

6-2-2021

The Underbelly of the Criminal Justice System: A Critique and Proposed Reforms of Parole Hearings in Louisiana

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The Underbelly of the Criminal Justice System: A Critique and Proposed Reforms of Parole Hearings in Louisiana

*Brittany E. Williams**

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INTRODUCTION

Imagine spending so many years in prison that when the guards take your shackles off, you still walk as if you had them on. This is the story of Henry Montgomery, Louisiana’s longest-serving “juvenile lifer.”¹ Henry Montgomery is a 74-year-old man and the namesake of the landmark U.S. Supreme Court case, *Montgomery v. Louisiana*.² Although the Supreme Court found that Mr. Montgomery’s life sentence was unconstitutional and that the court must award him the *opportunity* for parole, the Committee on Parole denied his request, for the second time, in April of 2019.³

1. THE PAROLE PROJECT, <https://www.paroleproject.org> [<https://perma.cc/A2HX-6SXD>] (last visited Oct. 20, 2019). A “juvenile lifer” is a person who was convicted of life without parole as a juvenile. *FAQ*, THE PAROLE PROJECT, <https://www.paroleproject.org/faq/> [<https://perma.cc/XK35-9NKF>] (last visited Oct. 20, 2019).

2. 577 U.S. 190 (2016). The Court held that its previous ruling in *Miller v. Alabama*, that a mandatory life sentence without parole should not apply to persons convicted as juveniles, should apply retroactively. *Id.* at 732 (citing *Miller v. Alabama*, 577 U.S. 460, 479 (2012)).

3. *Montgomery v. Louisiana*, 577 U.S. 190 (2016); Katy Reckdahl, *Inmate from Supreme Court Case Rejected for Parole a Second Time*, JUVENILE JUSTICE INFORMATION EXCHANGE (Apr. 13, 2019), <https://jjie.org/2019/04/13/inmate-from-supreme-court-case-rejected-for-parole-a-second-time/> [<https://perma.cc/G432-ZHK4>].

Mr. Montgomery has a low IQ and struggles with expressing himself.⁴ He is hard of hearing and wears a prison-issued hearing aid—“a box hanging from his neck that resemble[s] a ‘repurposed cassette-tape player.’”⁵ Mr. Montgomery was only 17 years old when a court sentenced him to life without parole in 1963.⁶ He was incarcerated for 54 years before his first parole hearing in February of 2018.⁷ Mr. Montgomery participated in the parole hearing via video conference, and the Committee voted 2-1 in favor of denying parole.⁸ James Kuhn, the chairman of the Committee at the time, and one of the denial votes, told Mr. Montgomery that “[the Committee] has extraordinary discretion.”⁹ Using that discretion, the two members who voted against granting Mr. Montgomery parole cited a “lack of classes” to explain why Mr. Montgomery should not be granted parole.¹⁰

After the hearing, Keith Nordyke, Mr. Montgomery’s lawyer, explained that “only looking at such classes is . . . unfair.”¹¹ According to Mr. Nordyke, for the first 30 years of Mr. Montgomery’s sentence, inmates serving life sentences at the Louisiana State Penitentiary, better known as Angola, were not able to take classes.¹² These classes¹³ include job skills and employment readiness courses, faith-based and values development programming, substance abuse treatment, and educational courses that are presently available to inmates.¹⁴

At the time the courses became available to inmates serving life sentences, a certified educator deemed Mr. Montgomery incapable of

4. Liliana Segura, *Henry Montgomery Paved the Way for Other Juvenile Lifers to go Free. Now 72, He May Never Get the Same Chance.*, THE INTERCEPT (June 2, 2019), <https://theintercept.com/2019/06/02/henry-montgomery-juvenile-life-without-parole/> [<https://perma.cc/DY2E-SR9K>].

5. *Id.*

6. Grace Toohey, *Board Denies Parole to Man Who Served More Than 50 Years after Killing Deputy When He Was Juvenile*, THE ADVOCATE (Feb. 19, 2018), https://www.theadvocate.com/baton_rouge/news/courts/article_acca953e-1579-11e8-aa66-1b036f45b902.html [<https://perma.cc/7HDE-547Z>].

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. The parole board uses the terms “classes” and “programming” interchangeably; they mean the same thing.

14. *Reentry Programming*, LA. DEP’T OF PUB. SAFETY AND CORR., <https://doc.louisiana.gov/reentry-programming> [<https://perma.cc/KP5S-89JS>] (last visited Oct. 16, 2019).

receiving his GED and, as a result, Mr. Montgomery shifted his focus to job training.¹⁵ He worked at the silk-screen shop at Angola for 20 years and earned employee of the month eight times.¹⁶ Further, the two classes Mr. Montgomery did complete, he completed as an older man, in addition to working a full day at the shop.¹⁷ Beyond the classes, Mr. Montgomery founded a boxing association in the prison, attended church regularly, had a limited disciplinary record, and “even participated in Alcoholics Anonymous despite never having any issues with substance abuse, because ‘it was, at one point, the only self-help group.’”¹⁸ Despite Mr. Montgomery doing “pretty much . . . all he could,” it still was not enough to satisfy the Committee’s arbitrary requirements.¹⁹

At Mr. Montgomery’s second parole hearing, a hearing that he applied for and that the Committee granted due to a procedural error in the first one, he struggled to hear the Committee’s discussions when Brennan Kelsey—the single “no” vote in a 2-1 decision²⁰—told Mr. Montgomery that, for the second time, the Committee would not grant him parole.²¹ Mr. Kelsey cited a lack of programming, the same reason the first panel denied parole, despite the other two members of the current panel deeming Mr. Montgomery’s programming sufficient.²² One has to wonder what life for Mr. Montgomery would look like today if the chairman of the Board of Pardons & Parole (BPP) randomly assigned²³ one of the other Committee members to Mr. Montgomery’s hearing instead of Mr. Kelsey.²⁴

Despite recent declines, the United States maintains the highest incarceration rate in the world and the overall largest prison population.²⁵ Further, Louisiana is the most incarcerated state in the most incarcerated country in the world.²⁶ In an effort to reduce incarceration, Louisiana

15. Toohey, *supra* note 6.

16. *Id.*

17. *Id.*

18. *Id.*

19. *See id.*

20. Mr. Montgomery’s case, like most, required a unanimous vote to grant parole. *See* LA. ADMIN. CODE tit. 22, pt. 11, § 514(A) (2019).

21. Segura, *supra* note 4.

22. *Id.*

23. *See infra* Part I.C for how the parole board is chosen for parole hearings.

24. Toohey, *supra* note 6.

25. John Gramlich, *America’s Incarceration Rate Is at a Two-Decade Low*, PEW RESEARCH CENTER (May 2, 2018), <https://www.pewresearch.org/fact-tank/2018/05/02/americas-incarceration-rate-is-at-a-two-decade-low/> [<https://perma.cc/4NBP-YRJV>].

26. Lea Skene, *Louisiana Once Again Has Nation’s Highest Imprisonment Rate After Oklahoma Briefly Rose to the Top*, THE ADVOCATE (Dec. 25, 2019),

passed extensive criminal justice reform bills in 2017.²⁷ The new laws establish parole eligibility for offenders who would not have had it otherwise.²⁸ The laws, however, fail to address what happens beyond the point of an inmate simply receiving a parole hearing.²⁹

The Louisiana statutory and codal authority governing parole hearings grant the Committee an extraordinary amount of discretion.³⁰ Additionally, the procedural aspects of parole hearings prejudice inmates and lean in favor of non-release, especially if there is law enforcement or victim opposition.³¹ These prejudices are seen specifically in three ways. First, the inmate does not have access to one of the most important documents used during a parole hearing, the pre-parole investigation (PPI), nor is he provided a method for disputing the contents of the PPI during the hearing.³² Second, the Louisiana Administrative Code suggests the Committee consider factors that are not indicative of an inmate's rehabilitation and also allows the Committee to make decisions regardless of the suggested factors.³³ Third, the role of law enforcement and victims in parole hearings and the weight given to their testimony prejudice the inmate in many ways.³⁴ As a result, inmates that pose little to no risk to society remain incarcerated, impeding Louisiana's efforts of reducing mass incarceration.³⁵ Therefore, the Louisiana Legislature should amend Louisiana Revised Statutes § 15:574.12(B) to ensure all parties have access to the pre-parole investigation.³⁶ Additionally, the legislature should amend the Administrative Code articles governing parole hearings to change the criteria that the Committee uses to make parole decisions.³⁷

https://www.theadvocate.com/baton_rouge/news/article_4dcdfe1c-213a-11ea-8314-933ce786be2c.html [<https://perma.cc/GZQ3-CQ7E>].

27. See Adam Gelb & Elizabeth Compa, *Louisiana No Longer Leads Nation in Imprisonment Rate: New Data Show Impact of 2017 Criminal Justice Reform*, PEW TRUSTS (July 10, 2018), <https://www.pewtrusts.org/en/research-and-analysis/articles/2018/07/10/louisiana-no-longer-leads-nation-in-imprisonment-rate> [<https://perma.cc/BV2R-R53Z>].

28. See Act No. 280, 2017 La. Acts 692, 712 (codified at LA. REV. STAT. § 15:574.4(F) (2019)).

29. See generally *id.*

30. See generally LA. REV. STAT. § 15:574.4.1 (2019). See also LA. ADMIN. CODE tit. 22, pt. 11, § 701(C)(1)–(8) (2019).

31. See discussion *infra* Part II.C.

32. See discussion *infra* Part II.A.

33. See discussion *infra* Part II.B.

34. See discussion *infra* Part II.C.1–3.

35. See discussion *infra* Part II.A–C.

36. LA. REV. STAT. § 15:574.12(B) (2019).

37. LA. ADMIN. CODE tit. 22, pt. 11, § 701(C)(1)–(8) (2019).

Further, this amendment should change the role of law enforcement and victims in parole hearings.³⁸ Ultimately, this reform would (1) remove some, but not all, of the Committee's discretion; (2) reduce prejudice against inmates before and during parole hearings; and (3) allow for the release of inmates who do not pose a threat to public safety, thus furthering Louisiana's efforts of reducing mass incarceration.³⁹

Part I of this Comment will provide an overview of Louisiana's parole system. It will explain the process and procedure of a parole hearing and discuss Louisiana's current state in relation to the criminal justice reform bills that Governor John Bel Edwards signed into law in 2017. Next, Part II will discuss the issues with Louisiana's current laws surrounding parole hearings and explain how the laws do not align with the purpose of parole hearings. Finally, Part III will recommend that the Louisiana Legislature amend the current laws governing parole hearings to align the procedure with the purpose of parole, thus furthering the state legislature's goal of focusing prison space on those who pose a serious threat to public safety.

I. LOUISIANA'S PROBLEMATIC PAROLE SYSTEM

Across the country, organizations and academics are calling for states to adopt policies that ensure consistency and fairness during the parole hearing process.⁴⁰ In all other aspects of the criminal system, from arrest to sentencing, strict rules and standards—intended to guarantee fairness and predictability—govern the process.⁴¹ Yet, the public and the law relatively ignore the processes for releasing convicted felons from prison.⁴² In February of 2019, the Prison Policy Initiative released a report that graded the parole system of each state based on that state's parole policies and whether they promote consistency and fairness.⁴³ Louisiana received an F.⁴⁴ Louisiana is not the only state with such a low rating, as 36 other states received either an F or F-, with only one state receiving a B-, which was the highest score received.⁴⁵

38. *Id.* § 102(A)(2)(a).

39. *See* discussion *infra* Part III.A–D.

40. Jorge Renaud, *Grading the Parole Release Systems of All 50 States*, PRISON POLICY INITIATIVE (Feb. 26, 2019), https://www.prisonpolicy.org/reports/grading_parole.html [<https://perma.cc/U2YV-7EW8>].

41. *Id.*

42. *See id.*

43. *See id.*

44. *Id.*

45. Wyoming is the only state that received a B-. *See id.*

A. Louisiana's Board of Pardons and Parole

The BPP is part of the Louisiana Department of Public Safety and Corrections (DOC). Prior to 2012, there was a Board of Parole and a Board of Pardons, both under the DOC.⁴⁶ In 2012, however, the two boards merged⁴⁷ creating the BPP.⁴⁸ Within the BPP is the Board of Pardons and the Committee on Parole.⁴⁹ The governor appoints each of the seven BPP positions.⁵⁰ Of the seven BPP members, five serve on the Board of Pardons.⁵¹ The Board of Pardons' five members, in addition to two other governor-appointed members, make up the Committee.⁵² The Committee is solely responsible for granting or denying parole to an inmate.⁵³

The Administrative Code requires any member appointed to the Committee after August 1, 2014 to possess nothing less than a bachelor's degree from an accredited college or university and have at least five years of experience in "corrections, law enforcement, sociology, law, education, social work, medicine, psychology, psychiatry, or a combination thereof."⁵⁴ In addition to experiential requirements, Committee members must complete a comprehensive training course within 90 days of their appointment.⁵⁵ The DOC developed the training in collaboration with the chairman of the BPP.⁵⁶ The Louisiana Revised Statutes require the training to include an emphasis on data-driven decision-making, evidence-based practices,⁵⁷ stakeholder collaboration, and recidivism reduction.⁵⁸ Beyond the initial training, each member is required to complete an additional

46. See Act No. 748, 2012 La. Acts 2949.

47. This merger was a result of Act 714 of the 2012 Legislative Session. See Act No. 748, 2012 La. Acts 2949.

48. LA. BD. OF PARDONS & PAROLE, ANNUAL REPORT 7 (2018), https://s32082.pcdn.co/wp-content/uploads/2019/08/annual.report.2018.board_of_pardons.and_parole.pdf [<https://perma.cc/28XJ-WUUF>].

49. See *id.*

50. See *id.*

51. See *id.*

52. See *id.*

53. LA. BD. OF PARDONS & PAROLE, PAROLE IN LOUISIANA, <https://doc.louisiana.gov/media/1/2009/10/PAROLE-IN-LOUISIANA.pdf> [<https://perma.cc/LZ72-3UFL>] (last visited Apr. 14, 2021).

54. LA. ADMIN. CODE tit. 22, pt. 11, § 103(D) (2019).

55. *Id.* § 117.

56. *Id.*

57. "Evidence-based practices" means "practices proven through research to reduce recidivism." LA. REV. STAT. § 15:574.2(A)(9)(b)(ii) (2019).

58. *Id.* § 15:574.2(A)(9)(b)(i)-(iv).

eight hours of training annually.⁵⁹ These training and educational requirements are in place to equip the Committee to make decisions using evidence-based practices, as the BPP's vision statement requires.⁶⁰

B. Parole, Not Freedom

Louisiana Revised Statutes § 15:574.4.1(B) states that parole is a determination “that the prisoner is able and willing to fulfill the obligations of a law-abiding citizen so that he can be released without detriment to the community or to himself.”⁶¹ This, however, does not mean the prisoner is “free.”⁶² The Committee recognizes that parole in Louisiana gives an offender the opportunity to be released from prison, but that the inmate then serves the remaining portion of his sentence in the community, under the supervision of the DOC.⁶³ This means that if a court sentenced an offender to life in prison, but he is granted parole, DOC will directly supervise the released inmate for the rest of his life.⁶⁴

C. Parole Hearings and What to Expect

The DOC determines parole eligibility and provides inmates with their eligibility date.⁶⁵ Each month the DOC sends a list of inmates eligible for parole to the Committee, who then automatically schedules hearings for these inmates.⁶⁶ The Committee usually meets in panels comprised of three randomly assigned members for parole hearings.⁶⁷ The Administrative Code provides that the chairman of the BPP should randomly select members in a manner that reduces the probability of the same three people serving on a panel for two consecutive months.⁶⁸ In most cases, the Committee must vote unanimously to release an inmate on

59. LA. ADMIN. CODE tit. 22, pt. 11, § 117.

60. See LA. BD. OF PARDONS & PAROLE, *supra* note 48.

61. *Id.* § 15:574.4.1(B).

62. See LA. BD. OF PARDONS & PAROLE, *supra* note 53.

63. See *id.*

64. See generally *id.*

65. LA. ADMIN. CODE tit. 22, pt. 11, § 303 (2019); LA. BD. OF PARDONS & PAROLE, *supra* note 53.

66. LA. BD. OF PARDONS & PAROLE, *supra* note 53.

67. LA. ADMIN. CODE tit. 22, pt. 11, § 503(A) (2019).

68. *Id.* § 503(C). The governor of Louisiana appoints the chairman of the board.

parole.⁶⁹ The Administrative Code does, however, offer the possibility for a majority vote if a set of specific conditions are met.⁷⁰

In Louisiana, parole hearings take place at the DOC Headquarters complex in Baton Rouge.⁷¹ Victims and law enforcement are able to attend the hearing in person at this location, alongside the Committee members.⁷² An inmate, however, does not appear in person, but attends via video conference from the prison.⁷³ The hearings are open to the public; therefore, news media, as well as educational observers, may attend the hearings at the DOC complex.⁷⁴

As for attorneys, the Sixth Amendment “right to counsel” does not extend to parole hearings.⁷⁵ The Supreme Court has refrained from analyzing the Sixth Amendment’s application to parole hearings and has instead determined its boundaries as it applies to other post-conviction proceedings under due process and equal protection principles.⁷⁶ Thus,

69. *Id.* § 514(A).

70. *Id.* § 514(B). The criteria include that the offender: “has not been convicted of a crime of violence . . . or a sex offense . . . regardless of the date of conviction;” “has not committed any major . . . offenses in the 12 consecutive months prior to the parole hearing date;” “has completed the mandatory minimum of 100 hours of pre-release programming . . .;” “has completed substance abuse treatment as applicable. . .;” “has obtained HSE credential, unless the offender has previously obtained a high school diploma or is deemed by a certified educator as being incapable of obtaining a HSE credential due to a learning disability;” and “the offender has obtained a low-risk level designation determined by a validated risk assessment instrument.” *Id.* § 514(B)(1)(a)–(f).

71. LA. BD. OF PARDONS & PAROLE, PAROLE HEARING HANDBOOK: INFORMATION FOR VICTIMS AND THEIR FAMILIES, <https://s32082.pcdn.co/wp-content/uploads/2019/08/Parole-Hearing-Handbook.pdf> [<https://perma.cc/W7SJ-4VZE>] (last visited Apr. 14, 2021).

72. *See id.*

73. *See id.*

74. *See id.*

75. *Amendment 6.7.2.3 When the Right to Counsel Applies*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/amdt6-7-2-3/ALDE_00000952/ [<https://perma.cc/6QW5-DS3L>].

76. *Id.*; *see, e.g.*, *Wolff v. McDonnell*, 418 U.S. 539, 560–70 (1974); *Baxter v. Palmigiano*, 425 U.S. 308, 314–15 (1976).

because it is not constitutionally required, not all inmates⁷⁷ have legal representation at parole hearings.⁷⁸

D. Parole in Practice

The Administrative Code is the codal authority that governs parole decisions. As a result, parole hearings are considered administrative hearings.⁷⁹ The Administrative Code provides guidelines for the Committee through all parts of the parole process, including pre- and post-parole hearings.⁸⁰

1. Before the Parole Hearing

The Administrative Code requires the Committee to consider “all pertinent information” six months before the inmate’s eligibility date.⁸¹ This review occurs at the parole hearing.⁸² A hearing will not occur, however, unless there has been a pre-parole investigation (PPI).⁸³ Therefore, prior to a hearing, the DOC requests a PPI from the Office of Probation and Parole.⁸⁴ A probation officer in the parish where the crime occurred then prepares the PPI.⁸⁵ There are no rules or statutes mandating what the PPI should include, and thus the contents often differ depending on the inmate and the probation officer assigned to prepare the PPI.⁸⁶ The report typically contains: (1) identifying information for the applicant; (2) a summary of the facts of the crime; (3) the procedural history of the case; (4) information about the applicant’s adult and criminal records; (5) statements from community members about the applicant’s family

77. Only inmates who can afford post-conviction attorneys or who are represented pro-bono have counsel at parole hearings. The State does not appoint public defenders to post-conviction proceedings because these proceedings are not covered under the Sixth Amendment. *See Amendment 6.7.2.3 When the Right to Counsel Applies, supra* note 75.

78. *See generally id.* (explaining that the Sixth Amendment “right to counsel” does not apply to post-conviction proceedings).

79. *See* LA. ADMIN. CODE tit. 22, pt. 11, ch. 7 (2019).

80. *See id.*

81. *Id.* § 701(B).

82. *See id.*

83. *Id.*

84. Letter from James E. Boren, Attorney at Law, to Mallory C. Waller, Staff Lawyer, Louisiana Law Institute and Judge Guy Holdridge, Director, Louisiana Law Institute (Jan. 25, 2019) (on file with author).

85. *See id.*

86. *See id.*

members and the applicant, if available; (6) a summary of the applicant's social history; and (7) a final summary section.⁸⁷ The Committee, the district attorney's office, and other law enforcement agencies that play a role in the hearing have access to the PPI in advance; however, Louisiana Revised Statutes § 15:547.12(A)–(B) prohibits inmates and their counsel from having access to the PPI.⁸⁸ The prohibition serves to protect sensitive information and speaks to the societal fear that an inmate will retaliate if he or she knows what is said about them.⁸⁹ The Committee, nonetheless, will often question the inmate about information contained in the PPI at the parole hearing.⁹⁰

2. During the Parole Hearing

Generally, a parole hearing consists of: (1) an overview of the hearing process with the inmate; (2) a review of the crime and sentencing dates; (3) a review of the offender's pre-crime life factors; (4) a review of the offender's incarceration record; (5) a review of the parole plan, including residence, employment, and continued rehabilitation; (6) closing and impact statements; and (7) a deliberation or collaboration followed by a decision.⁹¹ The Administrative Code offers a set of guidelines that suggest how the Committee should process all of the "pertinent information" presented during the hearing and contained in the PPI.⁹² These "parole guidelines" include (1) the nature and circumstance of the crime; (2) prior criminal record; (3) character, social background, and emotional and physical condition; (4) institutional adjustment; (5) police, judicial, and community attitudes toward the offender;⁹³ (6) parole plan; (7) program participation; and (8) risk assessment.⁹⁴ The BPP's policy states, however, that "the parole guidelines serve as an aid in the parole decision process

87. *See id.*

88. LA. REV. STAT. § 15:574.12(A)–(B) (2019).

89. *See* Interview with Robert Lancaster, Professor and Assistant Dean of Experiential Education, Paul M. Hebert Law Ctr., in Baton Rouge, La. (Oct. 31, 2019).

90. *See* Letter from James E. Boren to Mallory C. Waller and Judge Guy Holdridge, *supra* note 84.

91. LA. BD. OF PARDONS & PAROLE, *supra* note 71, at 4.

92. LA. ADMIN. CODE tit. 22, pt. 11, § 701(B)–(C) (2019).

93. The Administrative Code suggests the Committee give this factor the most weight. *Id.* § 701(C)(5).

94. LA. BD. OF PARDONS & PAROLE, BOARD POLICY 07-701, "PAROLE DECISIONS" (Oct. 26, 2020), <https://s32082.pcdn.co/wp-content/uploads/2020/12/07-701-POL-PAROLE-DECISIONS.pdf> [<https://perma.cc/424X-8BPV>].

and the parole decision shall be at the discretion of the voting parole panel.”⁹⁵ Thus, the BPP’s policy implies that the Committee has complete discretion to make parole decisions regardless of the result of the suggested criteria listed above in the parole guidelines.⁹⁶ In congruence with the guidelines, once it is time for impact statements, the victim as well as the district attorney or other law enforcement agencies may present oral or written testimony providing their opinion on whether the Committee should vote in favor or in opposition of granting parole.⁹⁷ The traditional rules of evidence, however, do not apply to this testimony, and thus the testimony could potentially be irrelevant or inaccurate.⁹⁸

The Committee makes a decision at the end of the hearing and discloses the decision to the inmate at such time.⁹⁹ The Committee also provides the decision in a written form called the “parole decision form.”¹⁰⁰ If an inmate is denied release and would like another opportunity for consideration, he must submit an application for a parole *rehearing*, in writing, to the BPP after waiting the proper time period.¹⁰¹ On the other hand, if the inmate believes either that a Committee member committed misconduct, a Committee member made a significant procedural error, or that “significant new evidence” arose that was unavailable during his most recent hearing, then he may request that the Committee *reconsider* its decision to deny parole.¹⁰² The Committee has not disclosed any statistics on how many people have requested reconsiderations and how many have been granted or denied.¹⁰³ Though, attorneys who represent offenders in parole hearings and organizations that provide representation and assistance to offenders during the parole process opine that the BPP has stopped granting reconsiderations.¹⁰⁴

95. *See id.*

96. *See id.* § 701(C).

97. *See id.* § 102(A)(6)(a); *see also id.* § 510(A).

98. *See* LA. CODE OF EVIDENCE arts. 101, 1101 (2019).

99. *Id.* § 703(A).

100. *Id.*

101. *Id.* § 705(A). The proper time periods are found in Administrative Code Title 22, Part 11, § 705(C)(3), and the time period depends on the type of crime.

102. *Id.* § 705(D)(2)(c)(iii).

103. *See generally* LA. DEP’T OF PUB. SAFETY & CORR., THE BRIEFING BOOK (July 2020), <https://www.doc.la.gov/briefing-book> [<https://perma.cc/VD2J-8MT9>] (containing statistics that the DOC publishes but not any information about requests for reconsideration).

104. Interview with Keith Nordyke, prison law expert and parole hearing attorney for more than 30 years, at Paul M. Hebert Law Ctr., Baton Rouge, La. (Oct. 8, 2019); Interview with Kerry Myers, Parole Project Deputy Director, and

E. Recent Legislative Changes to Criminal Justice and Reform

For two decades, Louisiana held the title as the leading state in incarceration rates after adopting mandatory sentencing laws and restrictive parole policies.¹⁰⁵ In 2017, Louisiana Governor John Bel Edwards signed 10 criminal justice reform bills into law.¹⁰⁶ The new laws were the product of two years of the Louisiana Justice Reinvestment Task Force's work and research.¹⁰⁷ The legislature created the task force to develop policies and practices suited for Louisiana to improve sentencing, promote public safety, and reduce spending.¹⁰⁸

The newly enacted justice reform legislation had four primary objectives: (1) "prioritize prison space for those who pose a public safety threat;" (2) "strengthen community supervision;" (3) "eliminate barriers to re-entry;" and (4) "reinvest prison savings to reduce recidivism, support victims."¹⁰⁹ These goals are apparent in the legislation.¹¹⁰ For example, in an effort to "prioritize prison space for those who pose a public safety threat," the legislation expanded parole eligibility for some offenders that were not previously eligible.¹¹¹ Other relevant legislation included parole eligibility for people who served 25 years for life sentences imposed for crimes they committed as juveniles.¹¹² As a result of this justice reform legislation, Louisiana did lose its long-held title as the most incarcerated state in the country and ranked second behind Oklahoma during the year of 2018, but is now back in first place again.¹¹³ Although the legislature seeks to lower the incarceration rate through the justice reform legislation,

Ashleigh Dowden, Parole Project Administrative Manager, at 427 Mayflower St., Baton Rouge, La. (Oct. 9, 2019).

105. Gelb & Compa, *supra* note 27.

106. *Louisiana's 2017 Criminal Justice Reforms: The Most Incarcerated State Changes Course*, THE PEW CHARITABLE TRUST (Mar. 1, 2018), <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/03/louisianas-2017-criminal-justice-reforms> [<https://perma.cc/WV54-MA2D>].

107. *See id.*

108. *Id.* The task force members included legislators, judges, prosecutors, defense attorneys, law enforcement officials, the corrections secretary, and the state sentencing commission chair, as well as faith leaders and victim and community advocates. *Id.* The Pew Charitable Trusts and the Crime and Justice Institute provided nonpartisan data analysis and technical assistance.

109. *Id.* at 4.

110. *See id.*

111. *See id.*

112. Gelb & Compa, *supra* note 27.

113. Skene, *supra* note 26.

not a single recent legislative change addressed the process and procedure for parole hearings.¹¹⁴

II. THE PAROLE PROCESS: HOW THE PROCEDURE DISREGARDS THE PURPOSE

Louisiana Revised Statutes § 15:574.4.1(B) states that the Committee shall grant parole for the best interest of society, upon the Committee's determination that there is "reasonable probability" that the inmate is "able and willing to fulfill the obligations of a law-abiding citizen."¹¹⁵ The focus of the statute is on the prisoner's willingness and ability to operate as a "law-abiding citizen," which speak to his or her rehabilitation since incarceration.¹¹⁶ Louisiana's parole hearing process and procedures, however, do not align with this focus.¹¹⁷

A. *The Inmate Starts Out Behind Before the Hearing Even Begins*

The Committee relies heavily on the probation officer's PPI.¹¹⁸ It is one of the most important documents the Committee reviews in preparation for the hearing.¹¹⁹ The statutory prohibition on an inmate's access to the PPI harms an inmate's chance for release, as it causes confusion and delay during the parole hearing.¹²⁰ In addition, this document poses potential constitutional problems.¹²¹

The assigned probation officer creates the PPI, but there is no rule or statute mandating the contents of the PPI.¹²² Therefore, the information will differ significantly depending on the inmate and the probation officer preparing the report.¹²³ Additionally, the probation officer writes many narrative sections for the PPI, such as the summary of the facts of the crime and a summary of the inmate's social history.¹²⁴ Due to the subjective

114. Gelb & Compa, *supra* note 27.

115. LA. REV. STAT. § 15:574.4.1(B) (2019).

116. *Id.*

117. *See id.* § 15:574.12(A)–(B); *see also* LA. ADMIN. CODE tit. 22, pt. 11, § 701(C) (2019); LA. BD. OF PARDONS & PAROLE, *supra* note 71.

118. Letter from James E. Boren to Mallory C. Waller and Judge Guy Holdridge, *supra* note 84.

119. *See id.*

120. *See* LA. REV. STAT. § 15:574.12(A)–(B).

121. Letter from James E. Boren to Mallory C. Waller and Judge Guy Holdridge, *supra* note 84.

122. *Id.*

123. *See id.*

124. *See id.*

nature of the narratives, many of them may be inaccurate.¹²⁵ For example, the summaries of facts in the PPI have occasionally contradicted the facts that the prosecution used to establish the inmate's guilt at trial.¹²⁶ This occurs, in part, because there is no guidance provided to a probation officer on what documents to use to create the PPI, so occasionally the officer will use documents, such as police reports, that misstate facts or contain details that were never litigated at trial or that were proven false at trial.¹²⁷ Prohibiting an inmate from access to the PPI prejudices an inmate because he is not provided any opportunity to refute the information contained in the PPI, and therefore the Committee is potentially considering false or misstated information when making its parole decisions.¹²⁸

For example, at a recent parole hearing, the Committee, in reliance on the PPI, asked an inmate about crimes he committed before his current conviction.¹²⁹ The PPI contained information about prior thefts, but the inmate shared a time he assaulted someone.¹³⁰ The Committee then confronted the inmate about the thefts, and he had to explain, during the parole hearing, that he was never convicted for theft, only for assault.¹³¹ It is not clear why the PPI contained misinformation.¹³² The inmate's counsel assumed that the probation officer was looking at the wrong inmate's file when drafting the PPI.¹³³

In the case of Henry Montgomery, the PPI's factual summary indicated that Mr. Montgomery shot a police officer while the officer was retreating with his arms up.¹³⁴ This factual allegation was a statement the police officer's partner made in the initial police report but later rescinded during trial, where the partner confessed that he was actually about 350 yards away and could not see the victim nor Mr. Montgomery at the time of the shooting.¹³⁵ Mr. Montgomery tried to explain to the Committee that the officer did not have his hands up at the time of the shooting, but rather the officer was in plain clothes, and Mr. Montgomery thought he was reaching for a gun and became afraid.¹³⁶ The Committee replied that they

125. *See id.*

126. *See id.*

127. *See id.*

128. *See generally id.*

129. Interview with Robert Lancaster, *supra* note 89.

130. *See id.*

131. *See id.*

132. *Id.*

133. *See id.*

134. Toohey, *supra* note 6.

135. *Id.*

136. *See id.*

had to use the “documented facts in the case,” otherwise known as the PPI, which included the initial *false* statement from the police report.¹³⁷

The Committee wants inmates to show remorse for the crimes they committed in the past and to show respect to authority.¹³⁸ But this is difficult to accomplish when the statute prohibits inmates and their attorneys from accessing the PPI, and the information the Committee confronts them with during the hearing is incorrect.¹³⁹ An inmate will potentially come across as unremorseful, disrespectful, or even untruthful, limiting his or her chances for release.¹⁴⁰

B. Why Let the Committee Do a Job the Risk Assessment Tools Can Do More Accurately?

The Administrative Code recommends that the Committee consider eight factors as guidelines, not the exclusive criteria on which to base its decision.¹⁴¹ As for the eighth factor, risk assessment, Louisiana currently has two risk assessment tools that the Committee can use: Louisiana Risk/Needs Assessment (LARNA) and Targeted Interventions Gaining Enhanced Re-Entry (TIGER).¹⁴² Both tools employ a formula that predicts an inmate’s risk level—his risk of recidivism within a three-year period—which the Committee will then consider along with the other factors when deciding whether to grant or deny parole.¹⁴³

When calculating risk, the risk assessment tools evaluate their own set of factors, including the ones listed in the Administrative Code.¹⁴⁴ These

137. *See id.* (emphasis added).

138. Interview with Keith Nordyke, *supra* note 104.

139. *See id.*

140. *See id.*

141. LA. ADMIN. CODE tit. 22, pt. 11, § 701(C) (2019). The eight factors are: (1) the nature and circumstances of the crime; (2) prior criminal record; (3) character, social background, and emotional and physical condition; (4) institutional adjustment; (5) police, judicial, and community attitudes toward the offender; (6) parole plan; (7) program participation; and (8) risk assessment. *Id.* § 701(C)(1)–(8).

142. ALEXIS LEE WATTS ET AL., ROBINA INST. OF CRIM. LAW & CRIM. JUST., PROFILES IN PAROLE RELEASE AND REVOCATION: EXAMINING THE LEGAL FRAMEWORK IN THE UNITED STATES: LOUISIANA (2018), https://robinainstitute.umn.edu/sites/robinainstitute.umn.edu/files/louisiana_parole_profile_0.pdf [<https://perma.cc/TM54-J3HN>].

143. *See generally* LA. ADMIN. CODE tit. 22, pt. 11, § 701(C)(8) (2019).

144. Interview with Keith Nordyke, *supra* note 104.

factors can be classified as either dynamic or static.¹⁴⁵ Dynamic factors are factors that are susceptible to change and show signs of an inmate's rehabilitation or lack thereof.¹⁴⁶ The dynamic factors that the Administrative Code suggests the Committee consider are (1) character, social background, and emotional and physical condition; (2) institutional adjustment; (3) the inmate's parole plan; and (4) his or her program participation.¹⁴⁷ The other two factors, the nature and circumstances of the crime and prior criminal record, are static factors.¹⁴⁸ Static factors, as they relate to parole, are features of the offender's history that predict recidivism, but are not susceptible to intervention or rehabilitation and, therefore, do not signify whether someone has been rehabilitated.¹⁴⁹

The two risk assessment tools use an algorithm that weighs all of the factors and predicts an inmate's risk level, which will either score as low, moderate, or high.¹⁵⁰ LARNA is the older of the two risk assessment tools, and thus it is more widely used because the entire state has been trained to use it.¹⁵¹ TIGER is a newer risk and needs assessment tool that improves upon LARNA.¹⁵² TIGER has two components: the risk component and the needs component.¹⁵³ TIGER's risk component is accurate approximately 90% of the time, compared to LARNA's approximate 60% accuracy.¹⁵⁴ The risk component of TIGER evaluates a variety of factors, each given a different weight using a statistically validated algorithm.¹⁵⁵ There are separate algorithms for men serving longer sentences, as well as those serving time for sex offenses to ensure the highest possibility of accuracy for the specific inmate.¹⁵⁶ Yet, the Administrative Code allows the

145. See generally R. Karl Hanson, *Giving Meaning to Risk Factors*, 15(6) RES. SUMMARY 1 (2010), available at <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/mnng-fctrs/mnng-fctrs-eng.pdf> [<https://perma.cc/6AT6-DRXF>].

146. *Id.*

147. See generally LA. ADMIN. CODE tit. 22, pt. 11, § 701(C)(3)–(4), (6)–(7) (2019).

148. See generally Hanson, *supra* note 145.

149. See generally *id.*

150. Interview with Keith Nordyke, *supra* note 104.

151. See generally LOUISIANA JUSTICE REINVESTMENT TASK FORCE, REPORT AND RECOMMENDATIONS (2017), https://www.lasc.org/documents/LA_Task_Force_Report_2017_FINAL.pdf [<https://perma.cc/QP34-2MWU>].

152. See *id.*

153. Interview with Keith Nordyke, *supra* note 104.

154. *Id.* Keith was the Project Manager of the team that created TIGER, which was a partnership between the DOC and LSU's School of Sociology.

155. *Id.*

156. *Id.*

Committee members to give their own weight to each of the factors, despite having an extremely accurate and objective risk assessment tool.¹⁵⁷

Allowing the Committee to give their own weight to these factors shifts the focus of the hearing from the purpose of parole, which is to look at whether the inmate is currently able and willing to fulfill the obligations of a law-abiding citizen, and permits the Committee to focus on the past crime and to deny parole based on a static factor—one that will never change.¹⁵⁸ The Committee's consideration of static factors during the parole hearing puts the inmate in the position of being on trial for a crime he has already been convicted of, focusing on past acts, not on the present state of the inmate.¹⁵⁹ It also provides the Committee with a method to invoke their own implicit biases during parole hearings.¹⁶⁰ Parole decisions are highly discretionary, and each member of the Committee has different opinions about the nature and circumstances of the crime or the prior criminal record and how risky these factors are in relation to recidivism.¹⁶¹ By allowing the Committee to weigh these factors on their own, an inmate's parole decision depends on who is on the panel that day and what their individual beliefs are about the static factors, as opposed to relying on one of the objective risk assessment tools that the DOC developed to predict risk.¹⁶²

C. Law Enforcement and Victim Impact Statements—Good in Theory, Bad in Practice

Law enforcement and victims play an important and valuable role in criminal justice proceedings both leading up to and throughout sentencing.¹⁶³ Allowing victim and law enforcement opposition statements at parole hearings, however, is unfair and prejudices the inmate in a number of ways.¹⁶⁴ First, the victim and law enforcement are allowed to testify before the Committee in person, whereas the inmate is generally required to attend and testify via video conference.¹⁶⁵ Second, victims and

157. See generally LA. ADMIN. CODE tit. 22, pt. 11, § 701(C)(1)–(8) (2019).

158. See generally *id.* § 701(C)(1)–(2).

159. Interview with Keith Nordyke, *supra* note 104.

160. See generally LA. ADMIN. CODE tit. 22, pt. 11, § 701(C)(1)–(2). See also Interview with Keith Nordyke, *supra* note 104.

161. See generally LA. ADMIN. CODE tit. 22, pt. 11, § 701(C)(1)–(2). See also Interview with Keith Nordyke, *supra* note 104.

162. Interview with Keith Nordyke, *supra* note 104.

163. See discussion *infra* Part III.C.1–2.

164. See generally LA. ADMIN. CODE tit. 22, pt. 11, § 102(A)(6)(a); *id.* § 510.

165. LA. BD. OF PARDONS & PAROLE, *supra* note 71.

law enforcement have an opportunity to provide embellished or false information, as there is no requirement that the speakers prove the accuracy of their statements, and there is no procedural mechanism for the inmate or counsel to challenge the statements' accuracy.¹⁶⁶ Third, the Administrative Code advises the Committee to give the greatest weight to police, judicial, and community attitudes toward the offender, but their "attitudes" speak to who the inmate was before he entered prison, not his rehabilitation or current state.¹⁶⁷ Ultimately, the Administrative Code's allowance of victim and law enforcement testimony at parole hearings once again shifts the focus from the inmate's rehabilitation and "[ability and willingness] to fulfill the obligations of a law-abiding citizen" to a re-sentencing of the crime the inmate has already been convicted of and sentenced for.¹⁶⁸ Additionally, "the decision to release an individual should be informed exclusively by an understanding of that [individual]," and because law enforcement and victims often have not had any interaction with the inmate since sentencing, they simply do not possess the information related to the inmate's current ability or willingness to fulfill the obligations of a law-abiding citizen—at which Louisiana Revised Statutes § 15:574.4.1(B) says the Committee should be looking.¹⁶⁹

1. Reducing Costs at the Expense of Fairness: Face-to-Face versus Video Conference

Currently in Louisiana, most parole hearings happen via video conference.¹⁷⁰ This is likely because the Committee is able to conduct hearings with multiple institutions on any given day by quickly switching the video feed from one prison to the next, as opposed to traveling from prison to prison.¹⁷¹ Additionally, many prisons in the state do not have a space to hold parole hearings, and it would be a significant burden on prison administration and staff to support public hearings at the institution.¹⁷² Further, the DOC support staff and records are all at the

166. See generally LA. CODE EVID. arts. 101, 1101 (2019).

167. LA. ADMIN. CODE tit. 22, pt. 11, § 701(C)(4)(a).

168. See Renaud, *supra* note 40; LA. REV. STAT. § 15:574.4.1(B) (2019).

169. See Jorge Renaud, *Should Prosecutors and Survivors Have a Voice in Shortening Long Sentences?*, PRISON POLICY INITIATIVE (Oct. 25, 2018), <https://www.prisonpolicy.org/blog/2018/10/25/prosecutors-and-survivors/> [<https://perma.cc/2L8Y-AW4A>].

170. See LA. BD. OF PARDONS & PAROLE, *supra* note 71.

171. See Interview with Robert Lancaster, *supra* note 89.

172. See *id.* Some of the additional burdens include additional processing of visitors, extra security, and coordination of movement within prison. See *id.*

DOC headquarters, and to transport all of the staff and the records to each prison would be costly and inconvenient.¹⁷³ Thus, an inmate attends the hearing via video conference from the prison.¹⁷⁴ Nonetheless, law enforcement agents and the victim are able to meet face-to-face with the Committee at the DOC headquarters.¹⁷⁵ Though it may be faster and cheaper to conduct hearings via video conference, it unfairly disadvantages inmates.¹⁷⁶

Some immigration detention hearings, like most parole hearings, occur via video conference.¹⁷⁷ Judge Amenia Khan, the executive vice president of the National Association of Immigration Judges, noted the growing use of video conferencing in immigration detention hearings and said that video conferencing “does not always paint a complete picture” of a detained immigrant.¹⁷⁸ The judge noted that interaction is difficult during video conferencing, and it is hard to judge eye contact and nonverbal cues like body language.¹⁷⁹

Though Judge Kahn was referring to immigrants in detention, Louisiana’s inmates face the same barriers in parole hearings.¹⁸⁰ Henry Montgomery faced these barriers when he struggled to connect with the Committee during both of his parole hearings.¹⁸¹ His attorney, Keith Nordyke, had to repeat many of the questions the Committee asked Mr. Montgomery because Mr. Montgomery struggled to comprehend the questions due to the video feed and his already disabled hearing.¹⁸² Everyone who knows Mr. Montgomery, from fellow prisoners to those assisting him in his long-fought attempt at receiving parole, know him as a quiet, humble man.¹⁸³ He was nervous and struggled with expressing himself during the hearing.¹⁸⁴ The Committee, however, did not see that

173. See *id.*

174. LA. BD. OF PARDONS & PAROLE, *supra* note 71.

175. *Id.*

176. See Renaud, *supra* note 40.

177. See *id.*

178. See Christina Goldbaum, *Videoconferencing in Immigration Court: High-Tech Solution or Rights Violation?*, N.Y. TIMES (Feb. 12, 2019), <https://www.nytimes.com/2019/02/12/nyregion/immigration-court-video-teleconferencing.html> [<https://perma.cc/436D-BDY5>].

179. See *id.*

180. See Segura, *supra* note 4.

181. See Reckdahl, *supra* note 3.

182. See *id.*; Interview with Keith Nordyke, *supra* note 104.

183. See Reckdahl, *supra* note 3.

184. See *id.*

side of Henry Montgomery due to the barrier the video feed creates between an inmate and the Committee.¹⁸⁵

The difference between a video conference versus a face-to-face meeting with the Committee serves as a substantial disadvantage to the offender.¹⁸⁶ There are often technical issues and sound delays, making it hard for the inmate to hear the Committee's questions and for the Committee to hear the inmate's response.¹⁸⁷ Generally, the video feed further paints the picture that the inmate is and should remain removed from society due to the lack of personal connection and the idea that the inmate needs to be kept "away."¹⁸⁸ Thus, much like immigrants who are more likely to be deported when judges conduct their hearings via video conference, inmates are in an unfavorable position due to the barriers the video feed creates.¹⁸⁹ This disadvantage is further exacerbated by the Administrative Code's policy of allowing law enforcement and victims to speak face-to-face with the Committee at parole hearings.¹⁹⁰ The Committee is able to hear every word victims and law enforcement say, along with the inflection in their voice, see their tears, and connect with them in ways they cannot with inmates due to the barriers that the video feed imposes.¹⁹¹ This lack of face-to-face interaction, however, is not the only issue that inmates face during parole hearings.¹⁹²

2. *Effects of the Lack of Evidentiary Rules during Parole Hearings*

The lack of traditional evidentiary rules during parole hearings means that the testimony from victims and law enforcement can be legally irrelevant or even inaccurate.¹⁹³ Additionally, parole hearings are inquisitorial in nature, as opposed to the typical adversarial nature of traditional criminal proceedings.¹⁹⁴ The inquisitorial nature of the parole

185. *See id.*

186. *See* Renaud, *supra* note 40.

187. Interview with Ashleigh Dowden, Administrative Assistant at the Parole Project, Baton Rouge, La. (Oct. 9, 2019); Interview with Keith Nordyke, *supra* note 104. This is anecdotal evidence that was received from Ashleigh Dowden, Administrative Assistant at the Parole Project, as well as Keith Nordyke.

188. *See* Interview with Ashleigh Dowden, *supra* note 187.

189. Renaud, *supra* note 40.

190. *See* LA. ADMIN. CODE tit. 22, pt. 11, § 102(A)(6)(a) (2019); *id.* § 510(A).

191. *See id.* § 102(A)(6)(a); *id.* § 510(A); Renaud, *supra* note 40.

192. *See* discussion *infra* Part II.C.2–3.

193. *See generally* LA. CODE EVID. arts. 101, 1101 (2019).

194. *See* R. Kyle Alagood, *Parole Release Hearings: The Fallacy of Discretion*, 5 T. MARSHALL L. J. GENDER, RACE, JUST. 1 (2015).

hearing inhibits an inmate's ability to respond to or rebut inaccurate or irrelevant information that another party presents during the hearing.¹⁹⁵ As a result, the Committee is at a risk of considering inaccurate or irrelevant information when deciding whether to grant or deny parole.¹⁹⁶

The Administrative Code allows victims to testify at the parole hearings on their views of the offense, but occasionally the facts the victims state during parole hearings are not included in any reports of the crime, nor the trial record.¹⁹⁷ In the case of a deceased victim, the Administrative Code allows the spouse or next of kin of the deceased victim to speak to the Committee.¹⁹⁸ For inmates who are serving long sentences, this could mean that the grandchildren of the victim, who were not alive when the victim died, may testify during the hearing.¹⁹⁹ Keith Nordyke refers to this sort of testimony as "family hearsay" because it is often stories detailing the crime that have developed over the years to keep the victim's memory alive but are "simply not true."²⁰⁰ Yet, according to the Administrative Code, the Committee is supposed to give "[p]olice, [j]udicial, and [c]ommunity [a]ttitudes toward the [o]ffender" the greatest amount of weight, compared to the other factors, when considering whether to grant or deny parole.²⁰¹ Thus, the Committee is giving the most weight to potentially false or embellished testimony.²⁰²

a. Effects of Miller v. Alabama on Victim and Law Enforcement Testimony

In 2017, a new issue in parole hearings arose when the state legislature passed Act 277, which provided parole eligibility to prisoners who were serving life sentences without parole for crimes they committed as juveniles, including those convicted of murder.²⁰³ This legislation was a response to *Montgomery v. Louisiana*, where the U.S. Supreme Court held

195. *See id.*

196. *Id.*

197. *See* LA. ADMIN. CODE tit. 22, pt. 11, § 510(A) (2019); *see also* Interview with Keith Nordyke, *supra* note 104; Interview with Kerry Myers and Ashleigh Dowden, *supra* note 104.

198. *See* LA. ADMIN. CODE tit. 22, pt. 11, § 510(B)(3).

199. *See id.*

200. *See* Interview with Keith Nordyke, *supra* note 104.

201. LA. ADMIN. CODE tit. 22, pt. 11, § 701(C)(5).

202. *See id.*

203. Act No. 277, 2017 La. Acts 681 (codified at LA. REV. STAT. § 15:574.4(D)(1) (2019)).

that its *Miller v. Alabama*²⁰⁴ holding applied retroactively.²⁰⁵ The Court, in *Miller*, concluded that juvenile life without the opportunity of parole was cruel and unusual punishment under the Eighth Amendment if the court sentenced the inmate under a mandatory sentencing scheme that did not allow for an individualized determination.²⁰⁶ The Court reasoned that juveniles possess “diminished culpability and heightened capacity for change.”²⁰⁷ Thus, it was unconstitutional to mandatorily sentence juveniles to life without the opportunity of parole, and the states must deem them parole eligible.²⁰⁸ As a result, the DOC is now informing family members of deceased victims, who thought the offender would be serving life *without* the opportunity for parole, that the offender *is* eligible for parole.²⁰⁹ Family members of victims are in turn encouraged to testify at the parole hearing.²¹⁰

This specific type of victim testimony is different from others, first, because the victim is deceased and, second, because these inmates were serving sentences of life without parole, and now they have parole eligibility.²¹¹ Therefore, the common argument is “why should this person get a second chance when [my victim] did not,” or “the prosecutor told me [the inmate] would never be able to get out.”²¹² The Administrative Code then suggests that the Committee give this sort of testimony “greater weight” during its consideration.²¹³ This testimony, however, is not relevant to a parole hearing because, as a result of Act 277, these offenders *are* eligible for a “second chance.”²¹⁴

At Henry Montgomery’s first parole hearing, the daughter of the victim testified and asked the Committee “to give [Mr. Montgomery] the same consideration he gave [her] father and [her] family,” further stating that Mr. Montgomery “needs to stay [in prison].”²¹⁵ She also testified that her father’s death is not reversible, insinuating that Mr. Montgomery’s life

204. 567 U.S. 460 (2012).

205. *Montgomery v. Louisiana*, 577 U.S. 190 (2016).

206. 567 U.S. at 489.

207. *Id.* at 479.

208. *Montgomery*, 577 U.S. 190.

209. *See* LA. ADMIN. CODE tit. 22, pt. 11, § 510 (2019).

210. *See id.*

211. *See* Interview with Kerry Myers and Ashleigh Dowden, *supra* note 104.

212. *Id.*

213. LA. ADMIN. CODE tit. 22, pt. 11, § 701(C)(5) (2019).

214. Act No. 277, 2017 La. Acts 681 (codified at LA. REV. STAT. § 15:574.4(D)(1) (2019)) (emphasis added).

215. Toohey, *supra* note 6.

sentence should not be either.²¹⁶ Although it is true her father's death is not reversible, her statement and its insinuation contradict the principle that juvenile lifers have a higher capacity for change, and take the focus away from the facts supporting that Mr. Montgomery is no longer a threat to society and should not remain in prison.²¹⁷

Law enforcement's arguments tend to look similarly to the victim's family's arguments.²¹⁸ Officers often testify that they promised the victim's family that the offender would never be released from prison.²¹⁹ As a result, the Committee may feel the need to uphold that promise, as it would uphold the integrity of law enforcement and the judicial system as a whole.²²⁰ It may be true that the agent made that promise; however, the issue still remains—these sorts of inmates show a “heightened capacity for change” and, as a result, are eligible for parole.²²¹ These types of arguments that law enforcement and the victim or the victim's family make have no place in parole hearings, as they distract the Committee from the purpose of the hearing: to determine whether the prisoner is able and willing to fulfill the obligations of a law-abiding citizen.²²²

Further, when the Louisiana Legislature passed Act 277, which provided the opportunity for parole to juvenile lifers, it also enacted Louisiana Code of Criminal Procedure article 878.1.²²³ This article was a temporary mechanism that allowed prosecutors to maintain the juvenile-life-*without-the-opportunity-for-parole* sentence, but they had to file a notice to the trial court by December 1, 2017.²²⁴ The trial court would then conduct a hearing to determine parole eligibility.²²⁵ This was a legislatively created mechanism for prosecutors to oppose parole eligibility based on factors like the nature and circumstances of the crime and prior criminal history.²²⁶ If the prosecutor did not file the notice by the due date, the sentence would automatically revert to life *with* the

216. *Id.*

217. *See* Interview with Kerry Myers and Ashleigh Dowden, *supra* note 104.

218. *Id.*

219. *Id.*

220. Interview with Keith Nordyke, *supra* note 104; Interview with Kerry Myers and Ashleigh Dowden, *supra* note 104.

221. *Miller v. Alabama*, 567 U.S. 460, 479 (2012); *see also* Act No. 277, 2017 La. Acts 681 (codified at LA. REV. STAT. § 15:574.4(D)(1) (2019)).

222. *See* LA. REV. STAT. § 15:574.4.1(B) (2019).

223. Act No. 277, 2017 La. Acts 681 (codified at LA. CODE CRIM. PROC. art. 878.1 (2019)).

224. LA. CODE CRIM. PROC. art. 878.1 (2019).

225. *Id.*

226. *See id.*

opportunity for parole.²²⁷ Many prosecutors did not file the notice; therefore, numerous juvenile lifers were automatically parole eligible.²²⁸ These prosecutors essentially waived their ability to argue that the inmate should not be released based on the static factors when they failed to file the notice by December 1, 2017, yet the Administrative Code still allows them to attend parole hearings and oppose release using arguments that rely on factors like the nature and circumstances of the crime and prior criminal history.²²⁹ Arguments based on those static factors were exactly the point of the legislature passing article 878.1, yet now these prosecutors are attending parole hearings and making such arguments.²³⁰ To allow them to make these arguments now is unfair to the inmates whom, as a result of the prosecutor's failure to file the notice, the system automatically deemed parole eligible.²³¹ These arguments again shift the focus of the hearing from whether the inmate is able and willing to fulfill the obligations of a law-abiding citizen to whether the Committee should hear the case in the first place, which is not the purpose of a parole hearing.²³²

3. Tipping the Scale: The Weight Given to Victim and Law Enforcement Opposition

From lawyers to re-entry assistants, the people who represent and assist inmates in parole hearings know that if an inmate has law enforcement or victim opposition at the parole hearing, his or her chances at release reduce dramatically.²³³ The Committee will often tell an inmate during a hearing why they are denying parole, and if not, it is in the parole decision form, a copy of which the inmate receives after the hearing.²³⁴ Many in the parole community believe that the Committee will often cite another reason for why they are denying parole, such as a lack of programming, when the true reason is actually law enforcement or victim

227. *Id.*

228. *See* Interview with Robert Lancaster, *supra* note 89.

229. *See* LA. ADMIN. CODE tit. 22, pt. 11, § 102(A)(6)(a) (2019).

230. *See* Interview with Robert Lancaster, *supra* note 89.

231. *See generally* LA. CODE CRIM. PROC. art. 878.1 (providing a mechanism for prosecutors to maintain a juvenile life without parole sentence by filing a notice with the trial court by December 1, 2017).

232. *See* LA. REV. STAT. § 15:574.4.1(B) (2019).

233. *See* Interview with Keith Nordyke, *supra* note 104; Interview with Kerry Myers and Ashleigh Dowden, *supra* note 104.

234. *See* LA. ADMIN. CODE tit. 22, pt. 11, § 703; *see also* Segura, *supra* note 4.

opposition.²³⁵ In both of Henry Montgomery's parole hearings, the Committee stated that they were denying release due to his failure to "participate[] in enough programs," though they never told Mr. Montgomery what programming he should complete that would be sufficient.²³⁶ The Administrative Code does not require the Committee to tell an inmate what programming would be sufficient; however, it is not uncommon for an inmate to be told they need to finish certain programs they have already started before they can be released.²³⁷ After Mr. Montgomery's last hearing, Keith Nordyke, Mr. Montgomery's attorney, asked the warden at the Louisiana State Penitentiary what other programs Mr. Montgomery could take.²³⁸ The warden responded that "there may be some substance abuse class he hasn't taken."²³⁹ The irony in the warden's suggestion, however, is that Henry Montgomery does not and has never had a substance abuse problem.²⁴⁰

At Mr. Montgomery's parole hearing, the Baton Rouge Police Department, the East Baton Rouge Parish Sheriff's Office, and the statewide associations for sheriff's offices and police departments all accompanied the victim's family to oppose Mr. Montgomery's release.²⁴¹ Though the Committee cited a "lack of programming" as the reason they denied release for Mr. Montgomery, the parole community believed this denial was one of those times that the Committee used programming as a guise for the true reason for denial: law enforcement and victim opposition.²⁴²

The Committee reported that in the first half of 2016, over 60% of their denials were attributed to law enforcement opposition or to victim opposition which only includes the times the Committee was willing to admit that law enforcement or victim opposition was the reason for

235. See Interview with Keith Nordyke, *supra* note 104; see also Interview with Kerry Myers and Ashleigh Dowden, *supra* note 104.

236. Segura, *supra* note 4.

237. See generally LA. ADMIN. CODE tit. 22, pt. 11, § 703 (2019). This regulation speaks to the result of a decision to grant or deny parole but does not include any requirement to inform an inmate on what the inmate must do in order for the Committee to grant parole.

238. Segura, *supra* note 4.

239. *Id.*

240. *Id.*

241. Toohey, *supra* note 6.

242. Interview with Keith Nordyke, *supra* note 104; Interview with Kerry Myers and Ashleigh Dowden, *supra*, note 104.

denying parole.²⁴³ The Administrative Code allowing victims and law enforcement to testify is enabling the Committee to abuse the broad discretion it already grants them.²⁴⁴ The Committee is able to shift from evidence-based practices, focused on determining whether an inmate is able and willing to fulfill his obligations as a law-abiding citizen, to essentially re-trying the inmate for a crime he was already convicted of, except this time the rules of evidence do not apply, which is prejudicial to the inmate and makes it more likely the inmate will remain incarcerated.

Under current Louisiana law, an inmate may be eligible for parole and truly pose no threat to society, yet the Committee may still deny release.²⁴⁵ The laws governing parole hearings already provide the Committee with an extraordinary amount of discretion, and the procedural aspects of hearings encourage and allow abuse of that discretion by (1) suggesting that the Committee members make a parole determination by both weighing the static factors on their own and using the risk assessment tool, which has already weighed the static factors and given them a statistically validated weight; (2) prohibiting access to the PPI; and (3) conducting hearings via video conference, while nonetheless allowing face-to-face victim and law enforcement opposition.²⁴⁶ These laws contradict one of the main goals of the comprehensive reform package passed in 2017—prioritizing prison space on those who pose a serious threat to public safety—and instead keep Louisiana’s low-risk prisoners incarcerated.²⁴⁷

III. A GAME OF GIVE AND TAKE: PROPOSED PAROLE HEARING REFORM

The effects of Louisiana’s 2017 reform parallel a theme seen nationally as a result of criminal justice reform over the last decade— “[s]tates’ policy choices can help control the size and cost of their prison systems and protect public safety.”²⁴⁸ As of December 2019, the imprisonment rate in Louisiana was down to an estimated 683 per 100,000 residents, compared to the 882 per 100,000 residents at its peak in 2012.²⁴⁹ The current laws on parole hearings, however, still allow for the

243. Julia O’Donoghue, *For Louisiana Prisoners, Parole Is Still an Uphill Climb*, TIMES-PICAYUNE (Oct. 31, 2017), https://www.nola.com/news/politics/article_4947ab0b-68bb-5a17-8956-dfbc0624a5af.html [https://perma.cc/4H3A-PFES].

244. *See generally* Renaud, *supra* note 40.

245. *See* discussion *supra* Part II.A–C.

246. *Id.*

247. *See* Gelb & Compa, *supra* note 27.

248. *Id.*

249. *See* Skene, *supra* note 26.

Committee to deny parole to prisoners who no longer pose a serious threat to public safety.²⁵⁰ Therefore, to truly “decarcerate” Louisiana and prioritize prison space on those who pose a serious threat, the legislature must amend the Louisiana Revised Statutes and Administrative Code articles governing parole hearings.

A. Pre-Parole Investigation

Prohibiting an inmate and his attorney from accessing the PPI results in confusion, delays, and poses potential constitutional issues for juvenile lifers.²⁵¹ Currently, there is no mechanism for inmates or their attorneys to contest the “facts” that are stated in the PPI, though it is clear the “facts” are often incorrect or misstated.²⁵² This creates a “barrier to meaningful communication” between the Committee and the inmate.²⁵³ The result is time spent attempting to clarify facts in the PPI, causing a delay in the parole hearing, even though the Committee must ultimately consider the factual summary provided in the PPI as the official version of the events.²⁵⁴

In a letter sent to the Louisiana State Law Institute, those interested in a change in the law also raised a potential constitutional concern with the prohibition of access to the PPI from inmates seeking parole.²⁵⁵ This applies to juvenile lifers, specifically, who now have the opportunity for parole after the recent Supreme Court decisions in *Graham v. Florida*, *Miller v. Alabama*, and *Montgomery v. Louisiana*, which required juvenile offenders to have a “meaningful opportunity to obtain release.”²⁵⁶ Louisiana, like most states, has opted to grant juvenile lifers the opportunity for parole in order to meet the mandate.²⁵⁷ A federal district court in Missouri recently held that where a state has chosen the parole process as a means to satisfy this constitutional requirement, additional

250. See discussion *supra* Part II.A–C.

251. See Letter from James Boren to Mallory Waller and Judge Guy Holdridge, *supra* note 84.

252. See discussion *supra* Part II.A.

253. Letter from James Boren to Mallory Waller and Judge Guy Holdridge, *supra* note 84.

254. See discussion *supra* Part II.A.

255. See Letter from James Boren to Mallory Waller and Judge Guy Holdridge, *supra* note 84.

256. *Graham v. Florida*, 560 U.S. 48, 82 (2010); *Miller v. Alabama*, 567 U.S. 460, 479 (2012); *Montgomery v. Louisiana*, 577 U.S. 190 (2016).

257. See Act No. 277, 2017 La. Acts 681 (codified at LA. REV. STAT. § 15:574.4(D)(1) (2019)).

protections apply.²⁵⁸ The court found that Missouri's parole processes, specifically prohibiting inmates from accessing their parole files, which include "the prehearing report that largely guides the format and content of the . . . hearings," violated *Graham, Miller, and Montgomery's* requirement that the state provide "some meaningful opportunity to obtain release."²⁵⁹ The court further provided that because the state is keeping the information in these files from inmates, the "inmates cannot know of, let alone challenge, 'allegations of fact they perceive to be false.'"²⁶⁰ Louisiana, like Missouri, must ensure that parole hearings afford juvenile lifers procedural protections that allow for a meaningful opportunity to obtain release from prison or else remain in violation of the Constitution.²⁶¹

Though the constitutional argument is only in reference to juvenile lifers, prohibiting any applicant from accessing the PPI causes unnecessary delay and confusion.²⁶² If the state were to allow applicants and their attorneys the right to access the PPI, they could address and clarify any mistakes or misapprehension of the facts before the parole hearing or at the start of it.²⁶³ This would ensure constitutional compliance in reference to juvenile lifers and guarantee accuracy and fairness for all other applicants.²⁶⁴ Therefore, the Louisiana Legislature should amend Louisiana Revised Statutes § 15:574.12(B) to include applicants and their attorneys to the list of parties that may access the PPI upon request. The statute should read as follows, with the addition in italics:

Information may be released upon request without special authorization, subject to other restrictions that may be imposed by federal law or by other provisions of state law, to the committee

258. See *Brown v. Precythe*, No. 2:17-cv-04082-NKL, 2018 WL 4956519, at *10 (W.D. Mo., Oct. 12, 2018). The four plaintiffs in the case were all serving mandatory life without parole sentences for homicide offenses committed when they were fewer than 18 years old. They challenged the Missouri Department of Corrections policies and procedures for juvenile life without parole hearings. The court concluded that the defendants' policies and procedures did violate the Eighth and Fourteenth Amendments of the U.S. Constitution and that, among other things, the inmate is entitled to the prehearing report. See *id.* at 10.

259. *Id.* at *6–7 (citing *Graham v. Florida*, 560 U.S. 48, 75 (2010)).

260. *Id.* at *8.

261. See Letter from James Boren to Mallory Waller and Judge Guy Holdridge, *supra* note 84.

262. See discussion *supra* Part II.A.

263. See Letter from James Boren to Mallory Waller and Judge Guy Holdridge, *supra* note 84.

264. *Id.*

on parole, the Board of Pardons, the governor, the sentencing judge, counsel for the juvenile in a delinquency matter, a district attorney or law enforcement agency, the personnel and legal representatives of the Department of Public Safety and Corrections, *the parole applicant and his/her attorney*, corrections services and youth services, including student interns, appropriate governmental agencies, or officials when access to such information is imperative for discharge of the responsibilities of the requesting agency, official, or court officer and the information is not reasonably available through any other means, and court officers with court orders specifying the information requested.²⁶⁵

B. Risk Assessment Tools and Static Factors

In order for the Administrative Code's parole procedures to align with the purpose of parole, the legislature must remove the Committee's ability to individually consider and weigh the static factors.²⁶⁶ The Committee already has broad discretion when making parole decisions, and the Administrative Code suggesting that the Committee consider factors such as the nature and circumstance of the crime, as well as prior criminal record, enables the Committee to abuse that broad discretion.²⁶⁷ These factors are highly subjective, and the weight given to them varies dramatically depending on the person.²⁶⁸ The Committee's vision

265. The current version of the Louisiana Revised Statutes § 15:574.12(B) reads as follows:

Information may be released upon request without special authorization, subject to other restrictions that may be imposed by federal law or by other provisions of state law, to the committee on parole, the Board of Pardons, the governor, the sentencing judge, counsel for the juvenile in a delinquency matter, a district attorney or law enforcement agency, the personnel and legal representatives of the Department of Public Safety and Corrections, corrections services and youth services, including student interns, appropriate governmental agencies, or officials when access to such information is imperative for discharge of the responsibilities of the requesting agency, official, or court officer and the information is not reasonably available through any other means, and court officers with court orders specifying the information requested.

LA. REV. STAT. § 15:574.12(B) (2019).

266. See generally *id.* § 15:574.4.1(B). See also LA. ADMIN. CODE tit. 22, pt. 11, § 701(C)(1)–(2) (2019).

267. See LA. ADMIN. CODE tit. 22, pt. 11, § 701(C)(8); Renaud, *supra* note 40.

268. See Renaud, *supra* note 40.

statement requires the use of evidence-based practices to guide decisions.²⁶⁹ The best way to do that is to use TIGER, the most accurate risk assessment tool and the most objective evidence-based data available to the Committee.²⁷⁰

Louisiana continues to use LARNA because not all areas have been trained to use TIGER.²⁷¹ However, the DOC should make it a priority to have all areas trained in order to further its vision of making decisions using evidence-based practices. Using TIGER, and not the Committee's own individual discretion, to consider the nature and circumstances of the crime and the inmate's prior criminal history would give these static factors the scientifically proven weight they deserve and, in turn, make the process more fair for the inmates. Further, this would remove some discretion from the Committee, and refocus the parole hearing on the inmate's current willingness and ability to fulfill the obligations of a law-abiding citizen.²⁷² Therefore, since the TIGER algorithm already accomplishes the task of considering these static factors, the legislature should amend Administrative Code article 701(C) and remove the nature and circumstances of the crime and prior criminal record from the list of suggested factors for the Committee to consider.

Removing the static factors from the Committee's consideration would allow the risk assessment tool to inform the Committee's initial release decision based on the inmate's risk level, and then the Committee may modify that decision using the dynamic factors such as (1) character, social background, and emotional and physical condition; (2) institutional adjustment; (3) parole plan; and (4) program participation.²⁷³ To ensure the Committee is using these dynamic factors appropriately, if they deny parole, the Administrative Code must require the Committee to inform the applicant of exactly what he must do to satisfy the Committee's expectations. This can be done via the parole decision form the Committee is required to complete and provide to the inmate.²⁷⁴ For example, if the Committee denies for a "lack of programming," the Administrative Code

269. LA. BD. OF PARDONS & PAROLE, BOARD POLICY 01-101 (Oct. 26, 2020), <https://s32082.pcdn.co/wp-content/uploads/2020/12/01-101-Vision-and-Mission-of-the-Board.pdf> [<https://perma.cc/J6CF-TPB7>].

270. See Interview with Keith Nordyke, *supra* note 104.

271. See *id.*

272. See generally LA. REV. STAT. § 15:574.4.1(B) (2019) (providing that parole should be granted "upon determination by the committee that there is a reasonable probability that the prisoner is able and willing to fulfill the obligations of a law-abiding citizen . . .").

273. See Interview with Keith Nordyke, *supra* note 104.

274. See LA. ADMIN. CODE tit. 22, pt. 11, § 703 (2019).

should require that the Committee tell the applicant exactly what sort of programming they expect the applicant to complete. This will ensure that the Committee does not abuse their discretion and, instead, that they deny parole for justifiable reasons, not because of implicit biases relating to the static factors.²⁷⁵

Ultimately, there are four parts to this process. First, the DOC must ensure that the prisons within the state are trained to use TIGER. Second, the legislature must remove the static factors from the Committee's individual consideration in Administrative Code article 701(C), only allowing the static factors to be evaluated in the TIGER algorithm. Third, the Administrative Code should make the Committee's initial determinant of release based on an inmate's TIGER risk score and then allow the Committee to modify that decision using the dynamic factors. Finally, the Administrative Code must require that the Committee inform the inmate of what he must do in order to obtain release if the inmate was denied for a reason related to one of the dynamic factors. This will remove some of the discretion given to the Committee and ensure consistency and fairness for inmates.

C. Law Enforcement and Victim Opposition: Changing, Not Removing Their Voices

Currently, the Administrative Code suggests that the Committee give the greatest weight to “[p]olice, [j]udicial and [c]ommunity [a]ttitudes toward the [o]ffender.”²⁷⁶ The Administrative Code states that this factor is given the greatest weight because the likelihood that an inmate will be successful on parole diminishes if the community he returns to has expressed hostility or a lack of support for him.²⁷⁷ An inmate, however, does not have to return to the community where the crime occurred.²⁷⁸ The Committee may set conditions on release and order the inmate to live in a parish that does not express hostility or a lack of support toward him or

275. See Renaud, *supra* note 40.

276. See LA. ADMIN. CODE tit. 22, pt. 11, § 701(C)(5).

277. See *id.*

278. See LA. REV. STAT. § 15:574.4.2 (2018).

her.²⁷⁹ Thus, victims and law enforcement testimony should not carry as much weight as they currently do in parole hearings.²⁸⁰

1. Victims or Victims' Families: Conditions, Not Decisions

Victims play an important role in criminal justice proceedings.²⁸¹ For example, victims can benefit from the experience of giving impact evidence at sentencing, and judges perceive this participation as beneficial to the process.²⁸² The victim's input at a parole hearing, however, serves a different purpose.²⁸³ A victim's level of knowledge about information relevant to the parole decision is often lacking.²⁸⁴ At the parole hearing, the Committee should focus on a determination of whether the inmate is able and willing to fulfill the obligations of a law-abiding citizen.²⁸⁵ Thus, a victim's in-person testimony should not taint the Committee's decision, and the decision should be based solely on the evidence-based practices the Committee learned about in their onboarding and annual training.²⁸⁶ It is only the Committee who has the resources to understand an inmate's current behavior and needs.²⁸⁷

The goal is not to silence victims but, rather, shift the manner the Committee considers victim testimony.²⁸⁸ Currently, the victim or his or her family are allowed to present oral or written testimony of their views about the offense, the offender, and the effect of the offense on the victim.²⁸⁹ The rules of evidence, however, do not govern this sort of

279. *See id.* Andrew Hundley, the executive director of the Louisiana Parole Project, was released on parole in 2016. One of the conditions of his parole was that he would be barred from entering Acadia Parish, the parish where the victim's family resides. Grace Toohey, *The 'Power of Second Chances': How This 37-Year-Old, Once in Prison, Is Now an LSU Grad*, THE ADVOCATE (May 10, 2019), https://www.theadvocate.com/baton_rouge/news/crime_police/article_03c590ae-72a9-11e9-8d2b-4b78d19fcd5b.html [<https://perma.cc/YF25-AFM6>].

280. *See* Renaud, *supra* note 40.

281. *See id.*

282. Julian V. Roberts, *Listening to the Crime Victim: Evaluating Victim Input at Sentencing and Parole*, 38 CRIME & JUSTICE 347, 353–54 (2009).

283. *See id.*

284. *See id.*

285. LA. REV. STAT. § 15:574.4.1(B) (2019).

286. *See generally* LA. ADMIN. CODE tit. 22, pt. 11, § 103(D) (2019). *See also id.* § 117.

287. *See* Renaud, *supra* note 40.

288. *See* Interview with Kerry Myers and Ashleigh Dowden, *supra* note 104; *see also* Interview with Keith Nordyke, *supra* note 104.

289. LA. ADMIN. CODE tit. 22, pt. 11, § 510.

testimony; thus, it is often prejudicial to the inmate and does not further the purpose of parole hearings.²⁹⁰ Instead, the Code should provide that a victim or victim's family may express his concern and desired conditions for parole via written request only, and that request should not include an ultimate opinion about release or non-release.²⁹¹ For example, if a victim is scared of an inmate and does not want to risk seeing him in public, he can request a condition of parole that instructs the inmate to live in another parish.²⁹²

Additionally, victims are in a unique position to promote programming in prison that focuses on transformation.²⁹³ A 2016 national survey highlights this unique position, as it revealed that 60% of victims prefer shorter prison sentences and a focus on prevention and rehabilitation, as opposed to longer prison sentences.²⁹⁴ As such, the DOC could consult survivors' rights groups when it is determining what sort of programming prisons should offer to prepare inmates for eventual release, giving victims a voice in the rehabilitation of inmates.²⁹⁵

In effect, victims should be heard during sentencing in their victim impact statement, during the determination of what programming to put in prisons, and prior to a parole hearing, in writing, to aid in determining what conditions to set on a specific inmate upon release, but not in person during parole hearings and not regarding the ultimate decision of release or non-release. As a result, the legislature should amend all legislation, starting with Administrative Code article 510, that currently allows for victims to testify at parole hearings and should only allow for written request as to considerations upon release.

2. Prosecutors and Other Law Enforcement Agencies

Reliance on the participation of prosecutors and other law enforcement agents is misplaced because they can only speak to the nature

290. See discussion *supra* Part II.C.2–3.

291. CATHERINE C. MCVEY ET AL., ROBINA INST. OF CRIM. LAW AND CRIM. JUST., MODERNIZING PAROLE STATUTES: GUIDANCE FROM EVIDENCE-BASED PRACTICE (2018), https://robinainstitute.umn.edu/sites/robinainstitute.umn.edu/files/parole_ebp_report.pdf [<https://perma.cc/SEP4-S3QZ>].

292. See Toohey, *supra* note 279.

293. Renaud, *supra* note 40.

294. ALLIANCE FOR SAFETY AND JUSTICE, CRIME SURVIVORS SPEAK: THE FIRST-EVER NATIONAL SURVEY ON VICTIMS' VIEWS ON SAFETY AND JUSTICE, <https://allianceforsafetyandjustice.org/wp-content/uploads/documents/Crime%20Survivors%20Speak%20Report.pdf> [<https://perma.cc/7HMS-NPH7>].

295. See Renaud, *supra* note 40.

of the crime, not whether the inmate underwent a transformation while incarcerated.²⁹⁶ Yet, the powers and duties of the Committee include a requirement that they must allow the district attorney of the parish where the conviction occurred to review the offender's incarceration record when the inmate is eligible for parole.²⁹⁷ Further, the Administrative Code allows the district attorney to participate in the hearing, both by presenting testimony, as well as submitting information he or she deems relevant to the proceeding.²⁹⁸ Prosecutors, like victims, lack the level of knowledge needed to testify as to whether the inmate is currently a public safety threat.²⁹⁹ As a result, their input at parole hearings achieves little apart from intimidating the Committee into denying release.³⁰⁰

Additionally, prosecutors play an important role in sentencing.³⁰¹ In reference to habitual offenders, plea agreements have a large impact on parole eligibility.³⁰² According to Louisiana Revised Statutes § 15:574.4(A)(1)(b)(i), a person convicted of a third crime of violence or sex offense shall not be eligible for parole.³⁰³ Prosecutors, however, in an effort to secure convictions, often³⁰⁴ offer plea agreements to the accused.³⁰⁵ Occasionally, that plea agreement will allow a person to plead guilty to a lesser crime, sometimes a *non-violent* crime.³⁰⁶ Habitual *non-violent* crimes, however, do not result in a loss of parole eligibility.³⁰⁷ In some cases, the prosecutor will still attend the parole hearing and oppose

296. *See id.*

297. LA. ADMIN. CODE tit. 22, pt. 11, § 102(A)(6)(a) (2019).

298. *See id.*

299. *See Renaud, supra* note 40.

300. R. Michael Cassidy, *Undue Influence: A Prosecutor's Role in Parole Proceedings*, 16 OHIO ST. J. CRIM. L. 293, 305 (2019).

301. Renaud, *supra* note 40.

302. *See generally* LA. REV. STAT. § 15:574.4(A)(1)(b)(i) (2019) (providing that parole eligibility depends on a number of factors, including how many convictions the person has and whether the convictions are classified as crimes of violence or sex offenses).

303. *See id.*

304. A 2017 survey discovered that 97% of cases result in a plea agreement. NAT'L ASS'N OF CRIM. DEF. LAW, *THE TRIAL PENALTY: THE SIXTH AMENDMENT RIGHT TO TRIAL ON THE VERGE OF EXTINCTION AND HOW TO SAVE IT* (2018), <https://www.nacdl.org/getattachment/95b7f0f5-90df-4f9f-9115-520b3f58036a/the-trial-penalty-the-sixth-amendment-right-to-trial-on-the-verge-of-extinction-and-how-to-save-it.pdf> [<https://perma.cc/EV46-GJAG>].

305. *See Renaud, supra* note 40.

306. *See* Interview with Kerry Myers and Ashleigh Dowden, *supra* note 104.

307. LA. REV. STAT. § 15:574.4(A)(1)(b)(i) (emphasis added). The statute only refers to crimes of violence.

the release of the offender, despite the fact that the prosecutor was the one who allowed for parole eligibility by permitting the accused to plead guilty to a non-violent crime, as opposed to the violent one they were initially accused of.³⁰⁸

A prosecutor should not get a second chance to prolong an inmate's prison sentence, especially in the cases where the person is eligible because of a plea agreement the prosecutor made.³⁰⁹ The prosecutor is not honoring the deal made with the inmate and is usurping his rights pursuant to the plea agreement.³¹⁰ If a prosecutor believes a person is a threat to society, he should focus his efforts on convicting them of the initial crime—the one that would not allow for parole eligibility or would require a longer sentence before eligibility—during the trial, as opposed to trying to prevent release once the inmate is eligible for parole, when the focus is supposed to be on whether there is a reasonable probability the inmate is able and willing to fulfill the obligations of a law-abiding citizen.³¹¹ There is nothing else the prosecutor can offer at this point in the proceedings that aligns with the purpose of parole hearings.³¹² As a result, the state legislature should remove the requirements from the Administrative Code that allow for opposition from district attorneys and other law enforcement agencies at the parole hearing, starting with Administrative Code article 102(A)(6)(a).

3. Video Conference

Although the Committee is less likely to grant parole to an inmate when the hearings are conducted via video conference,³¹³ the Committee is making an effort to conduct live hearings at the prisons every year.³¹⁴ If the legislature removed all of the other factors that allow the Committee to abuse their discretion, then the fact that the hearing is conducted via video conference would not be as detrimental to the inmate.³¹⁵ This is especially true if the victim opposition is converted to written request focused on conditions upon release and if prosecutors are removed from the parole hearing process as a whole. If the legislature continues to allow

308. See Interview with Kerry Myers and Ashleigh Dowden, *supra* note 104.

309. See Renaud, *supra* note 40.

310. See *id.*

311. See *id.*

312. See *id.*

313. See discussion *supra* Part II.C.1.

314. LA. BD. OF PARDONS & PAROLE, *supra* note 48; see also discussion *supra* Part II.C.1.

315. See discussion *supra* Part II.C.1.

this sort of testimony at parole hearings, however, it is necessary that the inmate also meet face-to-face with the Committee.³¹⁶ Thus, it is crucial the legislature remove all other prejudicial procedures from the process because conducting all parole hearings face-to-face with inmates would be extremely costly, inconvenient, and difficult to accomplish.³¹⁷

D. “*Guess Who’s Back, Back Again*”³¹⁸

Although the 2017 criminal justice reform bills reduced the state’s incarceration rate, and moved Louisiana from the first to the second highest incarceration rate in the country for a short period of time, if the legislature focused on decreasing such broad discretion from parole hearings, more inmates would be granted parole, and the state’s incarceration rate would decrease even more.³¹⁹ This is especially important now that Louisiana is back in first place after Oklahoma passed its own criminal justice reform bills in 2019 and successfully decreased its prison population.³²⁰ If the Louisiana Legislature truly believes in the goals it emphasized in the 2017 comprehensive criminal justice reform package, specifically, prioritizing prison space those who pose a serious threat to public safety, then they should amend the laws governing parole hearings to ensure that inmates who no longer pose a threat to society are granted parole.³²¹

CONCLUSION

With the national spotlight on Louisiana after the successful criminal justice overhaul, now is the ideal time to reform parole.³²² The country lacks a state leader in parole, as the public and the law largely ignore this area of criminal justice, especially compared to prison reform, which has

316. *See id.*

317. *See id.*

318. EMINEM, *Without Me*, on THE EMINEM SHOW (Interscope Records 2002).

319. *See discussion supra* Part II.A–C.

320. *See Skene, supra* note 26.

321. *See discussion supra* Part II.A–C.

322. *See* The Editorial Board, *Louisiana’s Big Step on Justice Reform*, N.Y. TIMES (July 19, 2017), <https://www.nytimes.com/2017/07/19/opinion/louisiana-justice-prison-reform.html> [<https://perma.cc/PB2T-8P2B>]; *see also* Beth Reinhard, *Change and Culture Collide in America’s Prison Capital*, WALL STREET J. (May 25, 2017), <https://www.wsj.com/articles/change-and-culture-collide-in-americas-prison-capital-1495704602> [<https://perma.cc/VHR4-L2VQ>].

been the focus of a broad national conversation.³²³ Prison reform, however, is not enough.³²⁴ Louisiana must heed the call from academics and organizations across the country and ensure fairness and consistency in parole hearings.³²⁵

Governor John Bel Edwards and Department of Corrections Secretary James LeBlanc, in a letter to the Louisiana Justice Reinvestment Task Force in January of 2017, called for reforms that would “reduce the state prison population significantly with the modest goal of not having the highest incarceration rate in the country.”³²⁶ The Task Force delivered, and Louisiana was, for a short period, no longer the highest incarcerated state in the country, but Louisiana’s prisons still hold approximately 300 more inmates per 100,000 residents compared to the national average and is, once again, the country’s most incarcerated state.³²⁷ Further, as noted above, Louisiana is not the only state that could use prison reform, as 36 other states received an extremely low grade when the Prison Policy Initiative reviewed states’ policies.³²⁸ As seen by the Oklahoma legislation that resulted from Louisiana’s 2017 reform, state policymaking matters and can influence other states to follow.³²⁹ Thus, Louisiana currently has the opportunity to lead the country in parole reform.

Many Louisiana inmates are parole eligible and, under an objective analysis, show a reasonable probability that they are able and willing to fulfill the obligations of a law-abiding citizen, yet the Committee still

323. See *Probation and Parole Systems Marked by High Stakes, Missed Opportunities*, PEW CHARITABLE TRUST (Sep. 25, 2018), <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/09/probation-and-parole-systems-marked-by-high-stakes-missed-opportunities> [<https://perma.cc/ZV48-A7HR>]; see also Renaud, *supra* note 40.

324. Piper Kerman, *Statement on the Future of Community Corrections*, COLUMBIA JUST. LAB (Aug. 28, 2017), <https://justicelab.columbia.edu/statement-future-community-corrections> [<https://perma.cc/R5N9-RPLF>].

325. See *id.*; see also MCVHEY ET AL., *supra* note 291.

326. See *Louisiana’s 2017 Criminal Justice Reforms: The Most Incarcerated State Changes Course*, *supra* note 106 (citing Letter from John Bel Edwards, Gov. of La., and Jimmy LeBlanc, Sec’y Dep’t of Corr., to La. Justice Reinvestment Task Force (Jan. 13, 2017)).

327. See Adam Gelb & Jacob Denney, *National Prison Rate Continues to Decline Amid Sentencing, Re-Entry Reforms*, PEW CHARITABLE TRUST (Jan. 16, 2018), <https://www.pewtrusts.org/en/research-and-analysis/articles/2018/01/16/national-prison-rate-continues-to-decline-amid-sentencing-re-entry-reforms> [<https://perma.cc/B6Q4-8J8S>]; see also Skene, *supra* note 26.

328. See Renaud, *supra* note 40.

329. See Skene, *supra* note 26.

refuses to grant them parole.³³⁰ In the case of Henry Montgomery, a 74-year-old man is being held in prison due to a lack of programming, but the Committee refuses to grant him parole or simply tell him what programming he needs to complete.³³¹

The Louisiana Legislature should amend the current laws governing parole hearings. This would remove some, but not all, of the discretion from the Committee on Parole and ensure the use of evidence-based practices.³³² As a result, the Committee would grant release to prisoners who no longer pose a public safety threat, thus decreasing the state's prison population, and ultimately furthering goal of the 2017 criminal justice reform legislation—to prioritize prison space on those who pose a serious threat to public safety.³³³

330. See discussion *supra* Part II.C.3.

331. See Segura, *supra* note 4.

332. See discussion *supra* Part III.A–D.

333. See LA. DEP'T OF PUB. SAFETY AND CORR. & LA. COMM'N ON LAW ENF'T., LOUISIANA'S JUSTICE REINVESTMENT REFORMS 2019 ANNUAL PERFORMANCE REPORT (2019), <https://s32082.pcdn.co/wp-content/uploads/2020/02/FY-2019-Annual-Report-Final.pdf> [<https://perma.cc/E6F7-8FZ8>].

