

ROBINA INSTITUTE
OF CRIMINAL LAW AND CRIMINAL JUSTICE

PRISON-RELEASE DISCRETION AND PRISON POPULATION SIZE

STATE REPORT: NEW JERSEY

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Prison-Release Discretion and Prison Population Size

State Report: New Jersey

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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”

Ranking	Alternative terminology	
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: New Jersey¹

Executive Summary

New Jersey’s prison-sentencing system operates with a *moderate degree of indeterminacy*. This ranking reflects a composite judgment of two very different classes of sentences in the state. Under the general rules of prison release for people convicted of nonviolent and some violent offenses, eligibility for parole release (with credit earnings) can be as early as 20 percent or 25 percent of the maximum term. For designated serious violent and sex offenses, parole eligibility cannot occur before the 85-percent mark of the maximum term.

Major administrative parole release (APR) legislation effective in 2021 has the potential to reduce the parole board’s discretionary release caseload to a small fraction of its former size. We hesitate to jump to operational conclusions about a process that is less than two years old.

With respect to the levers of change in prison population size, New Jersey’s system is bifurcated by type of sentence. For prisoners convicted of nonviolent and other “less serious” offenses, back-end releasing decisions are the major determinant of prison population size. In contrast, for the designated “more serious” offenses subject to the 85-percent rule, back-end releasing decisions have little power to drive population numbers up or down.

Terminology note

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

¹ This report was prepared with support from Arnold Ventures. For a broad overview of the law of parole release and supervision in New Jersey, see Alexis Lee Watts, Mike McBride, & Edward E. Rhine, *Profiles in Parole Release and Revocation: Examining the Legal Framework in the United States: New Jersey* (Robina Institute of Criminal Law and Criminal Justice, 2018) (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

New Jersey’s prison-rate history, 1972 to 2020

At yearend 2020, New Jersey’s prison rate was 145 per 100,000 general population, with a prison population of 12,830.² New Jersey’s prison rate was 47th highest among all states.

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

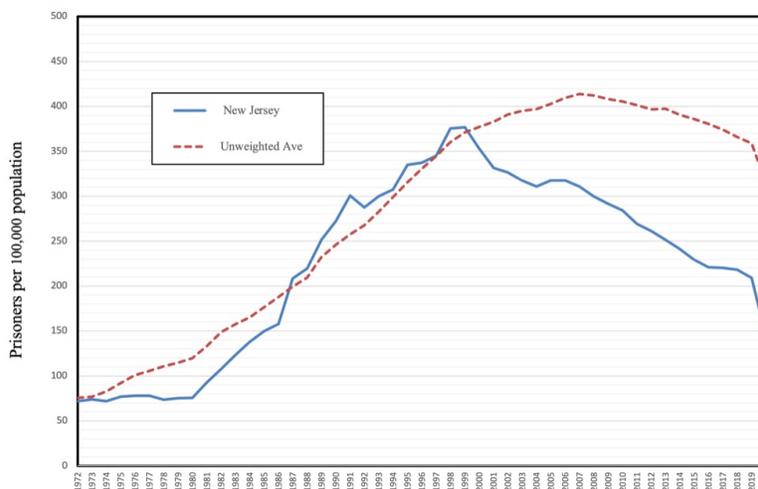
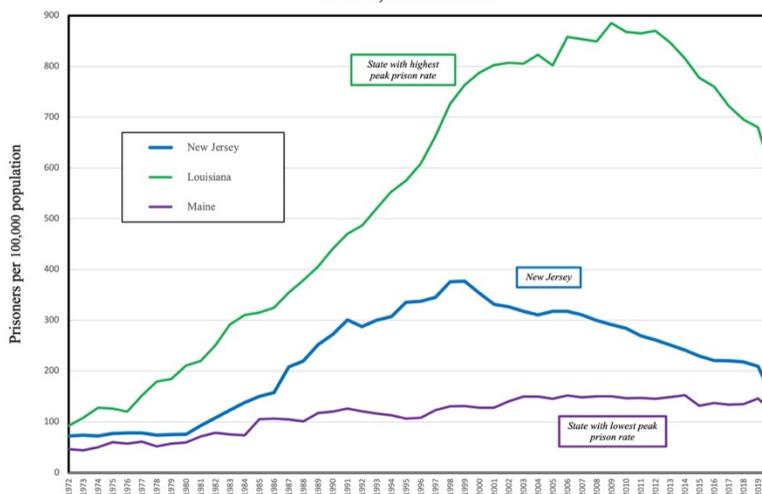


Figure 2. Prison Rate Change in New Jersey, Louisiana, and Maine, 1972 to 2020



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

² 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 New Jersey’s imprisonment rates after 2020 is presented below in the section on “The COVID period in New Jersey.”

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).

New Jersey reached its peak prison rate in 1999 at 377 per 100,000, which dropped to 145 per 100,000 in 2019. This is a net difference of -232 per 100,000, which was the 7th largest prison-rate drop of all states from their peak positions to yearend 2020.

During the 1980s and into the 1990s, New Jersey's prison rate grew at a faster year-by-year pace than the average across all states, see Figure 2. As of 1991, for example, New Jersey's prison rate was 20th highest among all states.

At the end of the 1990s, however, prison growth in New Jersey slowed to a below-average rate, and New Jersey turned the corner toward lowered prison rates years earlier than most states. The decline in prison rates has also been steeper than in the average state. See Figure 1. By 2020, New Jersey's prison rate had reached a low point not seen since 1984-85.

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

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.³

³ 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).

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 general population, for an average incremental downturn of -51 per 100,000.⁴ We believe this was the largest one-year decline in state prison rates in American history.⁵

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.⁶

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 March 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

⁴ 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.

⁵ 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).

⁶ 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.

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.⁷

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 2020.⁸

The COVID period in New Jersey

As reported by the Robina Institute, New Jersey was one of the few states to release large numbers of prisoners through the mobilization of new prison-release processes in the immediate period of COVID shock:

On April 10, 2020, New Jersey Governor Philip Murphy signed Executive Order No. 124, requiring the parole board and department of corrections (DOC) to implement an expedited process to consider prison inmates for parole and furlough. Targets for this process included inmates older than 60 years old, those with high-risk medical

⁷ 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 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.

⁸ 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.

conditions, those who were denied parole within the previous year, and those with short amounts of time left on their sentences. Anyone convicted of murder, sexual assault, or other serious crimes was not eligible for the expedited process. As of late October 2020, more than 1,200 inmates had been released under Executive Order 124, according to Governor Murphy. At least 300 of those 1,200 inmates were approved by the DOC commissioner for furlough (as of August 5, 2020), though there were no exact numbers detailing how many of the inmates were granted parole and how many were granted furlough.

Then, in September of 2020, the New Jersey state legislature passed the Public Health Emergency Credit Bill (S-2519). S-2519 awards up to eight months of public health emergency credits to inmates who are within a year of their maximum parole eligibility dates (excluding those convicted of murder or aggravated sexual assault, and repetitive, compulsive sex offenders). The law's effects continue on a rolling basis while the state is under a public health emergency declaration. As of March 31, 2021, around 3,675 individuals had been released from New Jersey prisons because of S-2519. Approximately 2,258 of those releases occurred on November 4, 2020 (the day the law took effect) and after that about 300 inmates were released each month. In the summer of 2021, Governor Murphy ended the state's public health emergency and thus closed the window for earning credits through S-2519. The last person to be released early was on October 4, 2021; between November 4, 2020, and October 4, 2021, 5,181 individuals were released.⁹

In calendar year 2020, which included the first ten months of the pandemic, New Jersey's prison rate fell from 209 to 145 per 100,000—a one-year decline of 64 per 100,000. This was the 13th largest one-year drop reported among all 50 states for that year.¹⁰ Measured in percentage terms, it was a 31-percent fall in New Jersey's prison rate. The state's total prison population fell by 5,783 people, from 18,613 to 12,830.¹¹

COVID releases were an important contributor to this drop. In a separate study, the Robina Institute identified 6,381 COVID-influenced releases in New Jersey from March 2020 through

⁹ 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 E (citations omitted). The raw number of COVID releases tells us nothing about how much later those releases would have occurred in the absence of the pandemic. See *supra* note 7.

¹⁰ The largest reported drop from yearend 2019 to yearend 2020 was in Kentucky, from 515 to 414 per 100,000. E. Ann Carson, *Prisoners in 2020 - Statistical Tables* (Bureau of Justice Statistics, 2021), at 15 table 7.

¹¹ *Id.*, at 11 table 4.

December 2021.¹² Falling admissions were an even greater factor in the state's loss of prison population, however. The number of prison admissions in New Jersey dropped by 46.7 percent in 2020 compared with the previous year (from 7,216 in 2019 to 3,845 in 2020). Total numbers of releases grew in 2020 by 19.7 percent over 2019 (from 8,115 to 9,711).¹³

New Jersey's large prison-population drop in 2020 did not carry forward into 2021 at nearly the same pace. From yearend 2020 to December 2021, the Vera Institute reported that New Jersey saw a decrease in its prison population, from 12,808 to 12,497—or 2.4 percent.¹⁴ As of this writing, no state prison population statistics were available into 2022.

1. General rules of prison release in New Jersey

When imposing a prison sentence, sentencing courts have discretion to select a judicial maximum term within the following statutory ranges:

- Crime of the first degree: between 10 and 20 years;
- Crime of the second degree: between five and 10 years;
- Crime of the third degree: between three and five years;
- Crime of the fourth degree: 18 months or less.¹⁵

As a general rule, sentences for nonviolent and lower-level violent and sex offenses carry parole release eligibility dates (PEDs) at the one-third mark of the judicial maximum sentence or nine months, whichever is longer.¹⁶ In most cases, PEDs and maximum terms may be reduced by

¹² 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.

¹³ E. Ann Carson, *Prisoners in 2020 - Statistical Tables* (Bureau of Justice Statistics, 2021), at 17 table 8, 19 table 9.

¹⁴ Jacob Kang-Brown, *People in Prison in Winter 2021-22* (Vera Institute of Justice, 2022), at 3 table 2 (reporting a drop from 22,854 to 22,342). As a general matter, Vera's *People in Prison* reports should not be treated uncritically as "updates" of BJS's annual *Prisoners* series. Vera does not always gather prisoner counts from the same dates as BJS, nor does it calculate state prison rates in the same way. For example, BJS calculates yearend prison rates using yearend population estimates for each state from the Census Bureau, while Vera uses the Census Bureau's July 1 estimates (six months earlier). Occasionally, the absolute numbers of state prisoners reported by Vera are dramatically different from those in BJS reports, suggesting basic differences in counting rules. Because of such incompatibilities, we do not attempt to integrate data from the two sources in any of our state reports for this project.

¹⁵ N.J. Rev. Stat. § 2C:43-6.

¹⁶ N.J. Stat. § 30:4-123.51(a),(g). The main body of serious offenses that are not subject to the one-third rule are listed in New Jersey's No Early Release Act, discussed later in the report (most of these delay PEDs until the 85-percent mark of the timeline). Sentences that carry a mandatory minimum prison term are another important exception.

good time and earned time credits, discussed below. Sentencing courts have discretion to impose extended minimum terms as long as 50 percent of the judicial maximum sentence if they are “clearly convinced” that there are “aggravating factors that substantially outweigh the mitigating factors” in a particular case.¹⁷

The typical configurations of general-rules sentences in New Jersey can be modeled in one set of prison-release timeline diagrams. New Jersey Figure 3 (below) shows the 33-percent starting position of PEDs for judicial sentences of 27 months or more. For maximum terms shorter than 27 months, the required nine months makes up a larger percentage of the judicial sentence (for example, for an 18-month maximum sentence, the PED would occur at the 50-percent mark).

PEDs can be moved earlier through the accrual of various forms of credits, but may never be shortened below nine months.¹⁸ Most credits are also deducted from judicial maximum terms to create earlier mandatory release dates (MRDs), although these reductions tend to be modest. All credit-based sentence discounts may be lost through the forfeiture of credits for misconduct.¹⁹

Prisoners receive good time credits (called “progressive time credits” in New Jersey) for “continuous orderly deportment.” Credits are awarded according to a schedule based on the judicial maximum term, ranging from 72 to 192 days per year, according to a statutory

¹⁷ N.J. Stat. § 2C:43-6(b); *id.*, § 2C:44-1 (listing aggravating and mitigating circumstances to be considered by sentencing courts). Courts may also impose extended minimum terms of up to 50 percent when there is a “substantial likelihood that the defendant is involved in organized criminal activity.” We have seen no information on how often sentencing courts exercise this option. (The New Jersey parole board’s published materials almost all refer to sentences with original minimum terms at the 33-percent mark of the timeline, so we assume this is the norm.) If courts regularly impose minimum terms extended to the 50-percent mark, this would reduce the degree of indeterminacy in such individual sentences and in the system as a whole.

¹⁸ This discussion does not include “jail credits” for time served in custody prior to sentencing. See N.J. Ct. R. 3:21-8(a). Some prisoners are ineligible for the receipt of credits against their sentences, including those convicted of offenses listed in the No Early Release Act, N.J. Stat. § 2C:43-7.2(d), and sex offenders found not to be amenable to sex offender treatment, N.J. Stat. § 30:4-123.51(e)(1). Prisoners serving sentences with mandatory minimum terms receive no credit-based reductions of their minimum terms to parole eligibility (with the exception of the small deductions available under parole contracts), but they may receive credit-based reductions from their maximum terms. N.J. State Parole Bd., *The Parole Book: A Handbook on Parole Procedures for Adult and Young Adult Inmates* (6th ed. 2019), at 7.

¹⁹ See N.J. Stat. § 30:4-140 (“In case of any flagrant misconduct the board of managers may declare a forfeiture of the time previously remitted, either in whole or in part, as they deem just.”); N.J. Admin. Code § 10A:9-5.3(a)(2) (capping penalties for single disciplinary violations at 365 days of good time credits and 72 days of work credits). Forfeited good time credits may be restored upon an inmate’s application as long as they were not revoked for filing a frivolous civil action or for failing to participate in sex offender treatment. N.J. Admin. Code § 10A:9-5.5.

formula.²⁰ The statutory schedule works very nearly like a ratio formula—as though 26 percent were subtracted from everyone’s PEDs and eight percent from their maximum terms, but the exact allowances are a little bumpy compared to a smooth ratio. Actual reductions vary upward or downward by one or two percentage points depending on the length of the maximum term.²¹

Application of full scheduled good time credits moves PEDs from the 33-percent to about the 25-percent mark (plus or minus one or two percentage points) no matter how long the judicial maximum term. New Jersey Full good time credits also move the mandatory release date (MRD) from 100 percent of the maximum term to about the 92-percent mark (plus or minus one or two percentage points).²²

New Jersey Figure 4 shows the relevant calculations for a maximum sentence of five years, assuming the greatest possible good time credits have been earned.

In addition, New Jersey offers two main categories of earned time credits.²³ Prisoners can earn “work credits” for work and program participation of up to six days per month.²⁴ Those held in minimum custody may also earn “minimum custody credits” of three days per month in their first year and five days per month in later years.²⁵

²⁰ N.J. Stat. § 30:4-140 (containing schedule). Prior to 2021, these were called “commutation credits” in New Jersey. See N.J. State Parole Bd., *The Parole Book: A Handbook on Parole Procedures for Adult and Young Adult Inmates* (6th ed. 2019), at 6.

²¹ See sample calculations in Appendix 1. Measured in percentages, credit-based sentence reductions in New Jersey tend to become slightly more generous as the lengths of maximum terms increase. Small as these differences are, they are probably all but irrelevant because prisoners with extremely long sentences are likely to be convicted of serious offenses under the No Early Release Act, and are foreclosed from earning credits.

²² *Id.*

²³ Additional earned time credits against PEDs are available for the completion of approved programs under “parole contract agreements,” see N.J. Stat. §§ 30:4-123.52(b), 30:4-123.67; N.J. State Parole Bd., *The Parole Book: A Handbook on Parole Procedures for Adult and Young Adult Inmates* (6th ed. 2019), at 11-12, 42. We do not treat parole contracts as a major factor in time-served outcomes in New Jersey because eligibility is limited; agreements must be concluded between the prisoner, the parole board, and the department of corrections; credit amounts are small; and reductions from PEDs ultimately require the approval of sentencing courts. Put another way, receipt of (modest) benefits by prisoners require a sequence of favorable actions by the parole board, corrections officials, and courts—a three-layer obstacle course. In this project, we view outcomes that are dependent on the actions of more than one agency to be less likely to occur than actions within the jurisdiction of a single agency.

²⁴ “Work credits” are earned at a rate of one day for every five days that prisoners are “employed in productive occupations consistent with their health, strength, and mental capacity.” These “productive occupations” include “all education and workforce skills or vocational training programs.” N.J. Stat. § 30:4-92.

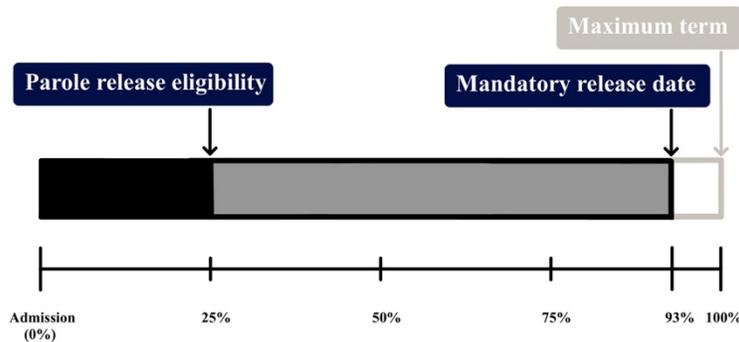
²⁵ Prisoners classified as being in minimum custody may earn minimum custody credits of three days for each month during the first year of employment in honor camps, farms, or details and five for each month in subsequent years. N.J. Stat. § 30:4-92.

The New Jersey Parole Board has calculated the greatest possible effects of these additional sentence reductions (see Appendix 2). For prisoners who win the most possible work and minimum custody credits—on top of full good time credits—PEDs are moved back to about the 20-percent mark of the judicial maximum sentence (plus or minus one or two percentage points). Prisoners with such high total earnings also receive MRDs moved back to about the 86-percent mark of their original maximum terms (plus or minus one percentage point).

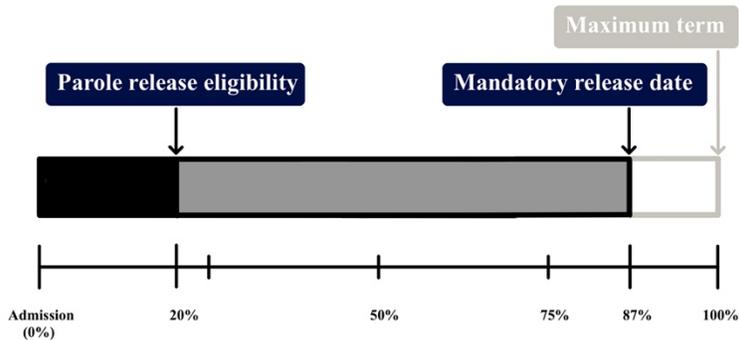
New Jersey Figure 3. Prison-Release Timeline for General-Rules Sentences with No Credits



New Jersey Figure 4. Prison-Release Timeline for General-Rules Sentences with Full Good Time Credits



New Jersey Figure 5. Prison-Release Timeline for General-Rules Sentences with Full Good Time Credits Plus Most Possible Work and Minimum Custody Credits



New Jersey Figure 5 shows the relevant calculations for a maximum sentence of five years, assuming the greatest possible good time, work, and minimum custody credits have all been earned.

Figures 3 through 5 are fair approximations of the operation of general-rules sentences with maximum terms from 27 months to 50 years. In the ranking system developed for this project, such sentences are about 20 percent determinate and 80 percent indeterminate. They carry a *high degree of indeterminacy*. For the affected subpopulation of prisoners, this class of sentences has a population multiplier potential (PMP) of 5:1. That is, if all general-rules prisoners were held as long as possible under *the longest-time-served scenario* their numbers would eventually stabilize at five times the number that would be reached if they were consistently released in accord with the *shortest-time-served* scenario allowable by law.²⁶

Prisoners ineligible for minimum custody assignment serve sentences with a somewhat lower degree of indeterminacy than eligible prisoners, but *all* of the release models shown in Figures 3 through 5 fit within our definition of high indeterminacy (with release eligibility from 20-39.99 percent of the maximum term).

Prison release for more serious offenses under the No Early Release Act

The most important category of prisoners who are not subject to the general rules discussed above are those who have been convicted of designated serious offenses in New Jersey's "No Early Release Act" (NERA). These people must serve 85 percent of their judicial maximum sentences before becoming eligible for discretionary parole release, with no reductions for good time or earned time credits.²⁷ NERA offenses include:

Either first or second degree of the following: murder; aggravated manslaughter; manslaughter; vehicular homicide; aggravated assault; disarming a law enforcement or corrections officer; kidnapping; aggravated sexual assault; sexual assault; robbery; carjacking; aggravated arson; burglary; extortion by threat of bodily injury, physical confinement, or other criminal act; booby traps in controlled substance manufacturing or distribution facilities or the fortification of such premises; strict liability for causing drug-induced death; terrorism; producing or possessing chemical weapons, biological agents, or nuclear or radiological devices; first-degree

²⁶ This calculation assumes everything else in the system is held equal.

²⁷ N.J. Stat. § 2C:43-7.2(a). Good-time, work credits, and parole contract credits do not decrease the 85-percent minimum terms required by NERA. N.J. Admin. Code § 10A:71-3.56(d); *State v. Webster*, 892 A.2d 688, 691 (N.J. Super. Ct. App. Div. 2006) ("the Legislature has spoken in clear and unambiguous terms that a person convicted of a NERA offense must serve eighty-five percent of the sentence imposed before becoming eligible for release.").

racketeering; firearms trafficking; causing or permitting a child to engage in pornography; and the attempt to commit any of these offenses.²⁸

New Jersey's administrative parole release program

Effective February 1, 2021, the parole release process for people convicted of nonviolent and lower-level violent crimes was dramatically streamlined, subject to New Jersey's administrative parole release (APR) law.²⁹

Prisoners eligible for APR are automatically released provided certain statutory conditions are satisfied:

- The prisoner has not committed a new crime or a serious disciplinary infraction within the prior two years. (The relevant disciplinary infractions are limited to those designated in regulations as “a prohibited act that is considered to be the most serious and results in the most severe sanctions”).
- The prisoner has completed rehabilitative programs as determined by the department of corrections and the parole board.³⁰

For APR-eligible prisoners who meet the above criteria, no parole hearing is required.³¹ Crime victims must be notified but have no right to remove prisoners from the APR process.³² Nor is there any discretionary power in the parole board or department of corrections to “derail” prisoners from the APR track because of a victim's objection.

Notably, the APR statute waives the program completion requirement for a prisoner who “applied for but was unable to complete or was denied access to these programs due to circumstances beyond the inmate's control including, but not limited to, capacity limitations or exclusionary policies of these programs.”³³ Thus, New Jersey's APR program is not

²⁸ N.J. Stat. § 2C:43-7.2(d).

²⁹ N.J. Stat. § 30:4-123.55b.

³⁰ N.J. Stat. § 30:4-123.55d(a)(2),(3).

³¹ N.J. Stat. § 30:4-123.55d(b).

³² In several other APR programs nationwide, prisoners must be “derailed” from the APR track upon request of the victim. 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, forthcoming 2022), Ch. 5 (comparing APR programs in a dozen states).

³³ N.J. Stat. § 30:4-123.55d(a)(3).

frustrated by shortages in program availability, waiting lists, administrative delays, and the like.³⁴

Also unusually, APR eligibility remains in force even if release is denied at first eligibility. The statute provides that, “an adult inmate shall be administratively released on parole at the time of primary or subsequent parole eligibility.”³⁵

Prisoners ineligible for APR include those convicted of NERA offenses (see previous section); convicted of designated offenses involving firearms; convicted of an offense requiring them to register as a sex offender; or who are classified by statute as “sexually violent predators.”³⁶

³⁴ Similar statutes exist in two other states’ APR programs, see Miss. Code § 47-7-18(2),(6); N.C. Gen. Stat. § 15A-1340.18(e).

³⁵ N.J. Stat. § 30:4-123.55d(a). In most APR programs across the U.S., prisoners receive only one shot at APR and are afterward shifted into the traditional parole release process. 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, forthcoming 2022), Ch. 5.

³⁶ These disqualifications are stated in N.J. Stat. § 30:4-123.55d(a)(1) (cross-referencing several other provisions). The offenses involving firearms that make inmates ineligible for APR include: possession, manufacture, transportation, sale, or disposal of a sawed-off shotgun, defaced firearm, or machine gun; possession of an assault firearm unless it is licensed, registered, or rendered inoperable; unlicensed manufacture, transportation, sale, or disposal of an assault firearm; possession of a handgun, rifle, or shotgun without the proper permit; possession of a firearm with intent to use it unlawfully against another person or another’s property; possession, receipt, or transfer of a “community gun” (i.e. a firearm used unlawfully by two or more people); possession of a firearm in conjunction with being a leader of a narcotics trafficking network, maintaining or operating a controlled dangerous substance production facility, manufacturing, distributing, or dispensing a controlled dangerous substance or an imitation, employing a juvenile in a drug distribution scheme, or possessing a controlled dangerous substance or imitation near school or public property; murder, manslaughter, aggravated assault, kidnapping, aggravated sexual assault, aggravated criminal sexual contact, robbery, burglary, or escapes from custody if a firearm was used or possessed while committing or attempting to commit the crime or while fleeing; or if the inmate is ineligible to possess weapons or ammunition because of previous offenses. N.J. Stat. § 2C:43-6(c); see *id.* § 2C:39-7 (listing the crimes which make it illegal to possess weapons or ammunition if a person has been convicted of them). If the weapon was a machine gun or assault firearm, some offenses are subject to an even lengthier mandatory minimum term. See N.J. Stat. § 2C:43-6(g) (identifying such offenses as possession with intent to use it unlawfully; manufacturing, distributing, or dispensing a controlled dangerous substance; and those in which a firearm is used or possessed: murder, manslaughter, aggravated assault, kidnapping, aggravated sexual assault, aggravated criminal sexual contact, robbery, burglary, and escape from custody). For exclusions based on the commission of sex offenses, see N.J. Stat. § 30:4-27.26(b) (defining “sexually violent predator” as “a person who has been convicted, adjudicated delinquent or found not guilty by reason of insanity for commission of a sexually violent offense, or has been charged with a sexually violent offense but found to be incompetent to stand trial, and suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for control, care and treatment”). The offenses that require convicted persons to register as sex offenders are listed in N.J. Stat. § 2C:7-2(a)(3)(b) (the offenses are aggravated sexual assault, sexual assault, aggravated criminal sexual conduct, kidnapping, or an attempt to commit any of those crimes if the court found that the offender’s conduct was characterized by a pattern of repetitive, compulsive behavior; other crimes include endangering the welfare of a child, endangering the welfare of a child

Because New Jersey’s APR program is so new, we have virtually no information about how it is working. The APR statute requires an independent evaluation of the program after it has been in operation for five years, to be conducted by a “criminal justice program at a four-year public institution of higher education in this State.”³⁷ At the earliest, such an evaluation could not begin until 2026.

Reconsideration after denials of parole release

The next date of reconsideration after a denial of parole release is based on an offense-specific statutory schedule ranging from as little as eight months for young adult offenders sentenced for a fourth-degree crime up to 27 months for more serious crimes and lengthier sentences.³⁸ The parole board retains discretion to establish a date nine months earlier or later than the schedule dictates if “the severity of the crime for which the inmate was denied parole and the prior criminal record or other characteristics of the inmate warrant such adjustment.”³⁹

The schedule may be circumvented if the subsequent parole eligibility date is “clearly inappropriate” considering an inmate’s failure to make “satisfactory progress in reducing the likelihood of future criminal behavior” or in light of “the circumstances of the crime, the characteristics and prior criminal record of the inmate and the inmate’s institutional behavior.”⁴⁰

An inmate’s reconsideration date may be pushed back for “serious” and “persistent” institutional violations or “indictable conduct.”⁴¹

Young adult offenders

People convicted of crimes who are younger than age 26 at the time of sentencing may be sentenced as “young adult offenders” to an “indeterminate term” instead of sentences

by engaging in sexual conduct, luring or enticing, criminal sexual contact if the victim is a minor, criminal restraint or false imprisonment if the victim is a minor and the offender is not the parent of the victim, knowingly promoting prostitution of a child, and leader of a child pornography network. A conviction, adjudication of delinquency, or acquittal by reason of insanity for an offense similar to those listed from another state are also included).

³⁷ N.J. Stat. § 30:4-123.55d(d).

³⁸ N.J. Admin. Code § 10A:71-3.21. For example, the 27-month waiting period applies to sentences for murder, manslaughter, aggravated sexual assault, and kidnapping, as well as sentences over fourteen years that are not otherwise mentioned in the rule. *Id.* § 10A:71-3.21(a)(1).

³⁹ N.J. Admin. Code § 10A:71-3.21(c).

⁴⁰ N.J. Admin. Code § 10A:71-3.21(d)–(e).

⁴¹ N.J. Stat. § 30:4-123.52(a).

otherwise authorized by state law.⁴² The decision whether to impose such a sentence is a matter of the sentencing court's discretion, to be used in "limited circumstances."⁴³

Prison release rules for such sentences are far more flexible than the general rules outlined earlier. There are no statutory minimum terms to parole release eligibility. Instead, the parole board assigns so-called "time goals" based on the nature of the crime and the sentence length, using the guidance of an advisory schedule.⁴⁴ Sentence credits are based on a holistic evaluation of prisoners' program participation, not the credit-deduction formulas for general-rules prisoners.⁴⁵

2. Life sentences in New Jersey

a. Adults

Offenders serving life sentences for the murder of a law enforcement officer, murder of a person under 18 years old while committing sexual assault or criminal sexual contact, or particularly aggravated murder are not eligible for parole.⁴⁶

"Persistent offenders" convicted of certain serious crimes who have been convicted of any of those crimes at least twice before are sentenced to life without parole.⁴⁷ However, persistent offenders sentenced to life who are at least 70 years old and have served at least 35 years may

⁴² N.J. Stat. § 2C:43-5; N.J. Admin. Code § 10A:71-3.3; N.J. State Parole Bd., *The Parole Book: A Handbook on Parole Procedures for Adult and Young Adult Inmates* (6th ed. 2019), at 9-10, 46. Men sentenced under this provision are to be held in the state's Youth Correctional Institution Complex; women are to be held in the Correctional Institution for Women.

⁴³ *State v. Styker*, 619 A.2d 1016, 1024 (N.J. Super. 1993) ("While the youthful offender statute unquestionably remains a viable part of the Code, and offers the benefits of rehabilitation in certain instances, its application is now merely an option, the exercise of which is reserved solely for those limited cases where the sentencing court, in its sound discretion, deems it to be appropriate."), *aff'd*, 633 A.2d 521 (N.J. 1993) (per curiam).

⁴⁴ N.J. State Parole Bd., *The Parole Book: A Handbook on Parole Procedures for Adult and Young Adult Inmates* (6th ed. 2019), at 9 ("If you are a young adult offender sentenced to an indeterminate term of years in the Youth Correctional Complex, the parole law does not set a parole term for you. A Board panel will establish a time goal."). For the current advisory schedule see *id.* at 43 ("The schedule of presumptive parole eligibility terms shown below is used as a guide by the Board panel when a time goal is set.").

⁴⁵ The Young Adult Board Panel or an assigned hearing officer use a scale of "above average," "average," "below average," and "poor." Those rated as "above average" receive 15 days off per month, those who are "average" receive 10 days, those who are "below average" receive five days, and those whose participation is evaluated as "poor" receive no days off. N.J. Admin. Code § 10A:71-3.3(g),(h).

⁴⁶ N.J. Stat. § 30:4-123.51(k).

⁴⁷ N.J. Stat. § 2C:43-7.1(a). The relevant crimes include murder; aggravated manslaughter; first-degree kidnapping; sexual assault if committed during the commission of another serious crime, with the use of a weapon, if aided or abetted by another, or using coercion and severe personal injury results; robbery; and carjacking.

be released on parole if the parole board finds that “the defendant is not a danger to the safety of any other person or the community.”⁴⁸

Inmates sentenced to life imprisonment with no mandatory minimum term are eligible for parole after serving 25 years minus commutation and work credits.⁴⁹ The 25-years-minus-credits is the latest possible parole eligibility date for *all* inmates not subject to a mandatory minimum sentence, even those not sentenced to life.⁵⁰

b. Juvenile life sentences

New Jersey has abolished LWOP sentences for offenders who were under age 18 at the time of their crimes. Instead, the state adopted a sentencing scheme limiting juvenile sentences to an offense-specific term of years, ranging from 6 months for a “disorderly persons” offense up to 20 years for murder caused purposely or knowingly.⁵¹ Repeat juvenile offenders may be subject to an extended term ranging from one to five additional years, depending on the current offense.⁵² Thus, a juvenile convicted of murder may ultimately be sentenced to a statutory maximum of 25 years.

The parole board has a high degree of discretion in making parole release decisions for juveniles,⁵³ though court approval is required if the board proposes to release inmates convicted of first, second, or third degree offenses before one-third of the sentence has been served or before one-fourth of the term has been served for all other crimes.⁵⁴

⁴⁸ N.J. Stat. § 2C:43-7.1(e).

⁴⁹ N.J. Stat. § 30:4-123.51(b).

⁵⁰ *Id.* (“If an inmate sentenced to a specific term or terms of years is eligible for parole on a date later than the date upon which he would be eligible if a life sentence had been imposed, then in such case the inmate shall be eligible for parole after having served 25 years, less commutation time for good behavior and credits for diligent application to work and other institutional assignments.”).

⁵¹ N.J. Stat. § 2A:4A-44(d)(1).

⁵² N.J. Stat. § 2A:4A-44(d)(3). The extended term for murder may be up to five years, other first-degree crimes up to three years, second-degree crimes up to two years, and third-degree crimes up to one year. *Id.* A juvenile is a “repeat” offender if convicted twice previously of an offense equivalent to a first or second-degree offense if committed by an adult. *Id.*

⁵³ N.J. Stat. § 2A:4A-44(d)(2) (“The period of confinement shall continue until the panel established pursuant to subsection b. of this section determines that the person is eligible for early release on parole or until expiration of the term of confinement, whichever shall occur first; except that in no case shall the period of confinement and parole exceed the maximum provided by law for the offense.”).

⁵⁴ *Id.*

3. Infrequently used forms of prison release in New Jersey

a. Compassionate release

If a medical diagnosis determines that an inmate is suffering from a terminal condition, disease or syndrome⁵⁵ or a permanent physical incapacity,⁵⁶ the Department of Corrections must promptly provide to the inmate a Certificate of Eligibility for Compassionate Release.⁵⁷ A copy of the certificate must also be provided to the inmate’s attorney or, if the inmate does not have an attorney, the Public Defender.⁵⁸ An inmate who receives a Certificate of Eligibility for Compassionate Release may petition the court for compassionate release.⁵⁹

The petition for compassionate release must be accompanied by a Certificate of Eligibility for Compassionate Release, and must be filed with the Superior Court.⁶⁰ The court may order compassionate release of an inmate if it finds by clear and convincing evidence that the inmate is so debilitated or incapacitated by the terminal condition, disease, or syndrome, or permanent physical incapacity as to be permanently physically incapable of committing a crime if released and, in the case of a permanent physical incapacity, the conditions under which the inmate would be released would not pose a threat to public safety.⁶¹

Eligible offenders may be released on medical parole “at any time.”⁶² However, they are subject to being recalled to confinement if they are no longer “physically incapable of committing a crime” or now pose a public safety threat.⁶³

b. Clemency

The governor of New Jersey has the authority to “grant pardons and reprieves in all cases other than impeachment and treason”⁶⁴ The state’s parole board collects applications,

⁵⁵ “Terminal condition, disease, or syndrome” is defined as an inmate’s prognosis of six months or less to live. N.J. Stat. § 30:4-123.51e(l).

⁵⁶ “Permanent physical incapacity” is defined as a prognosis that an inmate has a medical condition that renders the inmate permanently unable to perform activities of basic daily living, results in the inmate requiring 24-hour care, and did not exist at the time of sentencing. N.J. Stat. § 30:4-123.51e(l).

⁵⁷ N.J. Stat. § 30:4-123.51e (d)(2).

⁵⁸ N.J. Stat. § 30:4-123.51e (d)(2).

⁵⁹ N.J. Stat. § 30:4-123.51e (d)(2).

⁶⁰ N.J. Stat. § 30:4-123.51e (f)(2), (e).

⁶¹ N.J. Stat. § 30:4-123.51e (f)(1).

⁶² N.J. Stat. § 30:4-123.51(l).

⁶³ N.J. Stat. § 30:4-123.51c(h).

⁶⁴ N.J. Const. art. V, § 2, cl. 1.

and may investigate cases to make nonbinding recommendations to the governor.⁶⁵ The governor must report all granted clemency applications to the legislature on an annual basis.⁶⁶

c. Release during overcrowding emergencies

New Jersey does not currently have an established process for emergency release of inmates due to prison overcrowding. The most recent statutory provisions of this type expired in 1984 and have not been renewed.⁶⁷

4. Overall assessment of New Jersey's prison-sentencing system

Overall, the New Jersey's prison-sentencing system operates with a *moderate degree of indeterminacy*, according to the scale we have developed for this project. This ranking reflects a composite judgment of two very different classes of sentences in the state, both of which we expect to be heavily represented in New Jersey's standing prison population.

Under the general rules of prison release for people convicted of nonviolent and some violent offenses, eligibility for parole release (with credit earnings) can be as early as 20 percent or 25 percent of the maximum term. Such sentences are on the borderline of our definition of *extremely high indeterminacy*. For designated serious violent and sex offenses (NERA offenses), parole eligibility cannot occur before the 85-percent mark of the maximum term. Such sentences are *extremely low in indeterminacy*. They are among the least determinate sentences found anywhere in the nation.

It is difficult to assess the relative powers of the parole board and department of corrections at the back end of New Jersey's prison-sentencing system. On the surface, it appears that the department of corrections has become the most important agency with time-served discretion.

Recent administrative parole release legislation has potentially reduced the parole board's discretionary release caseload to a fraction of its former size. Under the APR program, the department of corrections may be the dominant release authority; it is the agency in charge of certifying prisoners' compliance with the criteria for automatic release. We hesitate to jump to operational conclusions about a procedure that is less than two years old as of this writing. In addition to their role in the APR program, however, credit awards administered by the

⁶⁵ See N.J. Stat. § 2A:167-7 (“The governor, in his discretion, may, prior to granting or denying any such application, refer the same to the state parole board for its investigation, and in such case the board shall make a full and complete investigation and report thereon in writing to the governor with its recommendation in the case.”).

⁶⁶ N.J. Stat. § 2A:167-3.1.

⁶⁷ See 1982 N.J. Laws 561–63 (granting two-year authority to the governor to declare a “correctional facilities overcrowding state of emergency” and accelerate parole release dates for certain offenders).

department are an important determinant of parole eligibility dates in the first place, potentially shortening minimum terms by as much as 40 percent.

With respect to the levers of change in prison population size, New Jersey's system is bifurcated by type of sentence. For prisoners convicted of nonviolent and other "less serious" offenses, back-end releasing decisions are the major determinant of prison population size. The PMP for these sentences is ordinarily in the range of 4:1 to 5:1. Variations in the uses of time-served discretion could have huge impact on this sizable subpopulation, without any change in legislation or in the practices of courts and prosecutors. In contrast, for the designated "more serious" offenses subject to the 85-percent rule, back-end releasing decisions have little power to drive population numbers up or down. The PMP for this sentence class is only 1.18:1.

*Appendix 1***Table 1. Effects of Credit Earnings on Minimum and Maximum Terms for General-Rules Sentences in New Jersey**

<i>Judicial MAX</i>	<i>MIN as % of MAX with good time credits only</i>	<i>Reduction from MAX with good time credits only</i>	<i>MIN as % of MAX with all possible credits*</i>	<i>Reduction from MAX with all possible credits *</i>
5 years	25 percent	7 percent	21 percent	13 percent
10 years	26 percent	8 percent	19 percent	14 percent
15 years	25 percent	8 percent	20 percent	14 percent
20 years	25 percent	8 percent	20 percent	14 percent
25 years	25 percent	9 percent	20 percent	14 percent
30 years	24 percent	9 percent	20 percent	14 percent
40 years	24 percent	9 percent	19 percent	15 percent
50 years	23 percent	10 percent	18 percent	15 percent

Source: Percentage calculations are derived from the “Parole Eligibility Table” in N.J. State Parole Bd., *The Parole Book: A Handbook on Parole Procedures for Adult and Young Adult Inmates* (6th ed. 2019), at 35 (reproduced in Appendix 2).

* To earn the most possible credits, prisoners must work seven days a week and must be placed on minimum custody.

Appendix 2

PAROLE ELIGIBILITY TABLE

A	B	C**	D**	E**	F**	G**
Sentence Eligibility (Where no man.-min.) max minus jail credits) <u>Years</u>	Flat Credits (Note: Based on 1/3 of possible) <u>yrs.-mos.</u>	Commutation Work Credits (Maximum possible) <u>days</u>	Estimated Minimum Custody Credits <u>days</u>	Estimated Eligibility Includes: 1.C.C. 2.No W.C. 3.No M.C.C. <u>days</u>	Earliest Eligibility Includes: 1.C.C. <u>yrs.-mos.-days</u>	Latest <u>yrs.-mos.-days</u>
1	0 - 4	--	--	--	0 - 9 - 0*	0 - 9 - 0*
2	0 - 8	--	--	--	0 - 9 - 0*	0 - 9 - 0*
3	1 - 0	72	45	22	0 - 9 - 0*	0 - 9 - 23
4	1 - 4	100	59	30	0 - 9 - 26	1 - 0 - 20
5	1 - 8	128	73	37	1 - 0 - 5	1 - 3 - 25
6	2 - 0	156	87	49	1 - 2 - 13	1 - 6 - 29
7	2 - 4	188	100	59	1 - 4 - 18	1 - 9 - 27
8	2 - 8	220	113	70	1 - 6 - 25	2 - 0 - 23
9	3 - 0	252	126	81	1 - 9 - 1	2 - 3 - 23
10	3 - 4	284	139	92	1 - 11 - 5	2 - 6 - 21
11	3 - 8	316	160	49	2 - 2 - 23	2 - 9 - 22
12	4 - 0	348	173	61	2 - 4 - 28	3 - 0 - 17
13	4 - 4	380	186	71	2 - 7 - 3	3 - 3 - 15
14	4 - 8	412	199	81	2 - 9 - 11	3 - 6 - 16
15	5 - 0	444	213	93	2 - 11 - 15	3 - 9 - 16
16	5 - 4	476	233	51	3 - 3 - 0	4 - 0 - 9
17	5 - 8	508	247	62	3 - 5 - 6	4 - 3 - 10
18	6 - 0	540	260	73	3 - 7 - 12	4 - 6 - 10
19	6 - 4	572	273	83	3 - 9 - 17	4 - 9 - 8
20	6 - 8	604	286	95	3 - 11 - 23	5 - 0 - 4
21	7 - 0	636	308	52	4 - 3 - 7	5 - 3 - 4
22	7 - 4	676	319	61	4 - 5 - 4	5 - 5 - 24
23	7 - 8	716	330	71	4 - 7 - 5	5 - 8 - 14
24	8 - 0	756	342	81	4 - 9 - 9	5 - 11 - 9
25	8 - 4	796	358	89	4 - 11 - 2	6 - 1 - 24
26	8 - 8	836	374	47	5 - 2 - 20	6 - 4 - 16
27	9 - 0	876	392	62	5 - 4 - 10	6 - 7 - 9
28	9 - 4	916	397	67	5 - 6 - 18	6 - 9 - 26
29	9 - 8	956	409	77	5 - 8 - 18	7 - 0 - 17
30	10 - 0	996	421	87	5 - 10 - 20	7 - 3 - 9
35	11 - 8	1196	488	83	6 - 9 - 28	8 - 4 - 21
40	13 - 4	1412	550	134	7 - 6 - 20	9 - 5 - 18
45	15 - 0	1632	593	170	8 - 5 - 8	10 - 6 - 13
50	16 - 8	1852	660	226	9 - 1 - 27	11 - 7 - 5
55	18 - 4	2088	712	269	9 - 10 - 29	12 - 7 - 10
60	20 - 0	2328	768	316	10 - 7 - 26	13 - 7 - 17
65	21 - 8	2568	795	348	11 - 5 - 29	14 - 7 - 25
70	23 - 4	2824	843	383	12 - 2 - 24	15 - 7 - 4
Life	25 - 0	3084	916	439	12 - 10 - 4	16 - 6 - 21

* Nine-month restriction applies to all 2C cases only.

** All figures based on zero jail credits.

Source: N.J. State Parole Bd., *The Parole Book: A Handbook on Parole Procedures for Adult and Young Adult Inmates* (6th ed. 2019), at 34-35 (“Column F ... is based on [full good time credits plus] the maximum amount of work and minimum custody credits Column G ... assumes that no [good time] credits have been lost and that no work credits or minimum custody credits are earned.”).