

CAGED BIRDS AND THOSE THAT HEAR THEIR SONGS: EFFECTS OF RACE AND SEX
IN SOUTH CAROLINA PAROLE HEARINGS†

DAVID M. N. GARAVITO,* AMELIA COURTNEY HRITZ,** & JOHN H. BLUME***

When most incarcerated persons go before the parole board, they hope that the decision whether to release them will be based on their institutional record; put differently, that the board will consider the use of opportunities available in prison, rehabilitation, and likelihood of success outside the carceral environment. However, numerous persons with excellent records and reentry plans are denied parole every year. Why? The actual variables that influence parole board decision making are often a mystery; parole rejections are left unexplained or opaque. Empirical research examining what drives parole outcomes is scarce, yet this research is necessary given the power the parole boards have in determining the actual amount of time served in prison.

In this Article, we examined the influence of institutional variables (those related to a person's behavior while incarcerated) and noninstitutional variables on parole hearing outcomes in South Carolina. We predicted that institutional variables, such as the conviction of additional crimes during incarceration, would predict parole outcomes, but we also predicted that noninstitutional variables which may cue characteristics such as dangerousness (e.g., the nature of the offense), regardless of relevance to a person's rehabilitation, would also predict parole outcomes. We analyzed the outcomes of all (43,290) parole board hearings from 2006 to 2016 and examined the influence of variables such as a person's race, biological sex, age at the time of the first offense, time served, conviction of another offense while incarcerated, sex offender status, and number of felonies.

Our results confirmed our hypotheses: although institutional variables, such as being convicted of another crime while incarcerated, influenced parole outcomes, several noninstitutional variables, particularly those which may cue dangerousness, were also significant. The most alarming results were those concerning race and biological sex. The parole board was significantly less likely to grant parole to incarcerated men compared to women and to Black people compared to white people. Further, there was a significant interaction between sex and race such that Black men were least likely to be granted parole, whereas white women were the most likely to be granted parole. In addition to the above results, the number of convictions and the severity of the crimes a person was convicted of were associated with significantly lower likelihood of being granted parole. Additional research highlighting the specific roles that noninstitutional variables should play in parole hearings is warranted, if only to root out undesirable effects on a critical aspect of the criminal justice system.

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* Assistant Professor, University of Washington School of Law. A very special thank you to my fiancée Kaitlyn Summey for her advice on this manuscript.

** Attorney in private practice; Visiting Scholar, Department of Psychology, Cornell University.

*** Samuel S. Leibowitz Professor of Trial Techniques and Director, Cornell Death Penalty and Juvenile Justice Projects, Cornell Law School.

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INTRODUCTION

The United States prison system is one of the largest in the world. With nearly 1.3 million people incarcerated in state prisons alone,¹ the United States accounts for one-fifth of the global incarcerated population.² Given both the sheer size of the prison population and the readily apparent racial disparities plaguing it, researchers have been primarily focused on the front end of criminal procedure, such as police stop and frisk practices, overcharging, guilty pleas, and prosecutors failing to disclose exculpatory information.³ Other work has centered around disparities in the demographic makeup of the ballooning prison population.⁴ On the other hand, relatively little research has been conducted on the back end of the criminal justice system, and this is especially true of the decision whether to release an incarcerated person on parole. What happens when people attempt to prove that they have paid their debt, are deserving of release, and should be given the opportunity to reenter society? Given that 1 in 55 adults in the United States were either on parole or probation in 2016,⁵ this

¹ Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2020*, PRISON POL'Y INITIATIVE (Mar. 24, 2020), <https://perma.cc/G5Z8-YXLQ>.

² Peter Wagner & Wanda Bertram, "What percent of the U.S. is incarcerated?" (*And other ways to measure mass incarceration*), PRISON POL'Y INITIATIVE (Jan. 16, 2020), <https://perma.cc/24SY-8WKV>; see generally U.S. Census Bureau, *U.S. and World Population Clock*, (last visited July 27, 2023), <https://perma.cc/7VD4-9HGS> (demonstrating that the U.S. accounts for under 5% of the global population).

³ See, e.g., Devon W. Carbado, *Predatory Policing*, 85 UMKC L. REV. 545, 548–49 (2017) (discussing the impact of "front-facing" factors like mass criminalization and predatory policing practices on vulnerable populations).

⁴ See, e.g., Bureau of Justice Statistics, *Prisoners in 2019*, 1 (2020), <https://perma.cc/FDH9-GTGN> (demonstrating the Black and Hispanic people are disproportionately incarcerated in the United States).

⁵ PEW, *Probation and Parole Systems Marked by High Stakes, Missed Opportunities* (Sept. 25, 2018), <https://perma.cc/VZ3K-AY2X>.

empirical void is glaring. Further investigation of the latter portion of the criminal justice system, including parole outcomes, will shed light on the functions of the criminal justice system in its entirety.

Parole is the release of prisoners after a term of imprisonment but before the end of their sentencing period.⁶ A parolee is technically still serving out the sentence, however, so parole is quite different from *commutation* (the shortening of a sentencing period via an order from the head of the government) or *probation* (court-imposed supervision in place of imprisonment).⁷ Parole plays an interesting and unique role in our criminal justice system. First, if the system functions as intended, then *discretionary parole*—that is, a system where a board of people vote, at their discretion, on whether people deserve to leave confinement before the end of their sentences—can offer a great incentive for good conduct while incarcerated and encourage incarcerated people to participate in programming.⁸ Nevertheless, *discretionary parole* is not universally available in the United States,⁹ and the popularity of discretionary parole as a whole has fluctuated over the last few decades.¹⁰ Currently, out of the 50 states, 16 have no form of discretionary parole whatsoever.¹¹ The federal government, too, removed discretionary parole for federal prisoners in the Sentencing Reform Act of 1984.¹² Jurisdictions who turned away from discretionary parole system have instead opted for determinate sentencing systems, whereby a person is sentenced to a fixed period of confinement, which may be reduced for good behavior.¹³ These shifts have been driven, in part, because states that utilize a *discretionary parole* system, despite varying in their rules and procedures, generally have little transparency in the factors actually guiding release decisions.¹⁴ This lack of transparency makes it harder for people trying to advocate for their release,¹⁵ and the wide discretion in release decisions drew a considerable amount of criticism from people and groups across the political spectrum in the late 20th century.¹⁶

For some, the discretionary nature of that system drew concerns that racial minorities were receiving disparate treatment.¹⁷ Critics on the other side of the political spectrum claimed that discretionary parole resulted in non-reformed criminals being released back into the community.¹⁸ In

⁶ *Id.*

⁷ *Id.*; see also LEGAL INFO. INST., <https://perma.cc/VN9N-D3FE> (last visited Mar. 22, 2024) (providing the definition of commutation within different legal contexts).

⁸ See Faye S. Taxman, *Parole: "What Works" Is Still Under Construction*, in HANDBOOK OF EVIDENCE-BASED SUBSTANCE ABUSE TREATMENT IN CRIMINAL JUSTICE SETTINGS, 205, 207 (Carl Leukefeld, Thomas P. Gullotta & John Gregrich eds., 2011); see also Ryan King, *Balancing the Goals of Determinate and Indeterminate Sentencing Systems*, 28 FED. SENT'G. REP. 85 (2015).

⁹ See Alexis Watts, *In Depth: Sentencing Guidelines and Discretionary Parole Release*, ROBINA INST. OF CRIM. L. & CRIM. JUST. (Feb. 23, 2018), <https://perma.cc/PRS4-BCHU> (describing how states over the years have gotten rid of discretionary parole).

¹⁰ Beth Schwartzapfel, *Life Without Parole*, THE MARSHALL PROJ. (July 10, 2015), <https://perma.cc/EW5K-7Y8K>.

¹¹ Jorge Renaud, *Grading the parole release systems of all 50 states*, PRISON POL'Y INITIATIVE (Feb. 26, 2019), <https://perma.cc/EYZ8-E6BL>.

¹² Sentencing Reform Act, Pub. L. No. 98-473, tit. 2, ch. 2, 98 Stat. 1837, 1897 (1984) (codified as amended at 18 U.S.C. §§ 3551-3673 (1988) and 28 U.S.C. §§ 991-998 (1988)).

¹³ Edward E. Rhine, *The Present Status and Future Prospects of Parole Boards and Parole Supervision*, in THE OXFORD HANDBOOK OF SENTENCING AND CORRECTIONS 633 (Joan Petersilia & Kevin R. Reitz eds., 2012).

¹⁴ *Id.*; see also Amelia Courtney Hritz, *Parole Board Decision Making and Constitutional Rights*, 17 ANN. REV. L. & SOC. SCI. 335, 338 (2021).

¹⁵ Schwartzapfel, *supra* note 10.

¹⁶ Schwartzapfel, *supra* note 10.

¹⁷ Beth M. Huebner & Timothy S. Bynum, *The Role of Race and Ethnicity in Parole Decisions*, 46 CRIMINOLOGY 907, 925–29 (2008).

¹⁸ Schwartzapfel, *supra* note 10.

response to criticism from both sides, many states began shifting away from discretionary parole, with at least 20 states either abandoning that system completely or restricting the role of parole boards.¹⁹ This shift coincided with other policies that further increased the growth of the prison population, including the decline of other early release options, the introduction of mandatory minimum sentences, and the enactment of three strike laws that increased the imposition of life sentences.²⁰ However, in the past two decades, the momentum has reversed and some states have begun to reimplement parole systems or expand the power of parole boards.²¹ This response is due, in part, to the growing and aging prison population caused by the removal of early release options, mandatory minimum sentences, and the large number of people serving life sentences.²² Consequently, prisons have become overcrowded, and the increasing amount of aging prisoners require medical care and other services.²³

In this Article, we will review the state of research on parole decision making and provide contemporary data from a decade of parole outcomes in South Carolina. This Article proceeds in five parts. Part I will provide an overview of parole in the state of South Carolina. We break down South Carolina's discretionary parole system, including criticisms of the system and any limitations on the parole board. Part II will describe the existing state of parole research and highlight variables that have routinely been included in research on parole decision making. We will also discuss limitations and shortcomings in existing research, particularly those concerning methods and the lack of consistency regarding inclusion of demographic variables, such as race and biological sex, which may cue stereotypes of parole-related characteristics, such as dangerousness. In Part III, we outline the present study, including our sample, data processing procedure, and analytical plan. We use data supplied by the South Carolina Department of Probation, Parole, and Pardon Services from 2006 to 2016. For each

¹⁹ Rhine, *supra* note 13, at 631.

²⁰ See, e.g., PEW, *State Reforms Reverse Decades of Incarceration Growth* (Mar. 21, 2017), <https://perma.cc/P3Q2-J37D> (stating a four-fold in the incarcerated population in the United States from the mid-1970s to the mid-2000s resulting from policy changes that increased prison admissions and extended the amount of time served); see also Cecelia Klingele, *The Early Demise of Early Release*, 114 W. VA. L. REV. 415, 446–50 (2012) (discussing the failures of certain states to implement early release and the varying availability of early release systems among states in the U.S.); Renaugh O'Leary, *Early Release Advocacy in the Age of Mass Incarceration*, 2021 WIS. L. REV. 447, 450–52 (2021) (describing the limited availability of early release mechanisms for incarcerated individuals resulting from a switch to determinate sentencing and from the loss of broad discretion amongst parole boards); Tina Chiu, *It's About Time: Aging Prisoners, Increasing Costs, and Geriatric Release*, VERA INST. OF JUST. (Apr. 2010), <https://perma.cc/PNS4-S8YL> (noting that state policies such as mandatory minimums, truth-in-sentencing laws, and the abolition of parole has increased the length of prison sentences and dramatically increased the prison population); Emily Widra, *The Aging Prison Population: Causes, Costs, and Consequences*, PRISON POLY INITIATIVE (Aug. 2, 2023), <https://perma.cc/9G5B-896X> (stating that tough-on-crime policies have increased the average age of the prison population).

²¹ Rhine, *supra* note 13, at 632; see also Ellen Whelan-Wuest, *States Taking Action: Flipping the Script on Parole*, CSG JUST. CTR. (Sept. 29, 2020), <https://perma.cc/7TUP-CNTC> (reporting on how states have started to challenge the idea that parole is ineffective and how some states have started to implement “presumptive parole” systems which rests on the assumption that incarcerated persons should be released from prison unless other factors suggest otherwise).

²² Ashley Nellis, *Life Goes On: The Historic Rise in Life Sentences in America*, THE SENT'G PROJ. (Sept. 18, 2013), <https://perma.cc/8B8V-FF62>; see Chiu, *supra* note 19 (describing the rise in the elderly population in prison resulting from state policies such as mandatory minimums, truth-in-sentencing laws, and the abolition of parole, which led to longer prison sentences); see also Widra, *supra* note 19 (stating a demonstrated rise in the median age of the prison population due to tough on crime policies and showing a higher cost associated for the care of elderly individuals in prison).

²³ See, e.g., *Old Behind Bars*, HUM. RTS. WATCH, (Jan. 27, 2012), <https://perma.cc/E6N7-HKZ5> (depicting the dramatic rise in the elderly population behind bars in both federal and state prisons).

parole hearing during that timeframe, we had information on the demographics of the person in the hearing, the crime(s) the person had been convicted of, and other data of interest. Part IV describes the results of our tests, including all relevant statistics. Overall, the strongest predictors of parole hearing outcomes were the presence of violent crimes, a person's sex offender status, subsequent convictions while incarcerated, and demographic variables such as biological sex and race. Finally, in Part V, we interpret our results within the context of previous research and draw several conclusions.

I. A BRIEF OVERVIEW OF PAROLE IN SOUTH CAROLINA

We begin with a brief overview of South Carolina's parole system, which is administered by the South Carolina Department of Probation, Parole and Pardon Services (DPPPS). The DPPPS oversees approximately 67,000 people,²⁴ which is about 1.3% of South Carolina's population.²⁵ We specifically focused on South Carolina for several reasons: 1) South Carolina has a discretionary parole system that affords the parole board a large amount of discretion, even compared to other states;²⁶ 2) South Carolina's board, as part of the DPPPS, operates separately from the South Carolina Department of Corrections (SCDC), leading to a potential disconnect between the institutional goals, incentives, and consequences of the two administrative bodies regarding parole decisions;²⁷ and 3) South Carolina is a state within the Deep South, a region with unique historical roots that has rarely been studied in parole research.²⁸

In South Carolina, as part of the DPPPS, the Board of Pardons and Paroles makes all decisions regarding paroles and pardons.²⁹ This body also makes all recommendations to the governor regarding commutations.³⁰ Importantly, as mentioned earlier, the DPPPS is a separate department from the SCDC. Thus, the DPPPS has virtually no interaction with potential parolees, given that they are only involved in the latter part of a person's journey through the criminal justice system. Additionally, DPPPS does not share the same goals and responsibilities that the SCDC does: the Board is not required to consider, as part of their mission, things such as reducing the costs to taxpayers caused by further incarceration or showing proof of rehabilitative programming.³¹ This structure is *not* the norm in the United States, and the lack of common interests is highlighted as a major detriment to the discretionary parole system.³²

Incarcerated people may apply for parole after they have served a certain proportion of their sentence, depending on the type of crime committed and when the crime occurred.³³ When a person

²⁴ Jerry B. Adger, *Annual Statistical Report - Fiscal Year 2022*, S.C. DEP'T OF PROB., PAROLE, AND PARDON SERVS. (2022), <https://perma.cc/5Z4Y-B9ZJ>.

²⁵ *South Carolina Quick Facts*, U.S. CENSUS BUREAU (July 30, 2023), <https://perma.cc/A4E7-XJYE>.

²⁶ Jorge Renaud, *Grading the parole release systems of all 50 states: Appendix A*, PRISON POL'Y INITIATIVE (Feb. 26, 2019), <https://perma.cc/WE2X-AVGL> (stating that South Carolina offers discretionary parole for new offenses).

²⁷ Brief of Former Correctional Agency Heads, Correctional Administrators, and Prison Wardens, Amici Curiae in Support of the Petitioner at 11 n. 52, *Kelsey v. SC DPPPS*, 441 S.C. 373 (S.C. App. 2023), (No. 2020-001473) (filed Mar. 15, 2023).

²⁸ See *infra* Section II.C.

²⁹ *Parole Board*, S.C. DEP'T OF PROB., PAROLE, & PARDON SERVS., <https://perma.cc/J6DP-GSKE>.

³⁰ *Id.*

³¹ Brief for the Petitioner at 11, *Kelsey v. SC DPPPS*, 441 S.C. 373 (S.C. App. 2023) (No. 2020-001473).

³² *Id.*

³³ S.C. CODE ANN. § 24-21-610 (2024); S.C. CODE ANN. § 24-21-640 (2024); S.C. DEP'T OF PROB., PAROLE, AND PARDON

is within 90 days of meeting the threshold for parole eligibility, the DPPPS reviews the file to confirm that the person is legally eligible for parole and, depending on the case, assigns a hearing officer to compile and submit all relevant information. Any order granting parole must be signed by a unanimous three-member panel of the Board for non-violent offenses³⁴ and requires least two-thirds of a quorum of the full Board in cases involving violent crimes.³⁵ South Carolina is not a state that allows for presumptive parole—a system that automatically grants parole subject to a board’s denial.³⁶ The Board is composed of seven members, including a chairman, vice-chairman, and secretary.³⁷ Each member comes from a separate congressional district in the state and serves a six-year term.³⁸

The governor may appoint a person from any background,³⁹ so long as one member of the Board has a minimum of five years of experience (work or volunteer) in a field such as criminal justice, law enforcement, social work, or psychology.⁴⁰ It is not uncommon in many states for the parole board to include members with little or no experience in legal processes or within the criminal justice system.⁴¹

For all people who are eligible for parole and who have been denied at their first hearing, future reviews are held every one or two years thereafter, depending on whether the case involved violent crimes and when the person was sentenced.⁴² Hearing dates are scheduled 30 days in advance.⁴³ Hearings usually occur only once per week, which often results in the Board conducting a staggering 70 hearings in one day.⁴⁴ South Carolina mandates inclusion of input from any surviving victims of the crime(s), in addition to input from the original prosecutor.⁴⁵ By contrast, family members of the incarcerated person, prison staff, and past or future employers of the incarcerated person may only offer information on behalf of the incarcerated person at the discretion of the parole board.⁴⁶ South Carolina allows for the presence of an attorney (but does not provide an attorney if the person seeking parole cannot afford one) during the board meeting.⁴⁷ The potential parolee is required to send in all materials three weeks before the hearing date. These materials are combined with a DPPPS agent’s opinion regarding the person’s suitability for parole, the report of a risk assessment tool (typically the

SERVS., ORIENTATION MANUAL (2019), <https://perma.cc/69f4-Eztc>.

³⁴ S.C. CODE ANN. § 24-21-645 (2024). A case with non-violent offenses can also appear before the entire board, in which case a simple majority is needed to justify an order to grant parole. *Id.*

³⁵ S.C. CODE ANN. § 24-21-650 (2024).

³⁶ Renaud, *supra* note 26.

³⁷ S.C. CODE ANN. § 24-21-10 (2024); S.C. CODE ANN. § 24-21-1140 (2024).

³⁸ S.C. CODE ANN. § 24-21-10 (2024); these terms are staggered, and members can be reappointed. *Parole Board*, *supra* note 28.

³⁹ Parole Board, *supra* note 28. At the time of writing, there are six seats filled on the Board, half of which come from legal practice, criminal justice administration (e.g., law enforcement trainers and educators), or law enforcement (e.g., retired correctional or law enforcement officers); at least one was part of the South Carolina juvenile parole board. *Id.*

⁴⁰ S.C. CODE ANN. § 24-21-10(B) (2024).

⁴¹ Schwartzapfel, *supra* note 10.

⁴² S.C. CODE ANN. § 24-21-650 (2024).

⁴³ *Parole & Pardon Hearings*, S.C. DEPT OF PROB., PAROLE, AND PARDON SERVS., <https://perma.cc/L3Y7-PPBW>.

⁴⁴ Amelia Courtney Hritz, *Board to Death: De Facto Juvenile Life Without Parole*, 47 AM. J. CRIM. L. 47 (2020).

⁴⁵ Renaud, *supra* note 26.

⁴⁶ Renaud, *supra* note 26.

⁴⁷ Renaud, *supra* note 26.

COMPAS),⁴⁸ and all other records “before, during, and after [the person’s] imprisonment”⁴⁹ (e.g., case summary, disciplinary records, criminal history, participation in programming, etc.) to form the official parole record. The Board must review this record when making a decision, and the potential parolee has the duty to identify any mistakes or inconsistencies and correct them.

However, if they attempt to review this official record, potential parolees and their attorneys will discover that they are not allowed access to the official record nor any components that they do not have access to otherwise, such as the results of the COMPAS.⁵⁰ According to the Board, “all information obtained by probation and parole agents in the discharge of their official duties is privileged information,” and the Board uses this authority, given to protect the materials and opinions of parole agents, to prevent access to the entire record absent a court order.⁵¹ The high opacity during this process continues leading up to the actual hearing and outcome.

With regards to the actual parole hearing, South Carolina does not have a set of statutory criteria for the parole board to follow when making a decision.⁵² Instead, the parole board is instructed to create their own criteria for the release or denial of parole.⁵³ According to the Board’s manual, their criteria for determining parole are the following:

[t]he risk that the offender poses to the community; [t]he nature and seriousness of the offender’s offense, the circumstances surrounding that offense, and the prisoner’s attitude toward it; [t]he offender’s prior criminal record and adjustment under any previous programs of supervision; [t]he offender’s attitude toward family members, the victim, and authority in general; [t]he offender’s adjustment while in confinement . . . ; [t]he offender’s employment history . . . ; [t]he offender’s physical, mental, and emotional health; [t]he offender’s understanding of the causes of his past criminal conduct; the offender’s efforts to solve his problems; [t]he adequacy of the offender’s overall parole plan . . . ; [t]he willingness of the community into which the offender will be paroled to receive that offender; [t]he willingness of the offender’s family to allow the offender, if he is paroled, to return to the family circle; the opinion of the sentencing judge, the solicitor, and local law enforcement on the offender’s parole; [t]he feelings of the victim or the victim’s family, about the offender’s release; [a]ny other factors that the Board may consider relevant, including the recommendation of the parole examiner.⁵⁴

It is important to note, however, that, before listing the above criteria, the Board also states in its manual that “[t]he publishing of these criteria in no way binds the Board to grant a parole in any

⁴⁸ Brief of Former Correctional Agency Heads, Correctional Administrators, and Prison Wardens, *Amici Curiae* in Support of the Petitioner at 10, *Kelsey v. SC DPPPS*, 441 S.C. 373 (S.C. App. 2023), (No. 2020-001473) (filed Mar. 15, 2023).

⁴⁹ S.C. CODE ANN. § 24-21-640 (2024).

⁵⁰ Brief for the Petitioner, at 11, *Kelsey v. SC DPPPS*, 441 S.C. 373 (S.C. App. 2023) (No. 2020-001473).

⁵¹ *Id.*; see also S.C. DEP’T OF PROB., PAROLE, AND PARDON SERVS., *supra* note 33.

⁵² S.C. CODE ANN. § 24-21-640 (2020); see also Renaud, *supra* note 26.

⁵³ S.C. CODE ANN. § 24-21-640 (2020).

⁵⁴ S.C. DEP’T OF PROB., PAROLE, AND PARDON SERVS., *supra* note 32.

given case.”⁵⁵ The relevant statute does give some conclusions that the board must draw when deciding to grant parole:

[N]o such prisoner may be paroled until it appears to the satisfaction of the board: that the prisoner has shown a disposition to reform; that in the future he will probably obey the law and lead a correct life; that by his conduct he has merited a lessening of the rigors of his imprisonment; that the interest of society will not be impaired thereby; and that suitable employment has been secured for him.⁵⁶

The lack of oversight has created an environment wherein potential parolees often are left in the dark to determine what they could have done better or how to improve their chances for parole at the next hearing. During the hearings, which are typically only minutes long, given that the board must get through seventy hearings each day, there is no statement from the Board regarding the outcome determination nor the justification for that outcome. After the parole hearing has concluded, the potential parolee is given a written decision (almost certainly prepared by agency staff not parole board members) on a one-page summary sheet which includes checked boxes next to the applicable justification(s) for a rejection (e.g., “the seriousness of the original crime”).⁵⁷ Of the six listed justifications for denial, four concern either the nature or elements of the crime or the prospective parolee’s past criminal record, none of which could be mitigated while serving the sentence.⁵⁸ Such an environment prevents meaningful review and the construction of viable legal challenges to parole decisions, increasing the necessity of examining the decision-making process and what variables influence the final outcome.

Finally, should a person wish to appeal the denial of parole, they must first file it in the administrative law court.⁵⁹ In reviewing an appeal of the administrative law court, the appellate court will apply an arbitrary and capricious standard: unless the court finds that the Board decided purely based on its own will, and not based on the law or guidelines, the decision will be upheld.⁶⁰ Given the vast discretion afforded by respective laws and guidelines, and the aforementioned opacity with regards to the specific decision-making process, there is little chance that a court would obtain enough evidence to overturn a decision of the Board.⁶¹ Additionally, even if the parole hearing is successful, before

⁵⁵ *Id.*

⁵⁶ S.C. CODE ANN. § 24-21-640 (2020).

⁵⁷ Hritz, *supra* note 44, at 63.

⁵⁸ S.C. DEPT OF PROB., PAROLE, AND PARDON SERVS., *supra* note 33, at 31. Officially, a person may be denied parole for one of the following reasons: (1) “Nature and seriousness of the current offense;” (2) “Indication of violence in this or a previous offense;” (3) “Use of a deadly weapon in this or a previous offense;” (4) “Prior criminal record indicates poor community adjustment;” (5) “Failure to successfully complete a community supervision program;” and (6) “Institutional record is unfavorable.” *Id.*

⁵⁹ Renaud, *supra* note 26.

⁶⁰ *Buchanan v. S.C. Dep’t of Prob., Parole, & Pardon Servs.*, No. 2019-001554, 2023 WL 5597908, at *7 (S.C. Ct. App. Aug. 30, 2023), [reh’g granted](#) (Oct. 18, 2023) (“We reluctantly affirm the ALC’s finding that the [Parole] Board followed the proper procedure when it denied Buchanan parole because the Board’s order of denial stated the Board had considered “the factors outlined in [s]ection 24-21-640” and “the factors published in Department Form 1212.”).

⁶¹ In the cases where the Board’s decision has been overturned, the evidence against the board was extreme. One example of such a case is *Barton v. S.C. Dep’t of Prob., Parole & Pardon Servs.*, 404 S.C. 395 (S.C. 2013). In this case, four Board members out

people can be released from incarceration, incarcerated individuals are subjected to a warrantless search of their person, any vehicle they own or operate, and all their personal possessions.⁶² They must also submit to a risk assessment, the results of which may be used as justification to revoke their parole status.

Overall, of those states that have discretionary parole systems, South Carolina's system has not received favorable reviews by policy groups such as the Prison Policy Initiative.⁶³ In its review, the Prison Policy Initiative gave South Carolina's discretionary parole system a grade of "F" on a standard grading scale, referencing the lack of assistance in case management, permitting seemingly subjective reasons for denial, and lack of a method to challenge incorrect information in the Board's record.⁶⁴ The lack of oversight warrants an examination as to what information and characteristics predict parole hearing outcomes, as has been done in other jurisdictions in the past.

II. THE EXISTING STATE OF PAROLE RESEARCH

South Carolina's parole system, with the wide discretion afforded to the parole board, is not unlike those that were heavily critiqued in the mid-20th century. Around that time, studies examining the importance of various factors on parole decisions found that parole boards *tended* to rely on variables such as participation in programming, which are most relevant to a person's rehabilitation, but also that race may affect the amount of time it takes to be granted parole and what needs to be done to demonstrate rehabilitation.

More recently, after many states shifted away from discretionary parole systems, a few research studies have continued to focus on parsing out which variables parole boards rely on, with a specific focus on determining the influence of variables that are less relevant (or not relevant at all) to evaluating a person's rehabilitation (e.g., race, the seriousness of the offense, etc.).⁶⁵ Given the increased attention paid to discretionary parole and the resulting policy shifts over the past half century, it is no surprise that there has also been an increase in the amount of research and legal advocacy centered around the use of discretion by parole boards. The significance of such work is magnified by the fact that many adults in the United States (almost 1 million in 2016) are on parole each year.⁶⁶ Nevertheless, even with the increased attention, there is still a dearth of literature aimed at scrutinizing the variables influencing parole hearings, and existing research is understandably specific to regions or states. When evaluating the research that has been done on this later stage of the criminal justice system, it is also important to

of a six-member quorum voted in favor of parole. The applicable statute at the time of conviction required a majority of the Board to vote in favor of parole, which was satisfied. However, the Board applied the subsequent statute requiring two-thirds of the quorum, interpreted that statute to require two-thirds of the *full* Board, not of the quorum (i.e., requiring *five* votes in favor instead of *four*), and issued a subsequent denial of parole, citing the seriousness of the offense. An Administrative Law Court affirmed the denial interpreting the two-thirds requirement to mean two-thirds of the seven-member Board, not of the quorum, but the South Carolina Supreme Court reversed, holding not only that this was an improper interpretation of the subsequent statute, and that retroactive application of the subsequent statute constituted an *ex post facto* violation. *Id.*

⁶² S.C. CODE ANN. § 24-21-640 (2024).

⁶³ Renaud, *supra* note 26.

⁶⁴ Renaud, *supra* note 26.

⁶⁵ See, e.g., Kathryn M. Young & Jessica Pearlman, *Racial Disparities in Lifer Parole Outcomes: The Hidden Role of Professional Evaluations*, 47 L. & SOC. INQUIRY 783, 807 (2022).

⁶⁶ PEW, *supra* note 5.

note that much of this work involves data that is decades old.⁶⁷ Few studies have examined parole data in the past two decades. As such, the existing research is insufficient to capture the potential effects of shifting sociopolitical trends across the nation. Additionally, few studies before 2000 used data from actual cases.⁶⁸ Without examining actual parole outcomes, there exists a gap in generalizability: it is difficult to make claims about the decision-making process using hypothetical cases when actual decisions are being made about real people. These shortcomings are particularly important when considering that a major focus of this work has been the identification of potential influences of biases, particularly those based on demographic variables such as race and biological sex. This concern is not unwarranted given that, compared to their share of the general population, people of color and men are overrepresented in the prison population.⁶⁹

A. *A Brief Summary of Existing Parole Research*

Research on parole outcomes (and the presence of race-based disparities) did not begin until the latter half of the 20th century. Some of the earliest studies examining actual parole hearing outcomes examined the influence of institutional and noninstitutional factors on parole board decision making. Generally, this early research found that institutional values, such as participation in treatment programs and history of disciplinary infractions, were more predictive of parole hearing outcomes compared to noninstitutional factors, such as race and the nature of the offense.⁷⁰ As an example, one of these early studies examined the hearings for 243 incarcerated men in the Eastern Correctional Institution in Maryland.⁷¹ Using data from 1970 to 1971, this study found that of all the information in a person's file, only the number of disciplinary reports in the previous year, psychiatric recommendation to the parole board, custody level, participation in treatment programs, and nature of the offense were significantly related to parole hearing outcome.⁷² Since only one of these factors was noninstitutional, the authors concluded that parole boards may be more likely to rely on institutional factors, perhaps to maintain order within the institution.⁷³

Given that this time period coincided with debates about the merits of discretionary parole as a whole, other studies considered how parole board decisions differed across judges and whether the length of a person's incarceration should be dependent on a parole board's discretion or the length of the judge's sentence (i.e., a nondiscretionary parole system). One example from this period examined the Illinois parole board's decisions regarding incarcerated men from 1970 to 1972.⁷⁴ In this study, the authors found that the parole board tended to rely on institutional factors that would not be known to

⁶⁷ See Joel M. Caplan, *What Factors Affect Parole: A Review of Empirical Research*, 71 FED. PROB. 16 (2007) (reviewing research on criminal procedure before the turn of the century).

⁶⁸ *Id.*

⁶⁹ See Sawyer & Wagner, *supra* note 1. Although men are overrepresented, the number of women has increased over the past decades. See Gina Fedock, *Number of Women in Jails and Prisons Soars*, 25 UNIV. CHI. SCH. SOC. SERV. ADMIN. MAG. (2018).

⁷⁰ See, e.g., John S. Carroll et al., *Evaluation, Diagnosis, and Prediction in Parole Decision Making*, 17 *Law & Society Review* 199 (1982); Michael R. Gottfredson, *Parole Board Decision Making: A Study of Disparity Reduction and the Impact of Institutional Behavior*, 70 J. CRIM. L. & CRIMINOLOGY 77 (1979).

⁷¹ Leo Carroll & Margaret E. Mondrick, *Racial Bias in the Decision to Grant Parole*, 11 L. & SOC. REV. 93, 93 (1976).

⁷² *Id.* at 98.

⁷³ *Id.*

⁷⁴ Anne M. Heinz et al., *Sentencing by Parole Board: An Evaluation*, 67 J. CRIM. L. & CRIMINOLOGY 1 (1976).

a sentencing judge, specifically the participation in educational programs while in prison, record of infractions, prospects for employment after release, and the recommendation of the institutional sociologist.⁷⁵ Additionally, the authors found several noninstitutional factors, most of which would likely be known at the time of sentencing (marital status and number of dependents, age, IQ, seriousness of the offense, and number of prior offenses), to be predictive.⁷⁶ The authors determined that a discretionary parole system would be preferred to relying solely on sentencing; however, this conclusion was dependent on the existence of appropriate safeguards to limit variability and bias, assuring accurate and “actuarial” predictions of dangerousness.⁷⁷ This early research highlighted several key considerations for later studies of parole decision making and policy discussions that this research informed. Such discussions inevitably resulted in the shift away from discretionary parole for many jurisdictions, although contemporary discussions regarding discretionary parole have reemphasized the need for appropriate research studies.

With contemporary improvements to methodology and data processing, there have been some particularly insightful research results in recent years. Nevertheless, in this recent work, similar variables have been found to influence parole decision making as those in seminal work from past decades. Generally, research has highlighted the importance of variables such as age,⁷⁸ the nature of the offense,⁷⁹ participation in programming,⁸⁰ recommendations of staff, such as wardens or correctional officers,⁸¹ and disciplinary records.⁸² However, given the variability in methodology and jurisdiction, many questions abound regarding the limits of generalizability. This discussion is perhaps most salient in the work involving the influence of demographic variables such as race and biological sex.

B. *Research on Demographic Variables as Cues for Stereotypes of Dangerousness*

Unsurprisingly, one major aspect of parole research has been examining the influence that demographic variables may have on parole decision making, mirroring the approaches that similar studies on related aspects of the criminal justice system have taken. With regards to race, one recent study found that minority men of any age were more likely to have their parole revoked for violations committed after they were granted parole than their white counterparts.⁸³ Similarly, women were less likely to have their parole revoked in response to violations than men.⁸⁴ In a recent qualitative study,

⁷⁵ *Id.* at 17–18.

⁷⁶ *Id.*

⁷⁷ *Id.* at 30–31.

⁷⁸ Robert Weisberg et al., *Life in Limbo: An Examination of Parole Release for Prisoners Serving Life Sentences with the Possibility of Parole in California*, STANFORD CRIM. JUST. CTR., 1, 21 (Sept. 15 2011), <https://perma.cc/LV4V-V9M7>; Kathryne M. Young et al., *Predicting Parole Grants: An Analysis of Suitability Hearings for California’s Lifer Inmates*, 28 FED. SENT’G REP. 268, 271–72 (2016).

⁷⁹ E. Rely Vilciã, *Revisiting Parole Decision Making: Testing for the Punitive Hypothesis in a Large U.S. Jurisdiction*, 62 INT’L J. OFFENDER THERAPY & COMPAR. CRIMINOLOGY 1357, 1372–73 (2018); see also JOHN S. GOLDKAMP ET AL., PAROLE AND PUBLIC SAFETY IN PENNSYLVANIA: A REPORT TO GOVERNOR EDWARD G. RENDELL (Mar. 29, 2009), <https://perma.cc/9V3C-4V8S>.

⁸⁰ GOLDKAMP ET AL., *supra* note 79.

⁸¹ Kathryn D. Morgan & Brent L. Smith, *The Impact of Race on Parole Decision-Making*, 25 JUST. Q. 411, 431 (2008).

⁸² *Id.*; see also GOLDKAMP ET AL., *supra* note 79.

⁸³ Tri Keah S. Henry, *Revolving Doors: Examining the Effect of Race and Ethnicity on Discretionary Decision-Making in Parole Revocations*, 46 AM. J. CRIM. JUST. 279, 291 (2021).

⁸⁴ *Id.* at 290.

one researcher explained this sex-based leniency as a product of the role of women in the nuclear family ideal.⁸⁵ Others have also attributed this effect to sex-based stereotyping and the association of traits like aggressiveness and criminality more generally with men, especially with men of color.⁸⁶ As such, researchers have suggested that in criminal justice contexts race (and biological sex) may serve as cues for stereotypes related to dangerousness, aggressiveness, or other characteristics that the criminal justice system seeks to weed out or otherwise mitigate.⁸⁷ Given time and information restraints, decision makers must rely on proxies or shorthand to come to a decision.⁸⁸ In parole cases, a parole board might subconsciously rely on demographic information such as race to “fill the gaps” in information about a person’s dangerousness, aggression, or propensity to recidivate or to otherwise hasten the decision-making process. For example, a parole board member may subconsciously associate being Black with being more aggressive, dangerous, and prone to recidivate. Since the parole board member does not want to let out dangerous reoffenders, the decision to deny parole is made much easier. Given that the South Carolina Board holds 70 parole hearings per day, it is not unreasonable to question whether this subconscious “shorthand” decision making may be taking place.

Even in early parole research, which occurred during the middle of the 20th century, noninstitutional variables such as race and sex have been examined as possible cues for stereotypes of dangerousness that could enter the decision-making process. This research was likely motivated by heightened racial tensions and the Civil Rights Movement. For example, a 1970s study in Maryland examining the impact of institutional versus noninstitutional factors in parole decision making found that, when they compared races, variables predicting the parole hearing outcome were not the same.⁸⁹ For white people, prior convictions, custody level, disciplinary reports, age, and psychiatric evaluation were predictive. Conversely, for Black people seeking parole, requirements for participation in rehabilitative programs were imposed, in addition to evaluating other predictors such as: the nature of the offense, disciplinary records, age, and psychiatric evaluation.⁹⁰ The authors also found that Black people served a significantly longer portion of their sentences before being released on parole.⁹¹ The authors concluded that these effects were likely related and possibly due to an opposition to stereotypes surrounding the “political militancy” of Black folk and associated communal danger.⁹¹

Although these first studies seemed provocative, there was little additional research on the influence of demographic variables on parole decisions until the 2000’s, though results were mixed. Resurgence of such work coincided with policy debates regarding mass incarceration, given the shift

⁸⁵ Katharina Geppert, *Explaining the Gender Gap in the Criminal Justice System: How Family-Based Gender Roles Shape Perceptions of Defendants in Criminal Court*, INQUIRIES J. (2022), <https://perma.cc/35ZR-QE4Q>.

⁸⁶ Kelly Welch, *Black Criminal Stereotypes and Racial Profiling*, 23 J. CONTEMP. CRIM. JUST. 276, 278–281 (2007); Luis M. Rivera & Bonita M. Veysey, *Criminal Justice System Involvement and Gender Stereotypes: Consequences and Implications for Women’s Implicit and Explicit Criminal Identities*, 78 ALB. L. REV. 1109, 1110 (2015). There is at least one study that revealed parole boards were more likely to reject men who displayed negative stereotypes associated with masculinity (such as aggressiveness). See Joss Greene & Isaac Dalke, “You’re still an angry man”: Parole boards and logics of criminalized masculinity, 25 THEORETICAL CRIMINOLOGY 639, 656–57 (2021).

⁸⁷ See, e.g., Huebner & Bynum, *supra* note 17, at 926–27.

⁸⁸ Huebner & Bynum, *supra* note 17, at 909.

⁸⁹ See Carroll & Mondrick, *supra* note 71.

⁹⁰ Carroll & Mondrick, *supra* note 71, at 104.

⁹¹ Carroll & Mondrick, *supra* note 71, at 105–06.

towards determinate sentencing, mandatory minimums, etc.⁹² One study in this period, using people convicted of violent felonies in Alabama, found that race was not a statistically significant predictor of parole decisions, though the authors pointed out that Alabama's unique two-step parole hearing process limits generalizing any effects to other states.⁹³ Conversely, another study *did* find evidence of racial disparities in an unnamed state's parole hearing outcomes.⁹⁴ The researchers found that Black men waited longer for parole compared to Hispanic and white men and concluded that parole board members *may* use race as a general cue for risk and dangerousness, particularly when there is a lack of other pertinent information regarding the potential parolee.⁹⁵ Even within jurisdictions, results can be mixed. For example, with a sample of California parole hearings, one study found no predictive relationship between race or sex on a parole board's decision.⁹⁶ These findings were similar to those from past research which has suggested that race in particular has not played a role in California's parole board process⁹⁷ and which may be, in part, due to cultural and legal movements affecting parole reform in California.⁹⁸ Nevertheless, in a very recent subsequent study by the same lead author using another random sample of hearing transcripts, the researchers found that Black people were significantly less likely to be granted parole compared to white people.⁹⁹ The perceived racial disparity was accounted for, in part, by the reliance on professional opinions (e.g., psychological assessments or prosecutor recommendations), despite the additional finding that Black and white people did not differ in rehabilitative efforts.¹⁰⁰ Thus, the authors concluded that the abundance of information offered to parole board members may exacerbate existing biases, allowing for prejudicial consideration of seemingly race-neutral variables.¹⁰¹ Lastly, looking specifically at juvenile parole decisions in California, a researcher found that Black parole candidates typically were granted parole at a lower rate when compared to other racial and ethnic groups, even while controlling for education, participation in prison programs, and time without a disciplinary infraction.¹⁰² Given this variability within one, admittedly enormous, state, it is clear that additional research must be conducted to clarify the generalizability of research conclusions.

With the recent focus on larger datasets, several studies have attempted to use *all* data from a state or group of states. One study used data from all people released on parole in Pennsylvania and found no influence of race on parole decisions.¹⁰³ However, there were limitations in both the design

⁹² See PEW, *supra* note 20.

⁹³ Morgan & Smith, *supra* note 81.

⁹⁴ Huebner & Bynum, *supra* note 17.

⁹⁵ Huebner & Bynum, *supra* note 17.

⁹⁶ Young et al., *supra* note 78, at 272.

⁹⁷ David R. Friedman & Jackie M. Robinson, *Rebutting the Presumption: An Empirical Analysis of Parole Deferrals Under Marsy's Law*, 66 STAN. L. REV. 173, 204 (2014).

⁹⁸ Young et al., *supra* note 78, at 276; see also Jazmine Ulloa, *More California inmates are getting a second chance as parole board enters new era of discretion*, L.A. TIMES (July 27, 2017), <https://perma.cc/9AT6-MMZ7> (discussing different measures that California has taken to reform their parole system in response to legal pressure and to shifting attitudes with respect to parole).

⁹⁹ See Young & Pearlman, *supra* note 65.

¹⁰⁰ Young & Pearlman, *supra* note 65, at 792–94, 806–07.

¹⁰¹ Young & Pearlman, *supra* note 65, at 807–09.

¹⁰² Kristen Bell, *A Stone of Hope: Legal and Empirical Analysis of California Juvenile*, 54 HARV. C.R.-C.L. L. REV. 485, 486–87 (2019).

¹⁰³ Shamena Anwar & Hanming Fang, *Testing for Racial Prejudice in the Parole Board Release Process: Theory and Evidence*, 44 J. LEGAL STUDS. 1, 30 (2015).

of the study and the data obtained, which will be discussed in the next section. The methods (and associated limitations) of that study were similar to those in a study examining who was released on parole across a group of ten states.¹⁰⁴ In that study, the authors examined data from the National Corrections Reporting Program, which compiles data across the nation on prison admissions and releases.¹⁰⁵ These authors found not only a *lack* of bias against Black people but evidence of a bias *in favor* of them.¹⁰⁶ Again, however, both of these studies have significant limitations, even within the inconsistent field of parole research.

III. METHODOLOGICAL SHORTCOMINGS IN EXISTING PAROLE RESEARCH

Parole research, generally, has not rendered consistent results. This is due, in part, to several major limitations become clear found in most studies of parole, including those mentioned above. The first major limitation that can be seen in parole research is the lack of real parole outcomes in analyses. For example, in the two large studies on those released on parole discussed at the end of the previous section, the authors did not compare parole grants and denials; instead they compared the length of time to release and recidivism rates.¹⁰⁷ These authors did not have any data regarding those people who were denied parole and kept in prison.¹⁰⁸ This particular comparison does not measure the effects of racial discrimination, and the authors, for their part, acknowledge the limitations of their dataset, highlighting, for example, how the effects of biased policing on recidivism rates cloud their conclusions.¹⁰⁹ Further, specifically looking at the multi-state study, they did not control for differences in the 10 states with regard to the consistency and reliability of the data, in either sentencing scheme, parole scheme, or other important parts of the criminal justice system.¹¹⁰ Given the tremendous variability across jurisdictions seen in parole research, this shortcoming is significant.

The lack of studies using real parole hearing data is especially troublesome when attempting to measure the effects of demographic variables like biological sex. Specifically, there is a tremendous dearth of research on the effect of sex-based disparities on parole outcomes using real parole data outside of the study by Young and colleagues, which found no effect of sex on parole outcomes in California.¹¹¹ The challenges of such research is not surprising, given that men have been overrepresented in the criminal justice system for years.¹¹² Nevertheless, even when considering studies that use hypothetical parole cases, few studies exist on this topic. One such study gave parole board members from New Zealand and Canada fictional parole cases to decide and found that parole boards

¹⁰⁴ Stéphane Mechoulan & Nicolas Sahuguet, *Assessing Racial Disparities in Parole Release*, 44 J. LEGAL STUDS. 39 (2015).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 43–44.

¹⁰⁷ Anwar & Fang, *supra* note 103, at 2; Mechoulan & Sahuguet, *supra* note 104, at 56–57.

¹⁰⁸ Mechoulan & Sahuguet, *supra* note 104, at 56–58.

¹⁰⁹ *See* Anwar & Fang, *supra* note 103, at 22.

¹¹⁰ Mechoulan & Sahuguet, *supra* note 104, at 57–58.

¹¹¹ *See* Young et al., *supra* note 77, at 272.

¹¹² Sawyer & Wagner, *supra* note 1; *see also Males Are Over-Represented in Prison and Jails*, PRISON POL'Y INITIATIVE, <https://perma.cc/PCH3-U247> (last visited Feb. 23, 2024); THOMAS P. BONCZAR & ALLEN J. BECK, U.S. DEP'T OF JUST., SPECIAL REPORT: LIFETIME LIKELIHOOD OF GOING TO STATE OR FEDERAL PRISON 1 (Mar. 1997), <https://perma.cc/BW5E-FLDS> (“Men are over 8 times more likely than women to be incarcerated in prison at least once during their lifetime.”)

were twice as likely to grant parole to hypothetical women compared to hypothetical men.¹¹³ Little to no research has sought to expand on these findings, including examinations of potential interactions between the demographic variables, which is another major limitation of the current literature.

Although there is existing research examining how demographic variables such as race and biological sex may affect parole decision making, via cueing stereotypes of dangerousness or otherwise, the incorporation of what would be considered “intersectional” approaches into parole research, and criminal justice research as a whole, is relatively new.¹¹⁴ Intersectionality comes from the idea that people’s lives and experiences cannot be easily divided into separate and distinct identities.¹¹⁵ Instead, those identities often interact, depending on the situation, particularly in scenarios that may have overlapping systems of oppression.¹¹⁶ To give an example, classifying a person as Black and separately as a woman glosses over unique experiences that the person has because she is a Black woman and not just Black or a woman. Crenshaw noted how women of color, especially Black women, are often at greater risk of being victims of violence compared to white women, despite sharing a feminine identity.¹¹⁷ In this way, the separate identity of being white or being a person of color interacts with the other identity and can change a person’s resulting life experiences. As such, intersectional approaches are particularly important for women of color who, as Crenshaw discussed, often do not experience the protections or benefits afforded to white women, a phenomenon also referred to as the “defeminization” of women of color.¹¹⁸ Although intersectional approaches are rare, even in criminal justice research, there is *some* research on the interaction between race and sex on outcomes in the criminal justice system. For example, Black men specifically are more likely to be incarcerated¹¹⁹ and, if granted parole, have a greater likelihood of having their parole revoked (resulting in reincarceration) after a violation occurs.¹²⁰ Without considering intersectional approaches, existing research focused on detecting potential influences on a parole board’s decisions regarding who is deemed non-reformed or otherwise too dangerous to re-enter society is deficient, particularly if certain identities (racial or otherwise) may be tied to region-specific sociocultural issues.

The last major limitation in current parole research relates to the issue of jurisdiction- specific

¹¹³ Renée Gobeil & Ralph C. Serin, *Preliminary Evidence of Adaptive Decision Making Techniques Used by Parole Board Members*, 8 INT’L J. FORENSIC MENTAL HEALTH 97, 97–102 (2009).

¹¹⁴ See Kimberlé W. Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 140 (1989); see also Kimberlé W. Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991) [hereinafter *Mapping*] (describing domestic violence law and the role intersectionality should have in shaping said law).

¹¹⁵ See Crenshaw, *Mapping*, *supra* note 114, at 1244.

¹¹⁶ See *id.*; see also Patricia Hill Collins, *Intersectionality’s Definitional Dilemmas*, 41 ANN. REV. SOC. 1 (2015) (discussing how intersectionality, specifically the interplay of different identifiers, allows for a deeper understanding of power relations and social inequalities).

¹¹⁷ Crenshaw, *Mapping*, *supra* note 114, at 1244.

¹¹⁸ *Id.*; see generally Negin Ghavami & Letitia Anne Peplau, *An Intersectional Analysis of Gender and Ethnic Stereotypes: Testing Three Hypotheses*, 37 PSYCH. WOMEN Q. 113 (2013) (studying the rates at which intersectional identities of gender and ethnicity impacted stereotypes); Rebecca I. Mohr & Valerie Purdie-Vaughns, *Diversity Within Women of Color: Why Experiences Change Felt Stigma*, 73 SEX ROLES 391 (2015) (discussing how intersectional identities of gender and ethnicity affect representation).

¹¹⁹ Cassia Spohn & Dawn Beichner, *Is Preferential Treatment of Female Offenders a Thing of the Past? A Multisite Study of Gender, Race, and Imprisonment*, 11 CRIM. JUST. POL’Y REV. 91, 163–67 (2000).

¹²⁰ Henry, *supra* note 83, at 291.

policies. Although there is still a great need for additional research using large samples and data from real parole outcomes in this field overall, there is a particular need for data from those regions which have been relatively understudied. One of these regions is the Deep South. Given the sociopolitical history of this region, data from it is, coincidentally, also vital to understanding the role that race and other identity categories play in cueing stereotypes of dangerousness or otherwise affecting parole decision making.

The Deep South, which includes Mississippi, Alabama, Georgia, Louisiana, and South Carolina, is a region historically known for being the most dependent on plantation crops (e.g., cotton) and slavery as compared to the rest of the United States.¹²¹ In South Carolina specifically, slavery also played a major role in the formation and development of the prison system.¹²² In its early years, South Carolina, despite having a high murder rate relative to other states, did not have a high incarceration rate or an established prison system.¹²³ Generally, crimes committed by white people were not heavily criminalized, and even white people who were sentenced to death were often pardoned.¹²⁴ In contrast, crimes committed by Black people (freed or enslaved) were dealt with using the Magistrate's and Freeholder's Court, in which a magistrate and a panel of white male slave-owners would often sentence the person to whipping, being sold out of state, or death.¹²⁵ Given this system, a state prison was often disregarded as unnecessary, and funding for such a facility was repeatedly defeated in the legislature.¹²⁶ However, after the Civil War, sociopolitical backlash from the former slave-owning ruling class quickly resulted in funding for a state prison system and new laws to force freed slaves back into a state of slavery through incarceration. The "Black Codes" later inspired the post-Reconstruction "Jim Crow" laws (named after a derogatory caricature of Black people popular in the early 19th century)¹²⁷ and primarily regulated only the behavior of Black people.¹²⁸ Additionally, and as one would expect, after the state prison's completion, the prison population quickly grew due to the enforcement of these Codes, and primarily (~90%) consisted of Black people throughout and after Reconstruction.¹²⁹ The same backlash that restructured South Carolina's criminal justice system also resulted in the formation of groups such as the Ku Klux Klan.¹³⁰ The violence from such groups in South Carolina was so extreme that then-President Ulysses Grant strongly encouraged Congress to pass responsive legislation

¹²¹ E. M. Beck & Stewart E. Tolnay, *The Killing Fields of the Deep South: The Market for Cotton and the Lynching of Blacks, 1882-1930*, 55 AMER. SOC. REV. 526, 528 (1990); *Deep South*, DICTIONARY.COM, <https://perma.cc/24UH-LH7U> (last visited Feb. 23, 2024).

¹²² See Reid C. Toth, *Prisons and Penitentiaries*, S.C. ENCYC. (June 20, 2016), <https://perma.cc/7BQ3-CWFX>.

¹²³ MICHAEL HINDUS, PRISON AND PLANTATION: CRIME, JUSTICE AND AUTHORITY IN MASSACHUSETTS AND SOUTH CAROLINA, 1767-1878 42 (1980).

¹²⁴ See Toth, *supra* note 122; see also John Charles Thomas, The Development of 'An Institution': The Establishment and First Years of the South Carolina Penitentiary, 1995-1881 8-11, 23 (1983) (M.A. thesis, University of South Carolina) (on file with the South Carolina Dep't. of Corrections) (discussing the early history of South Carolina prison systems).

¹²⁵ See Terry W. Lipscomb & Theresa Jacobs, *The Magistrates and Freeholders Court*, 77 S.C. HIST. MAG. 62 (1976).

¹²⁶ Kevin Krause, *The Big House and the Madhouse: Institutional Reform and the States in Tillman-Era South Carolina*, 115 S.C. HIST. MAG. 213, 217-18 (2014).

¹²⁷ David Pilgrim, *Thomas Rice*, JIM CROW MUSEUM (2023), <https://perma.cc/769G-4H4H>.

¹²⁸ See Kyshia Henderson et al., *Confederate monuments and the history of lynching in the American South: An empirical examination*, 118 PROC. NAT'L ACAD. SCI. (2021), <https://perma.cc/49GF-KKXV>.

¹²⁹ *Id.*

¹³⁰ *Id.*

(resulting in the “Force Acts”) to make such a behavior a federal crime.¹³¹ Backed by the power of such legislation, President Grant declared martial law and suspended habeas corpus in nine counties where there was the most violence and lawlessness.¹³² Similar problems were later seen in response to the Civil Rights Movement. During that time, the Confederate battle flag was first raised over the South Carolina capitol building,¹³³ Black schools and churches were often destroyed, and members of the Black community (and those who supported them) were routinely attacked or killed.¹³⁴

The dark history of the Deep South still sends ripples to life in the modern day. To give an example, the prevalence of slavery in a county’s history is significantly associated with the contemporary political views of the people in that county.¹³⁵ This effect is likely a byproduct of Southern whites reinforcing racist norms and institutions post-Reconstruction to maintain control over former slaves.¹³⁶ Such effects also likely interact with recent sociopolitical shifts. During Barack Obama’s presidency, there was a significant and widespread decrease in the perception of racial discrimination in society.¹³⁷ Those who perceived a greater decrease in racial discrimination also tended to hold a significantly worse opinion of Black people and immigration in general.¹³⁸ Social tensions caused by issues of race and sex were further exacerbated around the time of the subsequent candidacy and election of Donald Trump.¹³⁹ Because of these heightened tensions and increased discussion of race and sex, including discussion of race-based and sex-based stereotypes, it is vital to obtain and analyze contemporary data regarding the influence of demographic variables. This data may be invaluable in assessing the potential for demographic variables to cue the perception of dangerousness. Thus, analyzing such data was a primary objective for the current research study.

IV. DATA AND EMPIRICAL APPROACH

Using data from 2006 to 2016, we analyzed all South Carolina parole hearings. In predicting the outcome of parole hearings, we included institutional and non-institutional variables. Our project expanded on the previous research in several significant ways. First, we focused on South Carolina, a state from the Deep South with both a discretionary parole system that gives the Parole Board

¹³¹ *President Grant Takes on the Ku Klux Klan*, NAT’L PARK SERV., <https://perma.cc/YS79-673S> (last visited Mar. 14, 2023).

¹³² *Id.*

¹³³ Justin Worland, *This Is Why South Carolina Raised the Confederate Flag in the First Place*, TIME (June 22, 2015), <https://perma.cc/H42W-AMZJ>.

¹³⁴ *See id.*; *see generally* Todd Villeneuve, *Table 1. Incidents of Mass Racial Violence*, *Mass Racial Violence in the United States, 1863 to Present*, <https://perma.cc/s2tm-d42j> (last visited Mar. 14, 2023) (chronicling the incidence of racial violence in response to the Civil Rights movement).

¹³⁵ *See* Avidit Acharya et al., *The Political Legacy of American Slavery*, 78 J. POL. 621 (2016).

¹³⁶ *Id.* at 632–34.

¹³⁷ Nicholas A. Valentino & Ted Brader, *The sword’s other edge: Perceptions of discrimination and racial policy opinion after Obama*, 75 PUB. OPINION Q. 201 (2011).

¹³⁸ *Id.* at 214–17.

¹³⁹ *See* Marc Hooghe & Ruth Dassonneville, *Explaining the Trump vote: The Effect of Racist Resentment and Anti-Immigrant Sentiments*, 51 POL. SCI. & POL. 528 (2018) (discussing racist resentment and anti-immigrant sentiment as important predictors of a Trump vote); *see also* Brian F. Schaffner et al., *Understanding White Polarization in the 2016 Vote for President: The Sobering Role of Racism and Sexism*, 133 POL. SCI. Q. 9 (2018) (highlighting similar findings on the relationship between racial attitudes or sexism and a Trump vote).

significant leeway over the decision-making process and has a history of racial discrimination. As mentioned earlier, there are few research studies examining the effects of demographic variables on parole hearing outcomes at all, let alone intersectional research or research focused on the Deep South. Based off the above, combined with the existing literature, we had several predictions regarding the influence of demographic variables. We predicted that the parole board would grant parole to white people at a disproportionately higher rate compared to Black people. Such an effect would be consistent with the notion that race may serve as a cue for risk and dangerousness, a conclusion drawn from seminal papers in parole research.¹⁴⁰ Similarly, we predicted that the parole board would grant parole to women at a disproportionately higher rate than it did for men. This effect would be consistent with similar research suggesting that women may receive more lenient treatment in the criminal justice system due to stereotypes that women are less dangerous.¹⁴¹ For our final prediction for our demographic variables, we predicted that sex and race would interact, with white women receiving the most favorable treatment by the parole board and men of color receiving the worst treatment. Primarily, such a result likely reflects the compounding nature of the cueing effects of sex and race mentioned earlier. Additionally, and in line with the “defeminization” phenomenon, we predicted that women of color would not experience the same beneficial effects of feminine identity as seen with white women, and which is also akin to the effects discussed in work on sex-based violence.¹⁴² In this way, women of color would be treated more similarly to men, rather than to white women.

In addition to the above, we also expanded on previous studies by using the data from all parole hearings during a 10-year period, maximizing statistical power and increasing generalizability. Using this increased power, we were better able to detect true effects of the predictors we included. In agreement with previous research, we predicted that those institutional variables which signify or cue dangerousness, such as the conviction of additional crimes during incarceration, would be associated with a significantly lower chances of being granted parole. Additionally, we predicted that non-institutional variables that cue dangerousness, such as having a higher number of violent felonies on the person’s record or the presence of extremely violent or sexual crimes (e.g., murder), will also significantly reduce the likelihood of being granted parole.

A. Sample and Data Processing

Through DPPPS, we obtained information and parole outcomes between 2006 to 2016. This resulted in a total of 44,148 hearings. This dataset included demographic data (such as an prison identification number, name, age, race, and sex), the date of their parole hearing, the outcome of their hearing (as well as the release date, if applicable), a person’s date of admission to the SCDC, and information about the crime(s) for which the person was convicted (including the person’s indictment number, the dates of the offense and sentencing, the length of sentence (and probation, if applicable),¹⁴³ the date the sentence started,¹⁴⁴ the classification of crime(s), and the maximum penalty allowed for the

¹⁴⁰ See, e.g., Huebner & Bynum, *supra* note 17.

¹⁴¹ See, e.g., Geppert, *supra* note 85.

¹⁴² See, e.g., Crenshaw, *Mapping*, *supra* note 114.

¹⁴³ The sentencing information provided the length of time that the person was to be incarcerated as well as the length of time that the person would be on probation after release, if applicable.

¹⁴⁴ The SCDC and SCDPPPS use separate codes and descriptions for each crime, with the SCDPPPS providing information that more directly matched with language in South Carolina’s laws. Although SCDPPPS information was not always provided,

crime(s)). SCDC and DPPPS use separate codes and descriptions for each crime, with DPPPS providing information based on their review of the file before the parole hearing. Although DPPPS information was not always provided, the information from both departments matched almost always. In case of conflict, DPPPS codes were used. To ensure which people had committed felonies, all DPPPS offense codes (which were not listed for some people), SCDC offense codes, and offense descriptions were manually checked with the South Carolina laws that were relevant at the time of the offense.

Of the 44,148 hearings,¹⁴⁵ 8.3% (3,674 hearings) involved women. This breakdown is consistent with the population breakdown reported by SCDC: 92.6% men and 7.4% women. The racial breakdown of the people in the hearings was as follows: 36.3% white (16,032 people), 61.7% Black (27,258 people), < 0.1% Native American (99 people), < 0.1% Asian (35 people), and 1.6% other (724 people). This racial breakdown is similar to the racial breakdown listed in SCDC's current population report: 58% Black, 39% white, and 3% other.¹⁴⁶ Both breakdowns are noticeably different, however, from South Carolina's overall demographics: 68.9% white, 26.3% Black, 0.6% Native American, 2.1% Asian and Pacific Islander, and 2.2% other.¹⁴⁷ Our dataset did not indicate whether a person was ethnically Hispanic, so this could not be included. Further, the SCDC and DPPPS do not collect data on gender identity, so that could not be accounted for.

Because of the low cell sizes for Asian, Native American, and other racial groups, particularly when those groups were further broken down by sex, we removed these groups from our analysis. This removal resulted in a total of 43,290 hearings. Characteristics of the people appearing in these hearings, both overall and broken down by race and sex, can be found in Table 1.

B. Analytical Plan and Variables

As a cursory analysis of potential effects for race and biological sex on parole outcome, we first ran two tests: one to determine if the outcome of the parole hearing was independent of being Black or white and another to determine if the outcome was independent of being biologically male or female.¹⁴⁸ Next, for our primary analysis, we ran a regression predicting whether a given person was granted parole.¹⁴⁹ In addition to race, sex, and an interaction term between the two, we included the age at the time of the person's first offense for which the person is currently imprisoned, how many years the person has been serving their sentence, whether the person was convicted before or after June 15, 1981,¹⁵⁰ how many nonviolent felonies that person had been convicted of in the current sentence,

the information from both departments matched an overwhelming majority of the time.

¹⁴⁵ This number includes people who had multiple hearings, which we control for in our analyses. *See infra* Section III.b. On average, each person in our dataset had 1.60 hearings during this 10-year span. Broken down by race and sex, the averages were as follows: white men, 1.59 hearings per person; white women, 1.26; Black men, 1.68; and Black women, 1.37.

¹⁴⁶ S.C. DEPT OF CORR., *Profile of Inmates in Institutional Count (Including Inmates on Authorized Absence) as of June 30, 2023*, (2023) <https://perma.cc/2Q3Y-Z3YP>.

¹⁴⁷ U.S. CENSUS BUREAU, *supra* note 25.

¹⁴⁸ Both tests were chi-square tests of independence.

¹⁴⁹ This analysis was a binary logistic regression with the parole outcome as the dependent variable, where 0 represented a parole denial and 1 represented a parole grant.

¹⁵⁰ This was the active date for a crime bill that restructured the parole board, established a classification system for offenses, and changed minimum terms of imprisonment before eligibility, among other aspects of the criminal justice system in South

how many violent felonies that the person had been convicted of in the current sentence (excluding murders),¹⁵¹ how many murders the person had been convicted of in the current sentence, whether the person was classified as a “sex offender,”¹⁵² how many life sentences the person was serving, whether the person was convicted of a subsequent crime while serving this sentence (whether it was while incarcerated, on parole, or on probation), the year that the parole hearing took place, and the month that the parole hearing was taking place.¹⁵³ All non-binary predictors were centered and standardized before inclusion in the model. Lastly, we added a random effect made from the person’s identification number. This random effect should capture the variance attributed to a person appearing before the parole board multiple times.

Our predictors were included for three key reasons: first and foremost, these variables, or similar ones, have been used throughout previous parole decision making literature, both as significant predictors of parole outcomes themselves¹⁵⁴ and as important controls when examining for effects of demographic variables such as race.¹⁵⁵ Secondly, each of these variables (aside from those related to the time of the hearing) are important with regards to advocacy; it is a common practice for legal advocates, when addressing a parole board, to highlight their client’s youth at the time of the crime or their (hopefully) lack of a history of committing violent or particularly heinous crimes. Lastly, those variables related to the timing of the hearing were included to control for variance across the years and to account for possible timing effects that may exist when a person (and perhaps an attorney) applies for a parole hearing and, subsequently, when the Board holds the hearing.

All analyses were conducted in the statistical programming language R¹⁵⁶ and using R Studio.¹⁵⁷ General data processing and descriptive statistics were created using the R packages *car*,¹⁵⁸ *dplyr*,¹⁵⁹ and *psych*.¹⁶⁰ Our logistic regression was conducted using *lme4*.¹⁶¹

C. Results

Descriptive statistics, overall and broken down by sex and racial group, are provided in Table 2. Our first analysis examined the relationship between race and parole outcome. The relationship

Carolina. S. 234, 1981–1982 Leg., 104th Sess. (S.C. 1981) (enacted).

¹⁵¹ Violent and nonviolent felonies were distinguished by manually checking convictions to the relevant legal statutes. *See, e.g.*, S.C. CODE ANN. § 16-1-60 (2024).

¹⁵² Sexual offender status was confirmed by checking convictions against S.C. CODE ANN. § 44-48-30 (2024).

¹⁵³ To account for the month of the hearing, we created dummy codes for each month aside from January, which was the comparison month.

¹⁵⁴ *See* Caplan, *supra* note 67; *see, e.g.*, Young & Pearlman, *supra* note 65.

¹⁵⁵ *See, e.g.*, Carroll & Mondrick, *supra* note 71, at 432; *see also* Mechoulam & Sahuguet, *supra* note 104, at 59; Anwar & Fang, *supra* note 103, at 19.

¹⁵⁶ *See The R Project for Statistical Computing*, R PROJ., <https://perma.cc/4G77-AZGE> (last visited Mar. 14, 2023).

¹⁵⁷ *See R STUDIO IDE*, POSIT, <https://perma.cc/6FVA-UWJ4> (last visited Mar. 14, 2023).

¹⁵⁸ *See* JOHN FOX & SANFORD WEISBERG, AN R COMPANION TO APPLIED REGRESSION (3rd ed. 2019).

¹⁵⁹ *See* Hadley Wickham et al., *dplyr: A grammar of data manipulation*, <https://perma.cc/QYC8-3YFJ> (last visited Mar. 14, 2023).

¹⁶⁰ *See* William Revelle, *Psych: Procedures for Personality and Psychological Research*, <https://perma.cc/UZT3-QAJ6> (last visited Mar. 14, 2023).

¹⁶¹ *See* Douglas Bates et al., *Fitting Linear Mixed-Effects Models Using lme4*, 67 J. STAT. SOFTWARE 1 (2015).

between these variables was significant: $X^2(1, n = 43290) = 82.297, p < .001$.

Specifically, parole was significantly less likely to be granted to Black people compared to white people. Our second analysis examined the relationship between sex and parole outcome. Nearly identical to the analysis with race, the relationship between these variables was significant, $X^2(1, n = 43290) = 801.97, p < .001$. Here, parole boards were significantly less likely to grant parole to men compared to women. Our regression also supported our hypotheses (see Table 5). The older a person was when committing the first offense significantly increased the odds of getting parole, as did being convicted after June 15, 1981 or having a more recent hearing year (i.e., closer to 2016). Conversely, serving a greater amount of time, receiving a subsequent conviction while serving the original sentence, being convicted of a greater number of violent or nonviolent felonies, being classified as a sex offender, and being convicted of a greater number of murders all significantly decreased odds of getting parole. In addition, race and sex were significant predictors. Being a woman significantly *increased* the odds of a person being granted parole. Conversely, being Black significantly *decreased* a person's odds of being granted parole. There was also a significant interaction term consistent with our hypotheses. Being a woman significantly increased the effect of race (or, alternatively, being Black significantly decreased the effect of sex).

D. *Summarizing the Effects, Limitations, and Future Directions*

Each year, thousands of parole board hearings take place across the nation. Most incarcerated people do their best to demonstrate that they are reformed individuals worthy of freedom. However, every state differs in their parole schemes,¹⁶² and the factors that determine whether a parole board will decide to release a person are not always clear.¹⁶³ Several states have even abolished discretionary parole entirely, removing the option for incarcerated people to prove that they are worthy of freedom.¹⁶⁴ Nevertheless, in states that have discretionary parole as an option, one cannot underestimate the significance of this opportunity for those seeking to move on from a low point in their life. Consequently, the power that parole boards have is immense. A group of people, sanctioned by the state, can validate the efforts of those who prove themselves to be reformed members of society by freeing them from confinement. However, a discretionary parole system comes with its own dangers, the most concerning being bias.

In this study, we examined variables that play a significant role in parole board decision making. We included multiple institutional and noninstitutional predictors with a particular focus on those that may cue dangerousness, including a person's race and biological sex. Our findings suggest that both institutional and noninstitutional variables predicted parole hearing outcomes. Understandably, one of the strongest institutional predictors was the presence of additional convictions during incarceration, which lessened the likelihood of a person getting parole.

The amount of time served also significantly reduced one's likelihood of getting parole, possibly a cyclical effect of keeping those with the longest sentences incarcerated because of the convictions that led to those long sentences.

Our results for noninstitutional variables highlighted well-established effects in the literature: as the number of convictions and severity of the convictions increases, the likelihood of a person getting

¹⁶² Renaud, *supra* note 26.

¹⁶³ See, e.g., Caplan, *supra* note 67, at 1.

¹⁶⁴ Renaud, *supra* note 26 (outlining which states have abolished discretionary parole).

parole worsens. All these effects support the hypothesis that those variables with may cue dangerousness are particularly important for the parole board. Our findings with demographic variables also suggested the same: a person's race and sex significantly influenced outcomes in the parole system of South Carolina, particularly to the detriment of men and women of color. Men of color were least likely to merit their freedom from incarceration in the eyes of the parole board. In contrast, white women, compared to the other three groups, had the greatest odds of being released. In the middle, white men and women of color were treated similarly.

These results expand on previous work in several key areas. No research examining the influence of race, let alone race and sex, on parole outcomes has used data from within the past decade, resulting in a gap that misses key sociopolitical shifts. Further, this study used real parole hearing data across 10 years and had a large sample size, unlike some previous studies.¹⁶⁵ With our larger sample size, we had the statistical power necessary to take note of effects that may otherwise be too small for detection in previous work. Of those other studies with large sample sizes, many have suffered from other key methodological issues. Some recent large studies have suggested, for example, that there are no negative effects of race or that there may be a bias *in favor* of Black Americans.¹⁶⁶ However, this previous work examined data from people who had already been granted parole. In essence, these researchers were examining whether race explained any differences in the amount of time served between the minimum and maximum sentences in those who were *released*. The problem, however, according to our results, was with whom the board felt should *remain* in prison. The time and place that this previous data came from differs from our data as well. Most of this data were decades old,¹⁶⁷ and the closest thing to a nationwide survey included 10 states, most of which were in the Midwest or Western United States.¹⁶⁸

Lastly, and perhaps most significantly, this study examined the interaction between race and sex using real parole hearing data. Intersectional approaches are rare in this research area, and the results are concerning, yet not unexpected. Our results suggest that, while women overall seem to be disproportionately granted parole compared to men. In contrast, women of color are treated similarly to white men, a finding which is consistent with the notion of “defeminization” of women of color.¹⁶⁹ Additionally, we found that Black men were also disproportionately denied parole compared to all other groups. These results are consistent with literature that has studied the interaction between race and sex.¹⁷⁰

The onset of the COVID-19 pandemic brought additional challenges to South Carolina's parole system. At the start of April 2020, the DPPPS suspended all parole board hearings.¹⁷¹ This decision was made so that the hearings could use technology to reduce the risks caused by COVID-

¹⁶⁵ See, e.g., Anwar & Fang, *supra* note 103, at 23; see also Caplan, *supra* note 67, at 17 (summarizing a study with parole hearing data that spanned one year).

¹⁶⁶ See, e.g., Mechoulan & Sahuguet, *supra* note 104, at 70.

¹⁶⁷ Mechoulan & Sahuguet, *supra* note 104, at 56.

¹⁶⁸ Mechoulan & Sahuguet, *supra* note 104, at 59.

¹⁶⁹ See generally Crenshaw, *Mapping*, *supra* note 114 (explaining women of color's experiences as being at the intersection of sexism and racism).

¹⁷⁰ See, e.g., Henry, *supra* note 83, at 291, 293; see also Spohn & Beichner, *supra* note 120; Crenshaw, *Mapping*, *supra* note 114 (explaining the concept of intersectionality).

¹⁷¹ Emily Bohatch, *SC parole hearings postponed due to the coronavirus. Lawmakers, ACLU decry decision*, THE STATE (Apr. 3, 2020, 11:45 AM), <https://perma.cc/N7LJ-94YA>.

19.¹⁷² However, the local chapter of the ACLU heavily criticized the decision because of the tremendous risk of contracting COVID-19 while in prison.¹⁷³ The ACLU had previously called for the release of vulnerable people due to the dangers that COVID-19 posed to prisoners, who often found themselves in close quarters with others and with limited protective health precautions.¹⁷⁴ However, South Carolina was not one of the handful of states that considered releasing incarcerated people early, despite thousands of those people contracting COVID-19 and even dying as a result of the disease.¹⁷⁵ On June 2, 2020, South Carolina resumed parole hearings in a fully-virtual format, which is still in place at the time of writing.¹⁷⁶ About 175 people had their hearings delayed during this hiatus.¹⁷⁷ Despite the legal (and ethical) implications of delaying parole hearings during a deadly pandemic, South Carolina's parole system has done nothing to improve its reputation. Given the dire circumstances surrounding public health crises such as these, particularly within prisons, the effects of what may be considered suboptimal parole decisions may have fatal outcomes, especially for the elderly.¹⁷⁸

One limitation of this study was that we were not able to include the reasons that the parole board gave for denying a person parole. Analyzing the reasons for denial of parole across multiple identity categories may provide additional insights into the effects of race and sex in parole board hearings. However, parole boards provide reasons for the decision only after denying a person parole, and as such may engage in *post-hoc* reasoning. No reason for denial is given *during* the hearing, and after the decision, the board only reveals which of the vague official reasons the parole board selected to justify denial, with the applicable reason(s) checked off.¹⁷⁹ This highlights a potentially troublesome aspect of the parole system in South Carolina: the independence of the Parole Board from the SCDC. As mentioned earlier, since the DPPPS is a separate administrative body, it does not necessarily share the same goals or incentives as the SCDC. Although the SCDC may be incentivized to provide feedback and incentivize people to participate in rehabilitative programming, highlight when incarcerated people are fully rehabilitated, and reduce the prison population, the DPPPS may not share the same objectives because it does not have the same incentives. Simply put, the DPPPS will not share the same benefits of accomplishing the SCDC's goals nor the consequences of failing to accomplish those goals. Nevertheless, future researchers may wish to seek out and include such information.

There were additional limitations based on lack of information in our dataset. For example, we were unable to run analyses factoring in issues such as disciplinary records and failure to complete rehabilitative programs. Given that parole boards are primarily concerned with an incarcerated person's growth and rehabilitative efforts, it would be worthwhile to include disciplinary history and work credits, despite the questions one may have about the actual weight a parole board places on such

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*; see *COVID Behind Bars Data Project*, UCLA LAW, <https://perma.cc/ZF2G-K2NR> (last visited Mar. 14, 2023).

¹⁷⁶ Emily Bohatch, *SC reschedules parole hearings that were canceled due to the coronavirus*, THE STATE (May 14, 2020), <https://perma.cc/33WA-G3CD>.

¹⁷⁷ *Id.*

¹⁷⁸ See *A State-by-State Look at Coronavirus in Prisons*, The Marshall Proj., <https://perma.cc/JUQ8-Y84P> (last visited Mar. 14, 2023); Raya Kheirbek & Brock Beamer, *Incarcerated Older Adults in the Coronavirus Disease 2019 Era: A Call for Advancing Health and Human Dignity*, NAT'L LIB. OF MED., (Oct. 17, 2022), <https://perma.cc/GJ2A-DDGT>.

¹⁷⁹ See *supra* note 58 and accompanying text.

variables given the limited reasons provided for denial in South Carolina.¹⁸⁰ We were able to control for the most extreme cases using a binary variable that captured whether a person was convicted of a crime while incarcerated, on probation, or on parole. However, additional analyses, including less serious disciplinary violations information, would be invaluable. Lastly, South Carolina is a state that allows attorneys to be present at parole hearings.¹⁸¹ Whether an attorney was present was not included in our dataset. Future researchers may want to include such information if their state of interest so provides.

Another limitation of this study was the lack of people from non-Black minority groups. There may be effects that are stronger or weaker for members of other racial groups, likely reflecting stereotypes of those groups. This type of limitation is common in parole research,¹⁸² as researchers cannot reliably parse out the effects of racial subgroups in regions that do not have sufficient racial diversity. This limitation in parole research is exacerbated by the lack of reliable coding in these types of institutional datasets that make it harder to identify racial and ethnic groups. In our dataset, for example, any person of seemingly Asian descent was coded as “C,” possibly because “Chinese” was used as a catch-all for Asian people. These same data collection and retention issues also prevented any examination of gender identity. Such analyses are non-existent in parole research. Due to this lacuna, researchers are unable to examine issues such as the criminalization of transgender and gender nonconforming people.¹⁸³ Future research may wish to obtain such data and explore the potential influence of gender identity on parole.

Relatedly, our lack of a reliable way to identify Hispanic people may have resulted in an underestimation of overall minorities, which may have affected our results. There have been contrasting findings regarding how Hispanic people are treated in the parole system. For example, in their seminal paper on parole outcomes, Huebner and Bynum found that Hispanic men were more quickly released on parole compared to non-Hispanic white or Black men.¹⁸⁴ The researchers interpreted their findings as parole board members viewing Hispanic men as less threatening than non-Hispanic white or Black men, which may have been due to the small Hispanic population in the study state. In contrast, one recent study in Texas found that Hispanic parolees were more likely, compared to white or Black parolees, to receive the most punitive outcomes, such as parole revocation, for violations after they were granted parole.¹⁸⁵ Another study on sentencing found that in certain cities, Hispanic and Black men received significantly harsher sentences compared to women of those groups, white men, or white women.¹⁸⁶ Given these results, it is hard to say how having an accurate accounting of Hispanic people would have changed our results, but hopefully future research and datasets will include such information.

Lastly, in future analyses, it would be worthwhile to attempt to replicate these findings in a sample of incarcerated people who were convicted of the most serious crimes, such as murder or sexual crimes. Unfortunately, additional analyses which attempted to examine parole decision making within

¹⁸⁰ S.C. DEP’T OF PROB., PAROLE, AND PARDON SERVS., *supra* note 33.

¹⁸¹ Renaud, *supra* note 26.

¹⁸² See, e.g., Huebner & Bynum, *supra* note 17.

¹⁸³ See CTR. AMER. PROGRESS, *Unjust: How the Broken Criminal Justice System Fails LGBT People* (Feb. 2016), <https://perma.cc/C46D-BYHN>.

¹⁸⁴ Huebner & Bynum, *supra* note 17, at 921–95.

¹⁸⁵ Henry, *supra* note 83, at 289–90.

¹⁸⁶ Spohn & Beichner, *supra* note 120, at 174.

those convicted of murder or sex offenses, or those sentenced to life, were underpowered because there were too few people granted parole *at all* in these scenarios. Such issues are not surprising; in fact, this low parole rate was the focus of a previous study by one of this paper's authors using similar data from South Carolina.¹⁸⁷ In that study, Hritz examined parole hearing outcomes for juveniles convicted of murder.¹⁸⁸ Hritz found that there were very few cases of parole boards granting release and that most of these young people were rejected due to factors related to the crime.¹⁸⁹ Nevertheless, there is support for the idea that, at the very least, race and other demographic variables may play less of a role in crimes of increasing severity. For example, in 2006, Huebner & Bynum conducted a study of 511 sex offenders (all men) who were sentenced in 1998.¹⁹⁰ Using information from the pre-sentencing investigation reports, the authors created proportional hazard models to determine what factors affected the timing of parole releases.¹⁹¹ This study found that race played a limited role for people convicted of sex offenses.¹⁹² Specifically, base models predicting parole outcomes suggested that non-white people had significantly worse chances of being granted parole; however, when these models were expanded to include measures assessing parole readiness and community protection, the effect of race disappeared.¹⁹³ Thus, there may be support for the idea that, as severity of crime increases, race (and perhaps other noninstitutional variables) may play less of a role, in favor of institutional variables that are more directly relevant to rehabilitation.

CONCLUSION

In this study, we conducted a statistical examination of a decade of parole board decisions from South Carolina. We found that multiple institutional and noninstitutional variables influenced a person's likelihood of being granted parole. Perhaps most concerningly, we found that race and sex significantly predicted whether a person was granted parole. Based on these findings, some may argue that discretionary parole should be abolished to prevent the unequal distribution of justice. This type of claim is not a new one in the world of criminal law. In fact, the death penalty was temporarily abolished in the United States because states arbitrarily enforced it, mostly to the detriment of minority defendants.¹⁹⁴ Further, as stated in the introduction, states shifted away from discretionary parole

¹⁸⁷ Hritz, *supra* note 44.

¹⁸⁸ Hritz, *supra* note 44.

¹⁸⁹ Hritz, *supra* note 44, at 80–81.

¹⁹⁰ Beth M. Huebner & Timothy S. Bynum, *An Analysis of Parole Decision Making Using a Sample of Sex Offenders: A Focal Concerns Perspective*, 44 CRIMINOLOGY 961, 967–68 (2006).

¹⁹¹ *Id.* at 968–69.

¹⁹² *Id.* at 979.

¹⁹³ *Id.*

¹⁹⁴ See generally *Furman v. Georgia*, 408 U.S. 238 (1972). In this case, the Supreme Court struck down all legal constructions of the death penalty due to the arbitrariness and discriminatory measures employed against convicted persons. *Id.* Following the decision in this case, the Court mandated consistency across death penalty cases. See Lorin Granger, *Cases in Brief: Furman v. Georgia with Carol Steiker*, HARV. L. TODAY (Aug. 15, 2022), <https://perma.cc/8KMA-HG3V> (discussing *Furman v. Georgia* and its ramifications on the application of the death penalty). There is evidence that this disparity still exists today. See John H. Blume & Lindsey S. Vann, *Forty Years of Death: The Past, Present, and Future of the Death Penalty in South Carolina (Still Arbitrary After All These Years)*, 11 DUKE J. CONST. L. & PUB. POL'Y 183 (2016); see also Scott W. Howe, *Article: Repudiating the Narrowing Rule in Capital Sentencing*, 2012 BYU L. REV. 1477 (2012).

systems in the latter half of the 20th century, partially because of such concerns.¹⁹⁵ However, the solution is not necessarily to do away with discretionary parole, which 16 states have already done.¹⁹⁶ Such a shift could disincentivize people from bettering themselves through programming, despite the fact that the participation in said programs has also been shown to improve the safety of carceral environments.¹⁹⁷ In a recent *amicus* brief filed within the South Carolina Court of Appeals, a group of former correctional agency heads, correctional administrators, and prison wardens voiced their concern with the operation of South Carolina’s parole system and how the current state of the system diminishes the benefits gained by a discretionary parole system focused on rehabilitation:

The Board’s refusal to reward participation in programming is especially egregious given SCDC’s efforts to provide a wide range of rehabilitative programs . . . [T]hese programs are not only vital to the secure day-to-day functioning of SCDC facilities but to the success of SCDC’s broader rehabilitative mission. . . . A dysfunctional, arbitrary parole process, as clearly evidenced in this case, is counter-productive to all those efforts.¹⁹⁸

To combat these shortcomings, new ideas must emerge that attempt to mitigate or remove the effects of noninstitutional, and specifically demographic, variables on parole decision making. These reforms will likely have to go beyond the simplest response, like ensuring that parole boards have the resources to fully consider each parole case and that the boards themselves are composed of people from diverse backgrounds.¹⁹⁹ To support these reforms, additional research is also necessary. Improving data management will be paramount for such research. As stated earlier, this study suffered from several limitations that could have been alleviated with more accurate records, clearer data management guidelines, and increased public access to records. Further, experimental research, including those involving hypothetical parole cases, may allow for the testing of potential procedural changes on smaller scales. Such research would allow for state actors to see potential consequences, good and bad, from alternative parole schemes or procedures. Increased research, legal challenges and effective policymaking could, together, illuminate and work to eliminate these effects. This work would, of course, require an abundance of time and resources from many different actors (researchers, lawyers, politicians, etc.). And, perhaps most importantly, there would need to be states that are willing to attempt potential solutions. However, this work is undoubtedly worthwhile; as the late Maya Angelou famously said, “equal rights, fair play, justice, are all like the air: we all have it, or none of us has it. That is the truth of it.”²⁰⁰

¹⁹⁵ Edward E. Rhine et al., *The Future of Parole Release*, 46 CRIME & JUST., 279 (2017).

¹⁹⁶ Renaud, *supra* note 26.

¹⁹⁷ See Ilyana Kuziemko, *How Should Inmates Be Released from Prison? An Assessment of Parole Versus Fixed- Sentence Regimes*, 128 Q. J. ECON. 371, 416 (2013); see also William D. Bales & Courtenay H. Miller, *The Impact of Determinate Sentencing on Prisoner Misconduct*, 40 J. CRIM. JUST. 384, 402 (2012); Sawyer & Wagner, *supra* note 1.

¹⁹⁸ Brief of Former Correctional Agency Heads, Correctional Administrators, and Prison Wardens, *Amici Curiae in Support of the Petitioner* at 14–15, *Kelsey v. SC DPPPS*, No. 2020-001473 (S.C. filed Mar. 15, 2023).

¹⁹⁹ In 2016, for example, of the seven parole board members for South Carolina, three were white men (two retired business executives and a pastor), one was a white woman (a registered nurse), and three were Black men (a realtor, a business executive, and a retired teacher). No members had worked in the criminal justice system.

²⁰⁰ Ellen Rolfes, *Maya Angelou, Renaissance Woman, Dies at 86*, PBS (May 28, 2020), <https://perma.cc/SJ3J-DYBE>.

TABLES

TABLE 1
DEMOGRAPHICS: OVERALL AND BROKEN DOWN BY RACE AND SEX (N = 43290)

		<i>M</i>	<i>SD</i>	<i>n</i>	%
Overall Sample	Age	37.81	11.81		
	Juvenile Offender			1841	4.3
	Sexual Offender			2595	6.0
	Convicted Before 6/15/1981			1633	3.8
	Convicted During Sentence			29352	67.8
	Granted Parole			7951	18.4
White	Age	39.72	12.21		
	Juvenile Offender			365	2.6
	Sexual Offender			1089	7.8
	Convicted Before 6/15/1981			583	4.2
	Convicted During Sentence			9251	66.4
	Granted Parole			2454	17.6
Female (<i>n</i> = 2110)	Age	37.96	9.81		
	Juvenile Offender			24	1.1
	Sexual Offender			26	1.2
	Convicted Before 6/15/1981			12	0.6
	Convicted During Sentence			1267	60.0
	Granted Parole			844	40.0
Black	Age	36.76	11.70		
	Juvenile Offender			1437	5.6
	Sexual Offender			1479	5.7
	Convicted Before 6/15/1981			1012	3.9
	Convicted During Sentence			17845	69.3
	Granted Parole			4199	16.3
Female (<i>n</i> = 1514)	Age	38.11	10.10		
	Juvenile Offender			15	1.9
	Sexual Offender			1	> 0.1
	Convicted Before 6/15/1981			26	1.7
	Convicted During Sentence			989	65.3
	Granted Parole			454	30.0

TABLE 2

DESCRIPTIVE STATISTICS AT PAROLE HEARINGS: OVERALL AND BROKEN DOWN BY RACE AND SEX (N = 43290)

		<i>M</i>	<i>SD</i>	Minimum	Maximum
Overall Sample	Age at First Offense	28.23	8.93	12.06	82.62
	Time Served	9.58	9.17	0.11	57.86
	Violent Felonies (Excluding Murder)	0.45	0.79	0	7
	Nonviolent Felonies	1.61	1.44	0	11
	Life Sentences	0.15	0.43	0	10
	Murders	0.10	0.30	0	2
White	Age at First Offense	30.06	9.85	15.39	82.62
	Time Served	9.66	9.56	0.31	57.86
	Violent Felonies (Excluding Murder)	0.48	0.80	0	6
	Nonviolent Felonies	1.62	1.52	0	10
	Life Sentences	0.17	0.46	0	10
	Murders	0.11	0.31	0	1
	Age at First Offense	32.50	8.59	16.01	71.58
	Time Served	5.46	6.72	0.42	38.60
	Violent Felonies (Excluding Murder)	0.22	0.54	0	4
	Nonviolent Felonies	1.09	1.23	0	8
	Life Sentences	0.06	0.27	0	3
	Murders	0.05	0.22	0	1
Black	Age at First Offense	26.75	8.11	12.06	71.16
	Time Served	10.00	9.11	0.11	48.87
	Violent Felonies (Excluding Murder)	0.46	0.80	0	7
	Nonviolent Felonies	1.68	1.41	0	11
	Life Sentences	0.14	0.43	0	7
	Murders	0.10	0.30	0	2
	Age at First Offense	30.67	8.25	15.78	63.76
	Time Served	7.44	7.61	0.42	45.30
	Violent Felonies (Excluding Murder)	0.19	0.49	0	3

CAGED BIRDS AND THOSE THAT HEAR THEIR SONGS

(n = 1514)	Nonviolent Felonies	1.06	1.18	0	8
	Life Sentences	0.08	0.30	0	4
	Murders	0.08	0.27	0	1

Note. Units for time served and age at first offense is years.

TABLE 3
LOGISTIC REGRESSION PREDICTING PAROLE OUTCOME (N = 43290)

Predictor	Estimate	SE	95% CI		χ^2	OR
			LL	UL		
Intercept	-2.171	0.067	-2.303	-0.993	-32.260**	0.114
Sex	0.916	0.056	0.806	1.027	16.248**	2.500
Race	-0.082	0.031	-0.142	-0.021	-2.638**	0.922
Sex X Race	-0.277	0.084	-0.442	-0.112	-3.285**	0.758
Age at First Offense	0.050	0.014	0.023	0.078	3.604**	1.052
Time Served	-0.238	0.025	-0.288	-0.188	-9.381**	0.788
Convicted Before 6/15/1981	0.568	0.139	0.294	0.841	4.076**	1.765
Nonviolent Felonies	-0.112	0.016	-0.144	-0.080	-6.823**	0.894
Violent Felonies (Excluding Murder)	-0.330	0.022	-0.374	-0.286	-14.688**	0.719
Murders	-0.396	0.044	-0.482	-0.310	-9.007**	0.672
Sex Offender Status	-2.588	0.207	-3.655	-2.183	-12.516**	0.075
Life Sentences	-0.054	0.051	-0.154	0.045	-1.076	0.947
Convicted During Sentence	-0.179	0.033	-0.244	-0.113	-5.339**	0.837
February	0.031	0.065	-0.095	0.158	0.486	1.032
March	0.014	0.065	-0.113	0.141	0.215	1.014

CAGED BIRDS AND THOSE THAT HEAR THEIR SONGS

April	0.112	0.063	-0.012	0.236	1.766	1.118
May	0.055	0.064	-0.072	0.181	0.846	1.056
June	0.042	0.068	-0.092	0.176	0.609	1.042
July	-0.051	0.070	-0.188	0.086	-0.726	0.951
August	-0.047	0.065	-0.174	0.080	-0.735	0.954
September	0.074	0.065	-0.053	0.202	1.146	1.077
October	-0.113	0.066	-0.244	0.017	-1.705	0.893
November	-0.077	0.071	-0.216	0.062	-1.080	0.926
December	-0.064	0.068	-0.198	0.070	-0.938	0.938
Hearing Year	0.102	0.004	-0.007	0.040	22.582**	1.107

Note. Sex was coded with male as 0 and female as 1. Race was coded such that white was 0 and Black was 1. Hearing month was dummy coded, such that each month was binary and compared to January. Age at first offense, time served, nonviolent felonies, violent felonies, murders, and life sentences were all centered and standardized. SE = standard error; CI = confidence interval; LL = lower limit; UL = upper limit; OR = odds ratio. * $p < .05$; ** $p < .01$.