

NO BODY, NO PAROLE? AN ARGUMENT AGAINST NEEDLESS BRIGHT-LINE ADVOCACY

Abstract: Beginning in 2015, Australia introduced “no body, no parole” (NBNP) laws in several of its states, representing a strict approach to parole decisions in relatively rare cases: those where a homicide conviction occurred, and the victim’s body remained lost. Variations of these laws exist within Australia itself, generally (1) prohibiting parole entirely for applicable offenders or (2) making it a determination on whether to grant parole after the non-parole period. England followed with its own version of a NBNP law titled “Helen’s Law” in 2019, and the United States saw its first enactment of a NBNP law in Utah in 2021. NBNP legislation touches on victims’ rights as well as the rights of incarcerated people, such as protection from double-jeopardy, self-incrimination, and wrongful convictions. Overall, NBNP laws bring into question what the purpose of parole is in the criminal justice system. This Note argues that NBNP laws reframe the purpose of parole from a rehabilitative purpose to a punitive one. Although there are legitimate rehabilitative concerns in cases where a convicted offender refuses to disclose the whereabouts of a victim’s body, these laws likely will not serve their intended purpose, and flexibility is necessary to mitigate possible NBNP issues involving the rights of those accused or convicted of a crime.

INTRODUCTION

In 2018, a podcast called “The Teacher’s Pet” began releasing episodes, which drew global attention to a cold case in Australia: Lynette Dawson’s mysterious disappearance.¹ In “The Teacher’s Pet,” Hedley Thomas investigated the sexual misconduct and betrayal that he believed culminated in the probable murder of Lynette Dawson by her spouse.² Lynette met her husband, Chris Dawson, in 1965 when they were sixteen years old, and they married five years later.³ While working as a teacher in Sydney in 1980, Chris Dawson be-

¹ RULE OF L. EDUC. CTR., CASE NOTE: CHRIS AND LYNETTE DAWSON 4, <https://www.ruleoflaw.org.au/wp-content/uploads/Chris-Dawson-Case-Note-FINAL2.pdf> [<https://perma.cc/3DFL-R45G>]. Hedley Thomas, an investigative journalist for *The Australian*, created and produced the podcast. *Id.*

² See *The Teacher’s Pet, Episode 1—Bayview*, THE AUSTRALIAN, at 1:28–2:37 (May 2018), <https://open.spotify.com/show/19LCrHZaUuWvizzJRZi8YN> [<https://perma.cc/P3KJ-LY2M>] (explaining that Thomas had spent the previous six months investigating the circumstances surrounding the disappearance of Lynette Dawson, including her husband’s role in inappropriate relationships with his students).

³ See RULE OF L. EDUC. CTR., *supra* note 1, at 3 (explaining that Lynette gave birth to two daughters after her marriage to Chris Dawson). Chris Dawson supported his family as a decently well-known rugby player and as a teacher. *Id.*

gan an extramarital affair with a sixteen-year-old pupil, “JC.”⁴ The affair created conflict between Lynette and him, and witnesses recalled seeing proof that Chris Dawson physically abused Lynette during this time.⁵ Furthermore, Chris Dawson left his family’s home in December 1981 so that he and JC could be together, but he ultimately returned home on December 26th.⁶ Later, the Dawsons decided to go to marriage counselling.⁷

Nobody heard from Lynette after January 8, 1982, and Chris Dawson only reported Lynette’s disappearance to authorities at the insistence of Lynette’s mother six weeks later.⁸ In the initial years after Lynette’s disappearance, the authorities did not conduct an extensive investigation because they believed her absence did not involve any suspicious activity.⁹

Eventually, two coronial inquests occurred—one in 2001 and one in 2003—and both revealed that a “known person” likely murdered Lynette, but the Director of Public Prosecutions did not pursue prosecution and did not charge anybody.¹⁰ In 2015, the Unsolved Homicide Unit in New South Wales

⁴ See *id.* (detailing how Chris Dawson’s relationship with JC escalated conflict between Chris and Lynette Dawson). JC briefly lived with the Dawson family in 1981, at which point Lynette found out that Chris had sexual relations with JC while Lynette was in their house. *Id.*

⁵ See *id.* (noting that Lynette’s co-workers remembered seeing bruises on her body then and in January 1982, shortly before her disappearance).

⁶ See *id.* (describing Chris Dawson’s departure with JC and his subsequent return to the Dawson family home).

⁷ See *id.* (detailing how Chris and Lynette attended marriage counselling on January 8, 1982—the day of Lynette’s disappearance).

⁸ See *id.* (noting that if Lynette left of her own volition, she apparently deserted her family and belongings without an adequate explanation).

⁹ See *id.* at 3–4 (finding that family friends thought they saw Lynette in public in New South Wales a week after she disappeared and so authorities accepted Chris Dawson’s story that Lynette had left of her own accord). Chris Dawson and JC married in 1984, but they divorced in 1990 after numerous domestic violence occurrences that made JC afraid for her life. *Id.* at 3. In 1990, Chris Dawson married for a third time. *Id.* Family and friends of Lynette continued to ask for the authorities to launch investigations into Lynette’s absence. *Id.* One investigation in 1990 found nothing and another investigation in 1998 also led nowhere, possibly because authorities in 1998 had to begin from scratch due to poor recordkeeping of prior investigations. *Id.* at 3–4.

¹⁰ See *id.* at 4 (noting that per the Director of Public Prosecutions, there was not enough evidence to charge anybody for Lynette’s murder). Authorities opened an investigation into Lynette’s disappearance in 1990, but the records were poorly compiled and so the re-opening of the case in 1998, sixteen years after Lynette’s disappearance, essentially had to start from the beginning. *Id.* at 3–4. The coronial inquests occurred nineteen to twenty-one years after Lynette’s disappearance. *Id.* at 4; see also *Coronial Process: A Guide to the Process and How the Coronial System Works*, AUSTL. FED. POLICE, <https://www.missingpersons.gov.au/support/coronial-process#:~:text=A%20Coronial%20Inquest%20is%20a,and%20circumstances%20of%20the%20death> [https://perma.cc/M643-R8FT] (explaining that coronial inquests occur in Australia when an individual is missing, the surrounding circumstances of the disappearance are suspicious or unexplained, and people believe that the missing person is possibly deceased). When a family requests referral to the Coroner’s Office, the Coroner will conclude whether an inquest is necessary. *Coronial Process: A Guide to the Process and How the Coronial System Works*, *supra*. A Coronial Inquest takes place in a courtroom as a formal hearing, but

re-opened Lynette's case, but the authorities did not make an arrest until "The Teacher's Pet" podcast began in 2018 and brought global attention to the case.¹¹ On December 5, 2018, authorities arrested Chris Dawson in Queensland, and after numerous procedural delays, the court convicted him for Lynette's murder on August 31, 2022 in a judge-alone trial.¹²

Lynette's case is a clear example of a "no body" case, which is a case where the victim's body remains missing when a defendant is convicted.¹³ Naturally, when "no body" cases gain public attention, they evoke strong compassion and emotion for the victim's family and friends, who still find themselves unable to put their loved one to rest.¹⁴ "No body, no parole" (NBNP) laws recognize the additional trauma that co-victims, a victim's family and friends, deal with when the victim's body remains lost, and this type of legislation often gains popular support.¹⁵

it is inquisitorial, not adversarial. *Id.* The Coroner leads the inquiry to discover why and how the disappearance occurred. *Id.*

¹¹ See RULE OF L. EDUC. CTR., *supra* note 1, at 4 (noting that over the course of 2018, the podcast attracted a large global audience and was downloaded millions of times). Public interest in Lynette's case grew, and Lynette's loved ones used this interest to promote Lynette's story and collect additional witness testimony. *Id.*

¹² See *id.* at 4–6 (noting that Chris Dawson pled not guilty and requested a permanent stay in the court proceedings due to his belief that "The Teacher's Pet" compromised his right to remain silent and his presumption of innocence). When his requested stay was denied, and later denied again on appeal, Chris Dawson requested a judge-alone trial in the Australian State of New South Wales to limit the influence of a potentially biased jury, which was granted. *Id.*; see also *Prosecution Guidelines: Chapter 9. Juries and Judge Alone Trials*, OFF. DIR. PUB. PROSECUTIONS N.S.W. (Mar. 29, 2021), <https://www.odpp.nsw.gov.au/prosecution-guidance/prosecution-guidelines/chapter-9> [<https://perma.cc/EX2A-VU8T>] (stating that while most trials in New South Wales's courts are before a judge as well as a jury, certain circumstances might call for a trial by judge alone). When there is a disagreement between the accused and the prosecution as to the request for a judge-alone trial, judges determine whether a judge-alone trial is necessary to preserve justice in the individual case. *Prosecution Guidelines: Chapter 9. Juries and Judge Alone Trials, supra.* The likelihood that an accused will or will not be convicted through a jury trial or a judge-alone trial is not a factor that a prosecutor should consider when assessing the request. *Id.* Prosecutors must consider a request for a trial by judge on the merits, and there are many factors to consider, including the importance of juries in the criminal justice system, potential prejudice in the case and whether there are adequate ways to address it in a jury trial, and timing of the request. *Id.*

¹³ Jessica Perrin, *Missing or Murdered?: The Increase in the Successful Prosecution of No-Body Homicides Within the United Kingdom and United States 6*, (MSc Policing and Criminal Investigation dissertation, Liverpool Centre for Advanced Policing Studies) (on file with author) (providing a general definition used in "no body" homicide research).

¹⁴ See Life Uncut with Britt & Laura, *Lyn's Law, No Body No Parole* (Sept. 2022), <https://open.spotify.com/episode/5ugad00mHpp9vsesvjZvvK> [<https://perma.cc/F6ZY-4G9J>] (speaking to the podcast hosts' rage that the authorities believed Lynette walked away from her family and did not conduct further investigations). While discussing "Lyn's Law," the host expressed how strongly she believes that the law should gain more support from the general public. *Id.* at 46:20–47:30.

¹⁵ See The Quicky, *Could a 'No Body, No Parole' Law Help Find Lynette Dawson?*, MAMAMIA PODCASTS (Sept. 2022), <https://open.spotify.com/episode/1ygl09ERn0Xw8iuhorZv0B> [<https://perma.cc/VQ5Q-PEXN>] (emphasizing the additional trauma that families and friends face when they are unable to bury their loved one); Monique Moffa, Michele Ruyters, & Greg Stratton, *Still No Bodies:*

Australia's NBNP laws represent another step in recognizing victims of crime, and like other countries, the Australian criminal justice system has seen victims' roles expand.¹⁶ NBNP laws are primarily meant to provide closure to victims, though legislatures have other rationales too.¹⁷ In promoting victims' rights, however, the rights of the accused and convicted as well as the decisions of the judiciary can be at risk of erosion.¹⁸

This Note argues that the growing movement of NBNP laws, although an understandable reaction to an emotionally fraught situation, is unlikely to accomplish its goal of providing closure to victims of the crime in most cases.¹⁹ Instead, NBNP laws may often burden the rights of the accused and convicted.²⁰ A perfect solution for this personal and legal challenge likely does not exist, but this Note argues that flexibility in the criminal justice system better addresses the concerns that arise when the location of a body is not revealed.²¹

Five Years of "No Body, No Parole" in Queensland, Australia, 55 J. CRIMINOLOGY 162, 164 (2022) (explaining that, because the effects of homicide crimes on families of the victims are so pervasive, those in the criminal justice system refer to the families of homicide victims as 'co-victims'); *Lyns Law—No Body = No Parole*, CHANGE.ORG, <https://www.change.org/p/lyns-law-no-body-no-parole> [<https://perma.cc/MYS4-NCWV>] (noting that the petition to enact the law in New South Wales had over 30,000 signatures); *Introduce 'Helen's Law': Where Hiding a Body, Preventing a Burial and Obstructing a Coroner Become Criminal Offences—with 'Whole Life' Tariffs*, CHANGE.ORG, https://www.change.org/p/rt-hon-theresa-may-mp-introduce-helen-s-law?use_react=false [<https://perma.cc/A8A3-YVKQ>] (showing an online petition to enact a "no body, no parole" (NBNP) law in England called "Helen's Law," which amassed over 700,000 signatures).

¹⁶ See Garna Mejia, *New Utah Law Keeps Convicted Murderer from Parole Unless Body Found*, KSL TV5, <https://ksltv.com/456417/new-utah-law-keeps-convicted-murderer-from-parole-unless-body-found/#:~:text=SALT%20LAKE%20CITY%20%E2%80%94%20A%20new,Cox> [<https://perma.cc/NHS8-PUAW>] (Jan. 4, 2023, 5:09 PM) (explaining the passage of Utah's NBNP law and the hope that it will bring closure to victims' families in the state); Press Release, Ministry of Just., *Helen's Law Receives Royal Assent* (Nov. 4, 2020), <https://www.gov.uk/government/news/helen-s-law-receives-royal-assent> [<https://perma.cc/9SAC-FZVF>] (noting how England passed a NBNP law and how many people believe that the law will assist the families of victims in getting closure); Arie Freiberg, Lorana Bartels, Robin Fitzgerald, & Shannon Dodd, *Parole, Politics and Penal Policy*, 18 QUEENSL. U. TECH. L. REV. 191, 211 (2018) (stating that every Australian jurisdiction now allows victim impact statements to be presented to courts at sentencing and that many parole boards, although not required, similarly allow for some form of victim representation).

¹⁷ See Moffa et al., *supra* note 15, at 4–5 (noting that preserving police resources are another reason to enact such legislation).

¹⁸ See Freiberg et al., *supra* note 16, at 213 (explaining that the way an accused or convicted offender conducts his defense cannot be an aggravated factor in punishment). Critics also believe that NBNP laws can undermine a judge's original ruling, becoming a form of double jeopardy. *Id.*

¹⁹ See Moffa et al., *supra* note 15, at 164 (asserting that closure is an intangible goal and that laws that are held out to deliver closure could lead to false hope, possibly extending the grief and trauma for a victim's loved ones).

²⁰ See *id.* at 165 (stating that several groups have opposed NBNP legislation in Queensland, Australia because of its potential impact on suspects and convicted offenders, especially those wrongfully convicted).

²¹ See *infra* notes 25–209 and accompanying text.

Part I of this Note tracks the history and results of NBNP laws' implementation in Australia, England, and the United States.²² Part II discusses the reasoning behind why people advocate for or against NBNP laws, including how this legislation might impact the rights of victims, the community, the accused, and the convicted.²³ Part III suggests that NBNP laws, while evoking a sense of fairness in many members of the general public, are largely an ineffective measure to incentivize the release of information regarding a body's location and could create an unwise precedent that threatens the role of the judiciary, parole boards, and the rights of offenders.²⁴

I. BALANCING RIGHTS AND PURPOSE: THE DEVELOPMENT OF NBNP LAWS

NBNP laws are a recent legislative tool in Anglo-based legal systems, expanding the victims' rights movement into the relatively rare subset of 'no body' cases in the criminal justice system.²⁵ This Note focuses on the purpose behind NBNP laws and the actual or potential consequences in three different countries with overlapping legal histories: Australia, England, and the United States.²⁶

Given the recent nature of these laws, their effectiveness and any drawbacks are still relatively untested.²⁷ This Part of the Note will largely focus on

²² See *infra* notes 25–109 and accompanying text.

²³ See *infra* notes 110–174 and accompanying text.

²⁴ See *infra* notes 175–209 and accompanying text.

²⁵ See Moffa et al., *supra* note 15, at 164–66 (noting that these cases are rare in Australia and that the NBNP law in Queensland was passed in 2017 with little debate but with the intention of addressing victims' suffering and protecting the community); Perrin, *supra* note 13, at 9 (noting that across 2007–08 and 2017–18 in the United States there were 165 instances of a murder conviction without a body at the time of conviction and, in the same period, thirty-six offenses were categorized as murder in England and Wales without recovering the victim's body); ROBERT J. SULLIVAN, MURDERS WITHOUT BODIES: THE CASE FILES OF AMERICA'S TOP "NO BODY" HOMICIDE PROSECUTOR, at xiii (2020) (explaining that, in 2019, the National Institute of Justice communicated that there have been more than 250,000 cold homicide cases in America since 1985, with those cases growing by about five thousand every year). The agency estimates that more than one-third of those cases are missing individuals who are likely dead. *Id.* In "no body" cases like those described, prosecutors have the additional burden of proving the missing individual is deceased beyond a reasonable doubt along with trying to obtain additional evidence. *Id.*

²⁶ See *infra* notes 27–109 and accompanying text.

²⁷ See Moffa et al., *supra* note 15, at 162 (revealing that "no body, no parole" laws were introduced in Australia in 2015 and have been enacted in most Australian states even though there are few homicides without a body); see Freiberg et al., *supra* note 16, at 213 (pointing out that requiring a defendant to disclose the location of a victim's body can be seen as punishing the defendant for the way they build their defense). Furthermore, positing parole as an incentive post-sentencing could create an additional punishment after the fact and thus constitute double jeopardy. *Id.* For the purposes of this Note, it is important to point out that there is usually no right to parole granted to convicted offenders, but that NBNP laws may adversely implicate other rights. *Id.* at 215.

Australian NBNP laws because they have been in effect the longest of the three analyzed countries.²⁸

Section A of this Part explores how these laws originated in Australia and looks at how they have been carried out since legislators enacted them in 2015.²⁹ Section B of this Part considers how England developed its own NBNP law after seeing their enactment in Australia.³⁰ Finally, Section C considers the foothold that NBNP laws gained in the United States: although no other states are currently discussing NBNP legislation, legislators did enact NBNP in Utah.³¹

A. A Search for Closure: The Rise of NBNP Laws in Australia

Parole is a large component of Australia's criminal justice system, wherein offenders who were sentenced to a period of imprisonment can serve part or all of their term of incarceration in the community under certain rules and restrictions.³² The intention behind allowing a period where an incarcerated individual can be paroled is to serve a rehabilitative purpose and to better reintegrate offenders back into the community.³³ Since the mid-1980s, there were several criticisms of rehabilitative parole in Australia that moved away from that philosophy.³⁴ Additionally, a few incidents of parolees who committed violent crimes upon release gained a lot of public attention and prompted critical reviews of existing parole systems.³⁵

²⁸ See Freiberg et al., *supra* note 16, at 212 (stating that South Australia first enacted NBNP laws in 2015 and that the Northern Territory and Victoria followed with NBNP laws in 2016).

²⁹ See *infra* notes 32–74 and accompanying text.

³⁰ See *infra* notes 75–91 and accompanying text.

³¹ See *infra* notes 92–109 and accompanying text.

³² See Freiberg et al., *supra* note 16, at 191 (revealing that 15,402 people were on parole in Australia in September 2019, which was the highest number to date). With prison populations continuing to increase in Australia, the number of incarcerated people eligible for parole will similarly increase. *Id.*

³³ See *id.* at 193 (explaining that Australia's High Court held that a non-parole period should be the minimum term of incarceration because the judge felt that the offender's crime calls for that detention, but that the legislature's intent in setting parole periods is the mitigation of that punishment in order to promote the rehabilitation of an offender).

³⁴ See *id.* at 194 (pointing toward three general critiques from citizens: (1) those advocating for truth in sentencing who felt that parole undermined the "correct" sentence that judges imposed, (2) those who felt that parole was too favorable to convicted offenders and not considerate enough to victims, and (3) those who felt parole was unnecessarily risky to members of the community).

³⁵ See *id.* at 194–95 (noting that a small number of incidents, like the September 2012 rape and murder of Jill Meagher by a parolee named Adrian Bayley, led to public criticism and an intense review of the parole system in Victoria). Another incident in Queensland led to an inquiry into its parole system, and New South Wales and Western Australia also reviewed their existing parole systems. *Id.* A majority of the propositions advocated for more restrictions, but there were also progressive suggestions to try and mitigate problems that these reviews brought to light. *Id.*

Consequently, Australian legislators first introduced NBNP laws in 2015, in the state of South Australia.³⁶ Shortly thereafter, several other Australian states enacted NBNP legislation.³⁷ Considering the relatively rare nature of “no body” cases, the adoption of NBNP laws in several Australian states and territories over a period of four years is notable.³⁸ Legal scholars and news outlets attribute the enactment of these laws in a large part to the public campaigns of homicide victim’s family and friends, like Margaret Dodd, who whetted the political appetite for NBNP laws in Western Australia.³⁹

Hayley Dodd, Margaret Dodd’s daughter, disappeared in 1999 after she failed to arrive at a farm where she planned to stay.⁴⁰ It was only in 2013 that a

³⁶ See *Correctional Services Act 1982* (SA) pt 6 div 3(67)(6) (Austl.), https://www.legislation.sa.gov.au/_/legislation/lz/c/a/correctional%20services%20act%201982/current/1982.48.auth.pdf [<https://perma.cc/TS52-2ANQ>] (stating that the Board may not offer a prisoner who is serving life imprisonment for a murder offence parole unless the Board finds that the prisoner satisfactorily cooperated with the offence’s investigation); Freiberg et al., *supra* note 16, at 212 (noting when NBNP laws were first introduced in South Australia). In introducing NBNP laws, Australian legislators delegated the task of evaluating an offender’s cooperation to Parole Boards. Moffa et al., *supra* note 15, at 166 (noting that, when evaluating cooperation, the relevant authority must consider (1) its form, fullness, and timeliness; (2) its truthfulness, totality, and accuracy of evidence or information given regarding the location of the victim; and (3) the importance and helpfulness of the cooperation). Location includes the location last known of all the remains or body parts and the area where all body parts or remains may be recovered. *Id.*

³⁷ See Freiberg et al., *supra* note 16, at 212 (noting that Victoria and the Northern Territory followed South Australia by enacting NBNP laws in 2016).

³⁸ See Moffa et al., *supra* note 15, at 163 (detailing that in the time period of 2015–19, six jurisdictions in Australia enacted these laws); Claire Ferguson & Kamarah Pooley, *Comparing Solved and Unsolved No-Body Homicides in Australia: An Exploratory Analysis*, 23 *HOMICIDE STUD.* 381, 383 (2019) (explaining, in the context of an Australian study on “no body” homicides, that there only exists a small number of these cases). As in Australia, “no body” cases in the United States are not common. See Keith L. Alexander & Dan Morse, *Murder Cases Without the Victim’s Body Are Difficult, Prosecutors Say, but Winnable*, WASH. POST. (April 17, 2017, 8:52 PM), https://www.washingtonpost.com/local/public-safety/murder-cases-without-the-victims-body-are-difficult-prosecutors-say-but-winnable/2017/04/15/85a0bffa-206b-11e7-ad74-3a742a6e93a7_story.html [<https://perma.cc/Y7SE-HV64>] (reporting that homicide cases where a victim’s body is never recovered are rare in Washington, D.C.). Between 1984 and April 2017, only four “no body” cases went to trial in Washington, D.C. *Id.* Dating back to the early 1800s, there have only been around 480 “no body” cases that were tried in court and around eighty-nine percent of those ended in convictions. *Id.* “No body” cases are difficult for prosecutors to try in court because of the lack of evidence. *Id.* For example, prosecutors in a “no body” case cannot bring in an important witness: a medical examiner, who would provide an account of the victim’s death, including cause of death, time, and other details. *Id.* Prosecutors often file charges in “no body” cases only when there is a large amount of compelling evidence, which may include witness testimony, DNA evidence, or testimony from other defendants in the case. *Id.* As many “no-body” cases involve domestic violence, evidence of past abuse is often essential. *Id.*

³⁹ See Moffa et al., *supra* note 15, at 163 (recounting that Margaret Dodd’s activism gained momentum and helped result in the enactment of these laws in many Australian states and territories).

⁴⁰ See Joanna Menagh, *Mother’s Persistence Helps Solve Hayley Dodd’s Disappearance, but Not All Questions Have Been Resolved*, ABC NEWS (Apr. 13, 2021, 2:38 PM), <https://www.abc.net.au/news/2021-04-14/mothers-persistence-helps-solve-hayley-dodd-disappearance/100058738> [<https://perma.cc/DC6W-PXZX>] (explaining that someone saw Hayley Dodd walking on a road around 11:40

break in the case allowed authorities to hone in on a suspect.⁴¹ Margaret Dodd's experience as a co-victim led her to start the campaign for NBNP laws, and the legislature passed the law in West Australia in 2018.⁴² Thousands of people signed a petition that Margaret Dodd promoted, and government officials positively commented on the incentives such a law would provide to reveal a body's whereabouts.⁴³

Similarly, in the state of Queensland, Fiona Splitt's advocacy allowed NBNP laws to gain political attention.⁴⁴ In 2012, Fiona Splitt's husband, Bruce Schuler, went missing, and although two individuals were eventually convicted of killing Bruce, Bruce's body was not found.⁴⁵ Fiona Splitt raised public awareness about her story and NBNP laws, which resulted in her petition capturing Parliament's attention with six thousand signatures.⁴⁶

am, heading toward the family farm where she planned to spend her working holiday). That was the last time anyone saw Hayley Dodd alive. *Id.*

⁴¹ See *id.* (stating that an inquest from the coroner's office lead to a re-examination of the cover of a car seat from the vehicle that Frank Wark, a person of interest, drove on the day of Hayley's disappearance). The examination found an earring embedded in the fibers of the car seat, and authorities later charged Wark with murdering Hayley. *Id.*

⁴² See *id.* (noting that Margaret Dodd began the campaign for "no body, no parole" laws in Western Australia). Margaret Dodd's daughter, Hayley, went missing in 1999 on her way to visit another family, and a coronial inquest in 2013 led to a cold case review and a re-examination of evidence that led to the arrest of Frank Wark. *Id.* Hayley's earring was found in the fibers of Wark's car seat in 2015, he was extradited to Perth in 2015, and his first trial was held in October 2017. *Id.* Wark was convicted of manslaughter, a lesser charge than murder, in a retrial in 2021. *Id.* As the Western Australia legislature passed the state's NBNP law in March 2018, Wark will have to serve his full sentence unless he cooperates with authorities in revealing the location of Hayley's remains. *Id.*

⁴³ See Jacob Kagi, *Hayley Dodd: 'No Body, No Parole' Legislation Sparked by Petition from Missing Teen's Parents*, ABC NEWS (Feb. 14, 2016, 2:28 AM), <https://www.abc.net.au/news/2016-02-14/wa-opposition-no-body-no-parole-laws-hayley-dodd-petition/7166870> [<https://perma.cc/U5HL-59WA>] (reporting that Margaret Dodd's petition almost had 20,000 supporters and that government official John Quigley believed this would be a strong incentive in getting the assistance of convicted offenders).

⁴⁴ See Moffa et al., *supra* note 15, at 165 (noting that Fionna Splitt started an online petition in 2015 to gain support for NBNP laws).

⁴⁵ See *id.* (noting that the individuals convicted of Bruce Schuler's murder did not participate in the authorities' investigation).

⁴⁶ See *id.* (stating that Fiona Splitt created her e-petition in October 2015, and the petition came before Parliament in February 2016, which corroborated a recent report reviewing the Queensland Parole System that recommended NBNP reforms); Felicity Caldwell, *No Body, No Parole: Wife of Missing Man Behind Petition for Change*, BRISBANE TIMES, <https://www.brisbanetimes.com.au/national/queensland/no-body-no-parole-wife-of-missing-man-behind-petition-for-change-20170620-gwup5s.html> [<https://perma.cc/M8T4-EL6T>] (June 21, 2017, 7:15 PM) (quoting Fiona Splitt as saying that she still expects her husband to come back home and that she does not think that feeling will go away until she can give him a proper burial). In advocating for NBNP legislation, Ms. Splitt believed that convicted offenders should only have two years, starting from the beginning of their sentence, to reveal a body's whereabouts, or if already in jail, they should only have one year to cooperate. Caldwell, *supra*. She advocated for those time constraints in order to diminish the possibility of environmental damage to remains, to grant closure for victim's loved ones, and to limit the possibility of long appeals. *Id.*

The aforementioned case of Lynette Dawson also speaks to the power of public attention and campaigns.⁴⁷ Renee Simms, Lynette Dawson's niece, did not believe any break in the case would have resulted without "The Teacher's Pet" podcast bringing public attention to Lynette's case.⁴⁸ After the court delivered a guilty verdict for Chris Dawson, Lynette Dawson's family realized that New South Wales did not have a NBNP law in place and began a petition to campaign for the law.⁴⁹

As in the case of Lynette Dawson's loved ones, many families view NBNP laws as a tool to help them achieve closure and to keep people that have not disclosed a body's location in prison.⁵⁰ In passing NBNP laws, families hope for the chance to properly bury their loved ones.⁵¹ Family members and friends advocate for NBNP laws in the hope that the laws may incentivize convicted offenders to release information on a body's whereabouts.⁵² Co-victims campaigning for this legislation, however, can still have doubts about whether they will achieve that goal.⁵³ For example, Lynette Dawson's niece, Renee Simms, believes that Chris Dawson has convinced himself that he did not have anything to do with Lynette's disappearance and will therefore never reveal information about where Lynette's body lies.⁵⁴

Nevertheless, Australian states and territories have largely been politically receptive to passing NBNP laws.⁵⁵ In Queensland, the government tasked Wal-

⁴⁷ See RULE OF L. EDUC. CTR., *supra* note 1, at 4 (explaining that "The Teacher's Pet" podcast reached a wide global audience and allowed Lynette Dawson's family to gain a large platform to speak out about Lynette's disappearance and hear new testimony).

⁴⁸ See Life Uncut with Britt & Laura, *supra* note 14 (noting that 52 million people listened to "The Teacher's Pet" podcast and that Renee Simms believes the publicity from the podcast is what allowed for a break in Lynette's case). New testimony compiled by the investigative reporter for the podcast and the resulting attention encouraged the police to reopen the case and arrest Chris Dawson for Lynette's murder. *Id.*

⁴⁹ *Id.* (explaining that after Lynette Dawson's family realized there was not a "no body, no parole" law in place in New South Wales, they started campaigning for Lyn's Law and asking listeners to sign the petition).

⁵⁰ See Moffa et al., *supra* note 15, at 165 (noting that Fiona Splitt's petition explicitly called for reform because the current parole system did not provide closure to the families of victims, since offenders convicted of homicide/accessory crimes could be paroled without sharing where a victim's body could be found).

⁵¹ See Menagh, *supra* note 40 (noting that Margaret Dodd hopes that NBNP legislation will allow her to lay her daughter to rest).

⁵² See Life Uncut with Britt & Laura, *supra* note 14 (explaining that Lynette Dawson's family has doubts about whether Chris Dawson will reveal anything about Lynette's body but that the law still gives them hope because it is the only way he could access parole).

⁵³ See *id.* (reiterating that Lynette's family is pursuing NBNP legislation even though they do not believe that Chris Dawson will cooperate in disclosing information about Lynn's body).

⁵⁴ See *id.* (explaining her view that Chris Dawson has had around forty years to convince himself that he was not involved in Lynette Dawson's murder and her belief that he will thus continue to maintain his innocence).

⁵⁵ See Moffa et al., *supra* note 15, at 163 (noting that between 2015 and 2019, six jurisdictions enacted NBNP laws in Australia).

ter Sofronoff with producing a report to review Queensland's parole system after the high-profile murder of an 81-year-old woman by a paroled person in 2015.⁵⁶ Sofronoff recommended the introduction of NBNP, justifying it by focusing on the retributive aspect of punishment and stating that it is an inconsistent outcome to parole a convicted murderer who does not reveal information about the victim's remains, leaving a victim's family and friends in grief.⁵⁷

This report highlights governmental concern for community safety, co-victims' trauma, and the feeling that a convicted offender was not adequately punished if paroled without revealing the location of a victim's body.⁵⁸ The safety of society at large was a big factor in adopting NBNP legislation in Queensland, but although Fiona Splitt's petition gained many signatures, there were no public submissions apart from Fiona Splitt's that endorsed the law.⁵⁹ Another factor that governments have spoken to in passing NBNP legislation is the belief that these laws will save police resources because they discourage offenders from sharing misleading or untrue information with authorities.⁶⁰

In the context of victims' stories and the campaigns of loved ones to pass NBNP laws, Australian politicians often spoke favorably about these reforms.⁶¹ In the case of Hayley Dodd in West Australia, John Quigley, the

⁵⁶ See *id.* at 165 (stating that the report was to focus on whether measures taken to address the safety of the community were adequate and whether there was enough support to reintegrate offenders in society).

⁵⁷ *Id.* (“[A] punishment is lacking in retribution, and the community would be right to feel indignation, if a convicted killer could expect to be released without telling what he did with the body of the victim. The killer’s satisfaction at being released on parole is grotesquely inconsistent with the killer’s knowing perpetuation of the grief and desolation of the victim’s loved ones.”) (quoting WALTER SOFRONOFF, QUEENSLAND PAROLE SYSTEM REVIEW: FINAL REPORT 234–35 (2016)); see also Hugo Adam Bedau, *A Retributive Theory of the Pardoning Power?*, 27 U. RICH. L. REV. 185, 198–99 (1993) (describing the author’s opinion that Michael Davis, a contemporary retributivist, has not evolved his views on the theory beyond basic, but abstract, principles like “*guilt is a necessary condition of punishment*,” “*convicted criminals deserve to be punished*,” and “*the more grave the crime, the more severe the deserved punishment*”).

⁵⁸ See Moffa et al., *supra* note 15, at 165 (noting that in the aftermath of the report, the government in Queensland committed to passing NBNP laws).

⁵⁹ See *id.* (noting that of the four public submissions received, three—the Queensland Law Society, the Queensland Council of Civil Liberties, and the Bar Association of Queensland—did not support NBNP laws because of various concerns regarding convicted offenders, such as the right to remain silent, retrospective application, and the potential effect on wrongfully convicted individuals).

⁶⁰ See *id.* (noting that “no body” investigations are especially challenging and that the presence of NBNP laws would encourage revealing a body’s whereabouts sooner).

⁶¹ See *id.* at 165–66 (asserting that in the wake of Fiona Splitt’s activism, Queensland’s Attorney General Yvette D’Ath believed NBNP legislation was the most effective way for homicide victims’ loved ones to receive closure); Alexandra Smith & Lucy Cormack, *Lyn’s Law: NSW to Follow Other States with ‘No Body, No Parole’ Laws*, SYDNEY MORNING HERALD (Sept. 20, 2022, 5:00 AM), <https://www.smh.com.au/politics/nsw/lyn-s-law-nsw-to-follow-other-states-with-no-body-no-parole-laws-20220919-p5bjbg.html> [<https://perma.cc/6S5V-Y3AJ>] (quoting the Premier of New South Wales, Dominic Perrottet, as saying that it is upsetting and traumatic for loved ones to be unable to bury a victim and that the government will ensure that convicted offenders who purposefully refuse to share information regarding the whereabouts of a victim’s remains will not receive parole).

Shadow Attorney General, supported NBNP legislation and spoke of the community's disgust that a victim's loved ones could continue to suffer while a convicted offender could be paroled without revealing the body's whereabouts.⁶² Research has shown that, regardless of where a particular government may fall on the political spectrum, political parties seek tougher parole reforms in the wake of a widely-publicized parole violation and resulting news reports of outrage in the community.⁶³ Nevertheless, there were government officials in Australia who felt that NBNP laws were an unnecessary reform even in the wake of popular family campaigns: Michael Mischin, Attorney General in West Australia at the time of Margaret Dodd's campaign for NBNP laws, did not believe there were any issues requiring those reforms.⁶⁴

In studying the effects of NBNP laws, Queensland is a helpful case study for three reasons: (1) it has had NBNP laws in place for several years, (2) it has the second largest number of "no body" cases in the country, and (3) its parole

⁶² See Kagi, *supra* note 43 (reporting that Mr. Quigley stated that those convicted of murder will remain in prison forever if they have not assisted authorities in recovering the remains of victims); *About Ministers and Shadow Ministers*, PARLIAMENT W. AUSTL., <https://www.parliament.wa.gov.au/webcms/webcms.nsf/content/about-ministers-and-shadow-ministers#:~:text=Shadow%20ministers%20are%20appointed%20by,under%20his%20or%20her%20responsibility> [https://perma.cc/U893-5GL3] (explaining that Shadow Ministers are senior members of an opposition party in Parliament who receive shadow portfolios that match the positions of the government). Australian shadow ministers do not have an official status, but they are typically the primary spokespeople for the opposition party. *Id.*

⁶³ See Freiberg et al., *supra* note 16, at 215 (noting that studies have shown that high profile cases of parole violations evoke strict parole reforms regardless of the political affiliation of a government, helped along by news outlets reporting on community anger regarding these parole violations). Nevertheless, these studies also show that the view of the Australian public at large is generally more nuanced than governing bodies might believe. *Id.*; see also Alison Caldwell, *Ian Callinan Review of Victorian Parole System Lashes Handling of Adrian Bayley Case*, ABC NEWS, <https://www.abc.net.au/news/2013-08-20/callinan-parole-system-review-criticises-handling-of-bayley-case/4900788> [https://perma.cc/R7HR-YENA] (Aug. 20, 2013, 4:37 PM) (describing criticism of Victoria's parole system after Adrian Bayley violated his parole, received permission to go free, and subsequently raped and murdered Jill Meagher); Stephanie Anderson & James Hancock, *Parole Board Was 'Never Told' Brighton Siege Gunman Yacqub Khayre Was on Terror Watch List*, ABC NEWS, <https://www.abc.net.au/news/2017-06-07/adult-parole-board-never-told-brighton-gunman-on-terror-list/8596626> [https://perma.cc/L3V2-D26T] (June 7, 2017, 1:33 AM) (responding to criticism of the Victorian Parole Board's decision to parole Yacqub Khayre, who killed one individual, held another hostage, and shot several police officers, by saying that the Parole Board was not told any information that caused them to worry about community safety in his case).

⁶⁴ See Kagi, *supra* note 43 (reporting that Michael Mischin, the Attorney-General, stated that there was no evidence to suggest that West Australia needed the proposed NBNP law because the current law adequately addressed the concerns of Margaret Dodd and other NBNP campaigners in the State). Mischin did clarify that he would not recommend parole for any person convicted of murder who had not released the whereabouts of a victim's body. *Id.* In addition to Michael Mischin, Judge Couzens felt that the existing parole system is beneficial. See Anderson & Hancock, *supra* note 63 (providing Judge Couzens's perspective in response to those who questioned whether parole should exist after an instance like Yacqub Khayre's parole violation by saying that releasing convicted offenders without the supervision that parole provides would be dangerous and that parole has proven to be a very effective tool in reducing recidivism).

board shares its NBNP decisions.⁶⁵ Queensland's NBNP Bill became effective on August 25, 2017 and essentially created an additional process that an impacted incarcerated person had to go through: in order to access parole under the NBNP law, the parole board first had to decide whether the incarcerated person satisfactorily cooperated in the investigation to find the victim's body.⁶⁶ The decision to publish NBNP deliberations in Queensland is to provide transparency to the loved ones of the victim as well as the incarcerated person.⁶⁷

Since Queensland enacted its NBNP law, the parole board considered seven of thirteen parole applicants to have satisfactorily cooperated under the law.⁶⁸ Successful applicants were either unable to cooperate (due to not knowing the information, such as in cases where an offender did not actually take part in disposing the body), or able to provide credible and reasonably timely information (credible information, even if it was not timely, could also bring success).⁶⁹ Regarding the matter of timeliness, the parole board felt that a con-

⁶⁵ See Moffa et al., *supra* note 15, at 163, 166 (explaining why the authors decided to focus on Queensland in examining the real-world impact of NBNP legislation).

⁶⁶ Corrective Services (No Body, No Parole) Amendment Bill 2017 (Queensl.) cl 4 (Austl.) ("The parole board must refuse to grant the application under section 193 unless the board is satisfied the prisoner has cooperated satisfactorily in the investigation of the offence to identify the victim's location."); see also Moffa et al., *supra* note 15, at 166–67 (noting that according to section 193A(2) of the amended Corrective Services Act (193A(2)), unless an incarcerated person has been found to have satisfactorily cooperated with efforts to locate the body of the victim in the offense's investigation, the parole board cannot grant the person's parole application). The incarcerated person must attend the hearing in the event that they need to provide more evidence. Moffa et al., *supra* note 15, at 166–67. Legal representation is only allowed at the NBNP tier in Queensland. *Id.*

⁶⁷ See Moffa et al., *supra* note 15, at 167 (emphasizing that transparency in these decisions allows the public, especially the loved ones of those involved, to see how the Parole Board arrived at a decision they felt was just).

⁶⁸ See PAROLE BD. QUEENSL., IN THE MATTER OF: RODNEY MICHAEL CHERRY 1 (2023), <https://pbq.qld.gov.au/wp-content/uploads/2023/07/Rodney-Michael-Cherry-delivered-on-18-July-2023-1.pdf> [<https://perma.cc/Z3VC-7P3D>] (deciding that Rodney Michael Cherry was another applicant who did not provide satisfactory cooperation); PAROLE BD. QUEENSL., IN THE MATTER OF: MATTHEW LESLIE ARMITAGE 1 (2023), <https://pbq.qld.gov.au/wp-content/uploads/2023/02/Declaration-and-Reasons-in-the-matter-of-MATTHEW-ARMITAGE-E42933.pdf> [<https://perma.cc/S47E-3DQJ>] [hereinafter IN THE MATTER OF: MATTHEW LESLIE ARMITAGE] (finding Matthew Leslie Armitage as an additional applicant who has not been found to have cooperated satisfactorily); PAROLE BD. QUEENSL., IN THE MATTER OF: KLAUS JULIUS ANDRES 1 (2021), https://www.pbq.qld.gov.au/wp-content/uploads/2022/02/ANDRES-Klaus-No-Body-No-Parole-Decision_16022022.pdf [<https://perma.cc/MM95-4PX2>] [hereinafter IN THE MATTER OF: KLAUS JULIUS ANDRES] (noting Klaus Julius Andres as an additional applicant who has been found to have cooperated satisfactorily); Moffa et al., *supra* note 15, at 167–68 (noting the decisions are published on the PBQ website).

⁶⁹ See Moffa et al., *supra* note 15, at 167–72 (explaining the decisions behind ten of the NBNP applicants: Shaun Dennis, Michael Dobrovitch, Clinton Stockman, Nelson Patea, Zane Lincoln, Stephen Renwick, Geoffrey De Jackson, Daniel Heazlewood, Clive Nicholson, and Byron Naylor). The first incarcerated person to apply for parole with the NBNP law in place was Shaun Dennis, who killed Kenneth Harris with a pipe in 2003 and deposited Harris's body in a river infested with crocodiles. *Id.* at 167. Dennis confessed to the crime forty-one days later, and he informed authorities that he put the body and murder weapon in the river. *Id.* Divers retrieved the murder weapon but the body was not located, and after the legislature introduced NBNP, police interviewed Dennis but heard a

victed offender's cooperation post-sentencing could still be found acceptable under the NBNP law because of the underlying policy of locating a victim's body.⁷⁰ None of the NBNP decisions in Queensland speak to the legislation leading to additional remains being found in cases where only a partial body had been recovered.⁷¹ There has, however, been at least one report of Queensland's NBNP law motivating the release of information about the victim's body in a case where there had previously been no discovery.⁷² Graeme Evans killed his partner, Leeann Lapham, in Queensland in 2010 but was not arrested until 2017 after police revisited evidence.⁷³ Chris Knight, a detective working

story consistent with what Dennis had previously told police. *Id.* Dennis told the Parole Board that his prior cooperation was accurate and that he had no additional information on the body. *Id.* The Parole Board considered that Dennis's cooperation was not as timely as it could have been but did note that divers may not have been able to investigate the river if the cooperation occurred earlier. *Id.* As a result, the Board found that Dennis's cooperation was satisfactory under the NBNP statute. *Id.* The Board took a similar approach with Klaus Julius Andres. *See* IN THE MATTER OF: KLAUS JULIUS ANDRES, *supra* note 68, at 10 (showing that while the Parole Board found Klaus Andres to have cooperated satisfactorily, no remains were found). Andres disposed of the victim's body by using acid to dissolve the remains. *Id.* As a result of the way in which Andres got rid of the body, authorities could not recover any other remains, and the Parole Board agreed that Andres could not provide any additional cooperation in the matter. *Id.*

On the other hand, Clive Nicholson is an incarcerated individual who did not meet the NBNP statutory requirements, per the Parole Board's determination. Moffa et al., *supra* note 15, at 171. In 2006, the court convicted Nicholson of the 2003 killing of his wife. *Id.* Although he denied involvement to authorities, Nicholson wrote letters wherein he confessed to the murder and stated that he disposed of his wife's body in the water at Southport Spit on the night he killed her. *Id.* When police informed Nicholson of the NBNP law in 2017, he maintained the same story but gave additional details about where her body entered the ocean. *Id.* Nevertheless, in 2019, he stated that his wife's remains were buried at Cedar Creek, which he had never mentioned previously, and a subsequent search did not locate any remains. *Id.* The Parole Board found that Nicholson was not credible and thus determined he did not cooperate satisfactorily under the NBNP statute. *Id.* at 172.

⁷⁰ *See* IN THE MATTER OF: KLAUS JULIUS ANDRES, *supra* note 68, at 10 (asserting that, even if assistance occurs a long time after the criminal offense, "no body, no parole" laws should still encourage cooperation).

⁷¹ *See* IN THE MATTER OF: MATTHEW LESLIE ARMITAGE, *supra* note 68, at 4 (providing an example where a NBNP prisoner did not cooperate satisfactorily because the victim's hands and feet had not been recovered and the incarcerated individual did not provide additional information to help locate those remaining parts of the body); IN THE MATTER OF: KLAUS JULIUS ANDRES, *supra* note 68, at 5 (noting that in the case of Klaus Andres, the victim's body was destroyed by acid and no additional remains could be recovered, though the Parole Board found Andres satisfactorily cooperated because he could give no additional information regarding the victim's remains).

⁷² *See* David Chen, *Leeann Lapham's Killer Jailed for Manslaughter After Punching Her to Death and Hiding Her Body*, ABC NEWS, <https://www.abc.net.au/news/2018-03-21/leeanne-lapham-death-graeme-evans-sentenced-manslaughter-qld/9570536> [<https://perma.cc/X8L8-PC8P>] (Mar. 21, 2018, 9:51 AM) (noting that a detective attributed a suspect's cooperation to the reminder of Queensland's recently passed NBNP legislation, the authorities then used the provided information to find the remains in dense bushland).

⁷³ *See id.* (stating that Graeme Evans and Leeann Lapham were staying at a motel in 2010 when they argued over an empty bacon container, leading to a physical altercation wherein Mr. Evans punched Ms. Lapham in the head multiple times, subsequently killing her). The police reexamined evidence from 2010 and arrested Mr. Evans in February 2017. *Id.*

the case, credited Queensland's NBNP law in incentivizing Evans to disclose the location of Ms. Lapham's remains.⁷⁴

B. NBNP Becomes Watered Down in England

The parole system in England allows for conditional release as part of an offender's ongoing sentence, and an offender's parole may be terminated if the individual were to break the conditions of release or commit another crime.⁷⁵ The parole board, having developed into a judicial body since its creation in 1967, is in charge of deciding whether to grant parole and can base its decision on oral hearings or simply on documentation about a prisoner.⁷⁶ In the Criminal Justice Act 2003, England allowed dangerous offenders to be sentenced to an indeterminate sentence, resulting in the sentencing of many offenders to indefinite prison terms and thus making parole the only way those individuals could be released.⁷⁷

The NBNP law in England followed a similar developmental trajectory to that in Australia: a "no body" case prompted a victim's loved ones to publicly and successfully campaign for reform.⁷⁸

⁷⁴ See *id.* (noting that Detective Knight stated that Mr. Evans was persuaded to aid police in locating Ms. Lapham's body because of the recently passed NBNP legislation in Queensland). Mr. Evans' defense team said that Mr. Evans gave information on the location of Leeann's remains to the authorities at a legal hearing. *Id.* The article does not quote Mr. Evans directly as saying NBNP legislation impacted his decision. *Id.* The news did not attribute any quote to Mr. Evans personally regarding the impact of NBNP legislation in his decision to cooperate with locating Leeann Lapham's remains. See Jarryd Bartle, Greg Stratton, Michele Ruyters, & Monique Moffa, 'No Body, No Parole' Laws Could Be Disastrous for the Wrongfully Convicted, *THE CONVERSATION* (Sept. 22, 2022, 10:38 PM), <https://theconversation.com/no-body-no-parole-laws-could-be-disastrous-for-the-wrongfully-convicted-191083> [<https://perma.cc/4HGD-4GUG>] (stating that Graeme Evans's case is only relevant to NBNP legislation because the detective overseeing the case claimed that his threat of NBNP laws is what convinced Evans to provide information on the body's whereabouts).

⁷⁵ See *The Parole System of England and Wales*, JUSTICE, <https://justice.org.uk/parole-system-england-wales/> [<https://perma.cc/8NUX-F7MP>] (explaining that parole occurs when the Parole Board releases an incarcerated person on license during the existing sentence and that the decision may be rescinded if the individual does not abide by the conditions of parole or commits an additional offense).

⁷⁶ See *id.* (noting that the Parole Board transformed from an advisory body without a final say on release into a judicial body that could determine how much time many incarcerated individuals spend in custody). At oral hearings, incarcerated individuals are present and can be legally represented, but some decisions are made "on the papers," occasionally only by one member of the Parole Board. *Id.*

⁷⁷ See *id.* (explaining that sentencing such offenders to indeterminate sentences was so popular that the government narrowed its application in later legislation). While there is a minimum amount of time that the incarcerated individual must spend in prison, the offender can still only gain release via a determination by the Parole Board that the risk to the community by the offender is adequately mitigated. *Id.* The Criminal Justice Act 2003 allowed for indeterminate sentences for the public's protection. *Id.*

⁷⁸ See Press Release, Ministry of Just., *supra* note 16 (noting that the reform could be attributed to the effort of Marie McCourt).

Helen McCourt was twenty-two years old when she disappeared on her way home from work in 1988, and the landlord of the local pub, Ian Simms, was found guilty of her murder in 1989—a notable occurrence in a country where there were no “no body” homicide convictions for centuries.⁷⁹ In Helen McCourt’s case, there was an abundance of physical evidence used to convict Ian Simms of Helen’s murder, but he maintained his innocence and never revealed the whereabouts of Helen’s body.⁸⁰

Marie McCourt, Helen’s mother, never stopped searching for her daughter’s body, and when she found out that officials were moving Ian to a lower-security prison in 2015 and that he would be up for parole again in 2016, she began to campaign for Helen’s Law.⁸¹ Marie’s online petition addressed the pain that the loved ones of “no body” victims go through and asked the U.K. government to pass Helen’s Law, which would deny parole to convicted murderers who refuse to reveal the location of a victim’s body, sentence such murderers to serve full life sentences if they do not disclose that information, and automatically apply additional common-law offenses in “no body” cases.⁸²

On November 4, 2020, Helen’s Law received Royal Assent, but it differed from many of the NBNP laws enacted in Australia, which will often deny parole altogether if a convicted offender does not satisfactorily assist in recover-

⁷⁹ See James Morton, Opinion, *Evidence in ‘No-Body’ Murder Trials*, 70 J. CRIM. L. 459, 459 (2006) (explaining that there were no murder convictions in England or Wales without a confession or a body for almost three hundred years). After almost three hundred years had passed, a court convicted Thomas Joseph Davidson of the murder of his son in 1934 based on his confessions, and his son’s body was never recovered. *Id.* In an opinion from 1736, Sir Matthew Hale stated that charging and convicting someone of murder must result from evidence of the body or from direct proof of murder, but many judges misquoted Hale in dicta as saying no murder charge could exist without a body. *Id.*; *Before Change, Responsibility—Backing the Introduction of the No Body, No Parole Law*, BIRMINGHAM CITY U., <https://www.bcu.ac.uk/news-events/news/before-change-responsibility—backing-the-introduction-of-the-no-body-no-parole-law> [<https://perma.cc/27EP-9WH2>] (Mar. 4, 2019) (noting that Helen McCourt’s case was the first “no body” case in the United Kingdom that used DNA evidence).

⁸⁰ See *Helen McCourt: Mum Hopes Killer’s Death Will Lead to Body Find*, BBC (June 28, 2022, 5:01 AM), <https://www.bbc.com/news/uk-england-merseyside-61962924> [<https://perma.cc/33AK-4YDC>] (writing that Ian Simms passed away around the time of publication); Bad People, *The Pearl Earring: No Body, No Parole?*, BBC (Dec. 2020), <https://open.spotify.com/episode/3ecN13E9ggzKIT0MiXv9wm> [<https://perma.cc/29UF-Y2D5>] (sharing that blood was found in Ian Simms’ apartment and car, Helen McCourt’s earring was found in his apartment, fibers from Helen McCourt’s pants were found in his apartment, and DNA evidence showed that the blood found was highly likely to come from a child of Helen McCourt’s parents).

⁸¹ See Perrin, *supra* note 13, at 38 (providing the reasoning for why Marie McCourt began the petition for Helen’s Law).

⁸² See *Introduce ‘Helen’s Law’: Where Hiding a Body, Preventing a Burial and Obstructing a Coroner Become Criminal Offences—with ‘Whole Life’ Tariffs*, *supra* note 15 (noting that Marie McCourt’s e-petition has 784,450 signatures at the time of writing). The petition calls for strict punishment in “no body” cases where a convicted offender does not assist in locating a victim’s remains. *Id.* Along with refusing parole and applying full life sentences in those cases, Marie McCourt advocated for the mandatory application of common-law offenses like preventing the burial of a corpse, disposing of a corpse, and obstructing a coroner to such offenders. *Id.*

ing a missing body's location.⁸³ Helen's Law, as the government enacted it, does not deny parole altogether in these situations but rather creates a legal duty for the parole board to consider the pain caused by those offenders who do not reveal the whereabouts of a body when assessing suitability for release.⁸⁴ Furthermore, the legislature broadened the law to apply to pedophiles that produce indecent photos of children but refuse to identify the victims.⁸⁵ The Act applies to England and Wales.⁸⁶

Like in Australia, many U.K. politicians also spoke up in support of this legislation, with Justice Secretary Robert Buckland stating that Helen's Law captured the expectation that offenders who do not cooperate should expect longer prison sentences.⁸⁷ Yet, unlike the strict form of NBNP in Australia, U.K. voices advocating for the consideration of incarcerated people's rights tempered the proposed NBNP legislation, with the parole board advocating for the stripped-back enactment of Helen's Law.⁸⁸

⁸³ Compare Press Release, Ministry of Just., *supra* note 16 (noting that England's law only creates a legal duty for the Parole Board to consider the suffering caused in cases where an offender does not assist in locating a victim's body), with Moffa et al., *supra* note 15, at 166–67 (noting that, under 193A(2), parole boards in Queensland cannot authorize an individual's parole application unless they believe that the incarcerated person satisfactorily cooperated with investigators in locating the body of the victim in the offense's investigation).

⁸⁴ See Press Release, Ministry of Just., *supra* note 16 (noting that the previous guidance for the parole board did not create a legal duty to consider the refusal to assist in locating remains but did make it clear that offenders withholding the location of a body could still pose a threat to the community and thus be denied parole); *The Parole System of England and Wales*, *supra* note 75 (explaining that the Parole Board is a judicial body that typically holds oral hearings where convicted offenders are present and often accompanied by legal counsel). The Parole Board itself has many part-time members, including psychologists, probation officers, and judges. *The Parole System of England and Wales*, *supra* note 75. The Board assesses whether the offender's risk to the community is adequately reduced based on the facts of an offender's case. *Id.*

⁸⁵ See Press Release, Ministry of Just., *supra* note 16 (stating that, like in the case of offenders in “no body” cases, the Parole Board would have a legal duty to consider the pain caused by pedophiles who refuse to disclose the identity of their victims when assessing them for release).

⁸⁶ Prisoners (Disclosure of Information About Victims) Act 2020, c. 19, § 3(1) (Eng. & Wales).

⁸⁷ Press Release, Ministry of Just., *supra* note 16 (“Helen's Law makes it absolutely clear that murderers and evil sexual offenders who refuse to disclose information about their victims should expect to face longer behind bars.”). The press release invoked the anguish that families feel in circumstances where convicted offenders purposefully refuse to disclose the location of a victim's remains and prevent the possibility of a proper burial. *Id.*

⁸⁸ See Claudia Tanner, *Helen's Law: 'No Body, No Parole' Rule Fought for by Murder Victims' Families 'Has No Teeth'*, I NEWS, <https://inews.co.uk/news/real-life/helens-law-murder-killer-parole-iam-simms-mccourt-carole-packman-386441> [<https://perma.cc/8X3A-L2Z7>] (Sept. 25, 2020, 4:38 PM) (noting that the law tried to strike a balance between the rights of offenders and community safety but emphasizing the Parole Board's view that a strict NBNP law could not be implemented without compromising human rights). The Parole Board's specific concerns related to human rights legislation that served to protect individuals against arbitrary detention. *Id.*; see also *The Parole System of England and Wales*, *supra* note 75 (explaining that because the decisions of the Parole Board directly impact an incarcerated person's access to liberty, it has to conform with Article 5 of the European Convention on Human Rights); cf. Cameron Casey, Note, *Cruel and Unusual: Why the Eighth Amendment Bans Charging Juveniles with Felony Murder*, 61 B.C.L. REV. 2965, 2991–92 (2020).

Many of the people who advocated for the passage of Helen's Law subsequently criticized the enacted version.⁸⁹ Neil Gillingham was one such person: he felt that the final version of Helen's Law prioritized the rights of convicted offenders over victims' families' rights and that convicted offenders who do not disclose the location of a victim's remains should not be allowed parole consideration in any situation.⁹⁰ In light of those feelings of dissatisfaction, their campaign for stricter NBNP laws, like those in Australia, may continue despite the government's concerns regarding the human rights of convicted offenders.⁹¹

C. NBNP in the United States: A New Frontier?

The government's decision of whether to grant an individual parole, as compared to a trial that may send a person to prison, is less transparent and systemic.⁹² Each state has its own system for parole, and these systems vary

(discussing how, in the context of juveniles and felony murder, the balance of human rights and retribution is important in ensuring physical detention is not arbitrary and disproportionate). The Human Rights Act of 1998 also brought about reforms to England and Wales's parole systems, including the requirement that the Board be independent, the necessity of procedural rights for incarcerated people, and the need for timely consideration of cases. *The Parole System of England and Wales*, *supra* note 75; see also *European Convention on Human Rights—Article 5*, FRA, <https://fra.europa.eu/en/law-reference/european-convention-human-rights-article-5> [<https://perma.cc/349N-GTZZ>] (noting that Article 5(4) states that those who are not at liberty due to arrest or imprisonment are entitled to proceedings evaluating the lawfulness of that detention).

⁸⁹ See Tanner, *supra* note 88 (stating that Neil Gillingham, one of the family members of a victim, felt that the bill was not what the government promised supporters).

⁹⁰ See *id.* (noting that Neil Gillingham felt the need to publicly criticize the effectiveness of the law after a parole officer privately warned him that his grandmother's killer would likely be released). The parole officer communicated that the risk of release was deemed low due to the offender's advanced age, even though authorities classed the offender as a threat to the victim's family. *Id.*

⁹¹ See *id.* (explaining how Neil Gillingham, a co-victim and supporter of Helen's Law, feels that the NBNP law in England and Wales was watered down and that victims and their loved ones deserve more rights in this process).

⁹² See Jorge Renaud, *Grading the Parole Release Systems of All 50 States*, PRISON POL'Y INITIATIVE (Feb. 26, 2019), https://www.prisonpolicy.org/reports/grading_parole.html [<https://perma.cc/6VKQ-DJUE>] (explaining that while the United States has various rules regulating the process from arrest until sentencing, releasing individuals from prison is comparatively ignored); DANIELLE KAEUBLE, U.S. DEP'T OF JUST., NCJ 303102, PROBATION AND PAROLE IN THE UNITED STATES, 2020, at 1 (2021), <https://bjs.ojp.gov/content/pub/pdf/ppus20.pdf> [<https://perma.cc/RV5K-8LR9>] (stating several statistics on parole and probation in the United States). In 2020, the population on parole grew in thirty states but decreased in nineteen, including Washington D.C. and the federal system's supervised release program. KAEUBLE, *supra*, at 1; see also Beth Schwartzapfel, The Marshall Project, *How Parole Boards Keep Prisoners in the Dark and Behind Bars*, WASH. POST (July 11, 2015, 9:44 PM), https://www.washingtonpost.com/national/the-power-and-politics-of-parole-boards/2015/07/10/49c1844e-1f71-11e5-84d5-eb37ee8ea61_story.html [<https://perma.cc/X6UG-EPXC>] (reporting that Reynaldo Rodriguez's parole file included a data-based scoring matrix which gives a suggestion on the length of time Rodriguez should serve and noting that nearly every decision across the criminal justice system makes use of tools like this). Nevertheless, parole boards frequently prioritize political considerations and instinct in their decision-making process in lieu of these tools. Schwartzapfel, *supra*. In the state of Michigan and in the case of Rodriguez, the Parole Board does not have to provide any

widely.⁹³ Many states abolished or limited discretionary parole and replaced it with mandatory parole, which automatically releases an individual from prison after a statutorily determined length of time, maintains supervision over the individual, and can result in a return to prison under certain circumstances.⁹⁴ The remaining states have a range of systems, from presumptive parole to other policies that limit an offender's possibility of earning release.⁹⁵

In February 2021, Utah became the only state in the United States to officially enact a NBNP law.⁹⁶ The impetus in passing the law was to bring closure to families in cases of "no body" murders, like that of Utah teen Kiplyn Davis.⁹⁷ Similar to the cases in Australia and England, the Davis family communicated their strong desire to give Kiplyn a proper burial place.⁹⁸ Utah state senator Michael McKell sponsored the legislation and explained his view that parole is a benefit received for good behavior, and that in this situation, the most important behavior that an incarcerated person could exhibit is assistance in giving these families closure.⁹⁹

In 2011, a court convicted Timothy Olsen of manslaughter, a reduced charge, in the death of Kiplyn Davis, and he was sentenced to a one-to-fifteen-

reason why they may decline to hear his case for parole. *Id.* Many parole boards possess nearly unlimited discretion on whether to grant parole and can use almost any basis, like personal instinct and hearsay. *Id.* Additionally, parole boards' decision-making processes often occur privately and are frequently not reviewable by courts. *Id.* Parole boards in twenty-four states do not need to disclose what information they relied on to decide an incarcerated person's application for parole, and courts have often upheld that standard because incarcerated people do not possess a due process right to parole. *Id.* The parole process also varies tremendously state by state: some parole boards may only look at a prisoner's files whereas others will look at files and conduct interviews—virtually or in person—and some parole boards may come together to discuss cases whereas others may take turns individually reviewing files until there are enough votes to grant or deny parole. *Id.*

⁹³ See Renaud, *supra* note 92 (noting that the differences between these parole systems make them very difficult to compare).

⁹⁴ See *id.* (explaining that, at the time of writing, sixteen states dispensed with discretionary parole, many of which instead opted for mandatory parole systems).

⁹⁵ See *id.* (noting that presumptive parole systems are those where parole is guaranteed once an incarcerated person meets specific conditions).

⁹⁶ See Mejia, *supra* note 16 (reporting that the law was signed by Spencer J. Cox, Governor of Utah).

⁹⁷ See *id.* (noting that Kiplyn disappeared in May 1995 when she was fifteen years old and that, while three individuals were eventually convicted of her death, her body was not found).

⁹⁸ See *id.* (explaining that, as evidenced by her father's testimony before lawmakers, a proper burial for Kiplyn is the main outcome her family is interested in).

⁹⁹ See *id.* (noting that Utah Senator McKell does not believe an incarcerated person in a "no body" case should be granted parole if they continue to hide a body's location from a victim's family, as he believes parole should only be granted after an incarcerated person exhibits good behavior); *Hearing on S.B. 124 Parole Amendments Before the S. Judiciary, L. Enf't, & Criminal Just. Comm.*, 2021 Gen. Sess., Jan. 29, 2021 (Utah 2021) (statement of Sen. Michael K. McKell), <https://le.utah.gov/av/committeeArchive.jsp?timelineID=174710> [<https://perma.cc/G4KT-LTXP>] (stating that, although he acknowledges that individuals can be reformed while in prison, the need for closure for families in these situations is critical).

year term in state prison.¹⁰⁰ Olsen's first parole hearing was March 9, 2021, and Kiplyn Davis's father shared that he would support Olsen's release if Olsen provided more information regarding the whereabouts of Kiplyn's body.¹⁰¹ Olsen did not provide any information in response to the Davis family's plea, nor did he have anything additional to add when the Parole Chairwoman reminded him of the new NBNP law in Utah.¹⁰² As a result of his reticence, the parole board decided that Olsen should remain in prison until the expiration of his sentence on February 10, 2026.¹⁰³

The NBNP law in Utah passed the legislature shortly before the last of Kiplyn Davis' offenders was up for parole consideration, and the legislation went into effect immediately.¹⁰⁴ At that point, the other co-offenders had already been released without providing any information on Kiplyn's body, and the family hoped the chance at parole would incentivize Olsen to assist authorities in good faith, which he had never done previously.¹⁰⁵ Utah's NBNP law does not require that a victim's body be recovered in order for an offender to be paroled, but the offender must be able to establish, through a preponderance of the evidence, that they assisted in good faith to locate a victim's remains.¹⁰⁶ Because withholding information can become a complete barrier to parole, Utah's NBNP law has more in common with Australian NBNP legislation than the U.K. legislation.¹⁰⁷

¹⁰⁰ See Pat Reavy, *Man Who Refuses to Say Where He Buried Kiplyn Davis Ordered to Serve Full Sentence*, DESERET NEWS (Mar. 22, 2021, 12:33 PM), <https://www.deseret.com/utah/2021/3/22/22344591/man-who-refuses-to-say-where-he-buried-kiplyn-davis-ordered-to-serve-full-sentence> [<https://perma.cc/3D8B-64CJ>] (noting that he spent his sentence for his participation in Kiplyn Davis's death at a Utah State Prison).

¹⁰¹ See *id.* (noting that his only priority was finding out where his daughter's remains were located).

¹⁰² See *id.* (noting that Utah's law would curtail his ability to be paroled without cooperating in good faith in recovering the victim's remains).

¹⁰³ See *id.* (noting that the Parole Board found that Mr. Olsens's reticence meant that he had not met the requirements outlined in the NBNP law as he had not acted in good faith to help locate Kiplyn's remains).

¹⁰⁴ See UTAH CODE ANN. § 77-27-9(2)(h) (West 2022) (noting that the NBNP law applies to an offender who was convicted of homicide after February 25, 2021, or an offender who was in a correctional facility for homicide on or after February 25, 2021); *Debate on S.B. 124 Parole Amendments Before the S.*, 2021 Gen. Sess., Day 21 (Utah 2021), <https://le.utah.gov/av/floorArchive.jsp?markerID=113663> [<https://perma.cc/Z7V6-PQY2>] (showing that Utah Representative McKell made a motion to change the effective date of the NBNP law to an immediate effective date); Mejia, *supra* note 16 (noting the Davis family's hope that the law will incentivize the only one of the offenders in Kiplyn's case still in prison, Timmy Brent Olsen, to lead authorities to the location of her body).

¹⁰⁵ See Mejia, *supra* note 16 (explaining that Olsen previously gave information that led authorities on a search that became a wild goose chase, with the authorities spending over a hundred thousand dollars attempting to locate Kiplyn Davis' remains).

¹⁰⁶ See § 77-27-9(2)(g) (noting that the parole board cannot parole an offender who was convicted of homicide without either the victim's remains having been recovered or without the offender showing, by a preponderance of the evidence, that he assisted in good faith to locate a victim's remains).

¹⁰⁷ Compare *id.* (stating that the Utah parole board may not allow an individual convicted of homicide to be paroled unless the victim's remains were recovered or unless the offender shows by a pre-

Whether NBNP laws will continue to spread in the United States remains to be seen, but the development of these laws in Australia, England, and Utah shows that the legislation often gains momentum through the campaigns of a victim's loved ones.¹⁰⁸ The United States has a larger estimated percentage of missing persons who end up deceased, and that prevalence compared to Australia and the United Kingdom could result in NBNP laws gaining popularity.¹⁰⁹

II. PROTECTING RIGHTS AND INTERESTS, THE ARGUMENTS FOR AND AGAINST NBNP LAWS

As outlined in Part I of this Note, several countries enacted NBNP legislation, often at the behest of homicide victims' loved ones, and consequently have affected incarcerated people's ability to access parole.¹¹⁰ In some cases, the enactment of these laws occurred without much opposing discussion.¹¹¹ Nevertheless, there were and are viewpoints that oppose NBNP legislation.¹¹²

ponderance of evidence that the offender cooperated in trying to locate a victim's remains), *with Moffa et al.*, *supra* note 15, at 166–67 (noting similarly that, unless an incarcerated person in Queensland has been found to have satisfactorily cooperated to locate the body of the victim in the offense's investigation, 193A(2) dictates that the parole board cannot grant the person's parole application).

¹⁰⁸ See Mejia, *supra* note 16 (explaining that the Davis family thinks NBNP will be a great tool to bring Kiplyn home); Press Release, Ministry of Just., *supra* note 16 (noting that the English reform could be attributed to the effort of Marie McCourt); Moffa et al., *supra* note 15, at 165–66 (noting that in the wake of Fiona Splitt's activism, Queensland's attorney general Yvette D'Ath believed NBNP legislation was the most effective way for homicide victims' loved ones to receive closure).

¹⁰⁹ See Ferguson & Pooley, *supra* note 38, at 384 (explaining that in 2018, Australia had around 2,600 missing persons who were designated “long-term,” but that Australia did not have a statistic indicating how many of those cases resulted in deceased, and potentially murdered, individuals). In comparison, a 1999 study from the United Kingdom indicated that merely 0.3% of those deemed missing persons turned up dead, with a subsection of that consisting of murder victims. *Id.* Studies of the United States from 2003 and 2007 reported higher numbers, estimating that 20% of long-term missing persons were homicide victims. *Id.*

¹¹⁰ See Mejia, *supra* note 16 (noting Utah's Governor Cox signed the NBNP law on February 25, 2021, and speaking to the hopes of the Davis family that the legislation would allow them to bring their daughter's remains home); Press Release, Ministry of Just., *supra* note 16 (noting that the English legislature passed Helen's Law in large part due to the campaigning of a “no body” crime victim's mother, Marie McCourt); Moffa et al., *supra* note 15, at 165–67 (attributing the legislation's increasing popularity in Queensland, Australia, to Fiona Splitt and restating the language of 193A(2) wherein an offender must cooperate satisfactorily to locate the body of the victim in the offense's investigation to be eligible for parole).

¹¹¹ See *Debate on S.B. 124 Parole Amendments Before the S.*, *supra* note 104 (finding no discussion on the NBNP bill on the senate floor); *Debate on S.B. 124 Parole Amendments Before the H.*, 2021 Gen. Sess., Day 36 (Utah 2021), <https://le.utah.gov/av/floorArchive.jsp?markerID=114726> [<https://perma.cc/55WR-GU39>] (finding no discussion of the NBNP bill on the house floor); Moffa et al., *supra* note 15, at 166 (noting that there was insufficient discussion on the possible impact of the NBNP law during the debate of its second reading in the Queensland Parliament).

¹¹² See *Debate on S.B. 124 Parole Amendments Before the H.*, *supra* note 111 (finding one vote in opposition to the NBNP regulation on the House floor); E-mail from Norman K. Thurston, Utah Representative, House District 62, to Tracy Walker (Feb. 6, 2023, 12:31 PM EST) (on file with author) (relaying that Representative Thurston voted against the NBNP law in Utah because he believed it

Part II of this Note looks at the policy reasons for and against NBNP laws.¹¹³ Section A of this Part explores three reasons that proponents of NBNP laws have for enacting these laws: the rights of victims, the desire to conserve police resources, and prioritizing the safety of the community.¹¹⁴ Section B evaluates two arguments against NBNP laws: the rights of suspects and convicted offenders, and the efficacy of NBNP laws.¹¹⁵

A. An Innovative Criminal Justice Tool?: Support for NBNP Laws

Advocates for NBNP laws believe that these laws represent a reasonable measure in those specific circumstances where someone has been convicted of a homicide without a body and has not assisted in revealing the whereabouts of the victim's remains.¹¹⁶ Three primary considerations come up in the rhetoric supporting NBNP laws: victims' rights, conservation of police resources, and the prioritization of community interests.¹¹⁷

would adversely affect the wrongfully convicted); Moffa et al., *supra* note 15, at 165 (noting that three legal societies in Queensland publicly submitted their concerns about the NBNP legislation's possible encroachment on the right not to self-incriminate, its retrospective application, and its potential harm to wrongfully convicted persons); HL Deb (20 May 2020) (803) cols. 1138–39 (UK) (reporting Lord Mackay of Clashfern's concerns regarding England's Prisoners (Disclosure of Information About Victims) Bill). Apart from those who maintain their innocence, Lord Mackay points to circumstances where a person may not know what happened to a body, like in the case of someone acting as an accessory. HL Deb (20 May 2020) (803) col. 1139 (UK). He acknowledges that a family's pain is the same even in situations where someone may not know what happened to a body and notes that just retribution is not always possible. *Id.* In Lord Mackay's opinion, an offender's refusal to disclose a body's location is relevant at sentencing, and he believes the Parole Board should have discretion in these situations rather than being bound by a duty to refuse to parole an offender. *Id.*

¹¹³ See *infra* notes 114–174 and accompanying text.

¹¹⁴ See *infra* notes 116–134 and accompanying text.

¹¹⁵ See *infra* notes 135–174 and accompanying text.

¹¹⁶ See *Debate on S.B. 124 Parole Amendments Before the S.*, *supra* note 104 (statement of Sen. Michael K. McKell) (showing the statement of the Utah NBNP bill's sponsor, Utah Senator McKell, that NBNP legislation is a reasonable way to encourage perpetrators who know of a body's location to meaningfully assist in the search for a victim's remains); Moffa et al., *supra* note 15, at 165 (explaining that, per Walter Sofronoff's report reviewing the Queensland Parole System, there seems to be an inconsistency with paroling a killer who is knowingly contributing to the ongoing grief of a victim's family and friends by not cooperating in recovering the victim's remains).

¹¹⁷ See *Hearing on S.B. 124 Parole Amendments Before the H. Judiciary Comm.*, 2021 Gen. Sess., Feb. 18, 2021 (Utah 2021) (statement of Sen. Michael K. McKell), <https://le.utah.gov/av/committeeArchive.jsp?timelineID=180435> [<https://perma.cc/6X6G-2C2Q>] (showing Utah Senator McKell's statements that an offender in Kiplyn Davis's case gave false information to police on the body's whereabouts which resulted in hundreds of thousands of dollars spent on fruitless searches). Utah Senator McKell believed that this law was reasonable encouragement to offenders to assist in locating victims' remains and gaining closure for victims' families. *Id.*; Moffa et al., *supra* note 15, at 165–66 (explaining that Walter Sofronoff based his recommendation to adopt NBNP legislation on community interests and pointing toward the Queensland Parliament's rationale that NBNP laws would provide closure to victims' loved ones and ensure that police resources are not wasted).

1. Victim's Rights

As evident by the campaigns for NBNP legislation across Australia, England, and the United States, the potential impact that these laws could bring to victims and their loved ones is a compelling reason to support NBNP laws.¹¹⁸ The consideration given to crime victims' interests within the criminal justice system and its policies is growing, and the enactment of NBNP legislation recognizes the specific trauma that a "no body" homicide victim's loved ones experience.¹¹⁹ The crux of the victim's rights argument in advocating for NBNP legislation is that the victim's loved ones deserve closure, that finding a victim's remains and laying them to rest will provide closure, and that convicted offenders should assist in locating a victim's remains because a convicted offender who does not do so has not adequately shown remorse for his or her actions.¹²⁰

In the case of Lynette Dawson in New South Wales, her family members speak to their desire to bring Lynette home and feel it is fair for Chris Dawson

¹¹⁸ See *Hearing on S.B. 124 Parole Amendments Before the H. Judiciary Comm.*, *supra* note 117 (statement of Sen. Michael K. McKell) (showing Utah Senator McKell's focus on the family of Kiplyn Davis and the NBNP bill as a tool for them to help in their grief); Press Release, Ministry of Just., *supra* note 16 (writing that the denial of families to bury their loved ones magnifies families' grief as well as expecting that the NBNP in England will assist families in getting closure and answers); Honorable Yvette D'Ath, Att'y Gen. & Minister for Just. & Minister for Training & Skills, Corrective Services (No Body, No Parole) Amendment Bill Introduction (May 23, 2017), <https://documents.parliament.qld.gov.au/bills/2017/2900/corrective-6b03.pdf> [<https://perma.cc/4H2W-BFPM>] (explaining from the Honorable Yvette D'Ath's introduction of the NBNP bill that the loss of a loved one via a criminal act is further exacerbated in situations where the remains have not been recovered and there are still unknown answers).

¹¹⁹ See *Hearing on S.B. 124 Parole Amendments Before the H. Judiciary Comm.*, *supra* note 117 (statement of Richard Davis) (noting how Richard Davis, Kiplyn Davis' father, spoke to the comfort and closure it would bring him if he could place his daughter's remains in his family's cemetery monument); Perrin, *supra* note 13, at 38 (transcribing an interview with Marie McCourt, Helen McCourt's mother, where Marie states that, even with the thought that her daughter's killer would die in prison, she still felt that she needed to find Helen's remains); Freiberg et al., *supra* note 16, at 211–12 (explaining the different ways in which victims' voices have been magnified in the criminal justice system, including statements by victims at the time of sentencing, victim representation or submissions at the parole board, and keeping victims abreast of when an offender will be eligible for parole next, among other policies). NBNP laws in Australian states, like Queensland, addressed the extended suffering of victims' families when they cannot bury victims' remains and were rationalized on a retributive basis of punishment. Freiberg et al., *supra* note 16, at 211–12.

¹²⁰ See Mejia, *supra* note 16 (quoting Utah's bill's sponsor, Utah Representative McKell, as saying parole is a reward for an incarcerated person's good behavior and that he believes the most important behavior that a convicted offender could exhibit is assisting in giving families closure); Moffa et al., *supra* note 15, at 165–66 (noting that Yvette D'Ath, Queensland's Minister for Justice and Attorney General, stated that the NBNP bill seeks to find victims' remains and to grant their families closure and holding that this bill enables the best path to gain closure for those loved ones). Public officials spoke to the fact that the community at large would be rightfully upset at the idea that a killer could happily be paroled while a victim's family remained emotionally tormented by the missing remains of the victim, suggesting an imbalance of fairness in that result. Moffa et al., *supra* note 15, at 165.

to either disclose the location of Lynette's remains or serve his full sentence as long as he refuses to cooperate.¹²¹ In promoting Lynette's case and the NBNP legislation, Lynette Dawson's family has been able to give many interviews and received vocal support from public figures, who also felt that NBNP legislation would result in a fair outcome in Lynette's case.¹²²

2. Conservation of Police Resources

In Australia and the United States, proponents of NBNP laws specifically spoke to the benefit that the legislation would have on saving police resources in their attempts to locate a victim's remains.¹²³ "No body" homicides present particular challenges to investigators: it can take time to realize that a victim is dead as opposed to simply missing, the coronial or murder investigation tends to begin later than it might have otherwise, and the lack of a body often results in scarce physical evidence.¹²⁴

A particular concern in "no body" cases that NBNP is meant to address is that a suspect or convicted offender will purposefully give authorities incorrect information about the whereabouts of a victim's remains.¹²⁵ The police will often investigate this information from an offender because of the possibility of finding remains, subsequently spending a significant amount of money without any result when that information turns out to be false.¹²⁶ The expectation is that suspects or convicted offenders in "no body" cases, when facing the reality that they will not be eligible for parole without good faith cooperation

¹²¹ See Life Uncut with Britt & Laura, *supra* note 14 (discussing "The Teacher's Pet" podcast with Renee Simms, Lynette Dawson's niece, and giving her a platform to advocate for NBNP laws in New South Wales due to her family's wish for closure in Lynette's case). The hosts perceived justice in a longer prison sentence for Chris Dawson should he choose not to disclose that information. *Id.*

¹²² See *id.* at 29:24–30:20; 27:03–28:15; 42:10–:50 (discussing the interviews that Lynette Dawson's family does to promote the petition for the NBNP bill in the state and telling Lynette Dawson's niece that they, the hosts, felt angry about the length of time it took to convict who they felt was the obviously guilty person in the case and that they believe everyone needs to begin supporting this legislation).

¹²³ See *Hearing on S.B. 124 Parole Amendments Before the S. Judiciary, L. Enf't, & Criminal Just. Comm.*, *supra* note 99 (statement of Jeff Buhman, Executive Director, Statewide Association of Prosecutors) (noting that a former Utah County Attorney, Jeff Buhman, felt chagrined that he did think to support legislation like this while in office because he felt it would contribute to saving police resources); Moffa et al., *supra* note 15, at 166 (explaining that this would prevent incarcerated people from wasting police resources by limiting the spread of incorrect or deceitful information in locating a victim's remains).

¹²⁴ See Moffa et al., *supra* note 15, at 166 (discussing the difficult nature of investigating "no body" cases due to issues of timeliness and paucity of physical evidence).

¹²⁵ See *id.* (stating the idea that NBNP laws will ensure suspects and incarcerated individuals refrain from wasting authorities' resources via misleading information on a body's location).

¹²⁶ See *Hearing on S.B. 124 Parole Amendments Before the H. Judiciary Comm.*, *supra* note 117 (relaying the story of one of the offenders in Kiplyn Davis' homicide in Utah, wherein there was evidence that the offender knew where the body was located and, when authorities tried to gain the cooperation of the offender, he purposefully misled authorities and wasted police resources).

in revealing a body's location, will decide to cooperate, and there is at least one instance in Australia where detectives attributed a suspect's cooperation to the state's NBNP law.¹²⁷

3. Prioritizing Community Interests

When speaking generally about NBNP legislation, NBNP law supporters will stress the importance of protecting the community's interests and safety.¹²⁸ A convicted offender of a "no body" homicide who does not reveal a body's location can be seen as lacking remorse, which consequently raises questions about whether the offender can be rehabilitated.¹²⁹ In some cases, critics of parole believe it is unnecessarily risky to the public because they believe parole presents offenders with opportunities to re-offend that would otherwise not be available to them.¹³⁰

Parole boards often prioritize community safety in parole decisions, and legislatures may prioritize the public's safety by targeting specific classes of offenders who are seen as particularly dangerous.¹³¹ Utah's legislature enacted its NBNP law in late February 2021 with an immediate effective date in part because Timothy Olsen, an offender in Kiplyn Davis' case, had his parole hearing set for early March 2021.¹³² The bill's sponsor felt that incarcerated individuals like Olsen, who refuse to assist authorities in locating a victim's remains and refuse to grant families closure, should not be rewarded for perpetu-

¹²⁷ See Chen, *supra* note 72 (noting that one of the police detectives attributed the suspect's assistance in locating the victim's remains to the reminder given to him of Queensland's recently passed NBNP legislation, subsequently allowing authorities to locate the victim's remains in dense bushland).

¹²⁸ See Moffa et al., *supra* note 15, at 165 (pointing toward the review of Queensland's parole system as necessary to review whether its measures adequately addressed the safety of the community and noting that community values, in being indignant at the release of a killer on parole while a victim's family continues to suffer, justifies introducing NBNP legislation in the state); Press Release, Ministry of Just., *supra* note 16 (stating in a press release that the NBNP law introduced in England balances concerns regarding arbitrary detention with the need to ensure the public's safety).

¹²⁹ See Freiberg et al., *supra* note 16, at 213 (acknowledging that an offender who fails to reveal a body's location can lead to questions about his or her ability to exhibit remorse and successfully go through the rehabilitative process).

¹³⁰ See *id.* at 194 (explaining the belief that the risk of an offender committing a crime while on parole is needlessly risky when compared to the alternative of keeping an offender in custody for his or her entire sentence).

¹³¹ See *id.* at 195–96 (pointing to a theme in Australian parole policies that elevate the community's safety against other factors while deciding whether to parole an offender). A form of prioritizing the community's safety can be seen in policy initiatives focusing on offenders believed to be especially dangerous to the public, like those convicted of violent or sexual crimes. *Id.*

¹³² See Mejia, *supra* note 16 (reporting that Utah's NBNP law would be immediately effective as of late February in relation to Timothy Olsen's parole hearing in early March).

ating that harm.¹³³ Despite the fact that a specific family's plight was heavily featured in the adoption of Utah's NBNP law, the belief is that the legislation will help the community at large as a tool to assist other families and keep those offenders who do not exhibit good behavior behind bars.¹³⁴

*B. Promising Too Much at the Expense of Fundamental Rights?:
The Arguments Against NBNP Laws*

Although NBNP laws aim to protect the rights of victims and their loved ones, criticisms often focus on how NBNP laws conflict with the rights of suspects and convicted offenders.¹³⁵ Furthermore, critics challenge the efficacy of NBNP laws and voice the concern that proponents of NBNP laws hold out promises and hopes that the laws may be unable to ultimately deliver.¹³⁶

1. NBNP Laws & the Rights They Implicate

Critics of NBNP laws raise several concerns regarding the rights of suspects and offenders, as seen in political and academic discussion of the laws in Australia, England, and the United States.¹³⁷ To varying degrees, the laws could affect the right to remain silent, the protection against double jeopardy, the wrongfully convicted, the protection against arbitrary detention, and could also raise concerns regarding retroactive application.¹³⁸

¹³³ See *id.* (relaying Utah Senator McKell's belief that parole is a reward that recognizes an incarcerated person's good behavior and that keeping information on a victim's remains from their loved ones directly contradicts that standard).

¹³⁴ See *id.* (quoting Richard Davis's belief that the NBNP law will be an effective tool to assist other families and reporting Utah Senator McKell's belief that offenders like Timothy Olsen do not exhibit the good behavior that parole should reward).

¹³⁵ See Moffa et al., *supra* note 15, at 165–66 (noting that several legal societies in Queensland opposed the NBNP legislation because of concerns regarding wrongful convictions, retrospective application, and the right against self-incrimination). Additionally, the article criticized the lack of debate amongst legislatures in Queensland's Parliament on the potential impact of the NBNP legislation on offenders. *Id.*

¹³⁶ See *id.* at 164 (raising the concern that NBNP laws may be unlikely or unable to provide the closure that these laws appear to promise and that false hope may have the effect of prolonging the trauma of a victim's loved ones).

¹³⁷ See *id.* at 165–66 (noting the concerns regarding the rights of suspects and convicted offenders from several legal societies in Queensland that opposed the NBNP legislation). Although legal societies criticized NBNP, some scholars felt there was a lack of substantive debate amongst legislators in Queensland's Parliament on the potential impact of the NBNP legislation on offenders. *Id.* There appeared to more discussion on the topic in England. See Press Release, Ministry of Just., *supra* note 16 (stating in a press release for England's NBNP laws that human rights laws protect people from arbitrary detention and that the NBNP law balances that factor with community safety); HC Deb (5 June 2018) (642) col. 154 (UK) (speaking to wrongful convictions in the legislative debate of the NBNP law in England).

¹³⁸ See Moffa et al., *supra* note 15, at 165–66 (noting that the only public commentary on the Queensland NBNP law came from legal societies who felt concerned about the effects NBNP may have on suspects and convicted offenders in the criminal justice process); Freiberg et al., *supra* note

a. Privilege Against Self-Incrimination (The Right to Remain Silent)

In the lead-up to his trial, Chris Dawson worried that his right to a presumption of innocence and his right to remain silent were at risk due to the popularity of “The Teacher’s Pet” podcast.¹³⁹ The right against self-incrimination remains after conviction, whether someone is factually innocent or not, and NBNP laws could be seen as an infringement on that right.¹⁴⁰ Many NBNP laws in Australia, as well as the one enacted in Utah, will bar parole entirely if an impacted offender does not provide adequate assistance.¹⁴¹

Although NBNP laws do not technically force offenders to reveal this information, they may wrongfully imprison someone who refrains from speaking

16, at 213 (pointing to the idea that withholding parole as a coercive instrument after an offender’s sentencing could constitute double jeopardy). *But see* Press Release, Ministry of Just., *supra* note 16 (stating in a press release for England’s NBNP laws that human rights laws protect people from arbitrary detention and that the law balances that factor with community safety). Additionally, scholars noted the lack of debate amongst legislatures in Queensland’s Parliament on the potential impact of the NBNP legislation on offenders, especially regarding wrongful convictions. Moffa et al., *supra* note 15, at 165–66. *But see* Mejia, *supra* note 16 (stating that Utah’s NBNP legislation would not impact cases of wrongful convictions); HC Deb (5 June 2018) (642) col. 154 (UK) (speaking to wrongful convictions in the legislative debate of the NBNP law in England).

¹³⁹ See RULE OF L. EDUC. CTR., *supra* note 1, at 5 (noting that the International Covenant on Civil and Political Rights, or the ICCPR, protects both of those rights in Article 14); *see also*, 999 U.N.T.S. 176–77, <https://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf> [<https://perma.cc/YRB4-9GGT>] (delineating the right to presumption of innocence in Article 14(2) and the right against self-incrimination in Article 14(3)(g)).

¹⁴⁰ See *The Quicky*, *supra* note 15 (explaining that a case where someone is factually innocent would mean someone could not help in recovering a body and that the right to remain silent is an especially important protection); AUSTRALIAN L. REFORM COMM’N, TRADITIONAL RIGHTS AND FREEDOMS—ENCROACHMENT BY COMMONWEALTH LAWS (INTERIM REPORT) 339–40 (2015), https://www.alrc.gov.au/wp-content/uploads/2019/08/alrc_127_interim_report.pdf [<https://perma.cc/B4AX-7JNU>] (stating that the privilege against self-incrimination is a common law right in Australia that protects a person from answering a question or producing a document that may open up the person to conviction of a crime). It is seen as one subset of the right to remain silent. AUSTRALIAN L. REFORM COMM’N, *supra*, at 340; *see also* Mark Berger, *Rethinking Self-Incrimination in Great Britain*, 61 DENV. L. REV. 507, 507–08 (1984) (explaining that both the United States and Great Britain have rules allowing witnesses to not answer questions that are self-incriminatory, allowing defendants to not testify at their trials, and providing protection for suspects in custody under the concepts of privilege against self-incrimination and right to silence). Despite their common roots, the United States’ Fifth Amendment constitutionalizes these protections, limiting changing its scope to decisions of the Supreme Court or a constitutional amendment, whereas the privilege in Great Britain derives from the common law and is, at least theoretically, more easily changed. Berger, *supra*, at 507–08.

¹⁴¹ See UTAH CODE ANN. § 77-27-9(2)(g) (West 2022) (stating that the parole board cannot parole an offender who was convicted of homicide without either the victim’s recovered remains or without the offender showing, by a preponderance of the evidence, that he assisted in good faith to locate a victim’s remains); Moffa et al., *supra* note 15, at 166–67 (pointing out that, unless an incarcerated person in Queensland has been found to have satisfactorily cooperated to locate the body of the victim during the investigation, the parole board cannot grant the person’s parole application per 193A(2)).

or who is not deemed credible.¹⁴² In many cases, remaining silent is key to an accused person's defense, and NBNP laws could be seen as unduly coercing suspects or offenders to compromise that right if it is the only way they might gain freedom from incarceration down the line.¹⁴³

b. Protection Against Double Jeopardy

NBNP laws can retroactively change an impacted offender's parole eligibility because, in some cases, they must first convince a parole board that they satisfied the law's expectations in sufficiently aiding the recovery of a victim's remains.¹⁴⁴ The retrospective application could have a punitive effect, like determined in the 2014 Canadian Supreme Court case of *Canada (Attorney General) v. Whaling*.¹⁴⁵

Denying someone parole based on a retrospective change, and doing so to incentivize cooperation, could be viewed as an example of double jeopardy.¹⁴⁶ Punishment after-the-fact is a form of double jeopardy because an offender has already been found guilty and received a sentence tailored to the facts of his or her case.¹⁴⁷ For people convicted of a "no body" homicide where a judge gave a life sentence with twenty-five years of a non-eligible parole period, NBNP laws can effectively turn their punishment into life imprisonment without parole—meaning they could face additional punishment for the same crime.¹⁴⁸

The NBNP law currently in place in England somewhat limits the risk of additional punishment because it does not bar parole entirely but rather requires that the parole board considers an offender's noncommunication on a

¹⁴² See The Quicky, *supra* note 15 (noting the pressure that NBNP places on offenders to speak). Even after an individual is convicted, that person has the right to remain silent. *Id.* Significantly, someone who is wrongfully convicted would not be able to speak to that information, and their right to remain silent should remain intact. *Id.*

¹⁴³ See Freiberg et al., *supra* note 16, at 213 (noting that if accused individuals are forced to reveal the location of a victim's remains, it could be seen as treating the accused's manner of conducting his defense, like remaining silent, as aggravating factors). In the case of an individual who was sentenced to life and a non-parole period, a NBNP law that prohibits parole without cooperation could supersede a judge's decision at sentencing and keep an individual incarcerated for life. *Id.*

¹⁴⁴ See Mejia, *supra* note 16 (noting that Utah's NBNP law was passed and then immediately applicable to Timmy Brent Olsen's parole hearing the next month).

¹⁴⁵ See Moffa et al., *supra* note 15, at 174 (explaining that the Canadian Supreme Court held that retrospectively changing eligibility for parole constituted a retrospective form of punishment). See generally *Canada (Att'y Gen.) v. Whaling*, [2014] 1 S.C.R. 392 (Can.).

¹⁴⁶ See Freiberg et al., *supra* note 16, at 213 (explaining that NBNP can be seen as a post-sentence tool that is coercive to offenders and thus effectively becomes a form of post-facto punishment, which is an example of double jeopardy).

¹⁴⁷ See *id.* (noting that unless post-sentence behavior is an important factor relating to whether an offender would pose a risk if released back into society, it should not be taken into account when assessing parole eligibility).

¹⁴⁸ See *id.* (revealing how NBNP laws could undermine the sentencing judge's decision in the case with the possible extension of an offender's sentence).

body's whereabouts and why, in the view of the parole board, the offender is not communicating that information.¹⁴⁹ Nevertheless, critics of NBNP laws view them as a form of double jeopardy because of their potential to inflict additional punishment after sentencing, which could conflict with the rights of offenders in all of the discussed countries.¹⁵⁰

c. *The Wrongfully Convicted*

A large concern that comes up with NBNP laws is the effect that these laws could have on the wrongfully convicted.¹⁵¹ In Australia, "no body" cases are considered fairly rare, and in many cases, critics of NBNP legislation denounce the fact that legislatures often pass these laws quickly and without comprehensive debate addressing concerns, like the impact on wrongful convictions.¹⁵² In Queensland's Parliament, one member dismissed concerns regarding how NBNP laws might impact the wrongfully convicted as low risk.¹⁵³

¹⁴⁹ See Prisoners (Disclosure of Information About Victims) Act 2020, c. 19, § 1 (Eng. & Wales) (stating that the Parole Board must consider these non-disclosures regarding a body's location when making a parole decision for an impacted offender).

¹⁵⁰ See U.S. CONST. amend. V (stating in the United States' Double Jeopardy clause that no one's life can be put in jeopardy twice for the same crime); *Retrial of Serious Offences: Legal Guidance*, CROWN PROSECUTION SERV., <https://www.cps.gov.uk/legal-guidance/retrial-serious-offences> [<https://perma.cc/66MK-CMLD>] (explaining that although the law in England previously would not allow an individual acquitted or convicted of a crime to be retried for the same crime, the new reforms permit retrials only in some highly serious offences and when there is a discovery of fresh and compelling evidence in the case); Freiberg et al., *supra* note 16, at 213 (noting that NBNP can be seen as a post-sentence instrument coercing offenders to reveal information and that the failure to do so and subsequent bar from parole effectively becomes a form of post-facto punishment); Elizabeth Byrne, *Why Australia 'Watered Down' Its Double Jeopardy Laws*, ABC NEWS, <https://www.abc.net.au/news/2016-05-07/why-australia-watered-down-double-jeopardy-laws/7392372> [<https://perma.cc/3FKM-EHJC>] (May 6, 2016, 10:29 PM) (explaining that public pressure resulting from a murder case and the inability to re-try the suspect after uncovering new evidence resulted in the Council of Australian Governments taking measures to change the double jeopardy principle in 2007, with only Victoria and the Australian Capital Territory refusing to sign). In 2016, the Australian Capital Territory also made exceptions regarding the double jeopardy principle, which would allow a re-trial for a crime that would incur life imprisonment if there were new and compelling evidence. Byrne, *supra*.

¹⁵¹ See Moffa et al., *supra* note 15, at 165–66 (stating that three different legal societies in Queensland, including the Council of Civil Liberties, opposed a NBNP law because of the possible impact on those wrongfully convicted of murder).

¹⁵² See *id.* at 164 (noting that the NBNP laws were passed quickly and did not provide time for thorough debates, consultation, or analysis of the possible effectiveness of these policies). Fiona Splitt's online petition called for NBNP in October 2015 and came to Parliament in February 2016. *Id.* at 165. Also in 2016, there was an official report to review Queensland's parole system that recommended NBNP legislation, and the government pledged to introduce the law. *Id.* Eventually, the legislature passed and enacted Queensland's NBNP law in August 2017. *Id.* at 166. The second reading of NBNP did not feature significant debate on how NBNP might affect offenders. *Id.*

¹⁵³ See *id.* at 166. (pointing to one member of Queensland's Parliament dismissing the risk of NBNP laws on the wrongfully convicted as not high risk); see also Queensland, *Parliamentary Debates*, Legislative Assembly, 9 Aug. 2017, 2105 (Jon Krause, Member of Parliament) (Austl.) https://documents.parliament.qld.gov.au/events/han/2017/2017_08_09_WEEKLY.PDF [<https://perma.cc/>

In a committee hearing on Utah's NBNP law, the bill's sponsor noted in his presentation that he amended the bill to focus on offenders who actually know where the remains are and thus protect offenders in instances where someone is mentally ill, does not know where the remains are, or the like.¹⁵⁴ A news report on the Utah law similarly commented that it would not impact individuals arguing wrongful conviction but did not further elaborate on how the law would do that.¹⁵⁵ In the text of the Utah statute, there are no explicit exceptions made for those cases where a convicted offender is arguing that they were wrongfully convicted.¹⁵⁶ In passing the Utah NBNP law, there was no discussion in opposition in either committee meeting and there was no discussion in opposition on the floor of the House or Senate.¹⁵⁷ In Utah's House, however, there was one vote in opposition from Representative Thurston, who voted no because he felt the legislation "creates perverse incentives" in cases where an individual is factually innocent.¹⁵⁸

d. Arbitrary Detention

Campaigners for England's NBNP law argued that the final law did not reflect the measures that many supporters originally advocated for, including denying parole to convicted murderers who refuse to reveal the location of a victim's body, sentencing such murderers to serve full life sentences, and automatically applying additional common-law offenses in "no body" cases.¹⁵⁹ In

B89D-RVBX] (stating that he believed that, at three percent, the risk of wrongful convictions across all convictions is low, so the number in regard to unlawful killings would be even smaller). The risk, seen as low by Krause, on balance favored the benefit of giving families closure. *Id.*

¹⁵⁴ See *Hearing on S.B. 124 Parole Amendments Before the S. Judiciary, L. Enf't, & Criminal Just. Comm.*, *supra* note 99 (explaining that the law would focus on offenders who can actually assist in the search for a victim's remains and would protect people who could not do so for a variety of reasons).

¹⁵⁵ See Mejia, *supra* note 16 (reporting that the new Utah NBNP law will not require that bodies be found and would also not impact cases where an offender was arguing a wrongful conviction had occurred).

¹⁵⁶ See UTAH CODE ANN. § 77-27-9(2)(g), (h) (West 2022) (featuring no references to those arguing that they were wrongfully convicted).

¹⁵⁷ See *Debate on S.B. 124 Parole Amendments Before the H.*, *supra* note 111 (revealing only one opposing opinion on the legislation on the House floor but no discussion); *Debate on S.B. 124 Parole Amendments Before the S.*, *supra* note 104 (revealing no opposing opinions on the legislation on the Senate floor); *Hearing on S.B. 124 Parole Amendments Before the H. Judiciary Comm.*, *supra* note 117 (revealing no opposing opinions on the legislation front of the House Judiciary Committee); *Hearing on S.B. 124 Parole Amendments Before the S. Judiciary, L. Enf't, & Criminal Just. Comm.*, *supra* note 99 (revealing no opposing opinions on the legislation in front of the Senate Judiciary, Law Enforcement, and Criminal Justice Committee).

¹⁵⁸ See E-mail from Norman K. Thurston, *supra* note 112 (relaying Representative Thurston's reason for voting no on S.B. 124); *Debate on S.B. 124 Parole Amendments Before the H.*, *supra* note 111 (noting one vote against the NBNP bill by Representative Thurston).

¹⁵⁹ See *Introduce 'Helen's Law': Where Hiding a Body, Preventing a Burial and Obstructing a Coroner Become Criminal Offences—with 'Whole Life' Tariffs*, *supra* note 15 (stating that Marie

response to that criticism, the parole board stated that arbitrary detention is protected against by human rights legislation, and so the board felt a need to balance that with the safety of the community.¹⁶⁰

2. Concerns About the Efficacy of NBNP Laws

Arguments against NBNP legislation often question whether its goals are even feasible, and opponents also take issue with the lack of critical debate regarding the effects of the legislation on those it purports to help as well as those that NBNP would keep imprisoned.¹⁶¹

Closure is an inherently complex concept, and critics of NBNP ask whether it can ever truly be achieved, and acknowledge that even if it can, it may vary widely person to person.¹⁶² NBNP laws promise closure to a victim's loved ones, but in many instances the argument is that they promise more than they deliver.¹⁶³ Utah's legislature enacted the NBNP law in time for the parole hearing of Timothy Olsen, who was convicted of manslaughter in the case of Kiplyn Davis.¹⁶⁴ The law did not result in Olsen revealing any information, however, and he is set to be released at the expiration of his sentence in February 2026.¹⁶⁵ In cases like that, some believe that NBNP laws thus offer false hope, which continue to prolong the grief of a victim's loved ones.¹⁶⁶

Furthermore, opponents of NBNP point out that the promulgation of NBNP laws by politicians can occasionally serve political ends at the cost of a victim's loved ones.¹⁶⁷ Timothy Pullen's parents, for example, felt deceived

McCourt's e-petition has over 700,000 signatures at the time of writing). Additional common-law offenses that supporters wanted to apply in these cases included: preventing the burial of a corpse, disposing of a corpse, and obstructing a coroner. *Id.*

¹⁶⁰ See Tanner, *supra* note 88 (noting that the law tried to strike a balance between the rights of offenders in regard to human rights legislation and public safety).

¹⁶¹ See Moffa et al., *supra* note 15, at 164 (pointing out that there is no agreement on what closure is or if it exists); *id.* at 166 (noting that the discussion in Queensland's Parliament did not properly address the potential issues with human rights); *id.* at 173 (stating that homicide cases with missing bodies always carry a risk that the body will never be found and that NBNP debates do not acknowledge how that may impact a victim's loved ones).

¹⁶² See *id.* at 164 (pointing out that there is no agreement on what closure means).

¹⁶³ See *id.* (noting that many victims' loved ones do not get closure and there are risks associated with holding closure out as attainable in these circumstances, like psychological harm and prolonged grief).

¹⁶⁴ See Mejia, *supra* note 16 (reporting that the law's effective date was passed in time to apply at Olsen's parole hearing).

¹⁶⁵ See Reavy, *supra* note 100 (noting that Olsen refused to even recount the events of that day and that he would be released at the expiration of his sentence).

¹⁶⁶ See Moffa et al., *supra* note 15, at 164 (noting that many victims' loved ones do not get closure and pointing out the additional trauma that might result when legislators, or others, maintain that closure is attainable in these cases).

¹⁶⁷ See *id.* (arguing that the promise of closure has been used by politicians for political advantage without considering the consequences for a victim's loved ones).

when Queensland's government used them to promote NBNP legislation without informing them that the parole board approved parole for the offender in their son's case days earlier.¹⁶⁸

Although proponents of NBNP argue that it will help save police resources, critics argue that the primary policy behind NBNP does not necessarily result in the conservation of those resources.¹⁶⁹ Locating a victim's remains is the goal of NBNP, so late cooperation with the police is still acceptable.¹⁷⁰ As such, there is still a risk that the incentive of parole will mean offenders continue to provide unreliable or false information that can waste police time and result in expensive searches.¹⁷¹

Given that these laws can block parole in cases like Timothy Olsen, whose sentence is set to expire relatively soon, critics argue against NBNP because they believe that parole is an effective tool in facilitating an offender's re-entry into the community.¹⁷² Parole is often a favorable option because it is a form of supervised release, and studies have shown that offenders are less

¹⁶⁸ See *id.* at 173 (relaying that the loved ones of a victim felt as if the government used them as pawns to popularize NBNP). Several people violently assaulted Timothy Pullen in 2012, possibly in relation to drug debts and a bounty placed on him by a gang. *Id.* at 169. Zane Lincoln orchestrated Pullen's presence on the night of Pullen's murder, and Lincoln himself was present during the incident. *Id.* Lincoln forced Pullen, who was alive, into a vehicle that Stephen Renwick drove. *Id.* Renwick and another individual then disposed of Pullen's remains in bushland. *Id.* Rather than accompany Renwick, Lincoln and another individual had returned to where they were living in another vehicle. *Id.* The Parole Board found that neither Lincoln nor Renwick had satisfactorily cooperated under the NBNP law, but Renwick was eventually released in May 2021 after serving his entire sentence. *Id.* at 170. Upon his release, Timothy Pullen's mother stated that the lack of information regarding Timothy's body from Renwick felt like Renwick was intentionally prolonging their family's torment. *Id.* Benjamin Oakley, another co-accused in Timothy Pullen's case, had his parole provisionally approved before the NBNP law in Queensland passed, and Timothy Pullen's parents felt upset that the government used them to promote NBNP without informing them of Oakley's parole decision. *Id.* at 173.

¹⁶⁹ See *id.* at 173 (noting that the method in which NBNP plays out is not in entirely in line with the idea that the policy saves police resources).

¹⁷⁰ See *id.* (explaining that because authorities want to find a victim's body, they will accept late cooperation in these cases).

¹⁷¹ See *id.* (pointing out that because information may be accepted at any time to satisfy NBNP laws, misleading information is still a risk). In the case of Timothy Pullen, one of the convicted offenders, Stephen Renwick, was out on bail before his sentencing to assist police in locating Timothy Pullen's remains but the search yielded no results. *Id.* at 170. After the legislature enacted NBNP, Renwick informed authorities that the body was cremated, which he had never previously disclosed. *Id.* Another search was unsuccessful, and it was not clear whether Renwick had withheld that information during the initial search or lied about the body's cremation in the subsequent search, perhaps in a bid to cooperate with the NBNP law. *Id.*

¹⁷² See Reavy, *supra* note 100 (noting that Olsen would not even recount the events of the day that Kiplyn disappeared and that he would re-enter society at the expiration of his sentence); Freiberg et al., *supra* note 16, at 191 (explaining that research shows that parole is an effective tool for helping formerly incarcerated people re-enter society).

likely to re-offend when they are released via parole rather than at the expiration of their sentence.¹⁷³

NBNP proponents feel that the legislation is a reasonable and effective tool, but those who criticize NBNP are concerned about the rights of suspects and offenders and question whether NBNP can carry out its goals.¹⁷⁴

III. DISCOURAGING THE IMPLEMENTATION OF NBNP LAWS

NBNP laws represent a recent legislative movement, beginning in Australia in the mid-2010s and subsequently spreading to England and the United States.¹⁷⁵ Due to their recent enactment as well as the relatively rare number of cases these laws apply to, it is questionable whether NBNP laws clearly meet their stated goals.¹⁷⁶ As shown in Part II of this Note, there are passionate arguments for and against this legislation.¹⁷⁷

Although the arguments for NBNP are emotionally appealing, this Note concludes that NBNP measures are unnecessary, likely ineffective, and that their potentially adverse effects on offenders should preclude their spread in the Unit-

¹⁷³ See Evann J. Ooi & Joanna Wang, NSW Bureau of Crime Stat. & Rsch., *The Effect of Parole Supervision on Recidivism*, 245 CRIME & JUST. BULL., Feb. 2022, at 1, 1, <https://www.bocsar.nsw.gov.au/Publications/CJB/2022-Report-Effect-of-parole-supervision-on-recidivism-CJB245.pdf> [https://perma.cc/NBH3-RCFR] (concluding that parole does reduce the likelihood that an ex-prisoner re-offends and that the recidivism reduction continued for twenty-four months after an individual's release from incarceration); Freiberg et al., *supra* note 16, at 191–92 (noting that similar offenders released without oversight are more likely to reoffend when compared to parolees).

¹⁷⁴ See Moffa et al., *supra* note 15, at 164, 166 (noting that NBNP laws were passed without considering their effectiveness or the potential consequences on victims' loved ones or offenders); *Hearing on S.B. 124 Parole Amendments Before the H. Judiciary Comm.*, *supra* note 117 (stating that the NBNP legislation is a reasonable instrument in achieving closure for families).

¹⁷⁵ See Mejia, *supra* note 16 (noting that Utah's NBNP law went into effect on February 25, 2021); Press Release, Ministry of Just., *supra* note 16 (attributing the passage of NBNP legislation in England to Marie McCourt and other campaigners); Freiberg et al., *supra* note 16, at 212 (stating NBNP laws were first introduced in Australia in 2015).

¹⁷⁶ See Moffa et al., *supra* note 15, at 163–64 (explaining that the article looked to analyze the success of NBNP in Queensland due to the comparatively higher number of “no body” cases that exist there as well as the fact that its NBNP laws are publicly shared). The article notes overall that homicides without a body are relatively rare. *Id.*

¹⁷⁷ See *supra* notes 110–174; *Hearing on S.B. 124 Parole Amendments Before the H. Judiciary Comm.*, *supra* note 117 (statement of Sen. Michael K. McKell) (showing Utah Senator McKell's statements that NBNP legislation was reasonable encouragement for offenders to assist in locating victims' remains, would allow for conservation of police resources, and would assist in gaining closure for victims' families); Moffa et al., *supra* note 15, at 165–66 (explaining that Walter Sofronoff based his recommendation to adopt NBNP legislation on community interests and pointing toward the Queensland Parliament's rationale that NBNP laws would provide closure to victims' loved ones and ensure that police resources are not wasted). *But see* Moffa et al., *supra* note 15, at 164 (speaking to the concern that NBNP laws may be unlikely or unable to provide the closure that these laws appear to promise and that false hope may have the effect of prolonging the trauma of a victim's loved ones). Additionally, there is concern that these laws do not fully address the impacts they may have on offenders. *Id.* at 166.

ed States.¹⁷⁸ Section A of this Part suggests that there are alternative measures that can more effectively consider and address the rights of victims and their loved ones.¹⁷⁹ Section B argues that NBNP laws likely cannot achieve their outlined goals.¹⁸⁰ Finally, Section C contends that the risk to offenders' rights and the risk to the wrongfully convicted are too high to promote NBNP legislation.¹⁸¹

A. The Argument for Allowing for Flexibility

In Australia and the United States, most NBNP laws would have the effect of barring parole entirely to offenders who do not comply.¹⁸² The effect of that legislation is that it can undermine the authority of both the sentencing judge and the parole board.¹⁸³ A system in which victims and co-victims can present testimony at sentencings and parole hearings gives that group an important opportunity to attest to the effects of the crime on their lives.¹⁸⁴ Nevertheless, that system should still leave the judge and the parole board discretion to tailor their decisions to the case at hand as opposed to mandating a specific result.¹⁸⁵

Judges and parole boards possess the authority to decide how long to sentence an individual to incarceration or when an individual appears ready for supervised release, and the facts of cases vary so widely that it makes sense to provide them that discretion.¹⁸⁶ When there are campaigns for NBNP legislation, they often arise in conjunction with very emotionally compelling “no body” cases, where the result of the case may seem obvious to the public at

¹⁷⁸ See *infra* notes 179–209 and accompanying text.

¹⁷⁹ See *infra* notes 182–193 and accompanying text.

¹⁸⁰ See *infra* notes 194–202 and accompanying text.

¹⁸¹ See *infra* notes 203–209 and accompanying text.

¹⁸² See UTAH CODE ANN. § 77-27-9(2)(g) (West 2022) (stating that the Utah parole board may not allow an individual convicted of homicide to be paroled unless the victim's remains were recovered or unless the offender shows by a preponderance of evidence that the offender cooperated in trying to locate a victim's remains); Moffa et al., *supra* note 15, at 166–67 (noting that, unless an incarcerated person in Queensland has been found to have satisfactorily cooperated in locating the body of the victim, the parole board cannot grant the person's parole application per 193A(2)).

¹⁸³ See Freiberg et al., *supra* note 16, at 213 (arguing that an incarcerated person's prison term should be set by the judge at sentencing and that parole decisions should also respect the sentencing decision of the court).

¹⁸⁴ See *id.* at 211 (explaining that all Australian jurisdictions allow for victim impact statements to be given to the court at sentencing, and the presence of victim representation at parole boards is common).

¹⁸⁵ See *id.* at 213 (detailing how NBNP laws counter the way that sentencing laws work in Australia, undermining the decision of the sentencing judge). The article states that judges should have discretion to set the length of a prison sentence as well as the parole period. *Id.*

¹⁸⁶ See *id.* (pointing out that an offender's assistance to authorities, or lack thereof, is traditionally a big factor in sentencing). Generally, decisions by the parole board should respect the court's decisions in sentencing, taking into consideration post-sentence conduct in relation to possible risks posed by an incarcerated person if released. *Id.*

large.¹⁸⁷ In the context of cases where an offender seems obviously guilty, a NBNP law seems fair and reasonable.¹⁸⁸ Nevertheless, cases are not tried in the court of public opinion, and it is unwise to let those instances apply to a whole subset of cases.¹⁸⁹

Furthermore, using parole as a coercive measure could impose additional punishment after a judge already sentenced an offender for the same crime.¹⁹⁰ Instead of this post-facto punishment, it would be clearer and fairer to offenders to account for additional years of punishment at the sentencing itself, a time when a judge is aware of the victim's missing remains and a defendant's unwillingness to assist in the body's recovery.¹⁹¹ A NBNP law like England's, which makes it mandatory for the parole board to consider an offender's unwillingness to assist and possible motive, is not as prohibitive but is likely still redundant.¹⁹² A system in which victims and their loved ones can provide testimony at sentencing and parole hearings will ensure that a parole board considers an offender's lack of cooperation.¹⁹³

B. Flying Too Close to the Sun

In promoting NBNP legislation, families and friends often speak to the fact that being able to properly lay their loved one to rest would provide them with closure.¹⁹⁴ It is an admirable goal that many politicians do their best to assist

¹⁸⁷ See Life Uncut with Britt & Laura, *supra* note 14 (discussing the publicity surrounding Lynette Dawson's case after "The Teacher's Pet" podcast, explaining the hosts' view that it seemed obvious to the public that Chris Dawson killed his wife, and advocating strongly for NBNP legislation).

¹⁸⁸ See *Hearing on S.B. 124 Parole Amendments Before the H. Judiciary Comm.*, *supra* note 117 (describing Kiplyn Davis's story and what her family has gone through in hoping to recover her remains). In the case of Kiplyn Davis, there was evidence that one of the perpetrators knew the location of her body and that NBNP was a reasonable tool to encourage him to reveal information. *Id.*

¹⁸⁹ See Freiberg et al., *supra* note 16, at 213 (arguing that the effect of NBNP legislation is to supersede the decision of the sentencing judge and likely extend the offender's term of incarceration).

¹⁹⁰ See *id.* (noting that withholding parole to coerce offenders can be seen as additional punishment for the same crime, constituting double jeopardy).

¹⁹¹ See *id.* (asserting that an incarcerated person's prison term should be set by the judge at sentencing in regard to the gravity of the crime).

¹⁹² See Press Release, Ministry of Just., *supra* note 16 (explaining that the existing Parole Board guidance before the legislature passed the NBNP law clearly addressed that offenders who do not disclose sensitive information, like that of the whereabouts of a victim's remains, could be refused parole because the individual may still present a risk to the community). The NBNP law, known as the Prisoners (Disclosure of Information About Victims) Act, requires that the Parole Board consider the pain caused by refusing to disclose the location of a body when considering an offender's application for parole. *Id.*

¹⁹³ See Freiberg et al., *supra* note 16, at 211 (noting that victim representation at parole boards can consist of submissions to be considered by the board when deciding whether to grant parole and that these submissions often directly present the view of the victim regarding the effects the release of an offender would have on the victim and their loved ones).

¹⁹⁴ See *Hearing on S.B. 124 Parole Amendments Before the H. Judiciary Comm.*, *supra* note 117 (statement of Richard Davis) (allowing Richard Davis, the father of Kiplyn Davis, to speak about the

these families in their search, but closure is an intangible goal that can entail many different things—meanwhile, the consequences of NBNP laws may extend far beyond one family’s experience with a specific offender.¹⁹⁵ The enactment of NBNP legislation in Queensland has thus far not proven very effective in recovering a victim’s remains, and giving these loved ones false hope might prolong the grief of these families and be irresponsible of the legislature.¹⁹⁶

Furthermore, families of a victim in a “no body” case can feel as if the political system used their story for its own gain, as in the case of Timothy Pullen’s family.¹⁹⁷ NBNP laws have the benefit of seeming to assist a victim’s loved ones and promoting community safety through a general tough-on-crime policy, but these laws apply in limited cases and often do not achieve the hoped-for results.¹⁹⁸ Strong opposition to NBNP from political representatives

trauma that their family endured as a result of this crime and the fact that Kiplyn’s remains are still missing). He described that it would give them closure and great comfort to properly lay Kiplyn to rest in the cemetery with their family’s monument. *Id.*

¹⁹⁵ See Moffa et al., *supra* note 15, at 164 (discussing studies that show there is no major agreement on what constitutes closure or if it can even be achieved); Marilyn Peterson Armour & Mark S. Umbreit, *Assessing the Impact of the Ultimate Penal Sanction on Homicide Survivors: A Two State Comparison*, 96 MARQ. L. REV. 1, 20 (2012) (speaking to the fact that the ideal of closure is poorly defined and can be imprecise). After an offender is convicted, victims often maintain a mental relationship to the offender wherein they inexorably hold the individual accountable and want them to feel a similar sense of suffering as their own. Armour & Umbreit, *supra*, at 88. One researcher argued that the relationship maintains its strength because of societal expectations and because victims create a subjective idea of who the offender is in life, without any substantial contact with the offender to confirm or deny these creations. *Id.* This subjective idea of the offender is especially harmful when an offender appears remorseless, and the victim believes his or her idea to be the truth. *Id.* at 89. Although there is a societal expectation that stricter punishments lead to improved moods, an experimental study that allowed participants to choose whether to punish a violator found that expectation was not true because participants who decided to punish continued to think about the individual. *Id.* at 90.

¹⁹⁶ See Moffa et al., *supra* note 15, at 164 (noting that NBNP laws will probably not achieve their goals and may extend the trauma of loved ones due to the rhetoric that promises closure); Reavy, *supra* note 100 (reporting that, even with a reminder of Utah’s recently enacted NBNP law that would prohibit parole without meaningful cooperation, Timothy Olsen declined to disclose any information on the remains of Kiplyn Davis or to even discuss the events of that day). Per the NBNP statute, the Parole Board did not grant Timothy Olsen parole, and unless he cooperates, he will continue to serve his sentence until its expiration in 2026. Reavy, *supra* note 100; Mejia, *supra* note 16 (quoting Richard Davis, Kiplyn’s father, as saying he believed the NBNP law would be a great tool in helping his family as well as others).

¹⁹⁷ See Moffa et al., *supra* note 15, at 173 (explaining that Timothy Pullen’s family believed the Queensland Government used them in its promotion of NBNP because the Corrective Services Minister refrained from sharing that the Parole Board provisionally granted one of the offender’s parole applications in the days preceding the promotion of NBNP). They felt it was dishonest that the Minister hugged and congratulated the family on passing NBNP given the intentionally delayed news regarding the offender’s parole. *Id.*

¹⁹⁸ See Chen, *supra* note 72 (noting that a detective attributed a suspect’s willingness to provide info on a body’s location to the reminder of Queensland’s recently passed “no body, no parole” legislation and that Leeann’s remains were then found in dense bushland); Moffa et al., *supra* note 15, at 167 (noting that in the ten cases that had occurred up to that point, no remains had been recovered); IN

is usually not forthcoming because they want to assist these families, but in many cases, NBNP is a quick fix that typically fails to fix anything.¹⁹⁹

Additionally, the priority of NBNP laws is and always will be locating a victim's remains.²⁰⁰ The prioritization of that goal means that any leads, no matter at what point they are given, will likely lead to some form of investigation.²⁰¹ NBNP advocates argue the legislation will conserve police resources, but NBNP laws that bar parole without an offender's cooperation may increase futile searches in the hopes of meeting that legislation's standards and getting paroled.²⁰²

C. The Oft-Overlooked in NBNP Discussions

Legislatures often pass NBNP amid emotionally powerful public campaigns and without substantial discussion of the consequences that these laws may have on suspects and convicted offenders.²⁰³ The ways in which NBNP laws may infringe on the privilege against self-incrimination, protection from double jeopardy, and concerns against arbitrary detention are worrying.²⁰⁴ Alt-

THE MATTER OF: KLAUS JULIUS ANDRES, *supra* note 68, at 5 (noting that in the case of Klaus Andres, the victim's body was destroyed by acid and not recoverable, but that Andres was found to have cooperated satisfactorily with NBNP).

¹⁹⁹ See *Debate on S.B. 124 Parole Amendments Before the H.*, *supra* note 111 (reporting that nobody on the House floor spoke in opposition to the NBNP bill); *Debate on S.B. 124 Parole Amendments Before the S.*, *supra* note 104 (reporting that nobody on the Senate floor spoke in opposition to the NBNP bill); *Hearing on S.B. 124 Parole Amendments Before the H. Judiciary Comm.*, *supra* note 117 (showing that no present members of the House Judiciary Committee spoke in opposition to the proposed NBNP bill); *Hearing on S.B. 124 Parole Amendments Before the S. Judiciary, L. Enf't, & Criminal Just. Comm.*, *supra* note 99 (showing that no present members of the Senate Judiciary, Law Enforcement, and Criminal Justice Committee spoke in opposition to the proposed NBNP bill). But see E-mail from Norman K. Thurston, *supra* note 112 (relaying that Representative Thurston voted no on S.B. 124 due to the coercive element of the bill on people who are factually innocent); *Debate on S.B. 124 Parole Amendments Before the H.*, *supra* note 111 (noting one vote against the NBNP bill by Representative Thurston).

²⁰⁰ See Moffa et al., *supra* note 15, at 173 (pointing out that locating a victim's body remains the underlying policy of NBNP).

²⁰¹ See *id.* (noting several cases in which an offender provided information at various points in the criminal justice process and that the lack of timeliness and potential deceitfulness of that information often prevented investigators from locating the remains).

²⁰² See *id.* (explaining that authorities typically accept cooperation up to a parole hearing due to the goal of locating a victim's body, but that an offender's late cooperation with the goal of trying to obtain parole could still lead to unreliable information that does not result in a body's recovery).

²⁰³ See *id.* at 165–66 (pointing toward Fiona Splitt's activism regarding her husband's "no body" case as the catalyst for NBNP in Queensland and that Queensland's Parliament did not adequately address what impact NBNP would have on offenders). The authors found that lack of discussion especially concerning because there are several Australian "no body" cases where authorities found a wrongful conviction occurred or offenders contest their conviction. *Id.*

²⁰⁴ See Press Release, Ministry of Just., *supra* note 16 (explaining that England's NBNP law needed to strike a better balance with victim's rights, such as providing better protection against arbitrary detention); Freiberg et al., *supra* note 16, at 213 (arguing that requiring a suspect to reveal the location of a victim's body treats his or her chosen defense as another factor to be punished and that withholding parole in that case as punishment can constitute a form of double jeopardy).

though these concerns were not addressed in NBNP debates in every jurisdiction, legislatures did at least nominally address wrongful convictions.²⁰⁵

Politicians addressed wrongful convictions, but only to the extent that they did not believe wrongful convictions would be a high concern in the context of NBNP or in maintaining that the NBNP adequately provided for those who argue wrongful conviction.²⁰⁶ Such comments do not adequately consider the reality of wrongful convictions and the impact that NBNP legislation could have on such individuals.²⁰⁷

NBNP legislation undermines the reality that parole can be a very effective reintegration tool, and the legislation can unduly burden the way that defendants conduct their defense.²⁰⁸ Admittedly, a convicted offender who refuses to provide information on a victim's remains does raise questions about his or her rehabilitation, but applying a bar to parole across the board infringes on the rights of suspects and offenders.²⁰⁹

CONCLUSION

As of the time of writing, there are no other states in the United States considering NBNP legislation. On its face, NBNP legislation may appear to make sense in the criminal justice system, taken in the context of cases where an offender seemingly refuses to provide the necessary information to allow a victim's family to lay their loved one to rest. Victims' rights have taken an increasingly larger role in various criminal justice systems and their testimony is undoubtedly helpful in understanding the scope of a crime's effect. Neverthe-

²⁰⁵ See Moffa et al., *supra* note 15, at 166 (describing how politicians raised concerns regarding wrongful convictions in Queensland's parliamentary debate but another member dismissed the concerns as low risk); *Debate on S.B. 124 Parole Amendments Before the H.*, *supra* note 111 (noting only one vote against the NBNP bill by Representative Thurston); HC Deb (5 June 2018) (642) col. 154 (UK) (raising the concern about NBNP in the context of miscarriages of justice).

²⁰⁶ See Moffa et al., *supra* note 15, at 166 (noting that a member of Queensland's parliament deemed that an adverse impact of NBNP on the wrongfully convicted was not a high risk); *Hearing on S.B. 124 Parole Amendments Before the H. Judiciary Comm.*, *supra* note 117 (statement of Sen. Michael K. McKell) (finding that Senator McKell believed that he appropriately limited the NBNP bill so it would not interfere with those who did not know the location of a victim's remains).

²⁰⁷ See Moffa et al., *supra* note 15, at 166 (arguing that the legislature failed to seriously consider NBNP concerns in the case of wrongful convictions even though Australia had "no body" cases that were contested or confirmed wrongful convictions). The government's optimistic position was that existing mechanisms in the criminal justice system would address concerns regarding wrongful convictions. *Id.*

²⁰⁸ See Freiberg et al., *supra* note 16, at 191–92 (highlighting research that shows parolees, compared to offenders released into the community without supervision, are not as likely to re-offend); *id.* at 213 (arguing that requiring suspects to release such information may interfere with their defense strategies).

²⁰⁹ See *id.* (noting that refusing to disclose a body's location may mean there exists less remorse, but that NBNP laws can interfere with a person's ability to conduct their defense as they choose and to be free from additional punishment post-sentencing that may result in much longer sentences).

less, NBNP legislation that prohibits parole in the case of uncooperative defendants in “no body” cases is likely ineffective in achieving its goals and is unnecessarily strict toward suspects and offenders. Furthermore, the timing of NBNP’s passage in Utah so it could be immediately effective for an offender’s parole hearing may raise ethical questions about targeting specific individuals through legislation. It may be appropriate in some cases to institute additional measures at an offender’s sentencing, but a criminal justice system wherein victims can testify at sentencings and parole hearings is an adequate measure in addressing such a situation without adversely impacting a whole class of offenders. From Australia to England to the United States, NBNP laws have come into existence, but legislatures should reevaluate the efficacy of these laws and limit their spread.

TRACY L. WALKER