Additional guidance on how to correspond with a Board and find representation for their hearing would be helpful for all people as they approach their hearing date.

The current Board began a new practice in 2019 to attempt to address this shortcoming. The Board provides suggestions to the petitioners about how they can improve for their next hearing, such as writing their thoughts on remorse or programs in which to participate. Prior to 2019 it was up to the AIC to file for “Administrative Review,” which is a process of appeal, to learn about the ultimate decisions. The 2019 practice of providing reasons has reportedly cut down on the number of Administrative Reviews. While this is an important and positive practice, it should be enshrined in policy to ensure that future Board cohorts follow suit.

Goal 2 Takeaway

Problem Many AIC survey participants reported fearing the Board, which has been shown to stem from poor understanding, increased insecurity, and increased anxiety about a process. This can degrade the legitimacy and power of the Board over behavior and facilitating change.

Solution Require greater clarity and transparency through information campaigns regarding hearings and decisions, as well as improve correspondence with petitioners outside of the hearings, all to bolster legitimacy of the Board.

Problem Petitioners who perceive the Board and its process as unfair weaken the Board’s legitimacy, which then spreads to AICs without hearing experience.

Solution Require that all petitioners receive regular, recurring notices with concise and clear information about the process, areas considered by the Board, and how best to prepare basis after the start of their parole eligibility.

VIII. GOAL 3 FINDINGS: HOW THE BOARD'S HEARING PROCESS IMPACT ELIGIBLE PARTIES

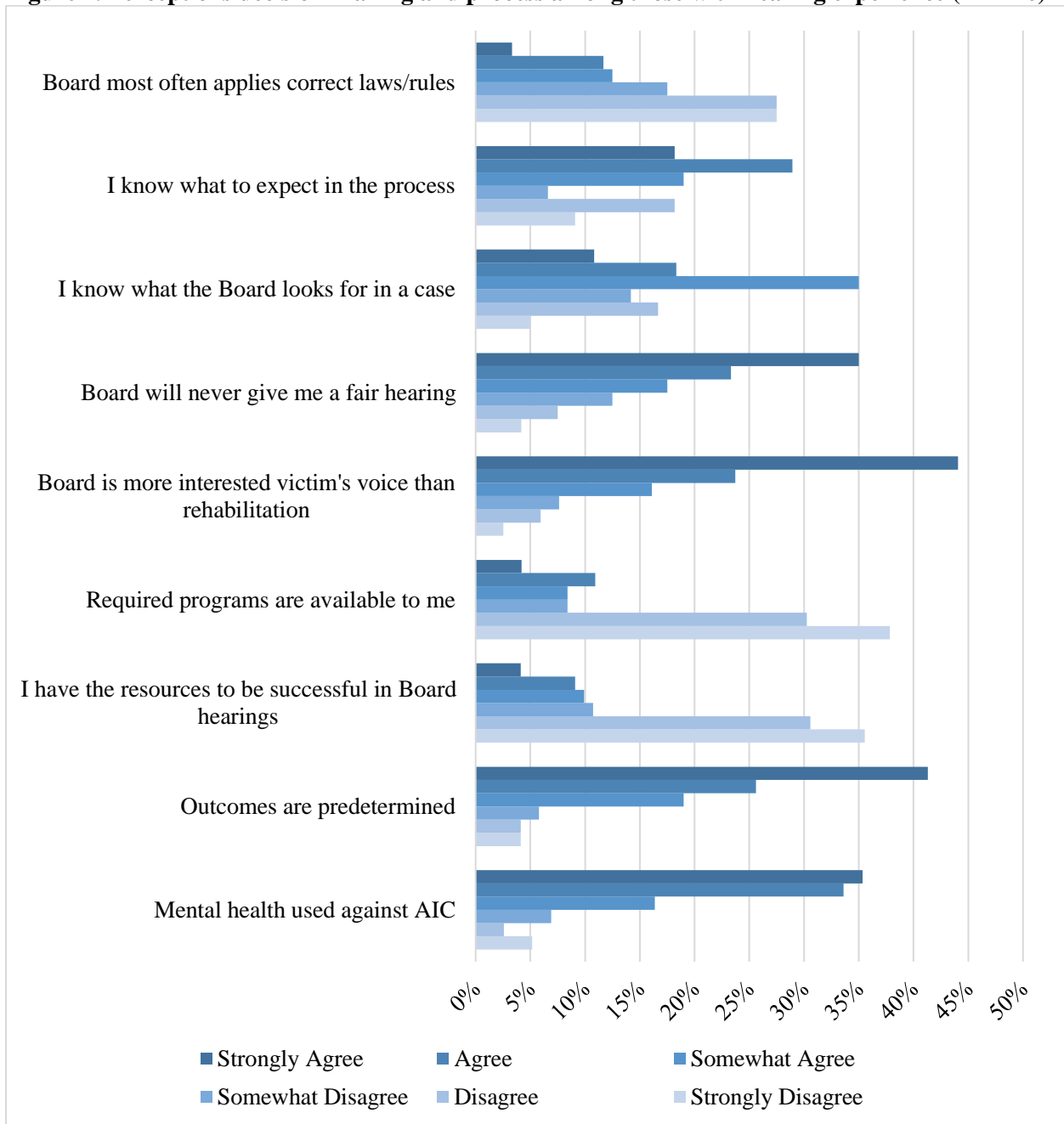
This analysis focused on the self-reported perceptions among those who have experienced the Board's hearings, procedures, and decisions. Diving a bit further into the responses, Figure 7 provides a more detailed breakdown of responses shown in Figure 6 among those with hearing experience. It should be noted that every questionnaire and consent form had a brightly highlighted section indicating that their responses would not have any kind of influence on their parole date or case. Relatedly, one of the first things to point out is the fact that there are a number of AICs who view the Board rather positively. This is likely to run counter to many administrator expectations that *all* AICs who have been flopped or denied release would have a highly critical view of the Board. This is clearly not the case. That being said, there are many things to take away from the more critical responses. Amid the response variation, three issues stand out – Resources needed to navigate the Board, shortcomings in rehabilitative programming, and perceived fairness in outcomes.

Lacking resources

It comes to no surprise to many that AICs follow suit with justice agencies in recognizing they need more resources. A key difference between agencies needing more resources and AICs, is that the former is to complete a job more efficiently or effectively, and the latter is to ensure fairness and due justice for those paying their debt to society. Nevertheless, it must not be lost that ensuring resources for one, can often translate into more resources for the other. When it comes to AICs and the parole process, the resource most needed is clear information and explanations, which largely builds off the discussions of clarity and transparency from Goal 1.

A core piece of information needed for all parties involved in parole hearings is the common understanding of the statute under which someone is convicted. Among the 126 respondents with hearing experience indicating “disagree” to some degree with the statement “The Board most often applies the correct laws/rules” to which the majority of respondents indicated some degree of “disagree” (17.5% somewhat disagree, and 27.5% for both disagree and strongly disagree). These responses exemplify the difficulties of keeping track of which laws apply to which cases. As noted previously, the Board is beholden to the laws under which the individuals were convicted. The survey responses show what is likely a mixture of two things – that it is likely easy to lose track of changing statutes, administrative rules, and sentencing structures, and it is a reverberation of needing greater clarity and more transparency in the laws being applied to the AICs coming before the Board. Information from the qualitative discussions corroborates this sentiment. All interviewees (AIC, parolees, victim advocates, and past/present members alike) discussed the difficulty in ensuring interchangeability and frustrations with the fact that members must adhere to the conviction statute, even when the statute has been reformed because it was viewed as problematic in some way.

Figure 7. Perceptions decision-making and process among those with hearing experience (n = 126)



Stemming from the potential disconnection on the statute being applied, there are the lack of resources and information related to the Board decision-making and hearing process. As noted previously, over 60% indicated *somewhat agree*, *agree*, or *strongly agree* to the statement “I know what the Board looks for in a case” and “I know what to expect in the process.” When further examining the responses to these statements in Figure 7, we see that the fewer *agrees* and *strongly agrees* suggest that there is a difference in the level of confidence exhibited by respondents on these topics. This suggests that even those who have experienced the Board/hearings are not very certain that they know what to expect or how the Board makes decisions. What we can derive from this is that the hearings and Board decisions are too complex or convoluted for most AICs to

understand. More importantly, however, in spite of the AICs reporting a moderate degree of confidence in knowing what to expect and what the Board looks for in a case, only 23.1% of respondents feel to some degree that they may have the resources needed to successfully navigate the Board and hearing process. Together, these three responses suggest a degree of hopelessness among AICs, developed in trying to make sense of the only mechanism out of prison.

Rehabilitative programming

One of the most important areas related to the lack of resources needed is that of rehabilitative programming. In contrast to the lack of confidence displayed in other response options, the statement “Required programs are available to me” received a resounding *disagree* (30.3%) and *strongly disagree* (37.8%). This sentiment resonated across all interviewees as well. While recent years have seen improvement in availability of treatment programming, the lack of *appropriate* programming is apparently something that has been a well-known problem for years. It is important to distinguish the difference between having rehabilitative programming available, and having the *appropriate* programming available. In corrections best-practices, there are what’s known as the principles of effective intervention,¹⁶⁰ in which there is a core principle known as risk-need-responsivity or RNR. The risk portion of the RNR process involves identifying those who are of the highest risk to recidivate, and supplying them with the most amount of guidance and services. Need refers to criminogenic needs, which are science-driven areas where programming ought to target in order to reduce one’s risk to reoffend. The responsivity portion refers to how appropriate programming provided should match the needs and the learning abilities of the individual to ensure that the programming effects are maximized.

The most common response to questions of rehabilitation emphasized that the Board often likes to see sex offender treatment and domestic violence treatment, but this has not been available to most AICs who come before them.

I think there is not enough appropriate programming available. We have not put enough effort into rehabilitative programming and impact those who are incarcerated. From what I’ve seen, it really depends on the individual. For those people who really take responsibility for their crime will seek out the programming they need. [Interviewer] Is there any type of programming that you’d like to see more of? Yea, I don’t see enough sex offender treatment. I don’t see enough domestic violence treatment. You know a lot of the murderers have their roots in domestic violence. They really need to do more to push inmates into that type of treatment so that the person may recognize their criminal thinking. (Victim advocate)

AICs and parolees also recognize there are many programs available, but that they are not always what is most helpful, especially in the eyes of the Board. This can set up many AICs for a difficult hearing where they are expected to “articulating their rehabilitation” or “demonstrated insight” into how their rehabilitation has influenced them.

[Quality programming] wasn’t there when I started. I went through the little lollipop programs, but that wasn’t enough to help me continue in my evolution, so I started on my own. But now, the prison has changed too. Inside, if a person wants

¹⁶⁰ Gendreau, P., French, S., & Gionet, A. (2004). What works (what doesn’t): The principles of effective correctional treatment. *Journal of Community Corrections*, 13(3), 4–6.

to change and better themselves, they can. I'm not gonna say there's plenty, but they can. People do. You know? But, when I started, that wasn't there, right? One of the things that the Parole Board misses a lot, is that it wasn't there.

The Parole Board is only seeing that this guy's been locked up for 25 years. It's only been in the last 10, that all these programs, that the meaningful programs are as abundant as they are now, at OSP, and only at OSP. So, a lot of those programs became meaningfully abundant in the last 10 years. But the guys going before the Parole Board have been locked up for 25 plus, and by the time their environment became resource-rich, they already established themselves in work, and established routines and built a life for themselves, and didn't have a lot of room to take a lot of the programs. It's catch-22s everywhere you go. They'd ask, "why didn't you take these programs?", you'd be like "well, I was workin, and I got a job, and I got a routine, and I'm just doing my thing. Stayin out of trouble" Then they say "Well, you're not showing enough initiative to work on yourself."

Then you have someone who take every program there is, and they get denied parole based on some other shit. Like, you know, based on his failures to demonstrate insight in an area where there is no program provided, like domestic violence. You know, it is one of the most prevalent forms of violence, and its like the most common perpetrators inside there is domestic violence. Even if they weren't prosecuted, there are so many in there. And when it does come up in Parole Board cases, the Board says "you ain't done enough" but the DOC don't provide any type of domestic violence treatment or therapy or program. So, it's a catch-22. They do what they wanna do. (Black parolee, over 40 years old, experienced four hearings before the Board, incarcerated over 25 years)

As this parolee alludes to, the reasons as to why such programming is not available can vary and is often a combination of how long someone has been incarcerated, the facility at which the individual is lodged, and DOC logistics.

[Interviewer] *Is it troublesome that the Board wants to see a certain programming and the DOC doesn't provide that program/opportunity? That can be extremely frustrating. The DOC gets hounded constantly specifically around DV and sex offender treatment opportunities which would be critical for a large swath of this population. So, it is frustrating, and challenging, that in our correctional systems, that our prisons, were not built or designed to create a lot of opportunity for treatment. It is very challenging for the DOC to manage all of the priorities of the secure setting and still provide meaningful work and education opportunities, as well as regular health check-ins, meal service, and counts, as well as having a vast array of groups occurring at the same time. The DOC is not designed or staffed enough, unfortunately. So, its very frustrating for a Board member because you know that these people are not getting what they need to be prepared for release.*

There is also the argument, that historically, what was being provided for sex offender treatment in custody, was not of much value. There wasn't a lot of great adherence to evidence-based curriculum, and the attempt to learn the skills in a custodial setting did not translate upon release, and that there really wasn't a difference in outcomes between the prison-based versus community-based

treatment. So, the DOC wants to make sure that what is being offered has got to be of quality. Otherwise, we are setting the individual up for failure, and giving victims in the community a false sense of hope that the offenders have changed merely because they have gone through this multiple week/month course. But we know that if it really isn't a solid curriculum being delivered to fidelity, that has equipped individuals, and it is more than just an educational course then we really aren't getting anything for it.

Perhaps one of the more concerning perceptions captured by the survey was a question regarding mental health. Specifically, AICs were asked how much they agreed or disagreed with the following statement, "AIC mental health status is used against them in Parole Board hearings?" In answering this, 16.4% or *somewhat agree*, 33.6% *agree*, and 35.3% *strongly agree*. This means that 68.9% of those who have experienced a hearing believe that the AICs mental health status is used against them in hearings. This is problematic because it could impact how AICs view their own potential need and willingness to seek or attend psychological treatment or counseling. If AICs believe that the Board will use their mental health against them in hearings, then as AICs prepare for their hearings, be it a flopped follow-up or a first hearing, they will either approach considering or participating in counseling treatment in a superficial manner or not at all. It is most likely that the AIC will feel compelled to attend treatment, but doing so superficially would essentially mean learning what issues to present or not present with (i.e., try to identify one's own symptoms and present as few as possible), or simply tell the psychologist what they want to hear.

While on the surface, this might seem "fine" – if an AIC refuses needed treatment, psychological or otherwise, then it will likely result in further delaying the AIC's release. In effect, the AIC is only hurting their own case. One problem with this is the fact that such a sentiment would fly in the face of wanting to ensure a fair process, and ensure that those who may have mental health issues feel doomed from the start. Another is that when a person superficially participates in treatment, particularly talk therapy or even pharmacologically aided talk therapy, the discussions and possible breakthroughs are unlikely to be internalized. Thus, perceiving mental health to be a disadvantage in getting released by the Board has the potential to dramatically hinder the rehabilitation process.

Perceptions toward outcomes

The perceived role of victims in hearings further hinders the rehabilitation process. In addition to concerns over mental health, respondents also reported the perceptions that the Board is more interested in the victim's voice than the rehabilitation process. Much of this is to be expected as victims are afforded the ability to weigh in at the hearings. This perception becomes a problem when AICs believe that the victim's voice means *more* than the rehabilitation process, from which the AIC might develop a strong sense of helplessness. On one survey, an AIC exemplified the feelings of helplessness, writing in the margins on a question related to being angry with the Board – "I let go of my anger issues, which were many, a long while ago; 15, 18 years ago. But, I just gave up, seven years ago. Thirty years was enough. So, I almost took the only way out of here. Still think on it from time to time." Given that the parole process is the antithesis of capital punishment, this respondent highlights how a process that is supposed to embody fairness, rehabilitation, and redemption can feel as though it is a forgone conclusion.

These sentiments of helplessness regarding the process and outcomes resonate resoundingly among the hearing-experienced respondents. Nearly 67% of the respondents

indicated that they believe the hearing outcomes to be predetermined before they begin (25.6% *agree*, 41.3% *strongly agree*). Coupled with the 19.0% who responded with *somewhat agree*, this consists of 85.9% of the hearing-experienced sample believing that the hearing outcomes are predetermined to some degree.

[Interviewer] How do you think the Board makes decisions? *Not sure if I can answer that. There's a feeling in here that the Board knows what they're going to do with you before you go in there. I think the victim input and outcry has the biggest impact on anything. [...] There's nothing that I can do to change my crime but I've done everything I can about my education and rehabilitation, but it still hasn't been enough.* (White AIC, over 55 years old, experienced five hearings before the Board, incarcerated over 30 years)

These perceptions of predetermined outcomes lend support to the belief that the Board could never really give a fair hearing. Among those hearing-experienced AICs, 75.8% (17.5% *somewhat agree*, 23.3% *agree*, 35.0% *strongly agree*) indicated that the Board would never give them a fair hearing. Considering the findings from Goals 1 and 2, the high degree to which AICs believe this is unfortunately not surprising; but the lack of perceived fairness is exacerbated when incorporating the degree to which AICs believe the outcomes are foregone conclusions. That is to say, for AICs to believe that the Board lacks fairness in decision-making does not bode well for maintaining legitimacy. Even worse for the Board's legitimacy, is the fact that AICs believe the Board's decisions are unfair *and* predetermined.

Goal 3 Summary

This section examined only the perceptions reported by AICs with hearing experience. One of the major findings from this goal is the need for more resources for the AICs and victims. The provision of more resources is often a difficult recommendation for justice agencies to absorb. No criminal justice agency has ever indicated that it had too many resources. Thus, when AICs report that they lack the resources to be successful at parole hearings, this information likely falls on unsympathetic ears. However, resources available for AICs often, if not always, run in tandem with the resources needed by justice agencies. A remedy for each of the responses is a strong informational/education campaign to inform all AICs of the appropriate statutes, how to prepare for hearings, how to contact the Board, and how to secure rehabilitative programming. Information campaigns spearheaded by the Board will require more resources for the Board in terms of personnel and greater digitization of records.

Greater resources are clearly needed for the DOC as well. A dearth of rehabilitative opportunities sets AICs up to fail when brought before the Board and infringes on the ability of AICs to rehabilitate. Assuming the mission of the Board, and the DOC as a whole, is to reform offenders rather than warehouse them, there must be a legislative effort to give these entities the necessary resources. Such efforts would be a substantial step towards ensuring public safety. Within this push for more resources is the reiterated need to improve the resources available to AICs and victims. Specifically, AICs and victims need better resources related to ensuring representation, pre-hearing information about the process and criteria, and ultimately more clearly justified decisions and next steps. All of these elements would help to improve the overall perception that hearing outcomes are foregone conclusions, while still providing ample voice to all parties involved.

Goal 3 Takeaway

Problem AICs report that they lack the resources to be successful at parole hearings

Solution A remedy for each of the responses is a strong informational/education campaign to inform all AICs of the appropriate statutes, how to prepare for hearings, how to contact the Board, and how to secure rehabilitative programming. Information campaigns spearheaded by the Board will require more resources for the Board in terms of personnel and greater digitization of records.

Problem Rehabilitation programs often required by the Board are not readily available for petitioners.

Solution Greater resources are needed for the DOC to ensure that the appropriate programs expected by the Board are actually attainable. At a minimum this includes incorporating the most efficacious domestic violence programs and sex offender programs.

Problem AICs and victims lack needed resources related to ensuring representation, pre-hearing information about the process and criteria, and ultimately more clearly justified decisions.

Solution In addition to making a codified information campaign standard protocol, there ought to be an “opt out” procedure for representation, making it required unless otherwise stated by the petitioner or victim.

IX. GOAL 4 FINDINGS: PAROLEE PERFORMANCE IN THE COMMUNITY

Once parolees are released, they become part of the larger post-prison supervision (PPS) population in a given county. While those released by way of the Board are via indeterminate sentencing, those released on PPS are via determinate. In effect, part of the broader purpose of the Board's process is to use the knowledge obtained through the hearings and administrative information available to make a prediction as to how well someone will do in the community. For the PPS population, there are no real procedural mechanisms to determine rehabilitation as their time-served is fixed at sentencing. Thus, it is reasonable to expect that the parolee population performs better upon release (i.e., have a lower recidivism rate) than the general PPS population. Although, this depends on how recidivism is measured.

All states evaluate the effectiveness of their respective corrections, rehabilitation, and supervision efforts by way of examining recidivism. Recidivism broadly refers to either a supervision failure (revocation) or reoffending. However, there are a number of ways that recidivism can be measured, and depending on which measure is focused on, the conclusion can change. For example, one of the broader measures of recidivism is a new arrest. Arrests can come as a result of a number of events, with only some of them resulting in a new conviction, which is perhaps the narrowest form of recidivism measurement. A recidivism rate based on rearrest is inherently higher than one based on new felony convictions. Moreover, there are parts of the supervision population that may be missed when only focusing on one type of recidivism measurement. With this in mind, the state of Oregon tries to test three types when capturing recidivism rates – rearrest, reconviction, and reincarceration.¹⁶¹ Additionally, from decades of research in criminology, an appropriate follow-up time has been established of three years following release or start of probation supervision. Three years is used because most recidivism events of any kind occur within this timeframe, with the most occurring in the first year, and progressively fewer the longer someone remains in the community. Thus, the longer a person remains in the community without a recidivism event, the less likely the person is to recidivate.

The purpose of Goal 4 is to examine how well paroling processes can predict recidivism and identify other factors that might impact parolee performance in the community. To do this, the Recidivism Dataset is used to examine differences in post-release success between those released via indeterminate sentencing and parole board processes and those released through determinate sentencing mechanisms. This section provides a discussion of findings related to recidivism using three analyses – (1) Baseline recidivism examination, (2) matched comparison between PPS and parolees, and (3) potential impact of certain factors on performance. Implications of these findings on the parole process are also discussed.

Before the findings are discussed, it is critical to remind readers that the data used here is on releases from 2011 to 2017, allowing three years of follow up time for all cases. Thus, these analyses are in no way a reflection on any specific Board cohort, the current Board members, or recent decisions. Rather, this is an analysis of how those parolees perform in the community who were released via the Board process and operations as a whole.

¹⁶¹ According to the [CJC](#), rearrest data comes from the Law Enforcement Data System (LEDS) and includes any arrest in which the person was fingerprinted at booking. Reconviction data comes from the Oregon Judicial Department's data management system (Odyssey), and captures all misdemeanor and felony convictions. Reincarceration is collected/maintained by the Oregon DOC system, and includes any prison sentence and felony local control sentences for a new crime.

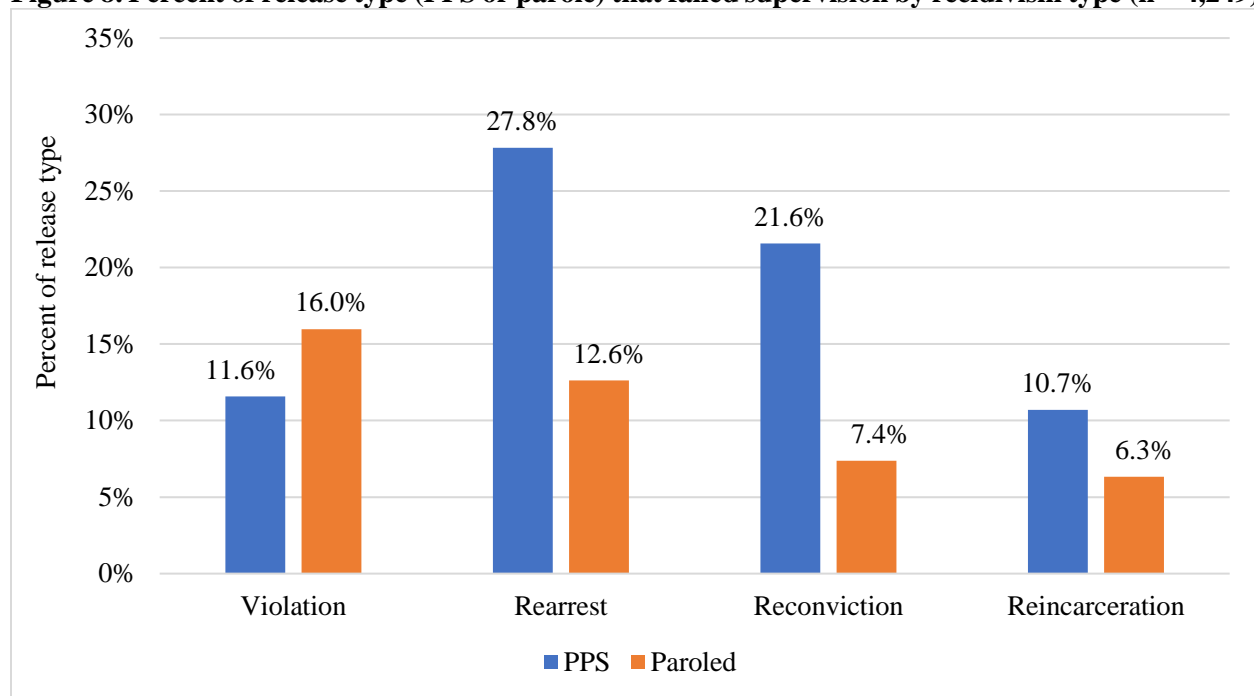
Naïve comparisons - Baseline predictions of recidivism

A common yet problematic practice when considering parolee performance in the community, is to compare parolee recidivism rates to that of the PPS populations. For example, if parolees have a baseline reconviction rate of 17% within three years of release, [as reported by the Board in 2017](#), it is tempting to compare this to the 40% reconviction rate of the general PPS population in the same year. However, doing so would lead someone to draw the inaccurate conclusion that parolees recidivate at a rate 23% lower than that of the general PPS population. These baseline comparisons are often referred to as naïve estimates because they do not account for differences in the groups. While parolees and PPS populations have similar expectations on supervision, they arguably look very different in many ways. A basic comparison between rates does not consider that different index crime types and sentences are included. Thus, people who served a two-year sentence for property crimes committed due to a substance use disorder are being compared to parolees who served 25 years on a murder conviction. This first assessment attempts to make a baseline comparison more accurate by only including those who served at least five years on a violent conviction.

Given the Board's process and information included in release decisions, the process can be expected to yield an important baseline relationship. Parole releases should be associated with a lower recidivism rate as more information is included in releasing parolees than PPS, and rehabilitation is theoretically at the forefront of such decisions. As noted in Table 1, the Recidivism Dataset used here encompasses 4,249 cases, of which 95 are parolees. Figure 8 shows the raw percent of each group (parole and PPS) that recidivated within three years of release, broken out by recidivism type. As is commonly reported, the recidivism rate among those on parole is rather low when examining primary three measures – rearrest, reconviction, and reincarceration – and particularly when comparing them to the PPS population. All differences shown here are statistically significant, except for that seen for reincarceration ($p = .380$).

The one exception is when examining violation behavior. Technical violations captured in the Recidivism Dataset is collected by the DOC via county-level reporting, and include any non-criminal violation of supervision conditions that results in a change of status (e.g., going from active supervision in the community to being in custody), which typically includes higher level violations. Figure 8 shows that parolees have significantly more violations than those on PPS. As discussed later in more detail, this is indicative of two possibilities – (1) Parolees could have a more difficult time following the conditions of their community supervision following decades in prison, and/or (2) parole officers apply an exceptionally high degree of supervision and monitoring on those released via parole. The former suggests that the parolee population likely needs greater resources to improve their reintegration chances, and the latter, known in the discipline as “supervision effects,” indicates that parolees experience greater scrutiny in the community than those on PPS.

Figure 8. Percent of release type (PPS or parole) that failed supervision by recidivism type (n = 4,249)



More accurate comparisons between PPS and parolees

The comparison shown in Figure 8 is already more accurate than most due to the restricted PPS population. However, it too has its limitations. A true “apples-to-apples” comparison would need to control for the remaining observed differences between the parolee and PPS populations. This next analysis goes two steps further in terms of accuracy. First, it reduces the PPS population to only those with a BM11 conviction to make those on PPS even more similar to those on parole. The left side of Table 5 highlights several of the remaining discrepancies between the populations. For instance, the paroled group has significantly smaller proportions of non-White individuals and of those whose county of conviction is in a rural/non-metro area. Although those paroled were convicted of more concurrent offenses than those on PPS, they had significantly fewer disciplinary reports (DRs). Two areas in which the paroled group possesses significantly greater counts are in years spent in prison and total weeks spent in the intensive management unit (IMU). Time spent in the IMU is more likely a function of the former, than of worse behavior as indicative of the DRs recorded over the last two years. In other words, parolees have more time in the IMU accrued over their lifetime because they have simply been in prison longer and experienced multiple policy shifts in the use of segregation.

This analysis takes a second step further from Figure 8 in terms of making a more accurate comparison by using propensity score modeling. Propensity score modeling (PSM) is a common statistical technique used to balance comparison groups so that the most similar of cases are being compared. By balancing the groups on all observed measures except for experiencing the discretionary parole process, then the unique effects of parolee performance in the community become apparent. Table 5 provides a model balance summary (top portion of the table), and a breakdown of the descriptive information about the sample. The left side of the table provides pre-PSM statistics, and the right side provides the post-PSM statistics.

There five balance statistics shown in Table 5 that are used in their totality to assess the how similar the groups are in their overall characteristics.¹⁶² (1) The percentage of covariates with statistically significant differences ($p < .05$). In a true experiment/RCT, we would expect to see approximately 5% of all covariates to be significantly different between the treatment and control groups just due to chance in the random assignment.¹⁶³ The standardized percent difference/bias was also calculated and compared in four ways. The standardized percent bias is a common method of identifying the degree to which treatment and control groups differ, and is the preferred method over simply using the Neyman-Pearson approach to statistical significance (i.e., greater than or less than .05).¹⁶⁴ According to Rosenbaum and Rubin,¹⁶⁵ the treatment and control groups should not differ on a covariate more than 20%, with less than 10% being ideal. Thus, the four ways we assessed the groups on the standardized bias included the (2) mean (average), and overall percent of covariates that were (3) over 20% and (4) 10% bias. Lastly, the (5) receiver operating characteristic - area under the curve statistic (AUC) is explained. The AUC can be used as a sensitivity check to gauge how well the propensity score predicts if a case is in the treatment group.¹⁶⁶ The closer a PSM technique can get to any of these ideal benchmarks, the closer the technique was at replicating the RCT.

As shown in the summary balance statistics as well as in the measure-based statistics, that the PSM technique used¹⁶⁷ dramatically reduced the bias between the pre- and post-PSM samples. Prior to PSM application, half of the measures used were significantly different between the groups, and the groups had nearly 20% standardized bias (19.2%) between them with 69.2% of the measures' categories possessing over 20% bias. The pre-PSM AUC indicates that the propensity score was very strong at predicting when a person was a parolee versus a PPS case, with a predictive accuracy of 95.1%. After PSM is applied, these differences are almost entirely removed with a few exceptions. The exceptions involve two regions to which people are released (metro and NW coastal areas). Regional differences are likely due in part to the higher concentration of all cases coming out of the metro area. While these two areas possess bias above 10%, they are still below the 20% threshold. Moreover, the AUC indicates that the propensity can no longer differentiate between the parole group and the PPS group once the PSM weight is applied (AUC=.500, similar to a coin flip).

¹⁶² For more on the summary statistics and how PSM is used to draw more accurate conclusions, see Campbell, C. M., & Labrecque, R. M. (2018). *Panacea or poison: Can propensity score modeling (PSM) methods replicate the results from randomized control trials (RCTs)?* [Summary Overview for the National Institute of Justice]. NIJ Award No: 2016-R2-CX-0030.

¹⁶³ Shadish, W. R., Cook, T. D., & Campbell, D. T. (2002). *Experimental and Quasi-experimental Designs for Generalized Causal Inference*. Houghton Mifflin.

¹⁶⁴ Austin, P. C. (2011). An Introduction to Propensity Score Methods for Reducing the Effects of Confounding in Observational Studies. *Multivariate Behavioral Research*, 46(3), 399–424.

¹⁶⁵ Rosenbaum, P. R., & Rubin, D. B. (1985). Constructing a Control Group Using Multivariate Matched Sampling Methods That Incorporate the Propensity Score. *The American Statistician*, 39(1), 33–38.

¹⁶⁶ Austin, P. C. (2008). Goodness-of-fit diagnostics for the propensity score model when estimating treatment effects using covariate adjustment with the propensity score. *Pharmacoepidemiology and Drug Safety*, 17(12), 1202–1217.

¹⁶⁷ Specifically, the propensity score was conditioned using covariate balancing propensity scores, and the weighting technique used was inverse probability of the treatment for the average treatment effect of the treated. Multiple PSM techniques were tested including 1-to-1 matching, logit conditioning, and entropy weighting. This technique proved to reduce the bias the most.

Table 5. Model Balance Summary

	Pre-PSM				Post-PSM			
Percent significant differences				47.4				0.0
Mean Standardized % difference or % bias				19.2				3.7
Percent of covariates with % Bias \geq 20				34.6				0.0
Percent of covariates with % Bias \geq 10				69.2				7.7
Area under the curve statistic (AUC)				.951				.500
Group sample size	PPS 3,693	Paroled 95			PPS 3,693 ^a	Paroled 95		
	% / M(SD)	% / M(SD)	<i>p</i>	%Bias	% / M(SD)	% / M(SD)	<i>p</i>	%Bias
Demographics								
Male	95.0%	94.7%	.901	1.4	94.7%	94.7%	.992	0.1
Non-White	33.3%	22.1%	.022	25.2	21.9%	22.1%	.972	0.4
Age at release (mean)	12.6 (53.4)	53.4 (8.2)	<.001	105.6	8.2 (53.4)	8.2 (1.0)	.977	0.3
Area released								
Central Eastern	9.4%	7.4%	.069	7.3	9.7%	7.4%	.573	8.2
Metro	62.4%	74.7%		26.8	69.0%	74.7%		12.9
NW Coastal	14.0%	6.3%		25.7	11.1%	6.3%		16.9
Southwest	14.2%	11.6%		7.8	10.3%	11.6%		4.1
Sub-Micropolitan	2.1%	1.1%	.345	8.3	2.2%	1.1%	.640	9.1
Micropolitan	15.1%	10.5%		13.7	8.3%	10.5%		7.6
Metropolitan	82.8%	88.4%		16.0	89.5%	88.4%		3.4
Rural/Non-Metro	19.8%	11.6%	.047	22.7	11.6%	11.6%	.998	0.0
Urban/Metro	80.3%	88.4%		22.6	88.4%	88.4%		0.0
Index offense								
Crime type: Person	58.9%	64.2%	.378	10.9	64.0%	64.2%	.975	0.4
Crime type: Sex off.	41.1%	35.8%		11.0	36.0%	35.8%		0.4
Concurrent convts. (avg)	3.6 (3.1)	4.2 (6.1)	.015	9.0	4.2 (4.9)	4.2 (6.1)	.949	0.8
Violent convts. (avg)	2.6 (2.3)	3.5 (5.9)	<.001	14.7	3.5 (4.3)	3.5 (5.9)	.940	0.1
Assault convts. (avg)	0.5 (0.7)	0.8 (0.7)	<.001	37.6	0.9 (1.5)	0.8 (0.7)	.974	0.5
Robbery convts. (avg)	0.6 (1.3)	0.5 (2.3)	.872	0.9	0.5 (1.2)	0.5 (2.3)	.940	0.8
Weapon convts. (avg)	0.2 (0.6)	0.1 (0.4)	.087	19.2	0.1 (0.3)	0.1 (0.4)	.985	0.2
SO Noncomply (avg)	0.9 (1.2)	0.9 (1.2)	.657	3.9	1.8 (3.9)	0.9 (1.2)	.992	0.1
Criminal history								
Age at first arrest (avg)	25.9 (11)	24.5 (8.3)	.216	12.4	24.6 (8.3)	24.5 (8.3)	.953	0.6
Past violt. convts. (avg)	2.4 (2.3)	2.1 (1.7)	.171	13.6	2.2 (1.9)	2.1 (1.7)	.728	4.6
Index incarceration								
Major nonvio DRs in 2yrs	3.5 (2.8)	2.7 (2.7)	.014	21.6	5.6 (12.4)	2.7 (2.7)	.615	5.6
Major violent DRs in 2yrs	1.0 (1.4)	0.4 (0.8)	<.001	47.6	0.4 (0.9)	0.4 (0.8)	.539	6.4
Weeks in seg/IMU in 2yrs	7.7 (28.7)	14.6 (52.8)	.025	12.2	11.6 (49.3)	14.6 (52.8)	.716	4.8
Quarterly visits (avg)	3.7 (8.6)	3.8 (7.1)	.955	0.5	3.0 (8.9)	3.8 (7.1)	.407	8.1
Length of stay (avg)	8.1 (3.1)	22.5 (7.3)	<.001	190.2	9.6 (3.8)	22.5 (7.3)	<.001	168.1

Note: Weighted sample size is reported for the post-PSM PPS population. The observed sample size of post-PSM PPS is 1,725. Length of stay is reported in this table, but is not incorporated in the balance indices as it inherently has far too much difference between the samples. SO = sex offender.

One important measure could not be balanced via PSM – length of stay in prison (LOS). Sentencing reforms in determinate and indeterminate sentencing have changed over the last several decades. None the least of which are BM11 and the development and imposition of sentencing grid/guidelines to help structure the discretion of judges and prosecutors. With the various changes, non-homicide serious crimes like those defined under BM11 have mandatory minimums now of five years, and have fewer cases sentenced for as long as murder convictions (25-year mandatory minimum). With discretionary maximum lengths for serious crimes slowly decreasing over time, the gap between those and homicide convictions will inherently widen. This creates a gap that is

not easy to balance, even with advanced statistical methods. In spite of this gap in LOS, I argue that it is controlled for enough in this study design to suggest it has little to no effect on the reported outcomes. The reason for this is two-fold. First, a recent study published by Portland State University researchers (including the PI on this analysis) and the Oregon Criminal Justice Commission¹⁶⁸ investigated the relationship between prison length of stay and the likelihood of recidivism. The report concludes that LOS has little effect on the reduction of recidivism, which aligns with the findings of other studies across the nation.¹⁶⁹ This suggests that not being able to balance on the LOS measure in this study is unlikely to have an impact on the recidivism results. Second, any possible effects that LOS might have on recidivism, is more of a function of the person's age. The age-crime curve is renowned for showing that people are at their highest likelihood to commit crime roughly between the ages of 15 and 25, with a precipitous drop in the probability for criminality for every year older the person is upon release. Given that the two groups in this study are balanced on their age-at-release, any possible effects are tangentially controlled.

With the two groups adequately balanced, the final step is to use a weighted regression in what is commonly referred to as a double-robust approach to isolating the effects of the parole process on the likelihood of recidivism, thereby providing a more accurate comparison to determinate PPS. Figure 9 provides a graphical representation of the marginal probabilities from the final models for each of the supervision outcomes. The effects demonstrate that the paroled population has more difficulty in the community than naïve comparisons would indicate. Given an otherwise average case, parolees have a substantively higher probability of failure for every recidivism event except for reconvictions. This essentially means that if we were to take two otherwise similar cases, one paroled and one released via determinate sentencing, those on parole have a higher probability of failure following release.

It is important to highlight that one of the best predictors of recidivism is a person's criminal history, which is typically captured by a static risk score. For Oregon, the static actuarial assessment used is the Public Safety Checklist (PSC), which is an automated instrument that compiles and weights a person's criminal history and provides a score that indicates the individual's probability to recidivate. The scores are subsequently broken up into "low," "medium," and "high" risk to recidivate. The parolee population in this sample has zero individuals in the "high-risk" category and only 1% in the "medium-risk" category, while the PPS population has 14.8% of the sample in that category. This suggests that the elevated probability of the parolee sample to fail has more to do with dynamic factors – factors that are subject to change due to intervention or supervision practices.

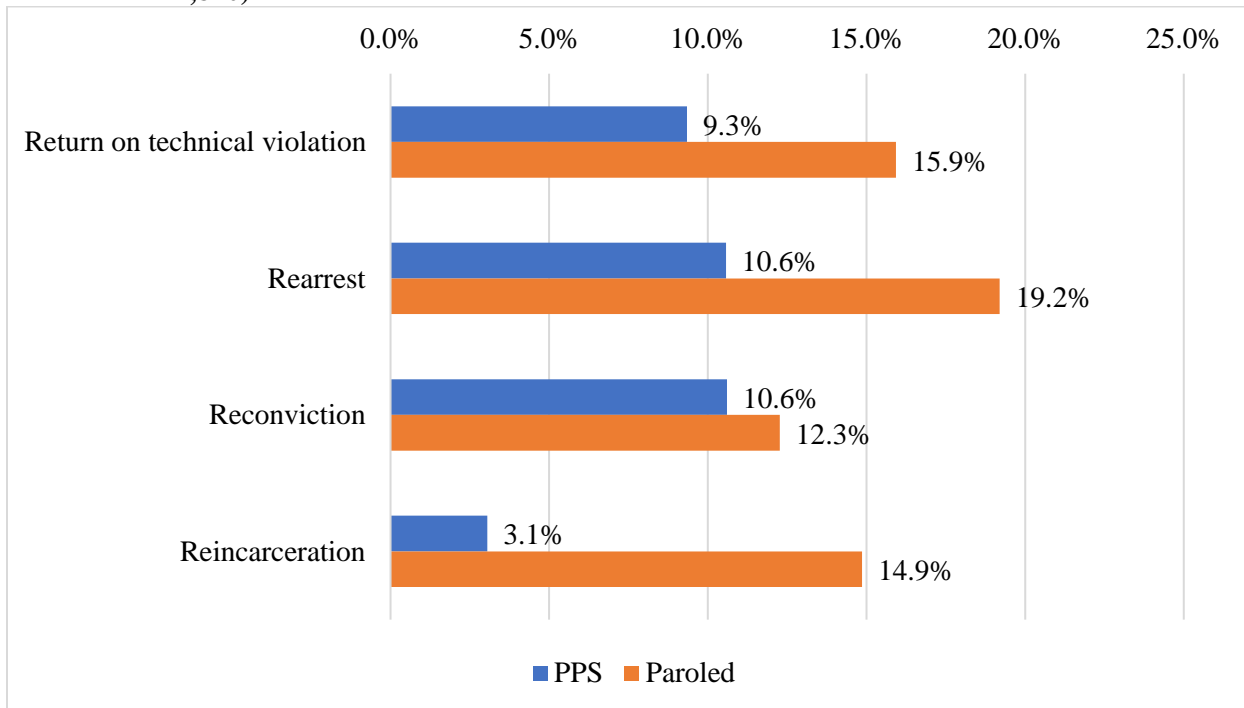
¹⁶⁸ <https://www.oregon.gov/cjc/CJC%20Document%20Library/PSU-CJC-LOSonRecidivismFinalReport.pdf>

¹⁶⁹ Loughran, T. A., Mulvey, E. P., Schubert, C. A., Fagan, J., Piquero, A. R., & Losoya, S. H. (2009). Estimating a Dose-Response Relationship Between Length of Stay and Future Recidivism in Serious Juvenile Offenders. *Criminology*, 47(3), 699–740.

Rydberg, J., & Clark, K. (2016). Variation in the incarceration length-recidivism dose-response relationship. *Journal of Criminal Justice*, 46, 118–128.

Zimring, F., & Hawkins, G. (1997). *Incapacitation: Penal Confinement and the Restraint of Crime*. Oxford University Press, USA.

Figure 9. Marginal probability of recidivism of PPS versus paroled in matched sample (unweighted n = 1,820)



Possible explanations for parolee performance

There are a number of possible reasons as to why the marginal effects suggest the opposite probability of recidivism compared to the naïve estimates. Aside from Figure 9 providing a more accurate comparison than naïve estimates, it is likely that the models highlight how parolees face more difficulties upon release. Perhaps the most obvious difference that parolees experience is that of age and the difficulties in adjustment to a dramatically changed society than when the individual went into custody over 20 years ago. Reintegration into a new world of technology after the loss of social ties over the years was a major concern for several AICs and parolees alike. One parolee put it this way:

I have my family but not everyone has a family to help you out like that. I'm struggling with having stamina to be able to work and also manage so much stimulation in the day. I never used a smartphone or computer, and I can be on the computer for 15 minutes that feels like 10 hours. For my first week and a half I was almost like seasick from looking at screens—there should be something that tells people that having screens would have an impact—some guys that aren't mentally strong who could struggle. (Latinx parolee, over 45 years old, incarcerated over 25 years)

Another potential reason has to do with the county of supervision. Since 1997, Oregon has operated and funded community supervision in a local control setting. This means that each county can opt to run their own community supervision (probation and parole/PPS) so long as they are adequately funded by the state. Two counties (Linn and Douglas) have opted for the state DOC to oversee their community supervision. As a result, community supervision can function very differently across counties. In talking with some officials from county supervision and DOC staff who help counties with community supervision needs, there is wide recognition that the success

of parolees and PPS populations can often depend on the way in which the county's supervision is conducted. Some officials indicated that there are many counties that operate on a philosophy of "trail'em, nail'em, and jail'em", suggesting that the focus of supervision is on finding a way to send the person back to custody rather than helping to ensure they successfully reintegrate into society.

[Interviewer] Do you think how community corrections is operated within a county really indicative of how well the parolee will do? *Absolutely. You get a county like Multnomah, that when they know they have someone returning who has been down for a long time, they have multiple individuals involved in that. Their parole officer, intake center, and release counselors they have out of intake there; full wrap-around approach. You've got a district attorney who is supportive, and a sheriff who is willing to let those parts of the system to do what they do, and a strongly run Department of Community Justice program that recognizes that community corrections ought to be designed to supervise everyone from a guy who stole a couple steaks from Thriftway to the guy who is a serial sex rapist and murder, and everyone in between, and it's a success.*

You have a county where they held a town hall meeting prior to the guy's release, blamed the Board for releasing a horribly dangerous, sick individual back into their community, and the community needs to be prepared and on guard. They then stuck him in a hotel room and allowed a vigilante posse to sit out in front of his hotel room in chairs, holding shotguns, with a cooler full of beer, day in and day out, and any time he came out of his hotel room, they all followed him through town. They followed and harassed and antagonized him everywhere he went. So, you do get the full spectrum. Of course, that hasn't occurred with every release to that county, but it's not the only time. This community failed to recognize the bigger picture in what they needed to do, certainly not doing anything to foster and help success, while still holding him accountable. I didn't think things like that happened, but they do.

Community corrections has a big responsibility in the parolee's success. And the Board must have the confidence in community corrections. The more confidence the Board has in the county's ability to supervise and do their job, the more likely they are to release. These aren't the highest risk individuals, but they are among the highest need. So, if they do recidivate, they do some of the worst stuff. But they are not the highest risk individuals, and so we are more than capable and equipped to supervise them and manage their behaviors and give them an opportunity to succeed. (Past/present Board member, over 20 years of experience in criminal justice)

The idiosyncratic nature of supervision in the counties can also provide problems for victims, especially as it relates to having the appropriate information necessary related to the offender's release from prison.

There are some areas with a lack of uniformity that could be improved. For example, each county runs their own parole and probation or community corrections division. There are only a couple of counties that are a subdivision of the Board of Parole. What I've found is that, depending on where the inmate is

released to, is going to make a difference in terms of what information that that victim in that county is going to be able to get from parole and probation. In some counties, the PO is really forthcoming about “yes, this offender is compliant with the terms of his parole” and “he has geographical limitations, and you won’t have to worry about running into this person in the grocery store.” You know, that sort of thing which helps victims feel safe. But in some counties, they say “no, I’m sorry, we can’t release any information to you.” I’ve had PO’s tell victims that the information is protected by HIPA, which is ridiculous. There is such a lack of uniformity in terms of the information that victims can get for someone that is on PPS, and that’s not fair. It goes against what we say the justice system stands for, which is justice, equity, and fairness. A victim in one county shouldn’t have more access than a victim in another county, just because it is a different county that is governing parole and probation. It is similar with the Board of Parole, when a victim asks for certain conditions to put in place, they often tell them that they need to talk to the PO. But some officers are receptive to that, and some aren’t. If it came directly from the Parole Board, and they take more victim input into account into the formation of conditions, I think it would go a long way towards improving the fairness of the system. (Victim advocate)

One major way that the Board can become more connected and foster standardization across county supervision is by incorporating a discussion of criminogenic needs when considering an individual’s potential success upon release or in exit interviews. As noted by a past/present member above, *“These aren’t the highest risk individuals, but they are among the highest need,”* highlighting that the transition to the community could be better supplemented if the Board works to incorporate more needs-based information into evaluating release plans.

I think what’s more important for the Board to have an understanding around, ideally, is the LS/CMI, which is now being completed by those who are in custody the same way as it is on those who are in the community. What’s nice about that is the LS/CMI gives you a broader picture of the needs of the individual. So, the challenge is that the vast majority of individuals coming before the Board are going to score pretty low from a recidivism standpoint. What that doesn’t give you the context to, is what are the multitude of needs and areas of support needed if the person is indeed going to be released back into the community, to help minimize even that relatively low risk to reoffend. As we know the true parole recidivism rate is really low; a third, a quarter, or an eighth of what it is for our standard post-prison supervision clients. So, it is important for a Board member to understand the instruments being utilized. Most importantly, they need to understand the Static-99 for the tiering aspect of the sex offender population. So, assessments play a variety of roles, but there isn’t, and probably for good reason so far, there hasn’t been a score to help them make a determination around release or not. For the specialized population, for the development of release planning and case planning purposes, and for the purposes of understanding the DOC, but not for the purposes of release. (Past/present Board member, over 25 years of experience in criminal justice)

It is important to note that the Board currently relies on actuarial risk assessments somewhat regularly to inform their decisions. The STATIC-99 is used to gauge the risk of sex offenders, and

the HCR-20 is used by clinical psychologists in supplementing their reports of psychological status related to rehabilitation and recommendation to be released. These are two validated risk tools that have support in the research community. However, the HCR-20 is not used by the Board as a direct part of their consideration, rather it is a part of the psychological evaluation. Moreover, community corrections agencies do not use the HCR-20 to help supervise those who are released. Thus, the current process could be further supported by integrating the LS/CMI into more of the discretionary decisions of the Board, and into release plans.

Goal 4 Summary

Goal 4 examines how well paroling processes can predict recidivism and identify other factors that might impact parolee performance in the community. An appropriate comparison group was identified using the available Recidivism Dataset (described in the Overview and Goal 4 section). Using a more compatible comparison group, the analysis demonstrates that traditional comparisons to recidivism rates among the PPS population are naïve estimates. Naïve estimates of parole success suggest that parolees are more likely to succeed compared to the general PPS population. However, when an appropriate comparison group is applied, the analysis shows that parolees struggle more than the PPS population. Specifically, parolees have significantly more violations than those on PPS. Matched-group analyses also suggest that given an otherwise average case, parolees have a substantively higher probability of failure for every recidivism event except for convictions. This essentially means that if we were to take two similar cases, one paroled and one released via determinate sentencing, those on parole have a higher probability of failure following release.

These differences highlight a low risk population that is of the highest need in terms of services. Perhaps the most obvious difference that parolees experience is that of age and the difficulties in adjusting to a dramatically changed society than when the individual went into custody over 20 years ago. Reintegration into a new world of technology after the loss of social ties over the years was a major concern for several AICs and parolees alike. This can manifest in parolees having a difficult time following the conditions of their community supervision following decades in prison, demonstrating that the parolee population likely needs greater resources to improve their reintegration chances. Another reason for the differences could be that parole officers apply an exceptionally high degree of supervision and monitoring on those released via parole. Known in the discipline as “supervision effects,” such a practice demonstrates how parolees might experience greater scrutiny in the community than those on PPS. The degree of scrutiny, however, can depend on the county to which the individual is released. One major way that the Board can integrate decisions and foster standardization across county supervision providers is to incorporate a discussion of criminogenic needs when considering an individual’s potential success upon release or in exit interviews. Similarly, the Board can help to foster great standardization and improve connectivity to release/supervision plans by incorporating the LS/CMI into their decision-making and condition-setting protocol.

Goal 4 Takeaway

Problem Paroled populations have the highest need for services, but it is overlooked by erroneous comparisons to the general population on post-prison supervision.

Solution Reporting of parolee recidivism should be completed via a matched-comparison study, where parolees are compared to like cases and not the general PPS population.

Problem Community corrections supervision is far too idiosyncratic when it comes to supervising parolees.

Solution The Board should incorporate criminogenic needs and the LS/CMI when considering potential success upon release and condition-setting protocol.

X. AREAS FOR REFORM AND POLICY RECOMMENDATIONS

The findings associated with each of the goals suggest that there are a number of potential improvements that could be made to help reform the Board's process to help ensure greater fairness, transparency, and consistency over time. These areas of improvement fall into six key areas:¹⁷⁰ (1) More resources for the Board, (2) Improve data collection and rely on empirical evidence to help decision-making, (3) Codify and reify abstract expectations of the Board, (4) Representation for hearings should be an opt-out procedure, (5) Standardize the approach to parolee supervision across the counties, and (6) Provide more specific transparency for AICs and victims.

More resources for the Parole Board

Regardless of the goal, the findings presented here, as well as the process of acquiring (or failing to acquire) data to fuel the findings, have all shown that there are critical gaps in Parole Board resources. There are five key areas for which the Board needs more resources: Data management, digitization, support personnel, consistent training, and more rehabilitative services offered by the DOC. Investment into each of these areas will provide the Board with needed assets to identify problem areas, address public records requests in a timely manner, and produce reports on workload and tasks performed by the Board in order to justify the expenditure of public funds. While there are current mechanisms in place to address many of these recommended areas, they are evidently understaffed and under-resourced as many of these areas still have many shortcomings. Thus, more resources are needed to ensure the Board can complete its tasks in a fair, consistent, and just manner. The following are specific areas of recommended investment by the state:

1. Parole-specific data management system that is integrated into the DOC-400. During the course of this study, there were several instances in which the DOC and the Board were not able to supply the same information. While the Board has access to the DOC-400, they evidently lack analytic capacity to draw and supplement DOC data. Given the inherent dependence that exists between the Board and the DOC operations, particularly when it comes to release plans and disciplinary reports, there should be a much clearer, transparent, and direct process by which the Board and DOC can share data points.
2. Conduct a workload study for the Board. More data points ought to be collected on the Board's work/caseload (e.g., how much time is spent on which tasks?). This only needs to be done once to identify what areas should be tracked in perpetuity.
3. Track "what works" when knowing what to look for in rehabilitation and reentry. This information should be based on the most recent science available (e.g., psychology, criminology, and neuroscience). Such data needs to be tracked to provide more consistent information for the Board on a given AIC coming before the Board.
4. Expedited and sustained digitization of data for the Board. The Board is woefully behind when it comes to data digitization, as was indicated by multiple sources the PI spoke with working with the Board's staff as well as by past/present members. Temporary workers and supportive infrastructure could be hired to help scan and digitize all paper-based

¹⁷⁰ These recommendations are provided numerically for the sake of ease in grouping and ease for reading. The list is not provided in any particular order, and are not meant to be taken as a prioritized list.

information which would immensely aid the digitization process. This could take the shape of funds for interns from local universities (e.g., Western Oregon University or Willamette University). Scanning and indexing case files (e.g., BAFs) would substantially help identify patterns, conduct searches, and provide the public/victims with information.

5. Additional supporting personnel for the Board would aid in achieving additional transparency and fairness. These positions could include the following:
 - a. An additional data management analyst to help provide more written context to the Board's reports, which are not immediately digestible by the public. Current reports consist of pie and bar charts that have little explanation or narrative. This person can also be expected to work within and across the DOC-400 data management system, and can be the primary person who inputs the data when digitizing and coding the decisions made. For more on this, see Recommendation #9 below.
 - b. It is highly recommended that there is someone on the Board's staff who can field and respond to CorrLinks (email) and written correspondence from AICs to the Board. This person's contact information should be given to all AICs who are eligible for parole. The person should be tasked with reaching out after hearings to ask if the AICs have any questions about the Board's decision. Setting up such a position will provide a mechanism that will give greater transparency and fairness to Board decision-making. Plus, it will increase perceptions of legitimacy among AICs who will and have experienced the Board.
 - c. Personnel related to the Board should be tasked with and specialized in aiding with release plans – specifically working with release counselors and the county community corrections staff to ensure that the release process is established, and supervision is conducted in accordance to the expectations of the Board. This person may also be tasked with ensuring that victims are receiving adequate and uniform information about the parolee upon release.
 - d. A Board staff person should be tasked with briefing (prior to hearings) and de-briefing (after hearings) AICs and victims involved in the hearings. This could be rolled into the duties of the person noted above in 5c.
6. Consistent and ongoing training should be codified and required for all Board members. Such training should include but is not limited to mandatory onboarding training for all new members. Onboard training can be provided through the National Institute of Corrections and other organizations mentioned above that provide such training on how Board member's can approach their job, given their state's expectations. Continuing education should be required for seated members to take every three years. Such training should incorporate updates in scientific knowledge salient to their decision-making such as rehabilitation (e.g., cognitive behavioral interventions, sex offender programming, and domestic violence programming), neuroscience as it relates to aging and violence, as well as best practices in supervision and conditions of release. Training should also include basic information on the principles of effective correctional intervention, abnormal psychology among offenders, and trauma-informed care.

It is important to note that the current Board cohort makes a concerted effort to have more trainings and to make well-informed, evidence-based decisions. They frequently attend and

present at practitioner and academic conferences (Association of Paroling Agencies International [APAI]) to maintain a consistent finger on the pulse of best practices, including on issues related to disparate outcomes among racial subgroups. Another example is “Trauma Informed Tuesdays” which is a webinar put on by APAI for all members, where the Board and staff sign into an informative discussion or presentation about trauma. These steps are admirable and consistent with a Board focused on best practices. However, the focus of the Board is dependent on the interests and scope of the Board’s sitting Chair and who is governor at the time. Thus, codifying this practice and expected trainings into a minimum expectation for all Board cohorts, then it safeguards against turnover.

7. All parties (Board members, AICs, and victims) should have adequate access to trauma/grief counseling. The cases that come before the Board are inherently traumatic for everyone involved. Reverberating effects of the Trauma should not be understated as the trauma is revisited every time the Board has a hearing. Board members are not immune to the effects of discussing and making decisions on such traumatic events.

Improve data collection and rely on empirical evidence to help decision-making

Many of the areas related to the concept of rehabilitation specifically, could be improved by better data, and using extant empirical evidence to help in decision-making. The following list of reform recommendations highlight how and why certain data and empirical evidence should be better integrated into the Board's processes.

8. More targeted rehabilitative programming must be offered by the DOC, and it should be offered in a capacity and frequency that will satisfy the needs of the Board’s population and decision-making. This is especially critical for those programs expected often by the Board such as more domestic violence and sex offender programming needs to be invested in. It is worth noting that the Oregon DOC provides a wide array of programming that receives quality assurance checks somewhat regularly. While it is undoubtedly challenging for the DOC to provide additional programming, particularly for those individuals whose release dates often change, it is essential that a concerted effort be made to expand these efforts and capacity.

However, AICs/petitioners appearing before the Board in most instances have engaged in some rehabilitative programming prior to arriving at their Board hearing, but there are many instances in which an AIC cannot participate in the expected programs. If a petitioner lives in a restricted housing unit, or in a facility in a remote part of the state, the access issues are more severe. They simply do not have access to the same services to others similarly situated in more central areas. In those instances, petitioners are sometimes directed to engage in “self-study” to address system-wide gaps in programming on those issues. The ambiguous and amorphous directive to “self-study” and release denials for failure to “self-study” can be problematic when considering that those experiencing incarceration are more likely than the general population to struggle with literacy.

The reality of programming actually provided should govern Board expectations for the petitioners that come before them. The Board should collaborate with DOC, and other relevant stakeholders to fully understand what risk reduction programs are offered and available for AICS in different facilities, units, and varying security statuses. If programming is not offered, and understanding risk factors related to those offenses is

mandatory, those self-study programs should be provided readily and easily to those who would benefit.

9. Information needs to be collected on how the 10 factors are considered in each murder review, and how the three core factors weighed into the decisions related to the Exit Interviews specifically. Most importantly, data that ought to be collected or extracted into data fields for analysis include the Board's reasoning from BAFs, and steps needed to complete to improve one's chances for release. It is important to note that including steps an AIC needs to complete to improve the chances of parole do not need to be milestones that guarantee release. Rather, the steps can increase the person's probability for release. If the steps are completed it does not necessitate release, but it will require the Board to be more specific in its reasoning given the prior steps were set in the last hearing.
10. Clearer, and more useful tracking of rehabilitation information needs to be engaged in by the DOC and the Board. Currently, the Board relies on case file information which encompasses multiple years to sift through, and/or the DOC-400 data system which has notoriously poor reliability in the tracking of program completion. Improving the data collection processes are necessary to ensure that decisions are being made in an interchangeable way across Board members, Board cohorts, and across cases. Furthermore, the relationship and communication between the DOC and the Board ought to be strengthened to ensure that appropriate treatment is available when the Board expects to see it.
11. Use more actuarial risk information (e.g., LS/CMI and information about needs) and sociological information about social network/situation to supplement psychological evaluations. Currently, the Board only uses the Static-99 for sex offenses, and the HCR-20 for psychological evaluations / Exit interviews. This could be expanded to include the LS/CMI (used in all counties to guide supervision and rehabilitation planning), and the psychopathy checklist to help with strengthening the psychological evaluations. See the Goal 4 findings for more justification for this recommendation. The key to including the LS/CMI is specifically for the incorporation into discussing and implementing supervision conditions and release plans. The more that the Board's expectations/decisions align with the information used by supervision staff, the more likely it is that community supervision is closer to a standardized application give a person's criminogenic needs.

It is worth noting that starting in 2019 the current Board cohort has made an effort to rely psychological evaluators who use more actuarial assessments such as the Sexual Violence protocol assessment depending on the case. Evaluators will also do the PCL-R (psychopathy checklist) typically, and others as needed (e.g., trauma symptoms inventory). These evaluations are deeply considered when the Board votes on conditions. This is important and good practices conducted by the current Board and its evaluators. However, it is subject to change depending on who sits on the Board and who is governor. Codification of using such tools can set a baseline/minimum expectation of all those evaluators to be contracted by the state.

Codify and reify abstract expectations of the Board

A key area of reform that could minimize problems in interchangeability and differences in decision-making/processes when Board cohorts turn over is the codification and reification of

abstract concepts. Concepts that could be interpreted differently depending on the person are abstract and have poor consistency in their application. Particularly when the criteria and procedures are amorphous, like in the personal review, personal interview, or prison term context, clarity is incredibly important to legitimize the process. The stark difference in experience between different AICs/petitioners is unsettling, especially in these hearing types that are held infrequently and where AICs/petitioners are not entitled to counsel. The following recommendations are focused on ways to improve abstract definitions in order to address interpretations and expectations that can change from Board to Board.

12. Define the purpose of punishment in Oregon. Regardless of the state, when it comes to criminal prosecution and punishment, there will always be a constant need to balance the goals of punishment – retribution, rehabilitation, incapacitation, and deterrence. However, without a clear definition as to which goal gets more a priority in Oregon, the application of punishment will forever be idiosyncratic. For example, if the Oregon DOC and scope of the Board is to focus on rehabilitation while simultaneously highlighting the reliance on incapacitation, then this should be clear in mission statements. To help codify these expectations, input should be gathered from the public (representative sample of Oregon’s electorate), and from victims as well as victim advocates for such definitions. Doing this will help to restore perceptions of fairness, justice, legitimacy, and trust into the state, the corrections system, and the justice system as a whole.
13. Clearly define the explicit relationship between rehabilitation, supervision success, and the purpose of parole. The fundamental purview of any Parole Board is to determine if someone is “ready” or “fit” to be released. The test of readiness can take many forms for those who are released from prison, with it typically relying on the conditions set at release¹⁷¹. If a Board member is not willing to consider release, or their discretion is not bounded by a clear purpose of the Board as it relates to release, then it is possible to have people on the Board who may never afford an AIC a chance at release. Such differences that could be observed between members and cohorts degrades legitimacy and fairness in the system and thereby can undermine decisions and power of the Board.
14. Define what it means to have a “fair hearing.” There are many structured elements that guide the structure of the hearings. However, the purpose and how these elements are expected to make the process fair (e.g., allowing voice, ensuring there is interchangeability in decision-making) is not always clear. This information can be included in a briefing of AICs before the go to a hearing, as well as in a de-briefing after a hearing takes place.
15. Define “demonstrating insight” and what it means to be “rehabilitated.” Similar to the definitions discussed above, these two concepts lack a clarity that is vital to ensuring that the hearings are fair and transparent. Moreover, ensuring the clarity of these concepts can help to improve the rehabilitation of AICs as they seek to internalize what the rehabilitation means to them well in advance of the hearing.

Within this context, it is worth noting that the assessment of remorse is particularly difficult for AICs/petitioners. The Board is set to expect petitioners to emote in a particular way around the issues of remorse and responsibility. The failure to do so appropriately is held against petitioners and cited as demonstrative of a “lack of insight,” without acknowledging

¹⁷¹ See Campbell, 2017

that expressions of remorse and responsibility are shaped by gender, race, socioeconomic class, education, faith, and facts of the crime. Race, culture, gender, socioeconomic class, and mental status play into assessment of remorse.¹⁷² Furthermore, there is little evidence to support that remorse can be accurately identified. Even psychologists who believe emotions can have universal expression cannot assign a face to remorse, as they could with more basic emotions like happiness, sadness, fear or disgust.¹⁷³ In addition, those assessing remorse bring their own implicit and explicit biases to their decisions. As a result, legal decision-makers hold different and sometimes contradictory ideas of what remorse looks like.¹⁷⁴ The socioeconomic class differences between Board members and AICs also may impact how remorse is interpreted. One universal expression of remorse does not exist, yet, petitioners are expected to express remorse in the way a Board finds palatable.¹⁷⁵

16. Explicitly define the role and purpose of the DA in hearings. It was noted by several interviewees that while the role of the DA was recognized as representing the state, and the community, many DAs come to the hearings looking to re-hash the initial specifics of the case, often to reiterate the heinousness of the act. Some past/present members highlighted how this is not helpful in the grand scheme and scope of the Board. Without Board members who are willing to interrupt or stop a DA from embarking on such a mission, then at the very least, the legitimacy, fairness, and interchangeability of hearing decisions are at risk of being compromised.

Representation for hearings should be an opt-out procedure

Representation was also identified in multiple findings as being something that could be dramatically important for AICs and victims. However, it is not currently set up as something that is easily accessible. These two recommendations provide options to addressing this shortcoming.

¹⁷²Nicole Bronnimann, *Remorse in Parole Hearings: An Elusive Concept with Concrete Consequences*, 85, Mo. L. Rev., 322, 347 (2020).

¹⁷³ *Id.* at 345.

¹⁷⁴ *Id.*

¹⁷⁵ Parole is designed for those who have actually committed harms. Thus, for those who have committed more attenuated harms, like in the felony murder context, or who have not committed a crime at all, as in innocence, the process is incredibly difficult. Prisoners claiming innocence who seek parole are fundamentally disadvantaged if they do not accept full responsibility for their crime of conviction. A jury has found them guilty and a court has pronounced its sentence. Accordingly, the prisoner's refusal to acknowledge his guilt represents a personal, social, and moral failure to confront the crime and the motivations for it. Furthermore, this failure implies the incapacity for rehabilitation, because accountability is a cornerstone of prosocial thought and behavior. However, genuinely innocent prisoners appear before parole boards to seek release; they, of course, have been convicted by juries and their sentences have been upheld by courts that found the evidence sufficient to support the verdict. Scholarship on this topic has identified the dilemma that the innocent prisoner faces when confronted by the realities of the parole process. (see Daniel S. Medwed [2008], "The Innocent Prisoner's Dilemma: Consequences of Failing to Admit Guilt at Parole Hearings," 93 *Iowa Law Review* 491, 541)

For those convicted of felony murder, the culpability narrative is still difficult. These petitioners were often involved in a crime that resulted in a death, but did not actually take a life. As a result, these petitioners may struggle to accept the same level of responsibility as someone who actually fired a weapon. This creates an incredible paradox. The person who committed murder may have an easier time getting through the parole process than someone who may have attenuated involvement but who never intended anyone die. The person who committed murder can accept culpability for the murder, whereas the person convicted of felony murder must express and emote as though they did. If they fall into a trap of placing blame on their co-defendant, the person who actually took a life, it could be construed as though they are avoiding responsibility for their own criminal behavior.

17. Ensure that all parties involved in hearings are provided adequate representation if desired with codified minimum standards. This should be in the form of an opt-out process. Parole-eligible AICs going before a Board and victims attending hearings should have automatic representation selected similar to how public defense counsel is for indigent clients. All victims should be assigned counsel to help them navigate the parole process. Counsel can fulfill a number of important roles, none the least of which are facilitator, counselor, and advocate. Parole counsel often meets the petitioner in a vulnerable position. In many instances, petitioners may never have spoken about their crime before. They may have differences in learning, or struggle to communicate verbally. Often, they have limited experience discussing childhood trauma or their own experiences of violence. The role of the attorney requires being sensitive to the incredible task required of the petitioner. Parole counsel serves as a facilitator, assisting the client in clarifying their own truth and in making it palatable for the Board. Those two needs are often in tension.
18. Greater investment should be made into representation. This may take the form of creating an office of parole representation in the Oregon Office of Public Defense Services who can help coordinate available counsel.

Standardize the approach to parolee supervision across the counties

19. Noted in multiple findings was the lack of consistency in supervision across county jurisdictions. There is currently far too many idiosyncratic differences between counties and their approach to supervision. The “trail’em, nail’em, and jail’em” approach to supervision is not particularly helpful in reintegration and is commonly used in multiple counties. Moreover, for the victims, there needs to be more uniformity in how they can get relevant information about the person on supervision. Furthermore, more services, specialized supervision and uniformity across counties. As discussed in the findings of Goal 4, this population is at a higher risk of failing supervision when compared to similar cases, which is likely due to the fact that they have the highest needs and are more closely scrutinized among those on post-prison/parole supervision. Much of these differences in needs may be exacerbated by the differences in county community corrections differences. The success and supervision of someone who is released via the Board (or any PPS), should not be determined by the management style or resources of the county. Moving forward, it is highly recommended that the state establish minimum requirements for how supervision should be completed, especially for special populations. This can be helped by using the Justice Reinvestment Act funds and gap analyses of services available in each county to help structure additional protocols and support systems to help counties achieve this.

Provide more specific transparency for AICs and victims

Prior to reaching the minimum sentence, the potential parolee should be assessed for their individual risk and needs, and those issues identified should be addressed through appropriate programs to prepare that person for release.¹⁷⁶ Currently, individuals may not understand even how and when to petition the Board for a hearing, let alone what is required of them at that hearing. That means the initial Board hearing and decision functions as a roadmap for what growth is necessary for securing relief. By providing clear and specific direction, the petitioner can better

¹⁷⁶ Robina Institute, *Modernizing Parole Statutes*, Guidance from Evidenced-Based Practices.

address and develop the self-awareness required for success, both for the hearing and for community reintegration.

20. Relay expectations and justification information to AICs in a clear way. As noted in the findings of Goal 2 and Goal 3, survey respondents whose who have experienced a Board know what they need to do, know what a Board is looking for, but recognize they do not have the resources to achieve it. Even among released interviewees, they noted that they have no idea how a Board makes decisions in spite of going through the process. Much of the frustration and lack of trust expressed toward the Board by survey respondents and interviewees largely stemmed from the lack of transparency and explanations available to them regarding hearing decisions and what to expect in hearings. There are many potential ways that the Board and the DOC could be creative in relaying more information to the AICs who experience the hearings as well as to those who have yet experience them. Much of such nuance varies depending on the availability of different modalities in a given facility (e.g., electronic tablet availability). Generally, a larger effort to provide more information can take the form of reform efforts completed by other states. One example is the [Parolee Handbook provided by the California Department of Corrections and Rehabilitation](#). Similarly, improvements in transparency are important for victims. As noted by victim advocates' statements, there needs to be greater transparency in process and decision-making before and after hearings.