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The Effects of an Incarcerated Person's Gender Identity and Crime Type on Mock Parole Board Members' Decisions

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ABSTRACT AND ARTICLE INFORMATION

Parole members are tasked with deciding which incarcerated person is granted parole; however, factors such as the incarcerated person's gender identity in combination with the crime committed could negatively affect this decision. This study investigated the effects of the incarcerated person's gender identity (male, female, nonbinary) and crime committed (sexual assault, theft/larceny) on mock parole members' decisions and perceptions of the incarcerated person. MTurk participants ($N = 467$) acted as mock parole board members. Participants read vignettes describing an incarcerated person eligible for parole, and participants rated their likelihood to release the incarcerated person and perception of the incarcerated person. We found that the incarcerated person's gender identity affected participants' parole decisions and perceptions of the incarcerated person, such that, in general, male incarcerated people were perceived more negatively than nonbinary and female incarcerated people, and female incarcerated people were perceived the most positively. Crime severity also affected parole decisions, such that incarcerated people who commit a crime of sexual assault were less likely to receive parole and were perceived the most negatively compared to incarcerated people who commit a crime of theft/larceny. There was no interaction between the incarcerated person's gender identity and crime severity. This study can provide insight on perceptions of nonbinary incarcerated people, and how these perceptions compare to binary incarcerated people.

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Parole boards were established to incentivize rehabilitation of incarcerated people (U.S. Department of Justice, 2015) by encouraging the incarcerated person to better themselves through partaking in programs, improving personal conduct while incarcerated, and demonstrating remorse (Ruhland, 2020). The intent of parole boards is to allow a person to be released prior to serving their full sentence to work in the community and abide by the law while still being supervised (National Institute of Corrections, n.d.). However, there are downsides of parole, such as the strict supervision over the person paroled can lead to low-level offending or technical failures (Jones, 2018). This could cause the paroled person to end up back in incarceration.

The process of an incarcerated person receiving parole varies between states. As of 2018, 16 states have determinate sentencing in which parole boards do not have an impact on the incarcerated person's release date (Rhine et al., 2018). The states that do not allow parole boards or have severely limited the parole board's authority are Arizona, California, Delaware, Florida, Illinois, Indiana, Kansas, Maine, Minnesota, New Mexico, North Carolina, Ohio, Oregon, Virginia, Washington, and Wisconsin. The other 34 states have an indeterminate sentencing in which parole boards can determine an incarcerated person's release date (Rhine et al., 2018). States also vary in their composition of parole board members, including the amount of prior knowledge about the legal system the board requires from their members (Delaware Board of Parole, 2019; Robey & Rhine, 2017). For example, some parole boards require members to have previous jobs in the legal system, and other states allow community members with interests in the legal system to serve on parole boards (Mechoulam & Sahuguet, 2015).

Regardless of the board's composition, parole members' decisions should be based on ethics and fairness (American Probation and Parole Association, n.d.; Nevada Board of Parole Commissioners, n.d.). These decisions often consider the findings from a risk-based assessment, the seriousness of the offense, characteristics associated with the crime, and the incarcerated person's criminal history (Nevada State Legislature, n.d.; U.S. Parole Commission, 2022). However, parole decisions are often impacted by a person's automatic decision-making system (Proctor, 1999), such as parole members being influenced by whether the incarcerated person expresses remorse (Cunius & Miller, 2023a; Ruhland, 2020). Other factors that could impact these decisions are the incarcerated person's discharge date, whether the incarcerated person's institution recommends parole, and the public's opinion on

whether the incarcerated person should be paroled (Proctor, 1999). Further, parole boards can also take into consideration the victim's opinion (Burke, 2003; California Department of Corrections and Rehabilitation, 2023; Nevada State Legislature, n.d.), the incarcerated person's family or friends' opinions (Nevada State Legislature, n.d.), and the opinion from law enforcement agencies (Burke, 2003). These decisions can also be dependent on the geographical area of the parole board. For example, parole boards in Eastern states emphasize public safety, and parole boards in Western states emphasize rehabilitation (Ruhland, 2020). Because these decisions are somewhat subjective, a parole board member's biases (e.g., gender biases) could also affect parole decisions.

In sum, parole boards attempt to rehabilitate an incarcerated person (United States Department of Justice, 2015) through encouraging them to reintegrate back into society (National Institute of Corrections, n.d.). Although parole boards vary by state (Delaware Board of Parole, 2019; Robey & Rhine, 2017), with some states not having a parole board at all (Rhine et al., 2018), all decisions are supposedly made with ethics and fairness (American Probation and Parole Association, n.d.). Despite this, decisions are susceptible to be influenced by their personal biases. The study described in this paper investigates whether an incarcerated person's gender identity and crime committed influences a mock parole member's likelihood to release the incarcerated person and the mock parole member's perception of the incarcerated person. Further, it investigates whether the crime committed affects mock parole members' decisions, and if the crime type moderates the effect of the incarcerated person's gender identity on mock parole members' decisions.

Cognitive Biases

Parole decisions are expected to be made based on the facts pertaining to the decision (e.g., crime committed, incarcerated person's risk to society) and free from personal beliefs (Mechoulam & Sahuguet, 2015). However, these decisions are often influenced by a person's biases (Proctor, 1999). Cognitive biases are heuristics that people use to help them sort through large amounts of information, particularly when information primes them to focus on specific facts (Shaw et al., 2018). Overcoming biases to make fair decisions is difficult (Shaw et al., 2018) because people are often unaware of their biases and the effect that these biases have on their decisions (Croskerry, 2013). The following section will describe how biases impact a person's information processing. It will then describe the impact that implicit biases and

stereotypes (i.e., gender stereotypes) have on a person's decision-making.

Information Processing

Biases can impact how a person thinks about, interprets, evaluates, and integrates information that is inconsistent with their beliefs; thus, ambiguous information is most susceptible to being interpreted with a person's biases (Charman et al., 2019). If a person relies on their biases, then the person is using their system 1 process of decision making which is an automatic and effortless process (Kahneman & Frederick, 2002). System 1 contrasts with system 2, which is considered a deliberate and effortful decision-making process (Kahneman & Frederick, 2002). Although system 2 is the desired information processing system, system 1 is often used because of its efficiency.

Implicit Biases and Stereotypes

Implicit bias is a type of cognitive bias that could impact a legal actor's opinion. An implicit bias is based on a person's unconscious attitudes and stereotypes; these biases could manifest in opinions about the legal, workplace, school, or healthcare systems (Ruhland, 2020). Peoples' implicit biases might diverge from their publicly endorsed beliefs (Greenwald & Krieger, 2006). Although there are numerous implicit processes, two such processes are implicit perceptions, which can help form attitudes toward a group, and implicit stereotypes (Greenwald & Krieger, 2006), which are stereotypes activated outside of the person's conscious awareness (Greenwald & Banaji, 1995).

Stereotypes can predict emotional responses (e.g., pride, disgust) of a group of people (Ellemers, 2018; Fiske, 2015) and are often associated with a person's behaviors (Cuddy et al., 2008). Examples of stereotypes associated with the above-mentioned gender identities are females being perceived as warm and males being perceived as competent (Kite et al., 2008). General biases against nonbinary people are that they are less likable than a man or transgender woman in the workplace (Dray et al., 2020). Further, nonbinary people are perceived as being lower status, being less competent, having a lower rate of well-being, and being lower in warmth compared to females (Jacques et al., 2022). These biases can mentally harm the nonbinary person by causing them to isolate themselves, face disadvantages within society, and face discrimination (Ontario Human Rights Commission, n.d.). Thus, a person's gender identity can significantly influence people's perception of the person.

Gender Identity

Gender identity is a person's internal and external experience of gender (Ontario Human Rights Commission, n.d.). A person's gender identity can either align or differ from their biological sex (Ontario Human Rights Commission, n.d.). This section will discuss three gender identities: male, female, and nonbinary. Often, gender is viewed in a binary system—male and female. A person who does not conform with the binary system might identify as nonbinary (National Center for Transgender Equality, 2020). A gender binary system is used by a person to categorize, and anchor, fixed and polarizing differences between men and women (Ellemers, 2018). There is limited research concerning people who identify as nonbinary, and often, discourse about nonbinary people is grouped within the larger LGBTQ+ community or specifically with transgender people.

Binary gender identities are the most acknowledged identities within the United States because it is the cultural norm to assume a person's gender identity aligns with their sex characteristics (Steensma et al., 2013). Binary gender identities are enforced as a cultural construct that is defined by a person's self, social interactions, and social institutions (Diekmann & Schmader, 2021). Thus, it is expected that if a person were biologically female, they would identify as a woman (Newman, 2002). If a person were biologically male, they would identify as a man. A person presents their gender identity through gender (Diekmann & Schmader, 2021)—the method in which a person publicly presents their gender (e.g., clothing, body language; Ontario Human Rights Commission, n.d.).

Although binary categories are culturally created, the acceptance of a third gender is also dependent on a person's respective culture (Newman, 2002). If incongruencies occur between a person's assigned gender and expressed gender, the person often identifies as a third gender identity (e.g., nonbinary). People who identify as nonbinary can either identify as both man and woman, an identity between man and woman, or identify as a category irrelevant to the identity of man and woman (Human Rights Campaign, n.d.). Currently, there are 1.2 million (11%) LGBTQ+ adults who identify as nonbinary in the United States (Wilson & Meyer, 2022).

This variance of a third gender creates discourse between people about how nonbinary people should be treated and whether spaces should be created to specifically serve these groups of people. This discourse extends to the legal system. In general, incarcerated people who identify as nonbinary are

forced to conform into a binary system, making the incarcerated person susceptible to undue harm (Diaz, 2021).

Gender Identity Within the Legal System

The American legal system's current structure separates men and women into different housing facilities. This separation of people based on their gender can impact the physical and psychological treatment of incarcerated people and subsequently affects their ability to receive parole (Hoffman, 2008). This could be especially harmful for people who identify as a third gender. As of 2020, there were 4,890 transgender people incarcerated with a majority of people being housed in the unit aligning with their sex (Sosin, 2020). There is no existing research that highlights the number of people who identify as nonbinary in state prisons. However, it is known that transgender men and nonbinary people have inequitable incarceration experiences compared to their gender binary peers (Jacobson et al., 2023).

This inequitable treatment could apply to the incarcerated person being paroled as well. For example, males are often associated with violent crimes, and thus, males compared to females might be at a disadvantage in receiving parole because of the crime's severity. The treatment of an incarcerated person within the legal system could also impact people's perception of and subsequent decisions regarding a prisoner (see Livingston et al., 2019). This section will provide an overview of the different treatment of binary and LGBTQ+ prisoners within the legal system. Further, it will explain stereotypical crimes committed and biases associated with a person's gender identity within the legal system. Thus, this section will provide an overview of the impact an incarcerated person's gender identity has in the legal system.

Treatment of Incarcerated Persons

A person's gender identity can impact their experience within the legal system and how legal actors perceive the person. Despite a lack of observable differences associated with their sentencing outcomes between men and women (Butcher et al., 2017), women are perceived more positively than men in the legal system (Bindler & Hjalmarsson, 2020). Specifically, women are convicted at a lower rate and receive more lenient punishments compared to men. There is a lack of research comparing LGBTQ+ people to men in the legal system; however, in a work context, men are perceived more positively than LGBTQ+ community members (Dray et al., 2021). Despite the lack of research regarding LGBTQ+ people in the legal system, people within the LGBTQ+ community are

overrepresented within the legal system—LGBTQ+ people are 2.5 times more likely to be arrested compared to their heterosexual peers (Jones, 2021). This extends to probation and parole, with LGBTQ+ people being twice as likely to be on probation or parole; however, the reasoning behind this discrepancy in probation/parole rates is unclear (Jones, 2021).

This is concerning because nonbinary incarcerated people are susceptible to increased harm (e.g., sexual harassment, physical harassment, time spent in isolation) if they are housed in the community that matches their assigned sex, especially if their appearance does not conform to their biological sex (Diaz, 2021). The Federal Prison Rape Elimination Act (PREA) has banned assigning incarcerated people to their housing based on their biological sex; however, PREA also prohibits the development of special "third gender" units (Kling et al., 2022). Thus, it is up to states to create policies specific for transgender, nonbinary, or other third gender incarcerated individuals. Some states, such as New Jersey, have implemented policies to house the incarcerated person in the unit that aligns with their gender identity, and the incarcerated person must be provided clothing, medical care, etcetera, that is congruent with their gender identity (Diaz, 2021). Similar policies have been created for New York and California that allow the inmate to choose their housing and the removal of others who pose a threat to an incarcerated person (Kling et al., 2022).

In sum, the current legal system is created for the benefit and treatment of binary incarcerated people. Within this system, women receive more beneficial treatment than men (Bindler & Hjalmarsson, 2020). However, nonbinary incarcerated people might be treated worse than male incarcerated people (Dray et al., 2021). Despite the unfair treatment of nonbinary incarcerated people, there is a lack of policies protecting this population.

Gender Identity and Crime Type

An incarcerated person's gender identity can be associated with the crime they commit. In general, women are more likely to be convicted of non-violent offenses (e.g., theft), and men are more likely to be convicted of violent crimes (e.g., sexual assault; JRank, 2022; Bureau of Justice Statistics, 2004). This suggests that men are more dangerous than women because of their association with more severe crimes (Bureau of Justice Statistics, 2004). Crime data are not collected on nonbinary incarcerated people, perhaps emphasizing the lack of acknowledgment of people who identify as a third gender within the legal system. However, often LGBTQ+ incarcerated people can be associated with sexual crimes (e.g., a stereotype that

gay men are pedophiles) or as hate crime victims (Woods, 2017). LGBTQ+ incarcerated people are also often arrested for theft, drugs, or other crimes required for the incarcerated person's survival (Hunt & Moodie-Mills, 2012). Crimes committed by nonbinary incarcerated people could be associated with either stereotypical male crimes (e.g., sexual assault; Woods, 2017), or stereotypical female crimes (e.g., theft; Hunt & Moddie-Mills, 2012). If parole members perceive a nonbinary incarcerated person as male instead of nonbinary, then the parole member could perceive the incarcerated person more negatively compared to if the parole member perceived the nonbinary incarcerated person as stereotypically female.

In general, the crime's severity and the gender associated with each crime can affect parole members' decisions. Parole members' perceptions of the incarcerated person can impact the severity of parole members' decisions. However, due to the lack of data regarding nonbinary people, the association between nonbinary incarcerated people and the crimes they most likely commit is unclear.

Gender Bias

The above sections described how gender interacts with different contexts of the legal system. Gender stereotypes and a decision-maker's gender biases also impact the legal system. Jurors often believe an incarcerated person is a male, and if the gender of the incarcerated person is unknown, jurors rarely assume the incarcerated person is female (Strub & McKimmie, 2016). Thus, jurors have biases about incarcerated people having masculine traits instead of feminine traits. If a female incarcerated person is described with stereotypical incarcerated person traits (e.g., masculine traits), then the female incarcerated person is more likely to receive a harsher punishment than if she were described with the feminine traits (Strub & McKimmie, 2016). This is problematic because men are given 60% longer sentences than women, regardless of if the male and female defendant commits the same crime (Starr, 2015; Wilczynski, 1997). Thus, jurors' biases toward men, perhaps because of the juror's stereotypes toward men, impact the jurors' verdict and subsequent sentence.

Gender also extends to other legal decision-makers, such as attorneys (see Livingston et al., 2019). Some research has found that jurors perceive male attorneys as more effective compared to female attorneys (e.g., Salerno et al., 2018; Sigal, 1985), perhaps because a male attorney presents as more assertive (Sigal, 1985) or aggressive (Hahn & Clayton, 1996). This is especially true if the participant's gender aligns with the attorney's gender (Hahn & Clayton, 1996). Further, stereotypes about the attorney's gender affect jurors' perceptions of the

attorney's credibility and trustworthiness (Nelson, 2004). This finding could also be attributed to the lack of women in the courtroom and the negative treatment of women in the courtroom. Research has also investigated the effect of the expert's gender on jurors' decisions; although, there are mixed results. Some studies have found that an expert's gender has no effect on jurors' perceived credibility of the expert and, subsequently, has no impact on the jurors' verdicts (e.g., Cunius, 2021; Parrott et al., 2015). However, some studies have found that jurors perceive an expert more positively if the expert's gender matched the stereotype associated with the expert's specialty (McKimmie et al., 2019). For example, a female expert is perceived more positively when she is presented as a speech therapist, instead of a doctor. Although there are different perceptions of the expert, there are no differences in jurors' awards given to the defendant. Despite contradicting findings regarding the gender of legal actors on jurors' decisions, research does demonstrate that the legal actor's gender has the possibility to affect jurors' decisions.

Jurors might also be biased against the defendant because the defendant's sexual orientation, specifically if the defendant is part of the LGBTQ+ community. Jurors are more likely to find a gay male or lesbian defendant guilty more often than a heterosexual male or female defendant (Coons & Espinoza, 2018). This bias against homosexual male defendants could be especially true for a defendant in a sexual assault case. A homosexual male defendant is more likely to be found guilty of sexually assaulting a heterosexual male than assaulting a homosexual male or a heterosexual male assaulting a female (Hill, 2000). For cases about a battered person, heterosexual male defendants and lesbian defendants receive the longest sentence, and heterosexual female defendants receive the shortest sentences (Russell et al., 2012). Some studies did demonstrate that jurors found heterosexual defendants more guilty than gay defendants, regardless of crime type (Petsko & Bodenhausen, 2019).

Thus, jurors' decisions are impacted by the legal actor's (e.g., incarcerated person, attorney) gender likely because of the juror's gender biases. These biases can then impact a decision-maker's ability to render a legally sound decision. If jurors' biases about the legal actor's gender affects jurors' decision-making, then it is plausible that parole members' biases about the defendant's gender could affect their parole decision.

The Present Study

This study is a 3 (gender identity: male, female, nonbinary) by 2 (crime type: sexual assault, theft/larceny) within-subjects design. The gender identity and crime committed were simply stated within each condition and were not described in detail. Pronouns were also manipulated (e.g., in the nonbinary condition, the pronoun “they” was used). It was hypothesized:

1. a. Incarcerated people who identify as nonbinary were predicted to be the least likely to be granted parole, and incarcerated people who identify as female would be the most likely to be granted parole.
b. Incarcerated people who identify as nonbinary would be perceived the most negatively, followed by incarcerated people who identify as male, and incarcerated people who identify as female would be perceived the most positively.
2. a. Incarcerated people who committed a crime of sexual assault would be less likely to be granted parole than incarcerated people who committed a crime of theft/larceny.
b. Incarcerated people who committed a crime of sexual assault would be perceived more negatively than incarcerated people who committed a crime of theft/larceny.
3. The incarcerated person’s gender identity and crime committed will interact such that the crime severity will moderate the effect of the incarcerated person’s gender identity on mock parole members’ decisions. Specifically, it was predicted that gender would influence mock parole members’ decision for the theft/larceny condition, but not the sexual assault condition.

Methods

The current study was an online experiment distributed through Qualtrics. This study was a within-subjects design, which focused on six conditions among a larger 22 condition study. The larger 22 condition study investigated different factors (i.e., age of person, aggravating or mitigating factors, type and timing of apology given by incarcerated person) that influence mock parole board members’ decision-making. The data presented are unique to the six conditions described below. The current study investigated the influence of an incarcerated person’s gender identity and the type of crime committed on mock parole members’ decisions. All participants rated their likelihood of releasing the incarcerated person as well as their perception of the incarcerated

person. The vignettes related to the study’s six conditions and measures are described below.

Vignette

In about 140 words, the vignette described the incarcerated person’s age (46 years old), gender identity (male, female, nonbinary), crime type (sexual assault, theft/larceny), health conditions (none except nicotine addiction), and other considerations (none). The vignette also explained that the incarcerated person had served 75% of their sentence for the crime, making them eligible for parole, and is at a “medium” risk for reoffending. Further, all incarcerated people had two violations for fighting within their first four years in prison and were actively taking classes while incarcerated. This information was held constant across all conditions. An example of the vignette is presented in Appendix A.

This information was included in the vignette because it reflects information that would be considered during a real parole hearing (U.S. Parole Commission, 2022). Further, “negative” information that the incarcerated person was addicted to nicotine was included to make the incarcerated person be perceived as more realistic. Authors chose an addiction to nicotine because the authors did not want to choose an extreme addiction (e.g., heroin) that could bias participants’ decisions. A similar reasoning was used to decide the incarcerated person’s prior violations. These “negative” factors were used in a prior study investigating the public’s opinion on parole decisions (Lantermann et al., 2023). Further, authors wanted to be realistic that the incarcerated person had prior infractions, but these infractions did not occur in the recent years. The vignette does not include specific details about the programs the incarcerated person completed.

Further, the incarcerated person’s age of 46 years old was chosen because a previous study (Lantermann et al., 2023) investigated several factors, such as the prisoner’s age and crime committed, to determine the effectiveness of manipulating these variables. Researchers found that an older incarcerated person (64 years old) was more likely to be paroled than a middle-aged incarcerated person (46 years old) and that a middle aged incarcerated person was more likely to be paroled than a 28 year old incarcerated person. The incarcerated person’s age of 46 years old was chosen because this age was neither the least likely or most likely to be paroled and thus reduces participants’ biases about the incarcerated person’s age.

Perception Variables

The perception variables included in this study were the perceived risk of, fear of, sorrowness

toward, empathy for, and similarities with the incarcerated person. These variables were all measured on a 1 (*not at all*) to 5 (*very*) Likert point scale measured by a one item question. Perceived risk was, “How much risk is the prisoner to the community (e.g., he might reoffend)?” and perceived fear was, “How fearful would you be of this prisoner if they were released?” Participants were asked to rate the degree they felt empathy toward (“I can really feel what this prisoner must have been feeling in prisoner”), sorrow for (“I feel sorry for the prisoner”), and similarities with (“I feel similar to this prisoner”) each incarcerated person. These questions remained consistent across all conditions.

Demographic Variables

Demographic variables were also collected. These variables included the participant’s gender, age, race/ethnicity, education level, political affiliation, religion, and family incarceration history. Participants also filled out scales measuring individual differences pertaining to a person’s attributions, beliefs, legal attitude, and moral disengagement. These individual differences and demographic variables will be used for an article describing whether a mock parole member’s individual differences influences their decision-making.

Procedures

The sample ($N = 467$) was recruited through Amazon Mechanical Turk and was mostly male (50.7%) and White (69.9%). Participants’ mean age was 40.11 years old. To participate in this study, participants needed to be a minimum of 18 years old and fluent in English. Participants were compensated \$6.00 for completing at least 80% of the study.

Participants were instructed to imagine they were selected to serve on a parole board and make parole decisions in the best interest of their community, the incarcerated person, and the prison. Participants were informed that the prison did not have the necessary resources to care for all prisoners as required by law. Participants were instructed to consider all six vignettes independently, and vignettes were counterbalanced to prevent order effects.

Results

A repeated measures analysis of variance and estimated marginal mean analysis was conducted to examine the main effect of the incarcerated person’s gender identity on mock parole members’ parole decision and perceptions of the incarcerated person. A repeated measures analysis of variance was also conducted to examine the main effect of crime type on mock parole members’ decision-making. Finally, a

two-way repeated analysis of variance and estimated marginal mean analysis was conducted to examine whether crime type moderated the effect of the incarcerated person’s gender identity on parole decisions and perception of the incarcerated person. A significance level of $p < .001$ was used for all analyses to account for the large sample size. Participants’ responses were included in analyses if they answered the release and all perception variable questions.

Hypothesis 1

We found a main effect of the incarcerated person’s gender identity on mock parole members’ decisions; thus, the findings partially supported hypothesis 1a. and 1b. because nonbinary incarcerated people were perceived no differently than, and at times better than, male incarcerated people. However, female incarcerated people were consistently perceived the most positively. Hypothesis 1a predicted that mock parole members would be the least likely to release the male incarcerated person and the most likely to release to female incarcerated person. Further, Hypothesis 1a predicted that mock parole members would be more likely to release the nonbinary incarcerated person than the male incarcerated person. Participants were significantly less likely to release the male incarcerated person than female incarcerated person, $F(2, 934) = 18.687$, $p < .001$, $\eta_p^2 = .038$). There was no difference between the nonbinary incarcerated person and the male incarcerated person.

Hypothesis 1b predicted that mock parole members would perceive the male incarcerated person the most negatively and the female incarcerated person the most positively. It was also predicted that a nonbinary incarcerated person would be perceived more positively than the male incarcerated person. A pattern similar to mock parole board members’ likelihood to release the incarcerated person was found for the perceived fear of, similarity to, and empathy toward the incarcerated person, which partially supports hypothesis 1b. The male incarcerated person was feared more than the female incarcerated person, $F(2, 934) = 9.493$, $p < .001$, $\eta_p^2 = .02$, and participants perceived themselves most similarly to the female incarcerated person, $F(2, 934) = 8.392$, $p < .001$, $\eta_p^2 = .018$. Finally, participants felt significantly less empathy toward the male incarcerated person than the female incarcerated person, $F(2, 934) = 9.493$, $p < .001$, $\eta_p^2 = .02$. For the above-mentioned variables, the nonbinary incarcerated person did not differ from the male incarcerated person.

Other variables did demonstrate a difference between male and nonbinary incarcerated people, which supports hypotheses 1b. Participants perceived

the male incarcerated person as significantly more risky than the nonbinary incarcerated person and female incarcerated person, and the nonbinary incarcerated person as significantly more risky than the female incarcerated person, $F(2, 934) = 9.592$, $p < .001$, $\eta_p^2 = .02$. This pattern was similar to the participants' perceived sorrow for the incarcerated person, such that participants felt less sorry for the male incarcerated person than the nonbinary incarcerated person and the female incarcerated person, and sorrier for the nonbinary incarcerated person than the male incarcerated person, $F(2, 934) = 14.627$, $p < .001$, $\eta_p^2 = .03$. Means are reported in in Table 1.

Table 1: Main Effect and Means of Gender Identity on Parole and Perception Variables

	Female	Nonbinary	Male	F Statistic
Release	2.732	2.611	2.568	$F(2, 934) = 18.687$, $p < .001$ *, $\eta_p^2 = .038$
Risk	3.206	3.308	3.40	$F(2, 934) = 26.216$, $p < .001$ *, $\eta_p^2 = .053$
Fear	2.703	2.849	2.786	$F(2, 934) = 9.502$, $p < .001$ *, $\eta_p^2 = .02$
Empathy	1.689	1.609	1.595	$F(2, 934) = 9.493$, $p < .001$ *, $\eta_p^2 = .02$
Sorriiness	1.704	1.689	1.581	$F(2, 934) = 14.627$, $p < .001$ *, $\eta_p^2 = .03$
Similarity	1.299	1.238	1.232	$F(2, 934) = 8.392$, $p < .001$ *, $\eta_p^2 = .018$

Note: * $p < .001$

Hypothesis 2

Hypothesis 2a predicted that mock parole board members would be less likely to release the incarcerated person who committed a crime of sexual assault than an incarcerated person who committed a crime of theft/larceny. This hypothesis was supported. A significant main effect of crime type on release decisions was found, with incarcerated people who committed sexual assault being released less often than incarcerated people who committed theft/larceny, $F(1, 468) = 1728.17$, $p < .001$, $\eta_p^2 = .787$.

Hypothesis 2b predicted that mock parole board members would perceive an incarcerated person who committed a crime of sexual assault less positively than an incarcerated person who committed a crime of theft/larceny. This hypothesis was supported. Participants were less empathetic toward perceived, $F(1, 468) = 168.043$, $p < .001$, $\eta_p^2 = .264$,

less sorry for, $F(1, 468) = 274.171$, $p < .001$, $\eta_p^2 = .369$, and perceived themselves as less similar to, $F(1, 468) = 103.616$, $p < .001$, $\eta_p^2 = .369$, an incarcerated person who committed a crime of sexual assault than to one who committed a crime of theft/larceny. Participants perceived the incarcerated person who committed sexual assault as more risky than the incarcerated person who committed theft/larceny, $F(1, 468) = 1179.35$, $p < .001$, $\eta_p^2 = .716$, and were more fearful of the incarcerated person who committed sexual assault than the incarcerated person who committed theft/larceny, $F(1, 468) = 168.043$, $p < .001$, $\eta_p^2 = .264$. Means for incarcerated peoples' crime committed are reported in Table 2.

Table 2: Main Effect and Means of Crime Type on Perception of Incarcerated Person

	Sexual Assault	Theft/Larceny	F Statistic
Release	1.61	3.65	$F(1, 468) = 1728.17$, $p < .001$, $\eta_p^2 = .787$
Risk	4.088	2.524	$F(1, 468) = 1179.735$, $p < .001$, $\eta_p^2 = .716$
Fear	3.65	2.05	$F(1, 468) = 871.159$, $p < .001$, $\eta_p^2 = .651$
Empathy	1.42	1.84	$F(1, 468) = 168.043$, $p < .001$, $\eta_p^2 = .264$
Sorriiness	1.34	1.97	$F(1, 468) = 274.171$, $p < .001$, $\eta_p^2 = .369$
Similarity	1.14	1.37	$F(1, 468) = 103.616$, $p < .001$, $\eta_p^2 = .181$

Note: * $p < .001$

Hypothesis 3

There was no significant interaction between the incarcerated person's gender identity and crime type on release decisions or perception variables (all $ps > .001$). Thus, crime type did not moderate the relationship between the incarcerated person's gender identity and parole decisions. Detailed results are reported in Table 3.

Discussion

The current study investigated the effects of the incarcerated person's gender identity and the type of crime committed on mock parole members' parole decisions, perceived risk of, fear of, empathy toward, sorrow for, and similarity with the incarcerated

person. The study found that the incarcerated person's gender identity affects mock parole members' parole decisions and perception of the incarcerated person. In general, females were perceived the most positively and were the most likely to be paroled. Participants perceived the nonbinary incarcerated person as less risky and were sorrier for the nonbinary incarcerated person than the male incarcerated people. Thus, the hypothesis for gender identity was not fully supported because although females were the most likely to receive parole, the male incarcerated person was perceived more negatively than the nonbinary incarcerated person in some cases. The similarity in perception between the nonbinary and male incarcerated person does not support past research (e.g., Dray et al., 2020; Jacques et al., 2022). This might be because of the difference in context between research studies, with the current study pertaining to

the legal system. The legal system and incarcerated person stereotypes allude to masculine traits (Strub & McKimmie, 2016), and thus, there might be more similarities perceived between a nonbinary incarcerated person and a male incarcerated person.

Results suggest that stereotype biases associated with the incarcerated person's gender identity could be associated with mock parole members' decisions; however, this does not occur in the predicted direction for nonbinary incarcerated people. This study replicates prior research in which female incarcerated people are perceived more positively than male incarcerated people (Bindler & Hjalmarsson, 2020) but contradicts expected results of nonbinary incarcerated people being perceived more negatively than male incarcerated people (e.g., Dray et al., 2020). Further, it is unclear why nonbinary incarcerated people differed from male incarcerated people on the perceived risk and sorriiness measures but not on the other measures. It could be guessed that if participants perceived the incarcerated person as less of a risk to society, the participant had higher rates of sorriiness for the incarcerated person as well. Further, for the perceived sorriiness measure, the means for all incarcerated people are low, and the effect size is also low (see Table 1). Thus, perhaps perceived sorriiness does not have a strong influence on participants' decision-making.

As such, this preliminary study offers mixed support for the concern that nonbinary incarcerated people might experience unwarranted prejudice within the legal system. This could be because of a lack of knowledge surrounding nonbinary people. Discussion and promotion of a third gender is fairly recent (e.g., Dray et al., 2020) and has not been integrated into several areas—such as the legal system. Thus, there could be a lack of knowledge and perception about a nonbinary incarcerated person. Nevertheless, prisons and parole boards should further investigate such possible prejudice in the real world's legal system.

Hypothesis two, regarding the effect of crime severity on mock parole members' decisions, was supported. This finding is expected because sexual assault is considered a severe crime—at times being perceived as more severe than a crime of murder (Cunius & Miller, 2023b). Thus, participants being less likely to grant an incarcerated person parole for a crime of sexual assault compared to theft/larceny aligns with mock parole members' decision-making criteria (U.S. Parole Commissions, 2022).

It was expected the incarcerated person's gender identity would be moderated by crime type—hypothesis three was rejected. It was expected the crime of sexual assault would weaken the strength of perception variables and likelihood that participants would parole the incarcerated person, regardless of the

Table 3: Interaction and Means between Gender Identity and Crime Type on Release and Perception Variables

		Female	Nonbinary	Male	<i>F</i> statistic
Release	Theft/larceny	3.74	3.63	3.61	$F(2, 932) = .850, p = .428, np^2 = .002$
	Sexual assault	1.72	1.59	1.53	
Risk	Theft/larceny	2.43	2.52	2.62	$F(2, 932) = .121, p = .886, np^2 = .00$
	Sexual assault	3.99	4.10	4.18	
Fear	Theft/larceny	1.96	2.02	2.19	$F(2, 932) = 5.348, p = .005, np^2 = .011$
	Sexual assault	3.45	3.68	3.82	
Empathy	Theft/larceny	1.93	1.79	1.82	$F(2, 932) = 4.009, p = .018, np^2 = .009$
	Sexual assault	1.45	1.43	1.38	
Sorriiness	Theft/larceny	2.04	2.01	1.87	$F(2, 932) = 2.760, p = .064, np^2 = .006$
	Sexual assault	1.37	1.37	1.30	
Similarity	Theft/larceny	1.44	1.32	1.35	$F(2, 932) = 5.219, p = .006, np^2 = .011$
	Sexual assault	1.16	1.15	1.11	

Note: * $p < .001$

incarcerated person's gender identity. Instead, the pattern of females being the most likely to be paroled and male incarcerated people being the least likely to be paroled was present for both crimes. Thus, gender stereotypes did not affect crime perceptions.

Often, crimes are associated with a person's gender—such as males being more associated with sexual assault (Bureau of Justice Statistics, 2004; JRank, 2022). Regardless of the crime committed, females significantly differed from nonbinary and male incarcerated people, but male incarcerated people did not always significantly differ from nonbinary incarcerated people. This could mean that regardless of the crime, males are perceived as more dangerous and violent than females (Stanilou & Markowitsch, 2012). Participants might not have a strong enough understanding of the nonbinary gender to elicit a consistent difference in response between the nonbinary incarcerated person and the male incarcerated person, and the nonbinary incarcerated person and the female incarcerated person. Because of this lack of understanding, participants might have applied the stereotype associated with a male gender and an incarcerated person to the nonbinary incarcerated person. This might also have occurred because people often associate gender-neutral terms (e.g., they) with masculine identities (Lindqvist et al., 2019). Further, despite a nonbinary incarcerated person being associated with both traditional female crimes (theft; Hunt & Moddie-Mills, 2012) and male crimes (e.g., sexual assault; Bureau of Justice Statistics, 2004; Hunt & Moddie-Mills, 2012;), participants did not perceive the nonbinary incarcerated person as more similar to the female incarcerated person in the theft/larceny crime condition. This lack of distinction could be a result of the incarcerated person being labeled specifically as nonbinary and not as part of the LGBTQ+ community (Hunt & Moddie-Mills, 2012). In sum, it is possible that participants in this study applied more “incarcerated person-like” traits and stereotypical male traits to the incarcerated person, reducing the difference in participants' decisions regarding the male incarcerated person and nonbinary incarcerated person.

These findings might also be attributed to the growing acceptance and tolerance of a third gender (Parker et al., 2022). However, this acceptance is dependent on factors such as the observer's gender, age, and political affiliation (Parker et al., 2022). Perhaps the perception of nonbinary people being worse than males and females is starting to shift, and perceptions of nonbinary people are becoming more neutral compared to binary people. For example, instead of the nonbinary incarcerated person being perceived more negatively and more harshly than a

gender binary incarcerated person (Hill, 2000; Petsko & Bodenhausen, 2019), the nonbinary incarcerated person is being punished similarly to and at times being perceived more positively than the male incarcerated person. Thus, the bias against a nonbinary incarcerated person might be shrinking specifically compared to a male incarcerated person.

Due to the lack of research in this area, there is not a clear explanation for why the nonbinary incarcerated person was perceived “between” the male and female incarcerated person across all crime types. Thus, only educated assumptions can be made. Further research needs to be conducted specifically comparing a nonbinary person to both a female and male identifying person to better understand the situations in which a nonbinary person is perceived as distinct from a binary gender person and when they are perceived as similar to a binary gender person.

In sum, the expected main effects of the incarcerated person's gender identity and the crime type affecting mock parole members' decisions was supported. However, the expected finding of crime type moderating the incarcerated person's gender identity on mock parole members' decisions was not found. The findings imply that gender stereotypes do influence mock parole members' decisions but might not occur with a nonbinary incarcerated person because of the overlapping stereotype characteristics between both male and females (Hansen & Zoltak, 2022) or because of the evolving perception of people who identify as a third gender (Parker et al., 2022).

Implications

This study provides the groundwork to inform the legal system on perceptions of and treatment of nonbinary incarcerated people. Although this study did not find the expected results regarding nonbinary incarcerated people, it did demonstrate that nonbinary incarcerated people are perceived worse than female incarcerated people and better than male incarcerated people on some measures (i.e., perceived risk, sorriness). However, mock parole members are sorrier for nonbinary incarcerated people and perceived them as less risky than male incarcerated people, thus demonstrating that participants do not perceive nonbinary incarcerated people as more similar to one binary gender over another. Thus, a nonbinary incarcerated person should not be expected to conform to the binary legal system. This study could provide data to advocate for nonbinary incarcerated people to be considered as a separate entity instead of being forced to conform to a binary gender system. This study could also promote research investigating nonbinary incarcerated people in the legal system to better understand perceptions of nonbinary

incarcerated people, which could subsequently affect parole decisions or other legal decisions (e.g., verdict).

This study specifically could impact parole boards because it is evident that the incarcerated person's gender identity and crime type are both given consideration regarding mock parole members' decision making, as seen in the lack of interaction found in the study's results. However, if nonbinary incarcerated people are entered into the traditional system, they could face more harassment (Diaz, 2021) and thus could be susceptible to more violations if incarcerated. This could negatively impact the incarcerated person being granted parole, which could further support a separate living situation for nonbinary incarcerated people. Overall, this research highlights the issues regarding biases and stereotypes associated with the incarcerated person's gender identity wrongfully affecting parole members' decisions, and thus, reforms to limit or safeguard against these biases need to be implemented.

Limitations and Future Directions

There are limitations to this study. The first limitation is the study's within-subjects design, which was conducted to increase power in this under-researched area. The within-subjects design introduces the possibility of practice effects because the same set of questions are asked for all conditions and also might reduce participants' attention because of the study's length. Future studies should replicate these findings with a between-subjects design. Further, this study lacks verisimilitude because it is an online study. However, studies have found that online studies and in-person studies produce similar results (Bornstein et al., 2017). This study occurring on Mturk though means participants are not actual parole members. Although community members can serve on parole boards in certain states (Mechoulan & Sahuguet, 2015), it is unlikely that this specific sampled population would serve on a parole board. Future studies can attempt to recruit a sample of interest who has, or currently does, serve on a parole board.

Another limitation to this study is that it examined one less severe crime type (i.e., theft/larceny) and one severe crime type (i.e., sexual assault). Thus, it does not investigate a large range of crimes. Future studies should examine a larger variety of crime types, specifically less severe crimes, to see if this pattern replicates. It could be plausible that a stereotype bias exists and interacts with less severe crime types. Further, the study states that the incarcerated person only had an institutional violation in the first four years and has not had any violations since. Thus, it suggests the incarcerated person served a sentence longer than four years for a crime of theft/larceny, which would be an unusually long

sentence for a crime of theft/larceny. This time frame was used in order to keep factors consistent across all conditions, but future research should choose a shorter time frame for the institutional violation in order to make it more realistic for a crime of theft/larceny.

Finally, there are limitations regarding the participants' demographics. The mean age of this sample was 40 years old, which limits the generalizability of the results. Lanterman and colleagues (2023) found a difference between a college aged sample and community (MTurk) sample, with a student sample being less likely to support parole than the community sample. Thus, the findings from our results could be because of the sample's age, and these findings might not replicate with a different aged sample. This study should be replicated with a college aged, or even older, sample. Further, this sample is predominantly White. People of color might have different perceptions of the legal system, including the parole system, because of their increased victimization rates and different experiences with the legal system compared to a White person (see Kennedy, 2012). Perhaps a more diverse sample could have higher rates of support for parole or might view the incarcerated person more positively.

Conclusion

This study investigates the effect of an incarcerated person's gender identity on mock parole members' decisions and whether this effect is moderated by crime type. The results indicate that there is a main effect of the incarcerated person's gender identity on parole decisions and perceptions of the incarcerated person, such that males are perceived the most negatively and females are perceived the most positively. A main effect of crime type on mock parole members' parole decisions and perception of the incarcerated person was also found, with sexual assault being perceived more negatively than a crime of theft/larceny. However, the predicted interaction between the incarcerated person's gender identity and crime type on parole decisions and perception of the incarcerated person was not found.

This study provides an important foundation for future research to better understand perceptions of nonbinary incarcerated people in the legal system and the influence of the incarcerated person's gender identity on legal actors' decision-making process. Specifically, more research on nonbinary people needs to be conducted to understand biases against them in the legal system and the subsequent impact that these biases could have on parole members' decisions. Overall, this study provides preliminary information on the impact of an incarcerated person's gender

identity on release decisions upon which future studies can expand.

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Appendix A

Example Vignette

Prisoner #5509:

They have served 75% of their time. This legally makes them eligible to serve the rest of their sentence in the community under the supervision of a parole officer. An assessment indicated that they are at “medium” risk of re-offending. In the first four years of their sentence, they had two disciplinary violations for fighting. They are active in taking classes in the prison and do not have any addiction aside from nicotine from cigarettes.

Please consider each of these prisoners separately (i.e., not in relation to other prisoners).

Age: 46

Gender identity: Prisoner identifies as Nonbinary

Crime: Theft/Larceny

Health conditions: None

Other considerations: None