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# Toward a Fairer Parole Process

Examining Parole Denials in New York State

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# Introduction

Every year in New York State, roughly 10,000 people appear before the parole board to make their case for release.<sup>1</sup> In 2019, only 40 percent of people were granted parole and in 2020—a year that demanded decarceration in the name of public health and safety, given the risk of spreading COVID-19 in congregate settings—the release rate rose by only one percentage point. In many cases, people are denied parole without receiving any concrete feedback on how to better prepare for release; instead, they are denied because of their original crime, told to come back again in a year or two, and then denied again for the same reason.

While New York’s parole release rate is not the worst in the country, it is far from the best. In data compiled by the Robina Institute, from 2009 to 2016, at least a dozen states had release rates above 50 percent.<sup>2</sup> In 2014, for instance, New Hampshire released 80 percent of people eligible for parole.<sup>3</sup>

In New York, the Board of Parole has sole discretion to grant or deny someone parole, and commissioners are instructed by Executive Law § 259-i to consider a range of factors when determining whether someone is ready for release.<sup>4</sup> These include a person’s institutional record, participation in prison programming, Correctional Offender Management Profiling for Alternative Sanctions (COMPAS) risk scores, letters of support, release plans, behavioral record while incarcerated, victim impact statements, prosecutors’ statements, deportation orders issued by the federal government, original sentencing minutes, and more.<sup>5</sup> Ultimately, however, the parole board can deny parole based on the original crime, current public safety concerns, or a combination of the two. Executive Law § 259-i presumes incarceration unless people meet the following standards for release on parole:

Discretionary release on parole shall not be granted merely as a reward for good conduct or efficient performance of duties while confined but after considering if there is a reasonable probability that, if such [person] is released, he will live and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society and will not so deprecate the seriousness of his crime as to undermine respect for law.<sup>6</sup>

Executive Law § 259-i stipulates what factors parole commissioners must consider when reviewing a case, but it does not specify how much weight the commissioners should put on each factor.<sup>7</sup> Therefore, even if a person has an exemplary record in prison and has completed all relevant programming, they still may be denied parole because of subjective concerns about public safety or because of the seriousness of the original crime—factors already taken into account by the sentencing judge when determining the appropriate sentence.

Provided the parole board considers all required factors, and if the denial is based on “factually individualized and non-conclusory terms,” the board has near-complete discretion to deny parole.<sup>8</sup> In other words, denials need to be specific to individuals and based on evidence. Because “judicial review of parole board determinations is narrowly circumscribed,” appeals are

rarely successful.<sup>9</sup> Only about 11 percent of parole denials are overturned on appeal; and, when they are, it is often due to technicalities like failing to mention one of the required factors for consideration.<sup>10</sup> Barring such a mistake of law, courts will not disturb the parole board's decision unless they find that the decision reflects "arbitrary and capricious" decision making to the degree of "irrationality bordering on impropriety."<sup>11</sup> Even then, the court's remedy is not to grant parole but to require a *de novo*, or new, parole interview.<sup>12</sup>

The Vera Institute of Justice (Vera) undertook a systematic analysis of 168 parole transcripts from across the state, all of which resulted in denials, to understand why incarcerated people are denied parole despite often having provided the board with concrete evidence to support release. Vera received the transcripts from the Parole Preparation Project, an organization that provides direct support to currently and formerly incarcerated people. The 168 transcripts represent 122 people, all serving life sentences and all having been denied parole previously. Overall, 23 percent of transcripts involved first appearances and 58 percent involved reappearances after a previous denial. While this sample is not representative, and whereas the analysis focuses exclusively on denials, Vera researchers wanted to understand whether the existing guidance under Executive Law § 259-i leads to arbitrary denials. Ultimately, Vera's analysis showed that:

1. An overwhelming majority of people in the sample showed strong evidence of release readiness but were nonetheless denied parole. In 85 percent of the 168 transcripts reviewed, the person denied parole had a low risk score for violence and arrest, and 79 percent of transcripts mentioned low risk scores for absconding (failing to report to parole officer check-ins), as determined by the New York Department of Corrections and Community Supervision (DOCCS) recidivism risk tool, known as COMPAS.
2. Most denials focused on the crime for which the person was originally convicted—an unchangeable fact—rather than on current public safety concerns. Commissioners justified 60 percent of denials in the sample by mentioning the original crime only, and they explained another 30 percent of denials by mentioning the original crime alongside current public safety concerns. Persistent denials based on the underlying offense reinforce the notion that New York's parole process is focused on punishment and often seems to ignore people's efforts toward rehabilitation.
3. Commissioners frequently denied parole based on ill-defined concerns about public safety, which often contradicted the findings of DOCCS's own assessment tool. When commissioners' judgments of public safety risk deviated from COMPAS scores, they often offered little guidance on how incarcerated people could better prepare for release.

New York State must stop this pattern of holding people's original crimes against them even after they have served their minimum sentences and where there is compelling evidence that they are not dangerous. Beyond the fiscal implications of unnecessary incarceration, 2020 has

shown the world the dangers of congregate settings, not just for those living in them but for surrounding communities as well.<sup>13</sup> Furthermore, keeping families apart when the incarcerated person poses no public safety threat perpetuates unnecessary harm and trauma.<sup>14</sup> To create a fairer parole release process that centers current public safety needs, Vera recommends the following:

1. The New York Legislature should amend Executive Law § 259-i to presume release. Parole commissioners should consider who a person is at the time of parole eligibility, not at the time of their original conviction. Commissioners should grant release unless the person before them embodies a specific and current public safety concern, which the board should be required to explain in all denials.
2. The governor and state senate should prioritize people with backgrounds in community-based services, like social services or healthcare, for nomination and confirmation to the parole board. New commissioners with expertise in areas like health, community-based violence prevention, and reentry services will help the board focus less on punishment and more on supporting people as they transition back to their communities.
3. The governor and state senate should increase transparency around the parole commissioner nomination and confirmation process by, for example, making clear how the governor's office identifies and vets potential commissioners, as well as the criteria by which the state senate determines whether to confirm someone to the Board of Parole.
4. The governor should fully staff the parole board to increase the board's ability to hear parole cases in a timely fashion. Currently, almost a quarter of board seats (four out of 19) are vacant.
5. To increase transparency, DOCCS should collect and publish data pertaining to parole decisions, broken down by parole commissioner and by the race of the parole-seeker. Such data will reveal whether commissioners are granting or denying parole at vastly different rates, either overall or according to the race of the person seeking parole, helping to flag any outliers and ensure the system treats all people equitably.

## Findings

In most of the transcripts reviewed, people who came before the parole board exhibited significant evidence of rehabilitation.

Of the 168 transcripts that Vera reviewed, the overwhelming majority provided clear evidence of readiness for release based on New York’s parole-decision criteria.

Table 1 shows the results of COMPAS score analysis in Vera’s sample. These scores are a statistical compilation of the likelihood that a person will reoffend, abscond, or engage in violent behavior. Research has shown that COMPAS scores are by no means accurate or fair predictors of recidivism, but as they are a key metric considered by parole commissioners, they were included in this study.<sup>15</sup> In 85 percent of the parole denials analyzed, the incarcerated person received low COMPAS scores for risk of violence and arrest. Seventy-nine percent of transcripts mentioned low scores for risk of absconding. Despite the metric’s flaws, these COMPAS scores show that, by DOCCS’s own calculations, most of the incarcerated people in Vera’s sample had low risk scores in the categories most relevant to public safety.

Table 1

**COMPAS scores mentioned in Vera’s sample of transcripts (N = 168)**

COMPAS score	Violence and arrest (%)	Absconding (%)	History of violence (%)	Prison misconduct (%)	Substance misuse upon release (%)	Lack of family support (%)
Low	85	79	48	49	43	57
Medium	4	1	15	2	10	2
High	1	0	12	24	18	2
Unknown	10	20	25	25	29	40

In addition to their low COMPAS scores, people in 67 percent of interviews in the sample participated in prison education programs, and in 69 percent of interviews they took part in vocational programming. Sixty-five percent of transcripts indicated participation in job assignments, such as working in the law library or cafeteria, or in the local community. Fifty-seven percent of transcripts mentioned participation in alcohol and substance abuse training.<sup>16</sup>

Furthermore, people in 74 percent of interviews provided robust release plans, which included detailed arrangements for securing housing and employment. In many cases, people’s release plans included working with a comprehensive service provider—like the Fortune Society, Exodus Transitional Community, or the Osborne Association—to receive support with treatment

for drug use or mental health issues in addition to getting help securing housing and employment.

People in 92 percent of interviews obtained letters from family, friends, corrections staff, and reentry service providers. These letters of support often went into detail about the incarcerated person’s character, and many letters contained offers of housing, employment, or financial support to ease people back into their communities after prison.

Together, these findings make clear that the overwhelming majority of the people in Vera’s sample demonstrated, in many ways, their suitability for release. Their COMPAS scores were low, they participated in significant prison programming, they compiled detailed release plans, and they received strong letters of support. Nevertheless, they all were denied parole.

## In 90 percent of sampled interviews, the board denied people parole, at least in part, because of the parole-seeker’s original crime.

Parole commissioners denied parole in every interview studied by Vera. However, in most sampled appearances people were, by DOCCS’s own metrics, ready for release. Table 2 shows the reasons commissioners provided for denial.

Table 2

### Reasons given for denying parole (N = 168)

Reason for denial	Percentage
Original crime	60
Public safety concerns	10
Both	30

Ninety percent of denial decisions in Vera’s sample cited concerns that granting parole would “deprecate the seriousness of [the original] crime so as to undermine respect for law,” language drawn directly from the statute.<sup>17</sup> Sixty percent of denial decisions cited the seriousness of the original crime as the only reason for parole denial. This means that, in 60 percent of cases, commissioners expressed no concern about the person’s current threat to public safety. Instead, commissioners framed a decision to grant parole to eligible applicants as a derogation of—or insult to—the import of these people’s original crimes. This reasoning ignores the considerable punishment many of these people have already received due to the seriousness of their crimes, and it fails to account both for their many accomplishments while incarcerated and the fact that, by the time they reach middle age, most people are less inclined toward criminalized behavior.<sup>18</sup>

Of course, Vera’s sample included only people serving life sentences, which likely means the percentage of denials citing the original crime was overrepresented compared to the general parole-eligible population. Nevertheless, this finding highlights that commissioners do not need any evidence beyond the seriousness of the original crime to deny someone parole.

## In 40 percent of sampled interviews, the board denied people parole, at least in part, because of ill-defined concerns about public safety.

Forty percent of denial decisions cited concerns that, if granted parole, people would not “live and remain at liberty without violating the law.”<sup>19</sup> In many cases, however, these people’s COMPAS scores directly contradicted commissioners’ assessments. Of the 40 percent of transcripts denied because of public safety concerns, only 3 percent had high risks of violence and arrest, and none had high risks of absconding. It is, therefore, unclear how commissioners determined that so many parole-seekers posed a public safety risk.

Although parole commissioners must provide their rationale for denial, in practice they often refer to public safety concerns with no real specificity—or they simply explain those concerns by invoking the person’s conduct at the time of the original conviction. Of the transcripts in which commissioners raised concerns about “liv[ing] and remain[ing] at liberty without violating the law,” only 25 percent relied on those public safety concerns alone to justify parole denial; the remaining 75 percent raised public safety concerns alongside deprecation of the original crime.

Without more information, it is difficult to surmise how parole commissioners determine a person’s current public safety risk, especially when so many people serving life sentences, and who were denied parole in Vera’s sample, presented compelling evidence demonstrating their readiness for safe release. The fact that so many denials reference public safety concerns alongside the original crime suggests that to many commissioners, one reason for denial may inform the other.

## When commissioners denied parole despite low COMPAS scores, their justifications often related to the original crime and rarely offered guidance for future parole requests.

In 2017, the parole board became legally required to explain denials “in detail” and “in factually individualized and non-conclusory terms.”<sup>20</sup> Regulations now mandate that when the board



denies parole despite a person's low COMPAS scores, commissioners must specify "any scale within the department risk and needs assessment from which it departed and provide an individualized reason for such departure."<sup>21</sup> The courts have interpreted that the parole board's decision must include individualized reasons it denied parole despite low COMPAS scores.<sup>22</sup>

In practice, explanations for departures from COMPAS recommendations often referred to the original crime rather than citing any current public safety concerns. The following quotation from a sampled parole decision illustrates commissioners' reliance on the nature and magnitude of the crime as a basis for departing from the COMPAS score: "Despite your overall low risk COMPAS scores, the Panel departs from the [low] COMPAS [score], as these factors must be weighed against the magnitude of your crime."<sup>23</sup>

Further analysis of denial letters revealed commissioners drawing conclusions that lacked evidence. In one excerpt, a commissioner notes that, in addition to the nature of the crime, the person came across as narcissistic: "This Panel departs from your low risk scores as your particular brand of crime really boils down to domestic violence that concerns us as you still come across as having an inflated opinion of yourself."<sup>24</sup>

While, by and large, commissioners are complying with the requirement to provide individualized reasons for denials that depart from COMPAS recommendations, those reasons either tend to invoke the nature of the crime or offer conclusory judgments that have no bearing on public safety.

Furthermore, when commissioners explain their rationale for denial, they rarely provide any guidance as to what a person can do to be granted parole at the next interview. In this way, commissioners' decisions may be nominally individualized, but they are not at all instructive.

## Policy Recommendations

### The New York State Legislature should amend Executive Law § 259-i to presume release.

New York State needs to reshape its parole process. The state legislature should amend Executive Law § 259-i to require commissioners to presume release and record a clear, factual basis for denying parole. Regardless of their original crimes, all New Yorkers should be evaluated based on who they are now and what risk, if any, they currently pose to public safety.

It is time for New York to reorient its parole system toward presumptive release—and it would not be the first state to do so. Hawai‘i, Michigan, and New Jersey all have strong forms of presumptive parole. In Hawai‘i, people assessed as low risk must be granted parole with severely limited exceptions.<sup>25</sup> Michigan passed legislation in 2018 requiring commissioners to explicitly cite one of 11 “substantial and compelling objective reasons” for denying someone parole; and, in many cases, the board can grant release to people deemed low risk without even interviewing them.<sup>26</sup> New Jersey’s new parole law, dubbed Earn Your Way Out, also presumes release from a person’s earliest date of eligibility.<sup>27</sup>

In New York, there is momentum for parole reform: Governor Kathy Hochul recently signed the Less Is More Act, which limits the re-incarceration of people for technical parole violations.<sup>28</sup> The next step should be to reorient the process toward a widespread presumption of release.

### The governor and state legislature should seek out parole commissioners with backgrounds in community-based services.

The governor and state legislature should prioritize people with backgrounds in community-based services, like social services or healthcare, for nomination and confirmation to the parole board. Currently, commissioners tend to have experience in prosecution, law enforcement, or corrections.<sup>29</sup> Appointing new commissioners with backgrounds and expertise in areas like public health, evidence-based violence prevention, and reentry programs will provide the board with a valuable perspective on whom to release, and when.

## The governor and state legislature should increase transparency surrounding the parole commissioner nomination and confirmation processes.

Currently, it is unclear how the governor identifies and vets potential parole commissioners, and there is little publicly available information as to how the state senate decides whether or not to confirm a nomination to the Board of Parole. The governor and state senate should remedy this lack of transparency by publishing clear guidelines for how they nominate and confirm parole commissioners. By doing so, they will allow for greater oversight of and accountability for the appointment process.

## The governor should fully staff the parole board.

The governor should also fully staff the parole board to ensure that all parole-eligible New Yorkers receive a prompt and decisive interview. A fully staffed board of 19 commissioners, as provided for in Executive Law § 259-b, would lead to a ratio of just over 500 cases per commissioner. In recent years, the ratio has approached and even exceeded 1,000 cases per commissioner, and vacant seats on the board have caused significant delays. While parole interviews typically require three commissioners, staffing shortages have reduced many panels to two, leading to deadlocked interviews. By comparison, the ratio is around 250–300 cases per commissioner in many other states, including Florida, New Jersey, New Mexico, and Washington.<sup>30</sup>

## DOCCS should increase data transparency regarding individual commissioners' parole release rates and racial disparities in decisions.

Finally, DOCCS should begin collecting and publishing data about parole interview outcomes associated with each commissioner to ensure that board members are granting parole at reasonably similar rates.

DOCCS publishes its overall parole release rate and segments this information by interview type, month, and region; however, it does not currently publish rates for individual commissioners or for parole-seekers of different races.<sup>31</sup> Even when facing allegations of racial bias, DOCCS has not published more granular data: in 2016 and 2020, for example, DOCCS claimed that the significant racial disparities in the parole process were not due to any bias, although it did not provide data to support this assertion.<sup>32</sup>

There is a well-documented association between perceptions of danger and race; many research studies have shown that, both consciously and subconsciously, non-Black people associate Blackness with danger.<sup>33</sup> In the criminal legal system, decisions from bail to sentencing often hinge on race, with Black and Latinx defendants being more likely to face increased scrutiny and harsher punishments as compared to their white counterparts.<sup>34</sup>

Vera’s analysis of parole release rates reinforces this connection and highlights the racial disparities that plague New York’s parole system. Without fail, every quarter from 2017 to the present, the release rate for white parole-seekers was higher than the rate for Black or Latinx parole-seekers.<sup>35</sup> Throughout 2020, for example, the overall parole release rate for white people was 47 percent, compared to 37 percent for Black people and 36 percent for Latinx people. In the first three quarters of 2021, as well, the parole release rate for white people (40 percent) was significantly higher than it was for Black people (37 percent) and Latinx people (34 percent). The release rates for Asian Americans and Pacific Islanders (AAPI) and Indigenous people fluctuate significantly from quarter to quarter because fewer of them are incarcerated compared to Black, Latinx, and white people. Even so, the rates show that over the last several years, AAPI people have been released at a rate higher than that of all other groups, while Indigenous people have been released at a relatively low rate. From 2017 to 2020, the release rates for AAPI people ranged from 40 to 56 percent, whereas, for Indigenous people, the rates ranged from 24 to 53 percent.<sup>36</sup> (See Table 3.)

Table 3

**Percentage of those released on parole, by race**

	2017	2018	2019	2020
Asian American and Pacific Islander	43	40	46	56
Black	28	39	37	37
Latinx	27	42	38	36
Indigenous	24	33	39	53
White	35	47	44	47

Commissioners do not explicitly invoke racial stereotypes or biases when explaining their parole decisions and departures from low COMPAS scores, and Vera did not find major racial disparities in the small sample of denials analyzed. However, the divergent release rates overall make clear that, whether through harsher sentencing, inflated COMPAS scores, or commissioner biases, race plays a major role in parole decisions.

To build confidence in parole decisions, DOCCS must publish both release rates for individual commissioners and overall rates broken down by race. If commissioners are granting release at vastly different rates from one another, or if they are granting parole more readily to

certain racial groups, the public has a right to know. The people of New York must have the information they need to hold the Board of Parole accountable for overseeing a fair, equitable process. The governor and state senate can also act on this information by removing or refusing to reconfirm parole commissioners who perpetuate racial disparities.<sup>37</sup>

## Conclusion

Vera analyzed 168 transcripts from parole interviews held between 2009 and 2021 that resulted in denial and found that, in the vast majority of those interviews, people serving life sentences had significant evidence, as outlined by Executive Law § 259-i, to support their readiness for release.

However, the two criteria used to deny people parole focused either on the original crime or on vague public safety concerns that often implicated the original crime. The overwhelming majority of transcripts in Vera's sample indicated that people had proven their readiness for release: they had taken part in relevant prison programming, compiled comprehensive release plans, collected strong letters of support, and had low risk scores by DOCCS's own metrics. Nevertheless, commissioners denied them parole.

While Vera's sample is not representative of the overarching parole-eligible population in New York State, this report's findings shed light on the immense discretion parole commissioners possess to deny parole based on an incarcerated person's original crime or on tenuous public safety concerns.

New York State's parole-review process must focus on who people are at the time of the interview and whether they pose a current and clear public safety risk. If petitioners do not present such a risk, they should be released. Vera's recommendations—to presume release, diversify the professional backgrounds of commissioners, and publish commissioner-level release rates—will help make New York's parole process more transparent, equitable, and fair for all.

## Appendix: Methodology

Vera researchers received 192 transcripts from the years 2009 to 2021 from the Parole Preparation Project, an organization that provides direct support to currently and formerly incarcerated people serving life sentences. The Project tends to work with people serving life sentences who have already been denied parole, meaning that the sample of transcripts Vera reviewed likely represents people convicted of offenses more serious than those associated with the general prison population. Vera's sample represents only a tiny fraction of the 10,000 to 12,000 transcripts compiled each year; nevertheless, by exploring the reasons for parole denial in relation to submitted evidence supporting release, this report provides important insight into the patterns of parole denial across the state. Furthermore, focusing on this population is especially important because these are the people who tend to remain incarcerated even after years of parole eligibility.

Of the 192 parole transcripts, 12 were missing decisions and were therefore excluded from the analysis. Seven transcripts' denial decisions mentioned that release would be "incompatible with the welfare of society"; because this rationale appeared so infrequently, researchers were unable to draw any meaningful conclusions from it and therefore excluded it from the final analysis. Five transcripts in the sample ended with parole being granted; because this report focuses on reasons for parole denial, these transcripts were also excluded. Therefore, in total, Vera conducted an in-depth analysis of 168 transcripts, all of which emphasized, as a reason for denial, the following two criteria outlined by Executive Law § 259-i: (1) the person's capacity to "live and remain at liberty without violating the law," which is rooted in current public safety concerns; and (2) the notion that a grant of parole would "deprecate the seriousness of [the person's] crime as to undermine respect for law," which hinges on the severity of the original crime.

Because some transcripts were associated with the same person over several appearances, Vera's sample represents 122 distinct individuals. Eighty-six people appear in the sample once, 30 appear twice, five appear three times, and one person appears four times. (See Table 4.) Researchers chose to use parole transcripts as the unit of analysis and included multiple transcripts for the same people because each interview is meant to be a fresh opportunity for parole-seekers to show their readiness for release, independent of previous denials they may have received.

Overall, 58 percent of interviews were reappearances, 23 percent were initial appearances, and 6 percent were *de novo* interviews. (See Table 5.) For 82 percent of interviews, commissioners met with people by videoconference, compared to meeting with 12 percent in person and another 7 percent that did not specify the means of communication. (See Table 6.) Over half of the people in the sample were Black, roughly a fifth were Latinx, another fifth were white, and the rest were of unknown race or ethnicity. (See Table 7.) Ninety-two percent of people in the sample were men, 5 percent were women, and 3 percent were of unknown gender. (See Table 8.)<sup>38</sup>

Table 4

**Number of times each person appeared in the sample<sup>39</sup> (N = 122)**

Number of transcripts in the sample	Number of people
1	86
2	30
3	5
4	1

Table 5

**Interview type (N = 168)**

Interview type	Percentage
Reappearance	58
Initial	23
<i>De novo</i>	6
Special consideration	3
Other	13
Unknown	1

Table 6

**Means of communication (N = 168)**

Means of communication	Percentage
Videoconference	82
In person	12
Unknown	7



Table 7

**Race (N = 168)**

Race	Percentage
Black	51
Latinx	23
White	21
Unknown	5

Table 8

**Gender (N = 168)**

Gender	Percentage
Men	92
Women	5
Unknown	3

Using the criteria set forth in Executive Law § 259-i, Vera researchers coded the transcripts for any mention of COMPAS score, participation in prison programming, letters of support, and release plan, all of which parole commissioners are legally required to consider when evaluating a petition. Researchers acknowledged the many issues with COMPAS scores but included them because of the importance parole commissioners place on low scores. Vera researchers then coded the parole commissioners' decisions based on rationale, considering two criteria listed in Executive Law § 259-i: (1) whether the person will “live and remain at liberty without violating the law”; and (2) whether release will “deprecate the seriousness of [the person’s original] crime as to undermine respect for law.”

Because researchers coded data based on mentions in parole transcripts rather than through records validated by DOCCS, it is possible—and, in fact, probable for people with significant material to cover in their interviews—that the transcripts excluded information about programming, letters of support, or release plans that would reinforce these petitioners' readiness for release. On the other hand, it is possible that either commissioners or parole-eligible people brought up information about programming or other materials that is inaccurate. Because of data and resource constraints, Vera did not validate every data point; given the formal nature of parole interviews, however, researchers assumed that the overwhelming majority of factors mentioned in the transcripts were accurate or an underestimation, meaning that the true numbers would further reinforce this report's conclusions.

## Endnotes

1 To calculate these appearance numbers and release rates, Vera analyzed data collected via monthly scrapes of the published DOCCS parole board calendar. New York Department of Corrections and Community Supervision (DOCCS), “Parole Board Interview Calendar,” database (Albany, NY: DOCCS),

<https://publicapps.doccs.ny.gov/ParoleBoardCalendar/default>.

2 Mariel E. Alper, *By the Numbers: Parole Release and Revocation Across 50 States* (Minneapolis, MN: Robina Institute of Criminal Law and Criminal Justice, 2016),

<https://perma.cc/Q9ZL-9MHY>.

3 Ibid., 113.

4 N. Y. Exec. Law § 259-i(2)(c)(A), <https://perma.cc/87RA-2BQY>.

5 In 2011, the state legislature amended Executive Law 259-c(4), among other provisions, to require that the parole board stop focusing solely on a person’s past (i.e., underlying offenses and criminal history) and begin considering their future through risks and needs principles. NY A04012-C (2011) was signed by the governor on March 31, 2011, and was enrolled as Laws of 2011, ch. 62, <https://perma.cc/C4SQ-J47R>. The risk assessment tool COMPAS is used to help inform these decisions. It is essentially a survey that is fed into a computer algorithm, which then classifies a person’s risk levels as “low,” “medium,” or “high.” However, as courts have noted, COMPAS “cannot mandate a particular result.” *King v. Stanford*, 137 A.D.3d 1396 (N.Y. App. Div. 2016).

6 N.Y. Exec. Law § 259-i(2)(c)(A).

7 New York State courts have explained that the parole board is “not required to give equal weight—or expressly discuss—each of the statutory factors.” *Schendel v. Stanford*, 185 A.D.3d 1365, 66-67 (N.Y. App. Div. 2020) (citing *Matter of Espinal v. New York State Bd. of Parole*, 172 A.D.3d 1816, 1817 (N.Y. App. Div. 2019)). See also *Hill v. N.Y. St. Bd. Of Parole*, 2020 N.Y. Slip. Op. 33468 (N.Y. Sup. Ct. 2020) (“[T]he parole board has wide discretion in determining whether to grant or deny parole release and how much weight to give to the eight statutory factors.”).

8 N.Y. Comp. Codes R. & Regs. tit. 9 § 8002.3; and *Ferrante v. Stanford*, 172 A.D.3d 31, 37 (N.Y. App. Div. 2019).

9 Ibid.

10 Michelle L. Lewin, Martha Rayner, and Steven Zeidman, *Appealing Denials of Parole Release in New York State: A Guide to Filing Administrative Appeals and Article 78s* (New York: Parole Preparation Project, 2019), 14, <https://perma.cc/8PHF-DXR5>.

11 N.Y. C.P.L.R. 7803(3) ([petitioners may raise the question of whether] a determination was made in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion), <https://perma.cc/87TB-V5H9>; and *Matter of Russo v. New York State Bd. of Parole*, 50 N.Y.2d 69, 77 (N.Y. 1980) (“In light of the board’s expertise and the fact that responsibility for a difficult and complex function has been committed to it, there would have to be a showing of irrationality bordering on impropriety before intervention would be warranted.”).

12 N.Y. C.P.L.R. 7806, <https://perma.cc/W3BE-94MW>.

13 Gregory Hooks and Wendy Sawyer, “Mass Incarceration, COVID-19, and Community Spread,” Prison Policy Initiative, <https://perma.cc/95WS-PNJV>.

14 See for example Eric Martin, “Hidden Consequences: The Impact of Incarceration on Dependent Children,” *NIJ Journal* 278 (2017), 1-7, <https://perma.cc/F4VW-BHEY>.

15 Julia Dressell and Harry Farid, “The Accuracy, Fairness, and Limits of Predicting Recidivism,” *Science Advances* 4, no. 1 (2018), <https://perma.cc/VWF5-TK6M>.

16 In many transcripts, commissioners did not explicitly list all programs in which individuals had participated, especially for mandatory programs like Alcohol and Substance Abuse Training, which most incarcerated individuals are required to take. As a result, Vera’s analysis likely underestimated program participation rates. Nevertheless, Vera’s findings confirm that people in the majority of parole interviews had participated in significant programming.

17 N.Y. Exec. Law § 259-i(2)(c)(A).

18 Gary Sweeten, Alex R Piquero, and Laurence Steinberg, “Age and the Explanation of Crime, Revisited,” *Journal of Youth and Adolescence* 42, no. 6 (2013), 921-938.

19 N.Y. Exec. Law § 259-i(2)(c)(A).

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- 21 N.Y. Comp. Codes R. & Regs. tit. 9 § 8002.2(a).
- 22 See *Robinson v. Stanford*, 2019 N.Y. Slip Op. 33386 (N.Y. Sup. Ct. 2019) (ordering *de novo* interview because parole board decision deviated from low COMPAS scores but board only provided a “conclusory statement that it considered statutory factors”).
- 23 Parole board decision from February 2021, on file with the Vera Institute of Justice.
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33 For example, see B. Keith Payne, "Prejudice and Perception: The Role of Automatic and Controlled Processes in Misperceiving a Weapon," *Journal of Personal and Social Psychology* 81, no. 2 (2001), 181-192 (in two studies of 31 and 32 (respectively) non-Black undergraduates, subjects primed with a picture of a Black face were more likely to subsequently misidentify a tool as a weapon than subjects primed with a picture of a white face), <https://perma.cc/GN5F-RMWY>; and Joshua Correll, Bernadette Park, Charles M. Judd, and Bernd Wittenbrink, "The Police Officer's Dilemma: Using Ethnicity to Disambiguate Potentially Threatening Individuals," *Journal of Personal and Social Psychology* 83, no. 6 (2002), 1314-1329 (in a study of 40 undergraduates [39 white and one Latinx], subjects were more likely to make the decision to "shoot" a character holding an object in a video game when presented with a Black character than a white one, where the only deciding factor was supposed to be whether the target was holding a gun or not), <https://perma.cc/76GD-TYCB>.

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35 To calculate the statistics presented in this section, Vera analyzed parole-release data collected via monthly scrapes of the published DOCCS parole board calendar. DOCCS, "Parole Board Interview Calendar," database, <https://publicapps.doccs.ny.gov/ParoleBoardCalendar/default>.

36 To calculate these statistics, Vera conducted a quantitative analysis of parole-release rates using monthly scrapes of the published DOCCS parole board calendar. DOCCS, "Parole Board Interview Calendar," database, <https://publicapps.doccs.ny.gov/ParoleBoardCalendar/default>.

37 N.Y. Exec. Law § 259-b(6).

38 Data on race and gender came from DOCCS and were self-reported.

39 Three transcripts in Vera’s sample had redacted Department Identification Numbers (DINs), which means Vera could not ascertain whether those people appeared in the sample multiple times.

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