



**ROBINA INSTITUTE**  
OF CRIMINAL LAW AND CRIMINAL JUSTICE

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# PRISON-RELEASE DISCRETION AND PRISON POPULATION SIZE

*STATE REPORT: ALASKA*

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# **Prison-Release Discretion and Prison Population Size**

## **State Report: Alaska**

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### Definitions and Concepts

“Indeterminacy” means “unpredictability of time served.” Once we know the terms of a particular judicial sentence, can we say with confidence how much time the defendant will actually serve before the sentence’s expiration? If actual time-that-will-be-served is highly unpredictable based on the pronounced judicial sentence, then the sentence is highly indeterminate. If actual time-to-be-served is knowable within a relatively small range of possibility, then the sentence has a low degree of indeterminacy—or, we might say—it has a high degree of determinacy. “Determinacy” means “predictability of time served” at the time of judicial sentencing.

Scaling up to the systemwide level, the project explores the degree to which prison population size in each state is placed under the jurisdiction of decision makers who exercise time-served discretion after judicial sentences have been finalized. Higher degrees of indeterminacy across hundreds and thousands of individual sentences add up to greater control over prison population size by “back-end” agencies such as parole boards and departments of correction. These structural features vary enormously across U.S. jurisdictions.

### *Note on the project’s rankings of “degrees of indeterminacy”*

To compare the degrees of indeterminacy in individual prison sentences or across the prison-sentencing systems of different jurisdictions, we use a qualitative ranking framework based on our cumulative learning while preparing the project’s 52 jurisdiction-specific reports. To avoid false precision, we place all systems within one of five categories (see table below).

Each of the five categories can be expressed in alternative terms: either the *degree of indeterminacy* or *degree of determinacy* thought to be present.

The ranking scale is subjective, although the reasoning that supports our judgments is laid out in each report. Ultimately, the rankings indicate only the rough position of specific prison-sentencing systems vis-à-vis each other. No two American prison-release systems are alike and all are highly complex, so nuanced comparative analysis requires closer inspection.

### *Rankings of “Degrees of Indeterminacy”*

<b>Ranking</b>	<b>Alternative terminology</b>	
1	Extremely-high indeterminacy	Extremely-low determinacy
2	High indeterminacy	Low determinacy
3	Moderate indeterminacy	Moderate determinacy
4	Low indeterminacy	High determinacy
5	Extremely-low indeterminacy	Extremely-high determinacy

For individual classes of sentences, we use the following benchmarks for our classifications of higher versus lower degrees of indeterminacy:

***Benchmarks for rankings of “degrees of indeterminacy”***

- *Extremely high indeterminacy:* >80-100 percent indeterminacy (first prospect of release at 0-19.99 percent of judicial maximum)
- *High indeterminacy:* >60-80 percent indeterminacy (first prospect of release at 20-39.99 percent of judicial maximum)
- *Moderate indeterminacy:* >40-60 percent indeterminacy (first prospect of release at 40-59.99 percent of judicial maximum)
- *Low indeterminacy:* >20-40 percent indeterminacy (first prospect of release at 60-79.99 percent of judicial maximum)
- *Extremely low indeterminacy:* 0-20 percent indeterminacy (first prospect of release at 80-100 percent of judicial maximum)

Classifying entire sentencing systems on our five-point scale is an imprecise exercise largely because all jurisdictions have multiple different sentence classes with varying degrees of indeterminacy attached to each class. Prisoners who are present within a system at any moment in time represent a broad mixture of sentence classes, and this mixture is constantly changing with releases and new admissions. Thus, our systemwide rankings cannot reflect mathematical precision.

In this project, we use the term “population-multiplier potential” (or PMP) to express the amount of influence over prison population size that is ceded by law to back-end decision makers such as parole boards and prison officials. To give a simplified example, if all prisoners in a hypothetical jurisdiction were eligible for parole release after serving 25 percent of their maximum sentences, then the PMP attached to the parole board’s release decisions would be 4:1. That is, if the parole board were to deny release to all prisoners for as long as legally possible (a *longest-time-served scenario*), the resulting prison population would be four times as large as it would be if the board were to release all prisoners at their earliest allowable release dates (a *shortest-time-served scenario*).

Most states have several different classes of sentences, each with their own rules of prison release. Each sentence class carries its own PMP. Application of the PMP measure to entire prison systems is, at best, an approximation that requires the proration of multiple classes of sentences and their PMPs according to the numbers and percentages of prisoners who have received those different classes of sentence.

## Prison-Release Discretion and Prison Population Size

### State Report: Alaska<sup>1</sup>

#### *Executive Summary*

Overall, Alaska’s prison-sentencing system operates with a *high degree of indeterminacy*, in the ranking system developed for this project (see p. iv). The largest broad class of sentences offer parole release eligibility after one-quarter of the judicial maximum term has been served. Exceptions to this formula are relatively limited.

By default, Alaska awards good time deductions to prisoners that result in mandatory release dates (MRDs) at the 67-percent mark of their maximum terms if the credits are not forfeited. We suspect that such credit-based deductions are retained by the great majority of Alaska’s prisoners.

Both the parole board and department of corrections hold substantial time-served authority at the back end of Alaska’s prison-sentencing system. Depending on how they exercise their powers, their decisions in the aggregate could have very large impact on the size of the prison subpopulation of people serving general-rules sentences.

#### *Terminology note*

This report will refer to the Alaska Board of Parole as the “parole board.” The Alaska Department of Corrections will be referred to as the “department of corrections.”

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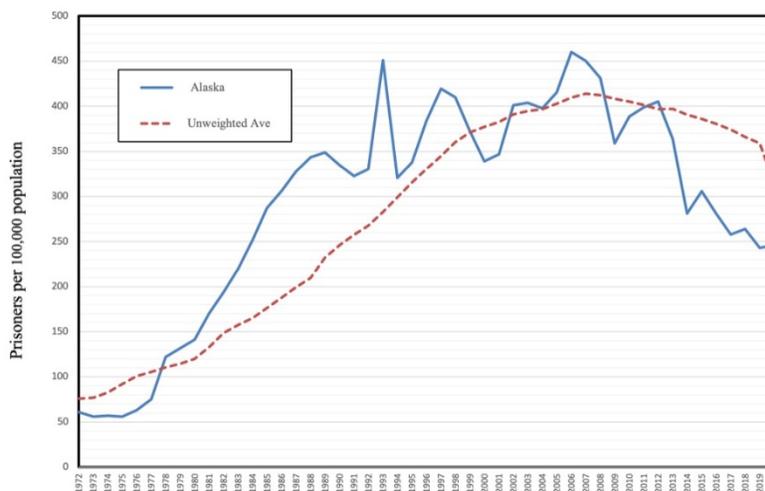
<sup>1</sup> This report was prepared with support from Arnold Ventures. The views expressed are the authors’ and do not necessarily reflect the views of Arnold Ventures. For a broad overview of the law of parole release and supervision in Alaska, see Alexis Lee Watts, Kevin R. Reitz, and Brendan Delany, *Profiles in Parole Release and Revocation: Examining the Legal Framework in the United States: Alaska* (Robina Institute of Criminal Law and Criminal Justice, 2017) (including surveys of parole-release criteria, procedures for release decisions, laws relating to parole supervision and revocation, and the institutional attributes of the parole board).

Introduction

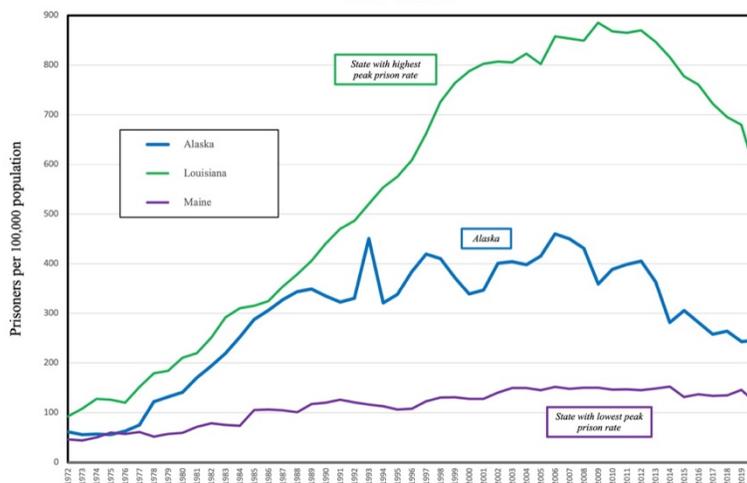
*Alaska’s prison-rate history, 1972 to 2020*

In 2020, Alaska’s prison rate was 246 per 100,000 general population, with a yearend prison population of 1,794.<sup>2</sup> Alaska’s prison rate was 36<sup>th</sup> highest among all states.

**Figure 1. Prison Rate Change in Alaska and (Unweighted) Average Among All States, 1972 to 2020**



**Figure 2. Prison Rate Change in Alaska, Louisiana, and Maine, 1972 to 2020**



Sources: Timothy J Flanagan, Kathleen Maguire & Michael J. Hindelang, *Sourcebook of Criminal Justice Statistics, 1990*, at 605 table 6.56, Rate (per 100,000 resident population) of sentenced prisoners under jurisdiction of State and Federal correctional authorities on

<sup>2</sup> E. Ann Carson, *Prisoners in 2020 - Statistical Tables* (Bureau of Justice Statistics, 2021), at 11 table 4, 15 table 7. Preliminary information about changes in Alaska’s imprisonment rates after 2020 is presented below in the section on “The COVID period in Alaska.”

December 31: By region and jurisdiction, 1971-1989 (Hindelang Criminal Justice Research Center, 1991) (for 1972-1977); E. Ann Carson, *Imprisonment rate of sentenced prisoners under the jurisdiction of state or federal correctional authorities per 100,000 U.S. residents, December 31, 1978-2016* (Bureau of Justice Statistics, Corrections Statistical Analysis Tool) (for 1978-2016), at <https://www.bjs.gov/index.cfm?ty=nps>; E. Ann Carson, *Prisoners in 2018* (Bureau of Justice Statistics, 2020), at 11 table 7 (for 2017); E. Ann Carson, *Prisoners in 2019* (Bureau of Justice Statistics, 2020), at 11 table 7 (for 2018); E. Ann Carson, *Prisoners in 2020--Statistical Tables* (Bureau of Justice Statistics, 2021), at 15-16 table 7 (for 2019-2020).

Alaska reached its peak prison rate in 2006 at 460 per 100,000, which dropped to 246 per 100,000 in 2020. This is a net difference of -214 per 100,000, which was the 8<sup>th</sup> largest prison-rate drop of all states from their peak rates (in various years) through 2020.

Figures 1 and 2 span two important periods in American criminal-justice history. From 1972-2007, the United States saw 35 years of uninterrupted growth in the nationwide aggregated prison rate. This might be called the Great Prison Buildup. Since 2007, national prison rates have been falling. From 2007 through yearend 2019 (prior to the COVID pandemic), the average drop in states' prison rates was about 1.2 percent per year, with much variation across individual states.

### *The COVID period*

For the vast majority of states, we view American prison rates following the arrival of the COVID pandemic in March 2020 as discontinuous with earlier rates and trends. Whatever factors were at work to determine state prison rates in the “before times,” the pandemic introduced a major new causal force that, at least temporarily, diverted the course of prison-rate change nationwide.<sup>3</sup>

In calendar year 2020, most states saw unusually large drops in their prison rates. Prison rates fell in 49 states, the District of Columbia, and the federal system. The aggregate 50-state prison rate for the U.S. dropped by about 15 percent in a single year. From yearend 2019 to yearend 2020, the (unweighted) average state prison rate fell from 359 to 308 prisoners per 100,000

<sup>3</sup> In Figures 1 and 2 above, the COVID period arrives in the very last year of data that has been reported by the Bureau of Justice Statistics (BJS) as of this writing—from yearend 2019 to yearend 2020. Figures 1 and 2 rely exclusively on BJS data covering the years 1972-2020. For a tentative update, the Vera Institute of Justice has collected state imprisonment counts reaching into December 2021, which are not fully compatible with BJS reports. See Jacob Kang-Brown, *People in Prison in Winter 2021-22* (Vera Institute of Justice, 2022).

general population, for an average incremental downturn of -51 per 100,000.<sup>4</sup> We believe this was the largest one-year decline in state prison rates in American history.<sup>5</sup>

In calendar year 2021, U.S. prison rates did not continue to descend at the same dramatic speed. Preliminary data from the Vera Institute indicate that the aggregate 50-state prison population fell by about 1.8 percent from January to December 2021. Prison populations actually rose in 19 states.<sup>6</sup>

Given the focus of this project and the unprecedented size of prison-rate change during COVID's first year or so, it is relevant to ask whether indeterminacy in American prison sentences played a consequential role in events. An adequate history cannot yet be written, but considerable data has already been assembled.

Nationwide, COVID-driven changes in prison-release practices were not the main driving force of prison population shrinkage from early 2020 through the end of 2021. This is not to say that there was no expansion of prison release during the pandemic. Thirty-six states and the federal government did at least *something* to expedite releases, each jurisdiction choosing from a grab bag of different strategies—e.g., expedited parole release, loosened release criteria, increased or restored credit awards, early release of prisoners already close to their mandatory release dates, expanded compassionate release for the elderly or medically infirm, increases in clemency grants, invocation of overcrowding emergency provisions, and court orders. Such steps did not yield large numbers of “COVID releases” in most states, however, and many COVID releases were not much earlier than they would have been in the pandemic's absence.<sup>7</sup>

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<sup>4</sup> E. Ann Carson, *Prisoners in 2020 - Statistical Tables* (Bureau of Justice Statistics, 2021), at 1, 7 table 2. Across 2020, prison rates fell in every state except Alaska, where the rate increased by 1.2 percent.

<sup>5</sup> Historical sources show no one-year decline in average state prison rates that approaches -51 per 100,000. See Margaret Werner Cahalan, *United States Historical Correctional Statistics, 1850-1984* (Bureau of Justice Statistics, 1986); Margaret Cahalan, *Trends in Incarceration in the United States since 1880: A Summary of Reported Rates and the Distribution of Offenses*, 25 *Crime & Delinq.* 9 (1979).

<sup>6</sup> Jacob Kang-Brown, *People in Prison in Winter 2021-22* (Vera Institute of Justice, 2022), at 3 table 2 (reporting a decrease of 15.8 percent in the state prison population overall in 2020 followed by a decrease of 1.8 percent in 2021). The states reported to have had increases in prison populations in 2021 were: Alaska (up 7.7 percent), Arkansas (up 5.8 percent), California (up 3.9 percent), Connecticut (up 3.4 percent), Delaware (up 2.0 percent), Idaho (up 8.8 percent), Iowa (up 9.1 percent), Kentucky (up 0.2 percent), Missouri (up 1.5 percent), Montana (up 9.8 percent), Nebraska (up 5.9 percent), North Carolina (up 0.9 percent), North Dakota (up 20.6 percent), Ohio (up 0.04 percent), Rhode Island (up 2.1 percent), South Dakota (up 2.4 percent), Utah (up 8.4 percent), West Virginia (up 12.9 percent), and Wyoming (up 3.7 percent). *Id.* at 3-4 table 2.

<sup>7</sup> For a survey of state releasing practices in response to COVID, see Kelly Lyn Mitchell, Julia Laskorunsky, Natalie Bielenberg, Lucy Chin, and Madison Wadsworth, *Examining Prison Releases in Response to COVID: Lessons Learned for Reducing Effects of Mass Incarceration* (Robina Institute of Criminal Law and Criminal Justice, forthcoming 2022) (finding that 24 states released 0 to 150 prisoners in response to the pandemic from March 2020 through December 2021, while only five states and the federal system released more than 3,000

The available data suggest that the 2020 plunge in state prison rates was primarily due to reduced *admissions* caused by a number of factors, including fewer arrests, fewer new court commitments, fewer revocations from community supervision, and some prisons' embargoes on receiving prisoners from local jails. The number of all state prison admissions in the U.S. dropped by an astonishing 40 percent in a single year from 2019 to 2020.<sup>8</sup>

### *The COVID period in Alaska*

In contrast with most other states, the COVID pandemic has had no obvious impact on Alaska's prison population size. In a separate study, the Robina Institute found no (zero) COVID-influenced prison releases in Alaska from March 2020 through December 2021.<sup>9</sup>

In calendar year 2020, Alaska's prison rate grew from 243 to 246 per 100,000—a one-year increase of +3 per 100,000. This was at odds with the national trend; Alaska was the only state in the U.S. to experience growth in its prison rate during 2020.<sup>10</sup> Measured in percentage terms,

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prisoners). The effects on annual imprisonment rates were even less than the absolute numbers of releases would suggest. Mitchell et al. found that one of the most common criteria applied by states for COVID release decisions was “short time left on sentence.” Thus, some of the accelerated COVID releases in 2020 and 2021 were of prisoners who would have been released in the same year anyway, albeit somewhat later.

<sup>8</sup> See E. Ann Carson, *Prisoners in 2020 - Statistical Tables* (Bureau of Justice Statistics, 2021), at 17, 17 table 8 (admissions fell from 530,905 to 319,346). There was no comparable upswing in prison releases. Total releases from state prisons actually fell in 2020, dropping 9.8 percent from the previous year. *Id.* at 19 table 9 (nationwide releases fell from 557,309 to 502,723). Only five states released five percent or more of prisoners in 2020 than they had released in 2019: Arizona (6.9 percent), Maine (30.9 percent), Nebraska (5.9 percent), New Jersey (19.7 percent), and Wyoming (8.0 percent). For a focus on patterns of parole release in 2020, see Tiana Herring, *Parole boards approved fewer releases in 2020 than in 2019, despite the raging pandemic* (Prison Policy Initiative, February 3, 2021), at <https://www.prisonpolicy.org/blog/2021/02/03/parolegrants/> (surveying data from 13 states; finding that total numbers of parole releases fell in nine states; among all 13 states, the average drop in numbers of parole releases from yearend 2019 to yearend 2020 was 11.3 percent). See also Kelly Lyn Mitchell, Julia Laskorunsky, Natalie Bielenberg, Lucy Chin, and Madison Wadsworth, *Examining Prison Releases in Response to COVID: Lessons Learned for Reducing Effects of Mass Incarceration* (Robina Institute of Criminal Law and Criminal Justice, forthcoming 2022) (concluding that “the greatest impact on prison population overall occurred on the admissions side of the equation.”). From March 2020 through December 2021, Mitchell et al. estimate a total of 47,967 “non-routine COVID releases” from state prisons nationwide. Over a similar period (January 2020 to December 2021), Vera Institute of Justice (Vera) reported a drop in the aggregate state prison population of 217,989 people, from 1,259,977 to 1,041,988. Jacob Kang-Brown, *People in Prison in Winter 2021-22* (Vera Institute of Justice, 2022), at 3 table 2.

<sup>9</sup> Kelly Lyn Mitchell, Julia Laskorunsky, Natalie Bielenberg, Lucy Chin, and Madison Wadsworth, *Examining Prison Releases in Response to COVID: Lessons Learned for Reducing Effects of Mass Incarceration* (Robina Institute of Criminal Law and Criminal Justice, forthcoming 2022), Appendix A.

<sup>10</sup> The largest single-state drop from yearend 2019 to yearend 2020 was in Kentucky, from 515 to 414 per 100,000. Not counting Alaska, all states saw a drop of at least -20 per 100,000 in their prison rates that year. See E. Ann Carson, *Prisoners in 2020 - Statistical Tables* (Bureau of Justice Statistics, 2021), at 15 table 7.

it was a 1.2 percent increase in the state’s prison rate. As reported by BJS, the state’s total prison population increased from 1,782 to 1,794.<sup>11</sup>

Alaska was also the only state to see an upswing in prison admissions in 2020 compared with 2019. The number of admissions grew by 6.7 percent from 2019 to 2020 (from 1,560 to 1,664). Total numbers of releases did not grow during COVID’s first year, but fell by 5.3 percent (from 1,717 to 1,626).<sup>12</sup>

From yearend 2020 to December 2021, the Vera Institute reported that Alaska’s prison population continued to expand during COVID’s second year, from 4,303 to 4,634—or 7.7 percent.<sup>13</sup>

In May 2022, the Alaska Department of Corrections reported a total population of *sentenced* prisoners of 2,024.<sup>14</sup> In percentage terms, this is 13 percent more than the number of sentenced prisoners reported by BJS for yearend 2020. While the full force of COVID’s initial wave may have hit Alaska later than other states, we see no evidence of delayed downward pressure on the state’s prison population (at least as of mid-2022). COVID’s seismic effects on American prisons in the Lower 48 may have skipped over Alaska.

## ***1. General rules of prison release in Alaska***

### ***Maximum terms and parole release eligibility***

Most felony offenses in Alaska are graded as class A, B, or C felonies, except for selected “unclassified felonies” at the highest severity level, as follows:

[M]urder in the first and second degree, attempted murder in the first degree, solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree, murder of an unborn child, sexual assault in the first degree, sexual abuse

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<sup>11</sup> *Id.*, at 11 table 4.

<sup>12</sup> *Id.*, at 17 table 8, 19 table 9.

<sup>13</sup> Jacob Kang-Brown, *People in Prison in Winter 2021-22* (Vera Institute of Justice, 2022), at 2, 3 table 2. Vera’s counts are not compatible with BJS’s, however, and should be taken with a grain of salt. Alaska is one of only six states that operate with unified prison and jail systems, so that a large percentage of people who are incarcerated are held in pretrial detention and have not been convicted or sentenced. BJS counts only sentenced prisoners, while Vera gives the total prison population. As a result, Vera reports more than twice the total number of prisoners in Alaska as BJS.

<sup>14</sup> Alaska Department of Corrections, *Alaska Corrections Statistics for May 2022*, at <https://doc.alaska.gov/administrative-services/research-records/population-statistics> (visited on June 26, 2022).

of a minor in the first degree, misconduct involving a controlled substance in the first degree, sex trafficking in the first degree . . . , and kidnapping.<sup>15</sup>

Alaska has had a system of statutory sentencing guidelines since 1980.<sup>16</sup> Authorized penalties and “presumptive [guidelines] ranges” for graded offenses (as well as the highest-severity offenses above) are collected in one statutory provision.<sup>17</sup> Except when penalty enhancements apply, the maximum authorized prison terms for the three felony grades are: class A (20 years), class B (10 years), and class C (five years).<sup>18</sup> For the most serious unclassified felonies or enhanced sentences, maximum terms may be as long as 99 years. Alone among the 50 states, Alaska does not prescribe a life sentence for any offense.

In Alaska, most people sentenced to prison for 181 days or more are eligible for discretionary parole release.<sup>19</sup> Most become eligible for parole after serving one-fourth of their sentences or the mandatory minimum sentence (if applicable), whichever is greater.<sup>20</sup>

Sentencing courts in Alaska have the unusual authority to restrict the future parole release eligibility of individual defendants they sentence. In appropriate cases, they may impose

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<sup>15</sup> Alaska Stat. § 11.81.250(a). *See, e.g., id.*, § 11.41.100(b) (“Murder in the first degree is an unclassified felony.”); *id.*, § 11.41.110(b) (“Murder in the second degree is an unclassified felony.”).

<sup>16</sup> *See* Susan Di Pietro, *Appellate Sentence Review in Alaska* (Alaska Judicial Council, 1992), at 17 (reviewing history of adoption of statutory “presumptive sentencing scheme,” effective January 1, 1980).

<sup>17</sup> Alaska Stat. § 12.55.125.

<sup>18</sup> There are enhanced penalty provisions for many sex offenses, offenses involving the use of firearms, and repeat offenders depending on the number of their prior felony convictions. *See* Alaska Stat. § 12.55.125(i).

<sup>19</sup> Alaska Stat. § 33.16.090(a). Those ineligible for discretionary parole release are listed in ~~id.~~ § 33.16.090(a)(1)(A)-(E) (including people with mandatory 99-year sentences for first degree murder and those made ineligible for parole by order of the sentencing court or a three-judge sentencing panel).

<sup>20</sup> Alaska Stat. § 33.16.090(b)(4). Mandatory minimum sentences in Alaska include the following: Murder in the first degree carries a penalty of at least 30 but no more than 99 years, and in some circumstances murder in the first degree must carry a mandatory penalty of 99 years. Attempted murder in the first degree, solicitation or conspiracy to commit murder in the first degree, kidnapping, and misconduct involving a controlled substance in the first degree all carry terms of imprisonment of at least five but no more than 99 years. Murder in the second degree and murder of an unborn child carry a penalty of 10 to 99 years. Alaska Stat. § 12.55.125(a),(b).

Trial courts have authority to refer cases to a three-judge panel if they find “that manifest injustice would result” from imposition of a sentence within the presumptive range ordinarily authorized by Alaska’s statutory guidelines. Alaska Stat. § 12.55.165(a). The powers of the three-judge panel include the ability to relax restrictions that normally attend presumptive sentences, including the timing of first eligibility for parole release. Alaska Stat. § 12.55.175(c),(e); *Luckart v. State*, 314 P.3d 1226, 1232 (Alaska App. 2013) (“[T]he three-judge panel has the authority . . . to expand a defendant’s eligibility for discretionary parole.”); *Sikeo v. State*, 258 P.2d 906, 909 (Alaska App. 2011) (sex offender otherwise ineligible for parole release “may be granted parole eligibility by the three-judge panel”). We have no information concerning how often the three-judge panel process is used in Alaska, but we assume it is invoked rarely enough that it has no large effect on the operation of the state’s prison-sentencing system as a whole.

minimum terms longer than required by law, including the preclusion of all parole eligibility.<sup>21</sup> This power is not a matter of unconstrained judicial discretion. Courts must give “articulated reasons” for special parole restrictions based on the statutory purposes of criminal sentences. The reasons must be supported by “substantial evidence.” Finally, such restrictions are subject to appellate review.<sup>22</sup>

### *Reconsideration after denial of parole release*

If the parole board denies release to an eligible prisoner, the board may make the prisoner ineligible for parole release for the remainder of his or her term or may set any amount of time before the prisoner is again eligible for consideration.<sup>23</sup>

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<sup>21</sup> Alaska Stat. § 12.55.115 (“The court may, as part of a sentence of imprisonment, further restrict the eligibility of a prisoner for discretionary parole for a term greater than that required under [Alaska Stat.] 33.16.090 and 33.16.100.”); *id.*, § 33.16.090(a)(1)(B) (“[A] prisoner is not eligible for consideration of discretionary parole if made ineligible by order of a court under AS 12.55.115.”).

<sup>22</sup> The leading case is *State v. Korkow*, 314 P.3d 560, 565 (Alaska 2013):

AS [Alaska Stat.] 12.55.005’s list of factors [that courts must consider when imposing sentence] governs the sentencing court’s authority under AS 12.55.115 to restrict discretionary parole “as part of a sentence of imprisonment.” The statutory language is clear and uncontradicted by any legislative history—a sentencing court must consider all the enumerated criteria in AS 12.55.005 when restricting discretionary parole as a part of a sentence, not just public protection and the defendant’s reformation. ... A sentencing court must consider all of the statutory factors, determine which are relevant to the case, and support its overall sentence—including parole eligibility restrictions—with expressly articulated reasons backed by substantial evidence.

For examples of appeals from parole eligibility restrictions, see *Thomas v. State*, 413 P.3d 1207, 1213 (Alaska App. 2018) (overturning sentencing court’s ruling that parole eligibility must be restricted for defendant convicted of because court’s stated reasons were insufficient, holding that “a judge’s decision to restrict parole eligibility in a particular case must be supported by ‘expressly articulated reasons’—reasons that are case-specific, and that are backed by substantial evidence in the record.”); *Adams v. State*, 390 P.3d 1194 (Alaska App. 2017) (upholding sentencing court’s decision to eliminate parole eligibility when imposing a 99-year sentence in first degree murder case when defendant had prior convictions of homicide and assault, and two former domestic partners testified to defendant’s acts of severe violence against them; court found defendant was “an extreme danger to other persons”). Ten other states grant some authority to sentencing judges to alter the “minimum-maximum ratio” of their sentences in individual cases, see Kevin R. Reitz, Edward E. Rhine, Allegra Lukac, & Melanie Griffith, *American Prison-Release Systems: Indeterminacy in Sentencing and the Control of Prison Population Size, Final Report* (Robina Institute of Criminal Law and Criminal Justice, 2022), at 32-33, 36-43 table 6, 46. To our knowledge, Alaska is the only state to subject such trial court decisions to a meaningful process of appellate review.

<sup>23</sup> Alaska Stat. § 33.16.100(h) (“If the board considers an application for discretionary parole and denies parole ..., the board may make the prisoner ineligible for further consideration of discretionary parole or require that additional time be served before the prisoner is again eligible for consideration for discretionary parole.”); *id.*, § 33.16.130(c) (“If the board denies parole, the board ... may schedule a subsequent parole hearing at the time of the denial or at a later date.”).

### *Good time sentence reductions*

Most prisoners in Alaska are entitled to a deduction of one-third the term of imprisonment rounded off to the nearest day if the prisoner “follows the rules of the correctional facility in which the prisoner is confined.”<sup>24</sup> Good time deductions are applied to judicial maximum sentences to create earlier mandatory release dates (MRDs); they have no effect on dates of parole release eligibility. In this project, we call such a mechanism a “movable MRD.”<sup>25</sup>

Certain prisoners are ineligible for good conduct deductions, including: prisoners sentenced to a mandatory 99-year term for murder in the first degree; those sentenced to a definite term of 99 years for an unclassified or class A felony offense, with prior convictions of two or more serious felonies; those with convictions of designated sexual felonies; and those convicted of the unclassified felonies of murder in the first and second degree.<sup>26</sup>

All or part of a prisoner’s good time may be forfeited if a prisoner violates prison rules or commits a crime. The forfeiture statute provides that, “The amount of good time forfeited shall be related to the severity of the offense or rule violation.”<sup>27</sup> The commissioner of corrections may restore some or all forfeited good time if the prisoner demonstrates progress in “faithfully observing” prison rules.<sup>28</sup>

### **Timeline Diagrams**

Alaska Figure 3 shows the full scope of the parole board’s release discretion for prisoners who have no good time deductions to apply against their sentences. This would be an unusual case in Alaska because good time deductions are calculated and applied to prisoners’ sentences at the beginning of their prison stays. Credits may be lost through forfeiture, but no affirmative decisions are needed to put the credits in place in the first instance. Neither program participation nor completion is needed for the accrual of credits.

Alaska Figure 4 illustrates the more typical case for prisoners subject to Alaska’s general rules of prison release. The sentence is 25 percent determinate. That is, the judge’s choice of sentence requires that at least 25 percent of the time to expiration of the maximum term must be served in prison. The sentence is 75 percent indeterminate because back-end decisionmakers have jurisdiction over time served for the remainder of the prison term. In this case, Alaska’s parole board has unilateral control over about 40 percent of the timeline. The parole board has

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<sup>24</sup> Alaska Stat. § 33.20.010(a).

<sup>25</sup> See Kevin R. Reitz, Edward E. Rhine, Allegra Lukac, & Melanie Griffith, *American Prison-Release Systems: Indeterminacy in Sentencing and the Control of Prison Population Size, Final Report* (Robina Institute of Criminal Law and Criminal Justice, 2022), Ch. 7 (“Highlighted topic: Movable mandatory release dates”).

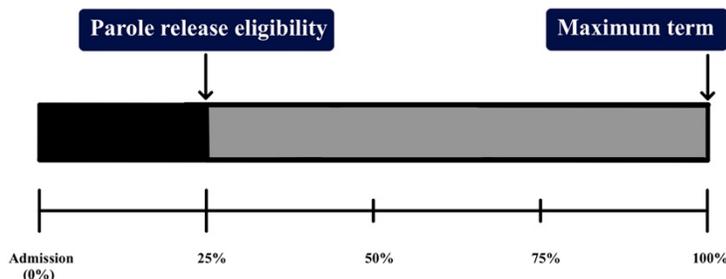
<sup>26</sup> Alaska Stat. § 33.20.010(a)(1)-(4).

<sup>27</sup> Alaska Stat. § 33.20.050.

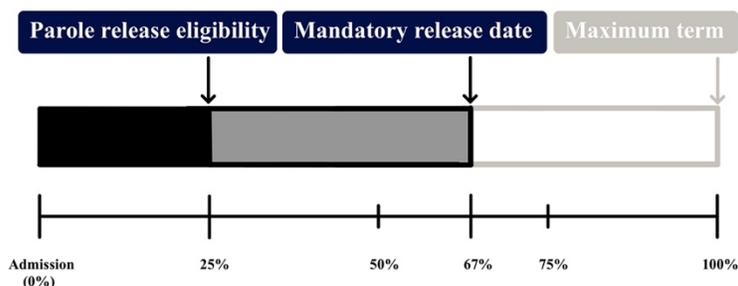
<sup>28</sup> Alaska Stat. § 33.20.060.

unilateral release and release denial discretion over this period. Time-served discretion over the last 33 percent of the sentence is initially in the hands of the department of corrections, exercised at the prison level by officials who administer the forfeiture process. If good time deductions are undisturbed by forfeiture, the parole board has no release or release denial beyond the 67 percent mark of the maximum term.

**Alaska Figure 3. Prison-Release Timeline for General-Rules Sentences with No Good Time Deductions**



**Alaska Figure 4. Prison-Release Timeline for General-Rules Sentences with Full Good Time Deductions**



In the ranking system developed for this project, these are sentences with a *high degree of indeterminacy*. General-rules sentences in Alaska carry a population multiplier potential (PMP) of 4:1.

Alaska is among the majority of states that makes use of “movable MRDs.” The percentage deduction from maximum terms in Alaska is in the average range among all states.<sup>29</sup> However, the default position in Alaska is that full credits are awarded unless they are lost through the forfeiture process. In many other states, prisoners must earn sentence deductions month-by-month or through program participation. At least in theory, credit-based deductions are more

<sup>29</sup> See Kevin R. Reitz, Edward E. Rhine, Allegra Lukac, & Melanie Griffith, *American Prison-Release Systems: Indeterminacy in Sentencing and the Control of Prison Population Size, Final Report* (Robina Institute of Criminal Law and Criminal Justice, 2022), Ch. 7 (“Highlighted topic: Movable mandatory release dates”). In the scale developed for this project, we consider credit amounts that subtract 0-19 percent from sentence requirements to be “minimal,” 20-39 percent to be “average,” and 40 percent and above to be “generous.” See *id.* at 65.

likely to benefit prisoners if they fall in place automatically than when affirmative action on the part of the department of corrections is needed.

## ***2. Life sentences in Alaska***

### ***a. Adults***

Alaska is the only state in the country that does not statutorily allow life sentences either with or without the possibility of parole.<sup>30</sup> The state does have the functional equivalent of life sentences however, such as the mandatory 99-year prison term for a first degree murder conviction if the victim was a peace officer, firefighter, or correctional employee.<sup>31</sup> A prisoner sentenced to a mandatory 99-year term for first degree murder or for conviction of an unclassified or class A felony offense where the offender has two or more previous convictions of serious felonies is not eligible for discretionary parole release.<sup>32</sup> In our view, 99-year maximum sentences with no parole are indistinguishable in all but name from sentences of life without parole (LWOP).

Some 99-year maximum sentences carry parole release eligibility. This is Alaska's equivalent of a sentence of life with parole. For prisoners convicted of murder who have been given a parolable 99-year sentence, the general rule is that two-thirds of the maximum must be served before they become eligible for discretionary parole release.<sup>33</sup> This is the functional equivalent of a parolable life sentence with a 66-year minimum term.

### ***b. Juvenile life sentences***

In the most serious cases, such as convictions for murder in the first degree, the same parole eligibility rules for adults are applied to defendants who were under age 18 at the time of their crimes.<sup>34</sup> We have found no case that rules on the question of whether a non-parolable 99-year sentence, when imposed on a juvenile offender, triggers the constitutional limitations and safeguards the Supreme Court has put into place for juvenile LWOP sentences.<sup>35</sup>

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<sup>30</sup> The Sentencing Project, *Virtual Life Sentences*, (Aug. 29, 2019) retrieved from <https://www.sentencingproject.org/publications/virtual-life-sentences/>.

<sup>31</sup> Alaska Stat. § 12.55.125(a)(1).

<sup>32</sup> Alaska Stat. § 33.16.090(a)(1)(A).

<sup>33</sup> Alaska Stat. § 33.16.090(b)(1)(A).

<sup>34</sup> See *Gray v. State*, 267 P.3d 667 (Alaska App. 2011) (upholding 65-year sentence for a murder conviction of a defendant who committed the offense at age 16 and noting the imposition of 99-year sentences of juvenile offenders in earlier cases).

<sup>35</sup> See *Graham v. Florida*, 560 US 48 (2010) (robbery case; holding life without parole is an unconstitutional penalty when applied to a juvenile offender for a non-homicide offense); *Miller v. Alabama*, 567 U.S. 460, 480 (2012)

### ***3. Infrequently used forms of prison release in Alaska***

#### ***a. Compassionate release***

Prisoners may be released by the parole board on special medical parole if they are severely medically or cognitively disabled as certified in writing by a physician.<sup>36</sup> The board must determine that there is a reasonable probability that the prisoner will live and remain at liberty without violating any laws or conditions imposed by the board; that due to the prisoner's severe medical or cognitive disability they will not pose a threat of harm to the public if released on parole; and that the release of the prisoner on parole would not diminish the seriousness of the crime. The board must also determine that the prisoner is likely to remain subject to the severe medical or cognitive disability throughout the entire period of parole "or to die," and there is no reasonable expectation that the prisoner's medical or cognitive disability will improve noticeably.<sup>37</sup> If the board finds a change in circumstances regarding a prisoner who has been granted special medical parole, the board may rescind or revise the parole release date.<sup>38</sup>

Prisoners also become eligible for release on discretionary parole if they are at least 60 years of age, have served at least ten years of their sentence, and have not been convicted of an unclassified felony or a sexual felony.<sup>39</sup>

#### ***b. Clemency***

The Governor of Alaska has authority to grant pardons, commutations, and reprieves, and may suspend and remit fines and forfeitures in all cases except impeachment.<sup>40</sup> The governor may not grant executive clemency without first providing notice of consideration of clemency

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(holding mandatory sentences of life without parole are unconstitutional when applied to defendants who were under age 18 at the time of their crimes; stating further that, "[a]lthough we do not foreclose a sentencer's ability to make that judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison."). *See also Montgomery v. Louisiana*, 136 S.Ct. 718, 735 (2016) (stating that *Miller* required "a sentencer to consider a juvenile offender's youth and attendant characteristics before determining that life without parole is a proportionate sentence."); *Jones v. Mississippi*, 141 S. Ct. 1307 (2021) (holding that sentencing courts are not required to make a factual finding of "permanent incorrigibility" before sentencing a juvenile offender to life without parole so long as the court has considered the defendant's youth before imposing the LWOP sentence).

<sup>36</sup> Prisoners serving mandatory sentences that restrict parole eligibility may not be eligible for special medical parole. Likewise, prisoners convicted of certain sexual offenses are also ineligible for special medical parole. *See* Alaska Stat. § 33.16.085(a)(1).

<sup>37</sup> Alaska Stat. § 33.16.085(a)(6).

<sup>38</sup> Alaska Stat. § 33.16.085(a)(1)-(6),(b).

<sup>39</sup> Alaska Stat. § 33.16.090(a)(2).

<sup>40</sup> Alaska Const. art. 3 § 21.

to the parole board for investigation. The board must notify the Department of Law, the office of victims' rights, and the crime victim, and must submit a report of its investigation within 120 days of receiving the notice of consideration.<sup>41</sup>

***c. Release during overcrowding emergencies***

There is no statutory release mechanism for prison overcrowding in Alaska. If prisoner overcrowding occurs, the commissioner of the department of corrections may enter into agreements with public or private agencies in the state or public agencies in other states to house prisoners.<sup>42</sup>

***4. Overall assessment of Alaska's prison-sentencing system***

Overall, Alaska's prison-sentencing system operates with a *high degree of indeterminacy*, in the ranking system developed for this project (see p. iv). The largest broad class of sentences offer parole release eligibility after one-quarter of the judicial maximum term has been served. Exceptions to this formula are relatively limited.

By default, Alaska awards good time deductions to prisoners that result in mandatory release dates (MRDs) at the 67 percent mark of their maximum terms if the credits are not forfeited. We suspect credit-based deductions are retained by the great majority of Alaska's prisoners, but we have no information about the actual workings of the forfeiture process.

Both the parole board and department of corrections hold substantial time-served authority at the back end of Alaska's prison-sentencing system. Depending on how they exercise their powers, their decisions in the aggregate could have large impact on the size of the prison subpopulation of people serving general-rules sentences.

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<sup>41</sup> Alaska Stat. § 33.20.080(a),(b).

<sup>42</sup> Alaska Stat. § 33.30.031(a).